

In the Matter of an Impasse

- between -

COUNTY OF SANTA BARBARA

- and -

DEPUTY DISTRICT ATTORNEYS  
ASSOCIATION.

*FACTFINDING REPORT &  
RECOMMENDATIONS*

*REPORT ISSUED  
NOVEMBER 30, 2014*

California Public Employment Relations  
Board Impasse No. LA-IM-168-M.

*FACTFINDING PANEL:*

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

*Association Member:* **LEE CARTER**, Senior Deputy District Attorney  
Office of the District Attorney, County of Santa Barbara  
1112 Santa Barbara Street  
Santa Barbara, California 93101

*County Member:* **ROBERT J. MacLEOD**, Chief of Employee Relations  
County Executive Office, Human Relations, County of Santa Barbara  
1226 Anacapa Street  
Santa Barbara, California 93101

*APPEARANCES:*

*For the Association:* **STUART D. ADAMS**, Attorney  
Adams, Ferrone & Ferrone  
4333 Park Terrace Drive, Suite 200  
Westlake Village, California 91361

*For the County:* **VICTORIA PARKS TUTTLE**, Senior Deputy County Counsel  
Office of the County Counsel, County of Santa Barbara  
105 East Anapamu Street, # 201  
Santa Barbara, California 93101

1 *BACKGROUND AND PROCEDURAL HISTORY*

2 In accordance with §3505.4 of the Meyers-Milias-Brown Act (“MMBA,” §3500 – §3511,  
3 Chapter 10, Division 4, Title 1, California Government Code), an impasse was declared in the  
4 negotiations between the *COUNTY OF SANTA BARBARA* (“County”) and the *DEPUTY*  
5 *DISTRICT ATTORNEYS ASSOCIATION* (“Association”) over the terms of a successor to their  
6 2011 – 2013 Memorandum of Understanding (“MOU”). I was jointly selected by the parties to serve  
7 as the neutral chairman of the factfinding panel. The Association named Senior Deputy District  
8 Attorney *LEE CARTER* and the County designated Chief of Employee Relations *ROBERT J.*  
9 *MacLEOD* as their respective members of the panel. Both parties waived the statutory time limits  
10 for the factfinding process.

11 The evidentiary hearing was held November 5, 2014, at the Offices of the District Attorney  
12 in Santa Barbara, California. The parties were afforded a full and adequate opportunity to present  
13 documentary evidence, testimony, and argument on each of the issues at impasse.

14 During the hearing, the parties agreed that they had reached tentative settlements regarding  
15 several of the issues on which they had been at impasse, including the following: Merit Increases;  
16 Benefit Allowance; Salary Reopener; Secured Parking; and Favored Nations. They also agreed to  
17 reopen negotiations on Leaves of Absence, and the County agreed to consider the Association’s  
18 request regarding employees’ Annual Dues for the California District Attorneys Association.  
19 Finally, the Association withdrew the following issues: Vacation Buy Back and On-Call Pay.

20 The parties waived the opportunity to submit post-hearing briefs on the issues that remained  
21 at impasse and instead argued orally at the conclusion of the evidentiary hearing. I then prepared  
22 a draft of this decision, which was provided to the other panel members for their review and  
23 comment.

24 The factfinding panel members met in executive session by conference telephone call on  
25 November 26, 2014, to discuss the draft report and recommendations. No material modifications  
26 of the document were made as a result of that discussion. Any concurring or dissenting opinions  
27 submitted by the partisan members of the factfinding panel are attached to this final report.

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1 *RELEVANT PROVISIONS OF LAW*

2 California Government Code §3505.4

3 3505.4. Unable to effect settlement within 30 days of appointment; request for submission to factfinding  
4 panel; members; chairperson; powers; criteria for findings and recommendations

5 (c) The panel shall, within 10 days after its appointment, meet with the parties or their representatives,  
6 either jointly or separately, and may make inquiries and investigations, hold hearings, and take any  
7 other steps it deems appropriate. For the purpose of the hearings, investigations, and inquiries, the  
8 panel shall have the power to issue subpoenas requiring the attendance and testimony of witnesses  
9 and the production of evidence. Any state agency, as defined in Section 11000, the California State  
10 University, or any political subdivision of the state, including any board of education, shall furnish  
11 the panel, upon its request, with all records, papers, and information in their possession relating to  
12 any matter under investigation by or in issue before the panel.

