FR-736-M

(PERB Case No. SA-IM-149-M)

FACTFINDING PANEL

CONVENED PURSUANT TO THE MEYERS-MILIAS-BROWN ACT

In the Matter Between

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, LOCAL 2703,
Employee Organization

and

COUNTY OF MERCED,
Employer

Declaration of Impasse by AFSCME on Loyalty Bonus

FACTFINDING PANEL

Sheila K. Sexton, Esq.
Panel Member for AFSCME

Shelline K. Bennett, Esq.
Panel Member for the County of Merced

Carol A. Vendrillo, Esq.
Third-Party Neutral

February 2, 2014

Appearances:

For the Employee Organization:
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For the County:
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INTRODUCTION

The American Federation of State, County and Municipal Employees, Local 2703, is the exclusive representative for employees in five bargaining units comprised of employees of the County of Merced. On behalf of bargaining unit 4 (Maintenance and Services), bargaining unit 5 (Technical and Vocational), bargaining unit 6 (Health Services), and bargaining unit 8 (Public Services), AFSCME declared impasse on the issue of loyalty pay. Pursuant to the Meyers-Milias-Brown Act, AFSCME invoked the factfinding procedures set forth at Government Code Section 3505.4.

A three-person factfinding panel was appointed by the parties. Sheila Sexton was selected to serve as AFSCME's panel member. Shelline Bennett was selected to serve as the County's panel member. Carol Vendrillo was selected by the parties to serve as the neutral, third-party member of the panel.

On January 9, 2015, the panel convened in Merced, California. Che Johnson made a presentation that explained the County's position in this matter. Kristy Waskiewicz made a presentation on behalf of AFSCME. Panel members asked for clarifications and asked questions during both presentations. In addition, persons present at the bargaining sessions between the parties answered questions posed by the panel members. Documentary evidence was presented for the panel's consideration.

The panel's recommendation to the Merced County Board of Supervisors follows the factual summary.

FACTUAL SUMMARY

In November 2011, AFSCME and the County reached agreement on a three-year Memorandum of Understanding. That MOU ran from July 1, 2011, until June 30, 2014. It included a provision that provided as follows: "Effective Pay Period 25, 2011, all employees who have, or will achieve 10 years of employment (20,800 accumulated paid hours) as of December 31, 2011, will be paid an employee Loyalty Bonus of $750." This provision was repeated for years 2012 and 2013.

As of pay period 25 in 2013, employees in the five AFSCME-represented bargaining units and the attorneys in unit 7 were receiving the loyalty bonus. In addition, unrepresented management employees in the ranks of assistant executives, middle management, supervisory, and confidential were paid a loyalty bonus, although not by operation of an MOU (County Exhibit 5).

The parties began negotiations with AFSCME for a successor agreement on April 16, 2014. During that round of negotiations, the County was bargaining with all labor groups except the Merced County Attorneys Association, which represents the County's attorneys.

AFSCME came to the table in 2014 with "pent-up frustration." Employees had received no salary increase since 2009; layoffs had significantly reduced the workforce, burdening remaining employees; and wage inequities with other County employees persisted and were exacerbated. Against this backdrop, AFSCME approached this round of bargaining with ambitious goals.

Because the County continued to face a budget deficit, it initially proposed various economic and non-economic "take aways" and told AFSCME there was "no new money." On July 23, 2014, the County withdrew its proposals seeking wage cuts and furloughs. However, it continued to press for maintenance of the status quo with no enhancements to wages or benefits.

By letter dated August 13, 2014, Marci R. Barrera, Director of Human Resources, advised the Merced County Attorneys Association that the loyalty bonus set out in its MOU with the County would "sunset" effective August 12, 2014. Ms. Barrera advised the Association's leader, Alan Turner, that the loyalty bonus had been eliminated for all other miscellaneous bargaining groups as well as the unrepresented management group (County Exhibit 6).

On August 20, AFSCME declared impasse. It took the position that the loyalty bonus, which had been in the parties' MOU since at least 2001, was bargained as an additional step increase and did not amount to "new money."

