

ARBITRATION OFFICE OF WALTER KAWECKI, JR. ESQ.
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**Fact-Finding Hearing with County of Tulare and Tulare County Corrections Association
Case No. SA-IM-148-M**

December 16, 2014

Panel Member for Corrections Association:

Scott Burkle
CPO Labor Representative
COPS Legal , LLC
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Panel Member for Tulare County:

Shelline K. Bennett
Attorney
Liebert Cassidy Whitmore
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Panel Chair:

Walter Kaweck, Jr.
Fact-Finder, Arbitrator and Attorney
756 Barton Way
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RE: Findings of Fact and Recommendation for Subject Fact-Finding, which occurred on December 11, 2014 at Tulare County HR Office

Background: Mr. Kaweck was notified on October 20, 2014 by Public Employment Relations Board he was selected to chair the fact-finding panel for the County of Tulare and the Tulare Corrections Association. Per Government Code section 3505.4c the panel meets within ten days after appointment, unless both parties agreed to delay the fact-finding date. I, Walter Kaweck, Jr. offered to hold the fact-finding within the ten day period, but the parties decided to delay the hearing until December 11, 2014. Additionally, the panel makes findings of fact and recommends terms of settlement within 30 days. The Code also required a final bill be filed with PERB, which shows the per diem fee on chair person's resume with PERB is not exceeded. The Chair person's per diem fee on his resume with PERB is \$1200, plus \$110/hour for travel and actual expenses. If a report is issued, PERB request a copy is sent to PERB.

At the Fact-Finding Hearing the following occurred:

Mr. Che Johnson, Attorney with Liebert Cassidy Whitmore presented the Tulare County's Fact-Finding presentation. This included a Tulare County comprehensive 2014-2015 Fiscal overview, recommended

Budget overview for FY 2014-2015, recommended Budget Fiscal Year 2014-2015, Annual Financial Report for Fiscal Year ending June 30, 2013 and Tulare County Financial Policies. Mr. Johnson provided a large binder with details concerning the above topics.

Mr. Johnson answered the questions from the Panel and argued, that based on the budget information he presented, the County of Tulare could not afford a salary increase asked for by the Correction's Association. He argued the County should maintain a general fund reserve of 14%-16%, focus on Workers Compensation obligations and the need to focus expenditures in a fiscally prudent manner. He pointed out that Tulare has a rural population with 30.4% of the County's population living at or below the poverty level; and higher unemployment rates than the State average, putting a strain on resources and lower taxable population base. Mr. Johnson points out that Tulare's average wage is \$34,101, the lowest of similar counties in the State, while the average annual salary for employees in the Corrections Association is \$45,498. He pointed out that retirement costs have increased by more than 10%. He stated the County sought Status Quo on wages until 2015 and the Corrections Association (TCCA) proposed a 2% increase for PCO's and 4% for PO's. This would cost \$614,468 per year which the County cannot afford. He also argued that the policy of the County was never to make pay increases retroactive, therefore since 2015 negotiations would start in March of 2015 this Fact-Finding should be set aside.

Mr. Johnson also provided the panel with a 2014 Salary Comparisons for specified job classifications during his presentation, in addition to the large binder on the budget. Mr. Johnson argued that while Probation Correctional Officer, and Probation Officer (in the Corrections Association) were below the average pay in other Counties, many other classifications in Tulare County, including Attorney, Cook, Mental Health Case Mgr., Office Assistant, Psychiatrist and Social Service Workers were also below the average pay in other Counties.

Mr. P J Williams, President of the Correction Association presented a fact finding report to the panel, which was the comprehensive annual financial report (CAFR). This is a document produced by the County on an annual basis, and is required by law. The County prepares the financial documents, which are then audited by an independent CPA. The information used in their presentation was obtained from the County of Tulare's CAFR's. The CAFR's were examined for a 8 year period of the County's budgeting figures versus actual figures. The County of Tulare has shown positive growth for the 8 year period. The County had an increase of \$262, 624, 000 or 16% increase over the base year of 2006. In the most current year report, 2013, revenues were at \$679, 617,000 which were well above 2006 which was \$572,153,000. Revenues have historically exceeded expenditures. In 2008 the revenue and expense gap was \$19,2323,00 and in 2013, the gap is \$37,167,000, showing the County is in a much better financial position. From 2006 to 2013 Tulare County budgeted financials general fund balance has been substantially less than the audited amount. For example the County showed a negative balance in 2008, 2009, 2010 and 2011 when the audited actual general fund balance for each of these years was a positive \$50,000,000 to \$60,000,000, and in the latest audited period of 2013 the Tulare County financial was \$13,958,000 below the audited actual amount. The County's actual expenditures in the most recent year had a gap of \$1,915,000. Local assessed property values for the fiscal year 2013-2014 increased 2.987 percent above the fiscal year 2012-2013; this will increase property tax revenues in the County, which is a significant source of revenue for the County.