13 (d) In arriving at their findings and recommendations, the factfinders shall consider, weigh, and be  
14 guided by all the following criteria:

- 15 (1) State and federal laws that are applicable to the employer.
- 16 (2) Local rules, regulations, or ordinances.
- 17 (3) Stipulations of the parties.
- 18 (4) The interests and welfare of the public and the financial ability of the public agency.
- 19 (5) Comparison of the wages, hours, and conditions of employment of the employees involved in  
20 the factfinding proceeding with the wages, hours, and conditions of employment of other  
21 employees performing similar services in comparable public agencies.
- 22 (6) The consumer price index for goods and services, commonly known as the cost of living.
- 23 (7) The overall compensation presently received by the employees, including direct wage  
24 compensation, vacations, holidays, and other excused time, insurance and pensions, medical and  
25 hospitalization benefits, the continuity and stability of employment, and all other benefits  
26 received.
- 27 (8) Any other facts, not confined to those specified in paragraphs (1) to (7), inclusive, which are  
28 normally or traditionally taken into consideration in making the findings and recommendations.

3505.5. Dispute not settled within 30 days after appointment of factfinding panel or upon agreement by  
parties; panel to make advisory findings of fact and recommended terms of settlement; costs; exemptions

(a) If the dispute is not settled within 30 days after the appointment of the factfinding panel, or, upon  
agreement by both parties within a longer period, the panel shall make findings of fact and  
recommend terms of settlement, which shall be advisory only. The factfinders shall submit, in  
writing, any findings of fact and recommended terms of settlement to the parties before they are  
made available to the public. The public agency shall make these findings and recommendations  
publicly available within 10 days after their receipt.

1 *FINDINGS & RECOMMENDATIONS*

2 *ISSUE 1. SALARIES*

3 *Positions of the Parties.* The County has offered across-the-board increases of 2 percent  
4 effective upon ratification of the successor MOU, and additional 1 percent in the second year of the  
5 new MOU, and an additional 1 percent in the third year.

6 The Association's proposal is as follows:

- 7 1. Effective May 6, 2014, salaries for employees represented by the Deputy District  
8 Attorneys Association will be increased by 2 percent.
- 9 2. Effective June 23, 2014, all employees in Deputy District Attorney IV and  
10 Deputy District Attorney Senior job classification shall receive a 2 percent  
11 increase in salary within the existing bands for their respective job classification.  
12 However, employees whose base rate of pay exceeds \$73.45 per hour shall not  
13 receive this increase. This increase shall not result in a rate of pay above the top  
14 of the salary band for their classification.
- 15 3. Effective December 8, 2014, salaries for employees represented by the Deputy  
16 District Attorneys Association will be increased by 1 percent.
- 17 4. Effective June 22, 2015, all employees in Deputy District Attorney IV and  
18 Deputy District Attorney Senior job classifications shall receive a 2.5 percent  
19 increase in salary within the existing bands for their respective job classifications.  
20 This increase shall not result in a rate of pay above the top of the salary band for  
21 their classifications.
- 22 5. Effective December 7, 2015, salaries for employees represented by the Deputy  
23 District Attorneys Association will be increased by 1 percent.
- 24 6. Effective June 20, 2016, all employees in Deputy District Attorney IV and  
25 Deputy District Attorney Senior job classifications shall receive a 3.0 percent  
26 increase in salary within the existing bands for their respective job classifications.  
27 This increase shall not result in a rate of pay above the top of the salary band for  
28 their classifications.

24 *Opinion.* The differences in the positions of the parties regarding salary increases apparently  
25 stems from bargaining history. Attorneys who work for the County are represented in three different  
26 bargaining units based on their primary functions and job classifications. In addition to the Deputy  
27 District Attorneys Unit, this includes the Deputy Public Defenders Unit represented by Service  
28 Employees International Union Local 620, the Civil Attorneys Unit represented by the Civil

1 Attorneys Association. According to the County, both the Deputy Public Defenders Unit and the  
2 Civil Attorneys Unit have agreed to across-the-board increases identical to what it is offering the  
3 Association, and it maintains that it would be unfair to the other units to grant greater increases to  
4 the Deputy District Attorneys. Moreover, it points out that the initial increases for the other units  
5 were effective upon ratification of their MOUs, and argues that the initial raise here likewise should  
6 be effective upon ratification. The County says that it does not want to establish a precedent for  
7 retroactive raises as that could have a deleterious effect on future negotiations with all units.

8 While the County's position seems quite logical, the problem becomes more complex when  
9 bargaining history and position-by-position salary comparisons are considered. In 2011 the County's  
10 representatives calculated that higher-level positions within the Deputy District Attorneys Unit were  
11 being paid 11 percent more than their counterparts who were at the time unrepresented or in other  
12 attorney bargaining units. This disparity was ostensibly due to the use of "salary bands" for the  
13 higher classifications. Under this structure, an employee's salary is based on performance as  
14 determined by the employee's supervisor or manager through annual evaluations rather than on the  
15 time that the employee has been in the classification. The salary bands are fixed, however, so such  
16 merit increases are capped rather than unlimited.