On September 4, 2014, the County took the position that it would maintain the status quo on economic matters. In the County's view, this did not encompass continuation of the loyalty bonus.

In these proceedings, the Union seeks to have the loyalty bonus language in the prior agreement given effect for 2014. The County's position is that existing terms and conditions of employments (without a loyalty bonus) should continue unless or until those terms are changed during the next round of negotiations, set to begin in March 2015.

PARTIES POSITIONS

AFSCME's position. Employees in bargaining units 4, 5, 6, and 8 have not had a unit-wide wage increase since 2009. In January 2012, they suffered a 5 percent cut in wages and were forced to take furlough days. In December 2013, those cuts were restored, but employees in these units are paid the same as they were paid in 2009. Given the increase in cost of living, no wage increase equals a reduction in earnings (Union Exhibit 6).

Clerical employees in bargaining unit 3 received raises every year through January 2012; they suffered the same wage cuts and furloughs in January 2012, but in July 2012, received a 3 percent unit-wide increase and a 5 percent unit-wide increase in December 2013.

The County has never asserted it is unable to fund the loyalty bonus; for the 374 employees from all four bargaining units entitled to the loyalty bonus, the total cost to the County is $280,500.

The loyalty bonus was not added to the contract to address recruitment and retention issues; it was part of an effort to gain an additional step increase. The County refused to establish a permanent sixth step and refused to adopt a "longevity bonus," but agreed to a "loyalty bonus."

The panel should recommend that the Board of Supervisors return the parties to the status quo and install the loyalty bonus for 2014.

The County's position. Although the loyalty bonus provision has been part of the MOU since 2001, it has been renegotiated each year thereafter. During negotiations in 2011, the County asked AFSCME to give up the loyalty bonus, but the Union refused.

During the 2014 negotiations, the Union proposed that the loyalty bonus continue as a term of the contract under an "evergreen provision" (Union Exhibit 11). That proposal was rejected by the County, demonstrating that the loyalty provision of the 2014 is not part of the status quo.

The loyalty bonus was installed in the MOU in response to the County's recruitment and retention problems. These concerns no longer exist.

Loyalty pay does not fix salary compaction with the clerical unit. Nor does it cure the workload problems caused by layoffs.

The Union did not provide the panel with a survey of comparable jurisdictions showing that Merced County employees' wages are below average. Nor did the Union provide any comparability data showing that other jurisdictions provide the same or similar loyalty bonuses to their employees after 10 years of employment.

The panel should recommend to the Board of Supervisors that the parties return to the bargaining table and engage in good faith negotiations about the loyalty bonus during the next round of negotiations.

DISCUSSION

Section 3505.4(a) of the Meyers-Milias-Brown Act allows the employee organization to request that the parties' differences be submitted to a factfinding panel after a declaration of impasse. Here, AFSCME declared impasse as to the loyalty bonus provision on August 20, 2014. The Act directs that the factfinding panel's findings and recommendations be guided by eight criteria set out in Section 3505.4(d).[1] The MMBA

[1] The criteria include state and federal laws applicable to the employer; local rules, regulations, and ordinances; stipulations of the parties; the interests and welfare of the public and the financial ability of the public agency; a comparison of the wages, hours, and conditions of employment of the employees involved in the factfinding proceedings with the wages, hours, and conditions of employment of other employees performing similar services in comparable public agencies; the consumer price index for goods and services; 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; and any other facts that are normally or traditionally taken into consideration in making the findings and recommendations.

directs the panel to make findings of fact and recommend terms and conditions of settlement.[2]

In this case, the parties' presentation to the factfinding panel focused mainly on the interests and welfare of the public and the financial ability of the public agency, external and internal comparability, and the consumer price index.

The County points to a number of goals and projects vying for its limited resources. These include food stamp programs, law enforcement services, indigent health care benefits and services, economic development and revitalization programs, infrastructure demands, water concerns owing to the drought, needed community services, workforce training and development, and capital improvement projects and deferred maintenance.