It is argued that a review of the County's financials has shown that the County of Tulare is in good financial health and has the ability to increase the base pay that has been requested ty the bargaining unit.

A Salary survey was conducted of the five surrounding Counties of Merced, Madera, Kern, Kings, and Fresno for positions in the bargaining unit. The Starting pay for a DSO is 26% below the average and the top pay is 31% below the average pay of other County's. The starting pay of a PCO is 8% below the average for a PCO 1 and 22% below the average for a PCO 3. It showed the top average pay is 12% to 33% below the average. The PO is 12% to 16% below the average pay of the other Counties.

Tulare County ranked lowest in Medical benefits compared to the County's survey. The consumer index has from 2006 to 2013 from \$201 to \$232 and in the three recent years the CPI has risen by approximately 5.5%

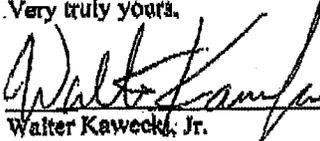
During the presentation Mr. PJ Williams answered questions of the panel.

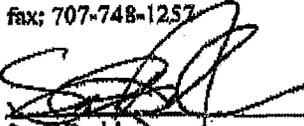
After the presentation of the presenters for the County and Corrections Association, the Fact-Finding Panel convened to discuss the facts presented and the recommendations of the panel.

It was agreed the Panel Chair would prepare his fact finding and a recommendation based on facts presented and discussions by the panel and email his recommendation to County and Corrections Association representatives after the hearing. Both the County and Corrections Association panel members agreed in a multiyear contract. Additionally, based on past practice and the County's policy the panel agreed that any wage increase would be effective after approved by the Board of supervisors and the Association.

Based on the facts presented, concerning ability to pay for salary increases by the County and pay comparisons of similar positions in surrounding Counties a 2% increase in base salary for PCOs and PO's is recommended starting the pay period after approval by the Corrections Association and the Board of Supervisors. Additionally, it is recommended that the contract be a multiyear contract going forward to June 30, 2016.

Very truly yours,

 Approve 12/17/2014
 Walter Kaweckl, Jr. approve/disapprove date
 Fact-Finder Chair
 756 Barton Way Benicia CA 94510
 email: 2kaweckl@comcast.net
 tel: 925-787-3471
 fax: 707-748-1257

 APPROVE 12/17/2014
 Scott Burkle approve/disapprove date
 Fact-Finding Panel
 Correction Association

 Shelline K. Bennett approve/disapprove date *Csee attached*
 Fact-Finding Panel *dissent from*
 County of Tulare *Shelline K Bennett*
dated 12/19/2014

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Case No. SA-IM-148-M

County of Tulare Representative to the Fact-Finding Panel
Shelline Bennett
Liebert Cassidy Whitmore

Dissent to the Fact-Finding Report and Recommendations:

As the representative for the County of Tulare (County) to the Fact-Finding Panel, I respectfully disagree with the recommendations contained in the Fact-Finder's Report & Recommendations (Report), and for that reason, I am providing this dissenting opinion.

It is uncontested that the County continues to face economic hardship resulting from the Great Recession that was responsible for devastating Cities and Counties throughout the State. While some public agencies are beginning to see a significant recovery from the Great Recession, the County lags behind. The County projects a modest to flat growth over the next year. The County has sought a measured, fiscally prudent course regarding future expenditures.

The County increased employee salaries for TCCA represented employees in 2013, provided a TCCA classification with an equity increase in 2014, and the parties will return to the bargaining table in just a few short months for the next round of negotiations. It was uncontested that the County has not treated TCCA represented employees differently than other County employees. While salaries for TCCA represented employees may lag behind other Counties, this is true of many classifications at the County.

Simply put, there was insufficient evidence produced at the hearing that it would be fiscally sound to increase TCCA represented employee salaries.

For the above stated reasons, I respectfully dissent from the Report's suggested terms of settlement.

I also note a few clarifications/corrections to the Report: The County did not assert at the bargaining table nor at the Fact-Finding Hearing that the County "could not afford" a salary increase. The County indicated that it generally has not paid wage increases retroactive but did not indicate that it "never" happens. The County indicated that the 2015 negotiations would start in or around March/April, and the County did not request that the "Fact-Finding should be set aside." The County/I did not agree to a multiyear contract, and although I generally agree that wage increases should not be retroactive, I did not agree that a wage increase should occur.


Shelline Bennett
December 19, 2014

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Liebert Cassidy Whitmore