17 Apparently based at least part on the County's calculations of the 11-percent salary disparity  
18 among top-level employees, the Association agreed to a 3.5 percent salary reduction in the salaries  
19 of upper-level Deputy District Attorneys in the parties 2011 - 2013 MOU, effective December  
20 2011. That reduction ostensibly left a difference of 7.5 percent between the bargaining-unit  
21 employees in those classifications and their counterparts who were either unrepresented or in other  
22 bargaining units.

23 Based on the purported 7.5-percent salary differential that remained, the County and SEIU  
24 Local 620 agreed in April 2014 to additional increases for the higher-level classifications in the  
25 Deputy Public Defenders Unit, specifically for employees in the classifications of Deputy Public  
26 Defender IV and Deputy Public Defender Senior. That agreement included increases of 2 percent  
27 effective June 23, 2014, 2.5 percent effective June 22, 2015, and 3 percent effective June 20, 2016,  
28 in addition to the 2 percent, 1 percent, and 1 percent the County is offering here.

1           Again, this all makes a great deal of sense and tends to support the County's position  
2 regarding salary increases for the Deputy District Attorneys Unit. Equal pay for equal work is a  
3 touchstone of collective bargaining, of the principles underlying the factfinding criteria of MMBA  
4 and other bargaining statutes, and of civil service itself. Indeed, the County's own bargaining  
5 representatives have embraced this principle.

6           However, the Association has presented compelling and uncontroverted evidence that the  
7 County's calculation of the purported 11 percent differential was simply wrong. The County's  
8 calculation was based entirely on the percentage of merit increases received from 2008 through 2011  
9 by each individual employee in the classification of Deputy County Counsel Senior compared to the  
10 merit increases received by employees in the Deputy District Attorney IV and Deputy District  
11 Attorney Senior classifications. The Association's far more detailed analysis compares the actual  
12 salaries received by each individual in the Deputy District Attorney Senior classification with those  
13 in the Deputy County Counsel Senior classification. The Association's analysis conclusively  
14 establishes that without the additional increases it is seeking for the employees in the higher-level  
15 classifications that it represents, those individuals will receive far less compensation than their  
16 counterparts in the other attorney units, who are presumably doing equal work.

17           Specifically, the Association's computations show that without the additional increases it is  
18 seeking for the employees it represents in the classification of Deputy District Attorney Senior,  
19 those individuals will be receiving from 0.1 percent to 10.6 percent less than employees in the  
20 classifications of Deputy County Counsel Senior as of January 1, 2015, from 2.5 percent to 13.2  
21 percent less as of January 1, 2016, and from 5.4 percent to 15.7 percent less as of January 1, 2017.  
22 Indeed, although the additional increases sought here by the Association would bring the salaries  
23 of bargaining-unit employees at the top of the salary band within 0.1 percent of their counterparts  
24 working for the County Counsel's Office, its members at the lower end of the band would still be  
25 8.8 to 9.2 percent behind the Deputy County Counsel Seniors. It must be presumed that employees  
26 in the Deputy County Counsel IV classification would be similarly affected, although there is no  
27 direct evidence comparing their individual salaries with similarly situated employees in the other  
28 bargaining units.

1           There is simply no valid justification for such salary disparities between similarly situated  
2 employees who are presumably doing equal work.

3           The Association has also presented comparisons of the salaries received by the employees  
4 it represents with those of similarly situated employees working for other California counties. Those  
5 data indicate that the current salaries received by Deputy District Attorneys range from 3 percent  
6 to 22 percent less than the average salaries received by their counterparts in eight other coastal  
7 counties of roughly similar size, specifically Marin, Orange, San Luis Obispo, Sonoma, Ventura,  
8 San Mateo, Santa Cruz, and Monterey. The differential varies, according to the data, based on  
9 classification, with the Deputy District Attorney Is 3 percent behind the average, IIs 14 percent  
10 behind, IIIs 22 percent behind, and IVs and Seniors 4 percent behind.

11           Accordingly, I find that the Association's proposal is the more persuasive as it is consistent  
12 with criterion number five of the applicable statute, specifically "Comparison of the wages, hours,  
13 and conditions of employment of the employees involved in the factfinding proceeding with the  
14 wages, hours, and conditions of employment of other employees performing similar services in  
15 comparable public agencies."

16           The Association's salary proposal is further supported by its evidence concerning movement  
17 in the Consumer Price Index ("CPI"), which is criterion number six of MMBA's factfinding  
18 procedures. Data from the federal government's Bureau of Labor Statistics show that the CPI for  
19 the Los Angeles area, which includes Ventura County and is the area nearest Santa Barbara for  
20 which such data is available, has increased a total of 7.8 percent since the last increase received by  
21 bargaining unit employees in 2010. Future increases are very likely to exceed the County's offer.