Despite these competing demands, the County does not assert an inability to pay the contested loyalty bonus. However, it has provided the panel with documentation describing its financial circumstances in broad terms. Merced is a rural county with a dispersed population. A U.S. Census Bureau Survey calculates that 24.3 percent of the County's population lives at or below the poverty level; this results in a lower tax base and places a greater strain on public assistance programs. Total budget projections show minimal growth, with the County's general fund well below the FY 2010/2011 level. As a result of mandated layoffs, the County workforce continues to operate with 300 fewer jobs since FY 2008/2009. Data shared with the panel shows that County retirement contribution rates have increased by more than 10 percent since FY 2011/2012.

AFSCME also introduced documents attesting to the County's financial ability. Based on the County's final budget figures, revenues and available fund balance steadily

[2] Section 3505.5(a).

have increased from FY 2011/2012 through FY 2013/2014. AFSCME's data also show that local revenues have been increasing since FY 2011/2012. In 2014, property values in Merced County increased by 9.3 percent to $19.5 billion, the second highest increase in the state since 2013.

The County takes the position that it is slowly recovering from the recent recession, but asserts it must strike the proper balance between restoring services and increasing compensation. The panel agrees. While the County's financial forecast generally appears positive, decisions about expenditures must be tempered and cautious. As James L. Brown, the County's Executive Officer advised the Board of Supervisors on June 17, 2014, "Although the economy continues to show signs of improvement, this year's budget still has challenges that require fiscal discretion." (County Exhibit 3.)

That cautionary directive duly noted, the panel's recommendation need not contend with the fiscal impact of a comprehensive memorandum of understanding. The panel's sole consideration is the County's financial ability as it relates to the impasse surrounding the loyalty bonus.

The County's final budget for FY 2013/2014 was $468.8 million; its proposed budget for FY 2014/2015 is $467.8 million. The cost of providing the loyalty bonus to employees in units 4, 5, 6, and 8 — estimated to be $280,500 — has a *de minimus* impact the County's financial ability. The price tag associated with the loyalty bonus for AFSCME-represented employees is 0.0598 percent of the County's budget. Therefore, the statutory criteria set out in Section 3505.4(d)(4) supports the Union's position.

The criteria mentioned in Section 3505.4(d)(5) directs the factfinding panel to consider the wages, hours, and working conditions of employees in comparable jurisdictions.

In the past, the parties have relied on an agreed-upon list of seven comparable public agencies. These were the Counties of San Joaquin, Stanislaus, Madera, Fresno, King, Kern, and Tulare. Since the use of salary surveys were abandoned in 2009, however, comparisons with these counties have not occurred.

The County asserts that of all the counties that border Merced, Madera and Stanislaus Counties are most similar. However, the County presented no evidence as to the wages and benefits in Madera or Stanislaus Counties.

AFSCME presented some evidence as to how employees in units 4, 5, 6, and 8 compare to similarly situated employees in neighboring counties. Citing to an October 20, 2014, article from *The Modesto Bee*, the Union notes that the County of Stanislaus and AFSCME agreed to a new contract that restores 80 percent of prior salary cuts in the first year and gives employees a 1 percent salary increase in July 2016, and a 3 percent salary increase in July 2017 (Union Exhibit 10).

In addition, the Union provided the panel with the County of Mariposa's "last proposal" submitted to the employee organization on December 18, 2014, which included an across-the-board salary increase of 5 percent effective January 1, 2015, an additional 3 percent boost effective November 1, 2015, and an additional 3 percent increase effective November 1, 2016 (Union Exhibit 10). The panel was informed that a loyalty bonus was made part of the proposed agreement for the first time in the County of Mariposa. However, it conveys a $500 bonus to employees with 10 years of service.

The Union also provided the panel with a "consent item" from the Madera County Board of Supervisors' agenda for December 9, 2014. This document refers to a three-year agreement with Madera County and AFSCME that carries a 5 percent salary increase effective in December 2014 (Union Exhibit 10).