22           Other criteria listed in MMBA are not relevant to the question of the appropriate salary  
23 increases for bargaining-unit employees. The County is not arguing an inability to pay the increases  
24 sought by the Association, and neither party has cited any other laws, rules, regulations, ordinances,  
25 or stipulations in this factfinding. The interests and welfare of the public remains debatable,  
26 depending on which end of the telescope one chooses to peer through.

27           The record is less clear, however, regarding retroactivity. As noted above, the County points  
28 out that the other units settled without retroactive salary increases as their successor MOUs were

1 effective upon ratification. Moreover, like most employers, the County is opposed to setting a  
2 precedent in support of retroactivity out of concern that such expectations may well cause future  
3 negotiations to be dragged out unnecessarily. That concern is entirely reasonable.

4 The Association, on the other hand, maintains that salary increases should be retroactive to  
5 May 6, 2014, as a matter of equity vis a vis the other bargaining units, which settled with the County  
6 several months ago. It maintains that retroactivity is particularly warranted in light of the salary  
7 disparities described above. Moreover, it argues that its negotiations with the County were delayed  
8 because until recently it was unaware of the additional increases granted to other attorney bargaining  
9 units beyond what it is being offered here.

10 While all of that may be true, it remains that the Association accepted the County's analysis  
11 and agreed to the reductions sought by the County in 2011. Furthermore, the County was not  
12 obligated to bring the other settlements to the Association's attention. I therefore find that on  
13 balance, the evidence in this record tends to support the County's position on retroactivity.

14 *Recommendation.* For the above reasons and based on the record as a whole, I recommend  
15 that the parties adopt the Association's salary proposal, to be effective upon ratification of their  
16 successor MOU.

17 *ISSUE 2. HOLIDAYS*

18 *Positions of the Parties.* The Association proposes that holidays for employees in the Deputy  
19 District Attorneys Unit match those observed by the courts in which they appear, an increase from  
20 the 11 holidays the employees currently enjoy to a total of 13 per year. It contends that similarly  
21 situated employees in the eight other California coastal counties identified above have from 10 to  
22 16 holidays per year, with an average of 12 per year.

23 The County, on the other hand, argues that the other attorney bargaining units have agreed  
24 to continue the same 11 holidays now observed by the Deputy District Attorneys.

25 *Opinion & Recommendation.* Although the Association makes some good points, in my  
26 judgment the most significant comparisons are those closest to home, particularly in light of the  
27 above salary recommendation. I therefore recommend that the parties agree to continue the current  
28 holiday schedule in their successor MOU.



1 In the Matter of an Impasse

2 - between -

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4 COUNTY OF SANTA BARBARA

5 - and -

6 DEPUTY DISTRICT ATTORNEYS  
7 ASSOCIATION.

FACTFINDING REPORT &  
RECOMMENDATIONS

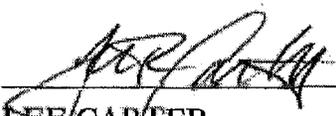
8 California Public Employment Relations  
9 Board Impasse No. LA-IM-168-M.

10  
11 I have reviewed the final draft of the Report & Recommendations of the neutral Chairman  
12 of the Factfinding Panel in this matter.

13  I concur.

14  I dissent.

15  Opinion attached.

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20 LEE CARTER  
21 Association Panel Member

22 Dated: November 29, 2014

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In the Matter of an Impasse

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*COUNTY OF SANTA BARBARA*

-- and --

*DEPUTY DISTRICT ATTORNEYS  
ASSOCIATION.*

*FACTFINDING REPORT &  
RECOMMENDATIONS*

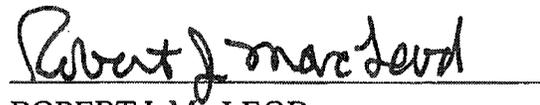
California Public Employment Relations  
Board Impasse No. LA-IM-168-M.

I have reviewed the final draft of the Report & Recommendations of the neutral Chairman of the Factfinding Panel in this matter.

I concur.

I dissent.

Opinion attached.



ROBERT J. MacLEOD  
County Panel Member

Dated: November 30 2014

# **ATTACHMENT 1**

**CONCURRING OPINION OF  
SENIOR DEPUTY DISTRICT  
ATTORNEY LEE CARTER,**

**SANTA BARBARA DEPUTY  
DISTRICT ATTORNEYS  
ASSOCIATION'S MEMBER OF THE  
FACTFINDING PANEL**

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**CONCURRING OPINION**

Salary Comparison

Based on the evidence presented at the Fact Finding Hearing conducted on November 5, 2014 it is clear that the position of the Deputy District Attorneys Association (“Association”) is the correct interpretation of the salary data and the position of the County of Santa Barbara (“County”) was simply wrong. The salary evidence presented, based entirely on data supplied by the County, was as follows:

1. The County relies on outdated data that it suggests show that salary increases awarded between 5 – 7 years ago caused higher-level attorneys in the Association to earn more than higher-level attorneys in the Civil Attorneys Association.
2. The County conceded that it never actually compared the salaries of the higher-level attorneys in the different associations. The County conceded that it could not show any actual current salary disparity arising from any salary increase given earlier in time.
3. The Association presented a complete comparison of the higher-level attorneys showing that the County’s claimed inequity in fact did not exist.
4. The salary comparison used similarly situated higher-level attorneys to make the comparisons. At the top end of the pay range the comparison was between Mr. Lavayen and Mr. Foley, both of who accepted a “demotion” from a management position back to the rank of Senior Deputy (or “V”). This caused them both to be returned to the top level of pay at the rank of Senior Deputy. At the bottom end of the pay range the comparison was made between Mr. Almgren and Ms. Lorien, both of whom were the last attorney in there respective Associations, to be promoted to the rank of Senior Deputy. Even if the comparison were to use a Senior Deputy who may earn less than Ms. Lorien, it would merely lower the respective inequity; it would not cure the salary disparities that will continue to increase over time.
5. The salary comparisons were run using the most current salary data provided by the County. It compared the salaries of the top and bottom Senior Deputies in both Associations on the date of the hearing.

1           6. The comparisons presented were for:

- 2                   a. 0% - if no salary increase is given to members of the Association;
- 3                   b. 2%/1%/1% - the "offer" being suggested by the County; and,
- 4                   c. 2%/1%/1% plus 2%/2.5%/3%.

5           7. The salary comparisons are for presentation purposes only. Should a contract be agreed  
6           upon, the top of the Senior Deputy total-salary band is approximately \$172,000, therefore  
7           any salaries numbers above that ceiling could not be awarded. Should a contract not be  
8           agreed upon, there would be no salary band or ceiling.

9           Based on the evidence presented, the County's position is not supported by the facts. Clearly,  
10          the County has created an actual inequity by paying higher-level attorneys in the other bargaining  
11          groups more than the higher-level attorneys in the Association. Any argument to the contrary is  
12          untenable and ignores the actual current salaries of the higher-level attorneys in the County. The  
13          proposal set forth by the Association (2%/1%/1% plus 2%/2.5%/3% with certain limitations) will  
14          accomplish what the County has not – paying all similarly situated attorneys the same amount and  
15          eliminate any inequity.

16                   Retroactivity

17          The County's position regarding retroactive pay increases would reward the County for  
18          excessively prolonging negotiations and punishes the Association for demanding fairness in salaries.  
19          The retroactivity should benefit the prevailing party back to the date that the losing party created the  
20          problem. In this case, the County was presented with a salary comparison based on the inequity the  
21          County created in May. The County repeatedly refused to consider the comparison and all further  
22          delay was entirely due to the County's unsupported salary claims. To allow the County to benefit from  
23          its unsupported position would undermine all County salary negotiations and punish bargaining units  
24          for demanding, and proving, what is fair. Any contract agreed upon by the parties should be  
25          retroactive to May 8, 2014, the date of contract negotiations in which the County refused to consider  
26          the Association's proposals regarding correcting the salary inequity among the higher-level attorneys  
27          the County created.

1 The Association presented completely accurate numbers, based on the data provided by the  
2 County. All data underlying the Associations entire presentation was presented to the fact-finders and  
3 any claim that the data is inaccurate is simply false and misleading.

4 As stated by Mr. Collins, the salary data and comparisons are compelling and uncontroverted.  
5 Those comparisons "conclusively establish" that the Associations proposal is required to correct the  
6 current salary disparity. The County's calculations were simply "wrong".

7 Accordingly, I concur in the opinion and report issued by Mr. Collins except for his decision  
8 regarding retroactivity of any salary agreement.

9 Respectfully submitted,

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12 Lee Carter  
13 Fact-finding Panel

14 Dated: November 29, 2014  
15 Santa Barbara, California  
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## **ATTACHMENT 2**

**DISSENTING OPINION OF  
CHIEF OF EMPLOYEE RELATIONS  
ROBERT J. MacLEOD,**

**COUNTY OF SANTA BARBARA'S  
MEMBER OF THE  
FACTFINDING PANEL**

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In the Matter of an Impasse Between )  
COUNTY OF SANTA BARBARA )  
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California Public Employment Relations )  
Board Impasse No. LA-IM-168-M. )  
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DISSENT OF COUNTY OF  
SANTA BARBARA TO THE  
FACTFINDING REPORT &  
RECOMMENDATIONS

NOVEMBER 30, 2014

The County strongly disagrees with the Chair’s findings and recommendations on  
“ISSUE 1. SALARIES.”