The panel observes that the Union's comparability data is anecdotal and does not consist of a comprehensive salary survey typically presenting during factfinding proceedings. Nonetheless, the data presented by the Union demonstrates that three counties bordering Merced have or are about to reach agreements with labor organizations that carry wage increases. In general terms, therefore, the panel finds in the external comparability data reason to credit the Union's position that wage stagnation in the Central Valley has abated.

However, focusing just on the loyalty bonus, comparability data favors the County. The only evidence presented shows Mariposa County adopting a $500 loyalty bonus, not the $750 bonus that has been customary in Merced County.

Section 3505.4(d)(6) directs the panel to consider the consumer price index for goods and services. The County presented no evidence regarding CPI. AFSCME submitted CPI data from the U.S. Bureau of Labor Statistics that shows an increase in the CPI of 1.1 percent in 2010; 2.8 percent in 2011; 2.2 percent in 2013; and 1.5 percent in 2014 (Union Exhibit 6). The CPI data support the Union's argument that, since employees in units 4, 5, 6, and 8 have not had a raise in compensation since 2009, they have, in effect, suffered a wage reduction.

In the panel's view, while the CPI criteria cited in Section 3504.5(d)(6) does not provide specific guidance as to the loyalty bonus per se, it supports the Union's argument that, when viewed broadly, there has been a reduction in employee earnings due to the absence of a wage increase since 2009, coupled with the increases in the CPI. The negative impact on employees' wages is exacerbated by elimination of the loyalty bonus that has been part of their compensation package since 2000.

Section 3504.5(d)(7) contemplates that the panel will consider overall compensation within the public agency, or internal comparability.

The Union provided the panel with wage data concerning the clerical unit. AFSCME asserts that the clerical employees in unit 3 received raises every year through January 2012. They suffered the same wage cuts and forced furlough days as other County employees in 2012, but earned a 3 percent unit-wide increase in July 2012 and a 5 percent increase in December 2013. As a result of these inequitable increases, the wage of a child support specialist position, which has traditionally been a position into which a registration and information assistant (entry-level clerical position) will promote, dropped from 8 percent *above* in 2009 to 5 percent *below* the registration and information assistant in 2012. Accordingly, a registration and information assistant clerical employee who "promotes" to the child support specialist position takes a 5 percent pay reduction.

The County does not dispute that this wage range anomaly exists, but asserts that the wage increases gained by the clerical unit came about because that unit agreed to a six-year MOU. The County also correctly points out that the $750 loyalty bonus does not fix the compaction issue with the clerical unit.

The Union also provided the panel with data regarding the attorneys' unit. AFSCME asserts that the attorneys suffered the same wage cuts and furlough days as other County employees, but received wage increases every year through July 2011.

The panel notes that all non-safety bargaining units received wage increases in 2005, 2006, 2007, 2008, and 2009, tied to the salary surveys then used by the County. That pattern was abandoned in subsequent years and, at least with regard to the clerical unit, the AFSCME-represented units have suffered. In terms of the internal comparability criterion noted in Section 3504.5(d)(7), the panel is persuaded that the wages of employees in units 4, 5, 6, and 8 lag behind their coworkers in the clerical classes.

The parties also presented documentation regarding internal comparability specifically as it relates to the loyalty bonus. According to AFSCME, of the 13 bargaining units in the County, the employer opted to eliminate the loyalty bonus only for the five AFSCME-represented units.[3] The MOU between the County and the Merced County Attorneys Association, the group that represents attorneys in bargaining unit 7, includes a clause that requires the elimination of the loyalty bonus when it is eliminated for all other miscellaneous bargaining units. By operation of this contract language, the County eliminated the loyalty bonus provision in the attorneys' MOU (County Exhibit 6). The County was not in negotiations with the attorneys' unit in 2014, when the loyalty bonus was eliminated.