During negotiations and at the factfinding hearing, the County presented evidence that  
between 2008 and 2011, every single Association represented attorney at the Deputy District  
Attorney IV or Senior level received a performance-based wage increase, while no other  
County attorneys at the same levels did (Exhibit A). Exhibit A also shows that, on average,  
the increases received between 2008 and 2011 by the Association’s attorneys were  
approximately 11%, while Deputy County Counsels at the same levels received on average  
less than ½ of 1%.

The Association itself recognized this fact when it agreed to a 3.5% wage reduction  
for Deputy District Attorney IV and Senior classifications in December 2011, which still left  
its members, on average, paid about 7.5% higher than other County attorneys working at the  
same level. To attempt to ameliorate this inequity, the County negotiated a phased-in 7.5%  
increase for its other attorneys at the IV and Senior levels. Now the Association argues that  
there was no disparity at all, and that attorneys it represents at the IV and Senior levels should  
receive the same 7.5% in equity wage adjustments that their counterparts in other units  
recently collectively bargained to receive; however, if the County agrees to the Association’s  
proposal, it would simply reestablish and perpetuate the disparity that the 7.5% increases to  
the other attorneys were given to address.

The Chair writes that “the Association has presented compelling and uncontroverted  
evidence that the County’s calculation of the purported 11 percent differential was simply

1 wrong.” At the hearing the Association presented a sheet titled “County Proposal 2/1/1,”  
2 which was the basis for its argument and the Chair’s finding. The County had not seen that  
3 information before the hearing, when it was presented as part of a slide show presentation.  
4 Since the information was not part of a spreadsheet, the County was not able to timely  
5 evaluate the Association’s computations. Nonetheless the County did state for the record that  
6 the calculations did not appear to make sense and specifically challenged the individuals used  
7 in one of its computations. Unlike in more formal proceedings, no evidence was “introduced”  
8 or “admitted” at the factfinding hearing; it was simply accepted by the Chair at face value. As  
9 noted below, however, the Association’s computations, which are shown in Exhibit B, are  
10 grossly inaccurate in a number of ways.

11 The Association purports to compare the impact of accepting the County’s offer of  
12 annual increases of 2%, 1%, and 1% over a three year contract on its members if they do not  
13 also receive the additional 7.5% negotiated by the other attorney units. It indicates the  
14 comparisons begin on “1/1/2014” for highest paid (“Top comp”) and lowest paid (“Bottom  
15 comp”) attorneys in each group.

16 Inexplicably, the Association provides salary data for the Civil Attorneys as of  
17 October 2014 in the upper right hand corner of Exhibit B, but at its “Top comp” the salary of  
18 the three highest paid attorneys it represents (Foley, Bramsen and Gittler) is compared to the  
19 single highest paid Civil Attorney (Lavayen) at the same level using salary data as of January  
20 1, 2014. However, as the County noted at the hearing, Lavayen, demoted from a management  
21 classification less than a year earlier; for that reason his salary was 6% higher than the salary  
22 of the next highest two paid Deputy County Counsel Seniors at that time.

23 Also inexplicably, in its “Bottom Comp” the Association’s lowest paid Attorney  
24 (Almgren) is not compared to the lowest paid Civil Attorneys (Barry, Munoz, and Rothstein)  
25 as indicated on the Association’s own chart. Instead, the Association compares its lowest  
26 paid attorney to the two Civil Attorneys who are the *second* lowest paid attorneys shown on  
27 its chart (Lorien and Rierson).

28 Moreover the wages used for these attorneys in the comparison are as of October

1 2014, not January 1, 2014. By October 2014, these two Civil Attorneys had received a 2%  
2 negotiated increase on 4/28/14 and an additional 2% increase on 6/13/14, the first of three  
3 equity adjustments intended to address the 7.5% disparity noted above. The Association's  
4 computations then apply those two increases again. Not only does the Association fail to  
5 compare similarly situated attorneys, by double-counting raises it misrepresents the starting  
6 point of its comparison by 4%.

7 Although the Association asserted its calculations as accurate, the calculations are not  
8 based on true comparisons. True comparisons for "Bottom Comp" would have required  
9 comparing the lowest paid attorneys in each group AND using January 2014 wages. The  
10 Association did neither. In January 2014, the lowest paid Civil Attorney at the Senior level  
11 earned approximately 7% less than the salary figure used by the Association in its "Bottom  
12 comp" illustration in Exhibit B.

13 Another major flaw in the Association's computations is that they include rates of pay  
14 as high as \$175,216.25 for its "Top comp" and as high as \$185,166.07 for Civil Attorney  
15 "Top comp," but no attorney would ever earn those rates of pay because increases are limited  
16 by the top of the salary band. The top of the band would be \$172,804 after the general wage  
17 increases of 2% - 1% -1% were applied (for either group). The Association's representation  
18 that its lowest paid attorney would fall 15.7% below his Civil Attorney counterpart and its  
19 highest paid 5.4% below the comparable "Top Comp" Civil Attorney has no basis in fact.  
20 The highest salary for any attorney would be the same based on the top of the band.