Employees in unit 20, comprised of unrepresented management employees, also historically have received the loyalty bonus. The County elected to eliminate the loyalty bonus for this group as well. However, as was the situation involving the attorneys' unit, this change was not affected during the course of collective bargaining. It was driven by the County's desire to treat unrepresented employees the same as employees in represented units.

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[3] AFSCME represents probation management employees in unit 11, however, the loyalty bonus as it affects that group is not part of this factfinding process.

Therefore, in terms of internal comparability and the loyalty bonus, while the end result was the same, the County held firm to a *bargaining position* that eliminated the loyalty bonus only when it negotiated with AFSCME.

Finally, the statute in Section 3504.5(d)(8) instructs the panel to consider any other facts, not confined to paragraphs (1) through (7), that normally or traditionally are taken into consideration in making findings and recommendations. In this regard, the panel has given careful consideration to how the Board's resolution of this impasse will impact upcoming negotiations and, in the end, labor peace.

A review of the documents exchanged during the 2014 round of negotiations illuminates how the parties' differing perspectives brought this matter to the panel and, ultimately, to the Board of Supervisors. When the County gave its proposal to AFSCME on April 16, 2014, it faced what it saw as a pending budget deficit and sought further concessions from labor, including additional furlough days. In response, the Union resisted concessions, believing that economic circumstances had improved. Notably, topping the list of its priorities, the Union sought preservation and continuation of the $750 loyalty bonus.

As bargaining progressed, the County dropped its demand for concessions, like the additional furlough days it was seeking in April. Instead, it proposed a one-year agreement that, while it included some changes to the MOU, essentially sought to maintain the status quo and encumber "no new money."

The Union, having only recently recovered from a 5 percent wage reduction, signaled its willingness to accept a zero percent wage increase. But, it conveyed in no uncertain terms its view that elimination of the loyalty bonus enjoyed by its members for nearly 20 years did not constitute maintenance of the status quo. AFSCME viewed the elimination of the loyalty bonus as a concession.

When AFSCME declared impasse, the County reiterated its position that the "status quo" model for the successor agreement did not include continuation of the loyalty bonus.

By its terms, the County correctly notes that the loyalty bonus provisions of the past MOUs are date specific. The contracts did not convey the bonus "every December." In the last accord, for example, the contract language provided for the loyalty bonus on pay period 25, in 2011, in 2012, and in 2013.

The County also notes that on May 21, 2014, AFSCME passed a written proposal which removed the sunset language of the loyalty bonus provision and replaced it with "evergreen" language (Union exhibit 11).

In the panel's view, the language as it appeared in the MOU and the Union's 2014 "evergreen" proposal establish that, however long standing, the loyalty bonus was not the status quo the County contemplated as its final offer. The provision in the prior MOU did not automatically carry over to a successor agreement.

However, the fact remains that employees in units 4, 5, 6, and 8 have enjoyed the loyalty bonus for many years and have come to expect it as part of their compensation package. There has been no showing the County was or is unable to pay the relatively modest dollar amount needed to fully fund the loyalty bonus for eligible County workers. While the County's economic forecast is not certain, elected officials in three neighboring counties have determined that increasing employee compensation after years of concessions is sound public policy. Within Merced County, AFSCME-represented groups have fared less well than some of their coworkers and, with regard to the loyalty bonus, formed a reasonable understanding that these longstanding bonuses could be counted on as part of the status quo.

The panel fears that the County's continued insistence on eliminating the 2014 bonus will hang like a dark cloud over the bargaining table and will strain the parties' relationship both at and away from the table. In the interest of fostering a positive labor/management relationship, where fruitful and respectful bargaining is built on trust and cooperation and supported by common goals, the panel recommends that the Board of Supervisors instruct its bargaining team to come to the table in 2015 with an opening proposal to units 4, 5, 6, and 8 that will retroactively restore the 2014 loyalty bonus and, as bargaining goes forward, give good faith consideration to a Union proposal that makes the loyalty bonus permanent.

RECOMMENDATION

This factfinding panel makes the above recommendation to the Merced County Board of Supervisors.