21 What is "compelling and uncontroverted" to use the Chair's phrase is that attorneys  
22 represented by the Association received significant wage increases their counterparts did not  
23 between 2008 and 2011, that the County's internal equity adjustments to the other attorney  
24 groups will ameliorate the disparity in part over time only if these increases are *not* given to  
25 Association attorneys, and that the data presented by the Association in support of its position,  
26 which is the basis for the Chair's finding, is deeply flawed.

## Merit/Performance Based Increases for DDAA and CAA Attorneys 2008 - 2011

Employee Name	Job Class	Job Class Start Date	Total Merit Increases since Jan 2008	2008	2009	2010	2011
ALMGREN, HANS H.	DPTY DA SR	10/1/2012	11.0%	0.0%	4.0%	3.5%	3.5%
BARRON, MARY E.	DPTY DA SR	5/31/2010	11.0%	0.0%	4.0%	3.5%	3.5%
BOLLER, GREGORY W.	DPTY DA IV	8/16/2004	7.0%	0.0%	3.5%	0.0%	3.5%
BRAMSEN, ANN	DPTY DA SR	10/5/2009	3.5%	3.5%	0.0%	0.0%	0.0%
CARTER, LEE R.	DPTY DA SR	7/13/1998	11.0%	0.0%	4.0%	3.5%	3.5%
COTA, BRIAN J.	DPTY DA SR	11/3/2008	10.5%	0.0%	3.5%	3.5%	3.5%
DAVIS, ANTHONY S.	DPTY DA IV	7/26/2010	18.5%	10.0%	5.0%	0.0%	3.5%
DUFFY, KEVIN M.	DPTY DA SR	1/29/2007	11.5%	4.5%	3.5%	3.5%	0.0%
FOLEY, STEPHEN P.	DPTY DA SR	8/5/2013	3.5%	0.0%	0.0%	3.5%	0.0%
GERARD, ALLYSON B.	DPTY DA IV	5/31/2010	13.5%	5.0%	5.0%	0.0%	3.5%
GITTLER, JEFFREY	DPTY DA SR	12/4/1995	11.5%	4.0%	3.5%	3.5%	0.5%
GRECO, PAUL	DPTY DA IV	7/22/2013	5.0%	0.0%	0.0%	0.0%	5.0%
GRESSER, CYNTHIA N.	DPTY DA IV	10/20/2008	15.5%	5.0%	3.5%	3.5%	3.5%
HENRY, RICHARD J.	DPTY DA SR	9/26/1994	11.0%	0.0%	4.0%	3.5%	3.5%
JEBENS, BRANDON S.	DPTY DA IV	8/20/2012	15.0%	5.0%	5.0%	5.0%	0.0%
LADINIG, BENJAMIN T.	DPTY DA IV	8/20/2012	20.0%	5.0%	5.0%	5.0%	5.0%
LIBEU, AIMEE	DPTY DA SR	1/8/2001	9.5%	4.0%	3.5%	2.0%	0.0%
MACKINNON, JOHN T.	DPTY DA SR	1/1/2007	11.5%	4.0%	3.5%	3.5%	0.5%
NEUFFER, ALLISON S.	DPTY DA IV	2/25/2008	11.0%	0.0%	4.0%	3.5%	3.5%
NGUYEN, VON T.	DPTY DA IV	8/20/2012	20.0%	5.0%	5.0%	5.0%	5.0%
SANTISTEBAN, MARINA R.	DPTY DA IV	8/20/2012	15.0%	5.0%	5.0%	5.0%	0.0%
SIEGEL, KIMBERLY A.	DPTY DA SR	10/1/2012	11.0%	0.0%	4.0%	3.5%	3.5%
TOLKS, ARNIS R.	DPTY DA SR	8/20/1990	11.0%	0.0%	4.0%	3.5%	3.5%
WALDMAN, PAULA M.	DPTY DA SR	1/30/2006	11.0%	0.0%	4.0%	3.5%	3.5%
		<b>Average</b>	<b>11.6%</b>				