Dated: February 2, 2015

Carol A Vendrillo

CAROL A. VENDRILLO, ESQ.
Third-Party Neutral

SHEILA K. SEXTON, ESQ.
Union Panel Member

SHELLINE K. BENNETT, ESQ.
County Panel Member

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RECOMMENDATION

This factfinding panel makes the above recommendation to the Merced County Board of Supervisors.

Dated: February 2, 2015

CAROL A. VENDRILLO, ESQ.
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SHEILA K. SEXTON, ESQ.
Union Panel Member

SHELLINE K. BENNETT, ESQ.
County Panel Member

Fact-Finding Hearing with County of Merced and American Federation of State, County and Municipal Employees (AFSCME), Local 2703
Case No. SA-IM-149-M

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

1. **The Report Correctly Finds that the Loyalty Bonus Expired.**

Although I dissent from the recommendations of the Report, I agree with the Report's finding of fact that the County properly ended the Loyalty Bonus when the parties' Memorandum of Understanding expired, and that it was not a part of the *Status Quo*. The Report specifically states that:

> By its terms, the County correctly notes that the loyalty bonus provisions of the past MOUs are date specific. The contracts did not convey the bonus "every December." In the last accord, for example, the contract language provided for the loyalty bonus on pay period 25, in 2011, in 2012, and in 2013.
>
> The County also notes that on May 21, 2014, AFSCME passed a written proposal which removed the sunset language of the loyalty bonus provision and replaced it with "evergreen" language (Union exhibit 11).
>
> **In the panel's view, the language as it appeared in the MOU and the Union's 2014 "evergreen" proposal establish that, however long standing, the loyalty bonus was not the status quo the County contemplated as its final offer. The provision in the prior MOU did not automatically carry over to a successor agreement.** (Emphasis added.)

This finding is particularly important and should not be understated. It establishes that AFSCME and the County consistently and purposefully negotiated an agreement for a Loyalty Bonus that would end at the expiration of each contract; therefore, the parties were aware that the Loyalty Bonus was a finite benefit subject to renegotiation each year. This negotiated term created limited fiscal expectations on the part of the County that the Loyalty Bonus would end at the expiration of the contract. Accordingly, this finding establishes that the Loyalty Bonus is not a guaranteed right or benefit and was properly ended by the County in 2014.

Therefore, the Recommendation that the County provide a Loyalty Bonus is an entirely gratuitous benefit for AFSCME members with the associated cost being solely born by the County. The Report recommendation is not a recommended term of settlement but instead provides a guaranteed benefit to the Union without negotiations.

2. **The Report Fails to Acknowledge the County's Current Economic Hardships and Priorities.**

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 recovery from the Great Recession, the County lags behind. At best, the County projects a modest to flat growth over the next year. In part, this tempered expectation is due to continuing increased personnel costs for County employees' health and retirement. The County has sought a measured, fiscally prudent course regarding future expenditures. This fiscally prudent course requires that the County prioritize its expenditures based on the needs of the public.

The Report does not dispute or argue the County's assessment of its fiscal status. The Report acknowledges the County's fragile economic state but chooses to ignore the fiscal impacts of its recommendations. The Report states:

> The County points to a number of goals and projects vying for its limited resources. These include food stamp programs, law enforcement services, indigent health care benefits and services, economic development and revitalization programs, infrastructure demands, water concerns owing to the drought, needed community services, workforce training and development, and capital improvement projects and deferred maintenance.
>
> * * *
>
> The County takes the position that it is slowly recovering from the recent recession, but asserts it must strike the proper balance between restoring services and increasing compensation. The panel agrees. While the County's financial forecast generally appears positive, decisions about expenditures must be tempered and cautious. As James L. Brown, the County's Executive Officer advised the Board of Supervisors on June 17, 2014, "Although the economy continues to show signs of improvement, this year's budget still has challenges that require fiscal discretion."
>
> That cautionary directive duly noted, the panel's recommendation **need not contend with the fiscal impact of a comprehensive memorandum of understanding. The panel's sole consideration**

<u>is the County's financial ability as it relates to the impasse surrounding the loyalty bonus.</u> (Emphasis added.)