Exhibit A

Employee Name	Job Class	Job Class Start Date	Total Merit Increases since Jan 2008	2008	2009	2010	2011
BARRY, MARY P.	DPTY CO CNSL SR	4/1/2013	0.0%	0.0%	0.0%	0.0%	0.0%
CZULEGER, JERRY F.	DPTY CO CNSL SR	9/13/1993	0.0%	0.0%	0.0%	0.0%	0.0%
DILLON, WILLIAM M.	DPTY CO CNSL SR	2/10/1997	0.0%	0.0%	0.0%	0.0%	0.0%
LASALA, MARIE A.	DPTY CO CNSL SR	3/7/2011	0.0%	0.0%	0.0%	0.0%	0.0%
LAVAYEN, GUSTAVO E.	DPTY CO CNSL SR	2/4/2013	0.0%	0.0%	0.0%	0.0%	0.0%
LORIEN, TONI	DPTY CO CNSL SR	4/14/2014	0.0%	0.0%	0.0%	0.0%	0.0%
MUNOZ, MIGUEL A.*	DPTY CO CNSL SR	8/20/2012	5.0%	5.0%	0.0%	0.0%	0.0%
NOVATT, MARIA S.	DPTY CO CNSL SR	12/5/2005	0.0%	0.0%	0.0%	0.0%	0.0%
READY, KEVIN E.	DPTY CO CNSL SR	9/13/1993	0.0%	0.0%	0.0%	0.0%	0.0%
RIERSON, ANNE M.	DPTY CO CNSL SR	10/28/2013	0.0%	0.0%	0.0%	0.0%	0.0%
ROTHSTEIN, LISA	DPTY CO CNSL SR	9/19/2011	0.0%	0.0%	0.0%	0.0%	0.0%
YOUNGDAHL, MICHAEL M.	DPTY CO CNSL SR	9/22/1997	0.0%	0.0%	0.0%	0.0%	0.0%
<b>Average</b>			<b>0.4%</b>				

\*Note Mr. Munoz received a 5% merit step increase in 2008 when he was a Deputy County Counsel III before promoting to Deputy County Counsel IV in 2010.

# County Proposal - 2/1/1

	Promotion date	59.45	4,756.00	123656.00	Bottom		Promotion date	65.16	5212.80	135532.80
Almgren V	10/1/2012	59.45	4,756.00	123656.00	Bottom	Lorien V	4/14/2014	65.16	5212.80	135532.80
Siegal V	10/1/2012	64.06	5,124.80	133244.80	Comp Used	Barry V	4/1/2013	63.36	5068.80	131788.80
Barron V	5/31/2010	64.84	5,187.20	134867.20	Lowest	Munoz V	8/20/2012	63.36	5068.80	131788.80
MackInon V	1/1/2007	68.7	5,496.00	142896.00	Paid	Rothstein V	9/19/2011	63.36	5068.80	131788.80
Duffy V	1/29/2007	69.03	5,522.40	143582.40		Rierison V	10/28/2013	65.16	5212.80	135532.80
Cota V	11/3/2008	70.2	5,616.00	146016.00		Lasala V	3/7/2011	70.98	5678.40	147638.40
Waldman V	1/30/2006	72.19	5,775.20	150155.20		Novatt V	12/5/2005	71.25	5700.00	148200.00
Libeu V	1/8/2001	74.8	5,984.00	155584.00		Youngda V	9/22/1997	73.45	5876.00	152776.00
Henry V	9/26/2004	75.9	6,072.00	157872.00		Dillon V	2/10/1997	76.03	6082.40	158142.40
Carter V	7/13/1998	75.9	6,072.00	157872.00		Czuleger V	9/13/1993	74.93	5994.00	155844.00
Tolks V	8/20/1990	75.9	6,072.00	157872.00		Ready V	9/13/1993	76.03	6082.00	158132.00
Foley V	8/15/2002	76.29	6,103.20	158683.20	Top Comps	Lavayen V	2/4/2013	79.45	6356.00	165256.00
Bramsen V	10/5/2009	76.29	6,103.20	158683.20						
Gittler V	1995	76.29	6,103.20	158683.20						
Top comp	1/1/2014	DDA=	158683.20			Note Salary is not as of October 2014				% Diff
			161856.86	165094.00		Civil Atty	155729.60			1.9%
	1/1/2015	DDA=	165094.00	170079.84		Civil Atty	162201.08	165261.50		-0.1%
			166744.94	170079.84		Civil Atty	171081.27	174502.90		-2.5%
	1/1/2016	DDA=	170079.84	175216.25		Civil Atty	174502.90	185166.07		-5.4%
			171780.64	175216.25		Civil Atty	181535.37	185166.07		% Diff
	1/1/2017	DDA=	175216.25	Impossible Rates of Pay						
Bottom comp	1/1/2014	DDA=	123656.00	128651.70		Civil Atty	135532.80			-8.8%
			126129.12	128651.70		Civil Atty	138243.46	143828.49		-10.6%
	1/1/2015	DDA=	128651.70	132536.98		Civil Atty	143828.49	152631.95		-13.2%
			129938.22	132536.98		Civil Atty	146705.06	161974.24		-15.7%
	1/1/2016	DDA=	132536.98	136539.60		Civil Atty	152631.95	161974.24		
			133862.35	136539.60		Civil Atty	155684.58	161974.24		
	1/1/2017	DDA=	136539.60			Civil Atty	161974.24			

October 2014  
Wage Data