Here, the Report is mistaken and takes an unfortunately myopic view of the role of the Panel. The Panel is tasked with providing "*recommend terms of settlement*" which consider "*the interests and welfare of the public and the financial ability of the public agency.*" (Cal. Gov. Code Sections 3505.5 (a) and 3505.4(d).)

While the County has not argued an inability to pay during negotiations, it has articulated that the Loyalty Bonus would come at the cost of some other County projects. Accordingly, AFSCME's proposal must be balanced against the County Board of Supervisor's legitimate goals and projects which have been slated for this coming fiscal year. The Report fails to balance its recommendation with the County's needs and priorities.

3. **<u>The Report's Recommendation is Based on Incomplete and Inaccurate Comparability Data.</u>**

The Report's findings regarding external comparability are flawed because the Union did not provide adequate information to identify other County's which provide a similar Loyalty Bonus. The Report acknowledges that the Government Code provides guidance concerning factors from which the Panel should base its recommendations. Notability, Cal. Gov. Code Section 3505.4(d) provides that the Panel should consider the interest and welfare of the public and the financial ability of the public agency, as well a comparison of employees in comparable jurisdictions. The Report also acknowledges that AFSCME did not provide a comprehensive salary survey. The Report states:

> The panel observes that the Union's comparability data is anecdotal and does not consist of a comprehensive salary survey typically presenting during factfinding proceedings.

Here, AFSCME has the burden to prove that the *Status Quo* should be changed. As such, AFSCME must provide complete evidence that identifies comparable jurisdictions that also receive a Loyalty Bonus. However, AFSCME did not provide any such data. In fact, there was no data provided that other jurisdictions provide a Loyalty Bonus. While there was some anecdotal testimony that other jurisdictions provide longevity pay, the Panel was not provided with the specifics of this data and therefore is unable to reach a finding of comparability. Simply put, AFSCME failed to meet its burden of proof.

Furthermore, the Report's findings regarding internal comparability are also flawed. The Report finds that salary increases for various bargaining unit groups have been different over the past 10 years and therefore attempts to articulate a justification for AFSCME members to receive a continuation of the Loyalty Bonus. This argument is flawed for two reasons. First, the Report fails to cite that AFSCME members had been offered the same increases and benefits as other bargaining units but rejected the offers hopeful to receive better terms. Second, a comparison of County employees clearly shows that no other County employee receives the Loyalty Bonus. As was discussed at the hearing, the County sought to discontinue the Loyalty Bonus for all County employees. Accordingly, had the Report included a complete analysis of the County's internal comparability of the Loyalty Bonus, it would have found that AFSCME employees were not treated differently than other County employees.

4. **The Report Incorrectly Asserts that the Cost of the Loyalty Bonus Would not Impact the County.**

The Report states that it is unconcerned with the associated costs of providing a Loyalty Bonus because it believes that the cost would be "*de minimus*." The Report reaches this finding by mistakenly citing to the County's total fiscal budgets for FY 2013-2014 and FY 2014-2015 and asserting that the cost for AFSCME represented employees would represent .0598% of the total budget.

As discussed above, the Panel ignores that restoration of the Loyalty Bonus would likely affect all County employees. As such, the County estimates the cost for the bonus for all County employees to be at least $480,250 per year, which is not a *de minimus* amount of money.

Further, the Report fails to establish how much unrestricted funds or excess funds are contained in the County's **General Fund**. Here, the Report conflates the total amount of the County budget, (which contains restricted funds that can only be used for a specific purpose), with funds that can be freely expended as the County deems fit. Without a specific determination or finding by the Panel of the amount of County unrestricted funds the County could utilize, the Panel is unable to determine whether the cost is *de minimus*. For example, the County established that between 2008 and 2013, expenditures have exceeded revenue. Therefore, any discretionary spending had a significant impact on the County's fiscal stability.

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

Shelline Bennett
February 2, 2015