FR-756-M

In the Matter of the Impasse Between	**)**	
	)	
COUNTY OF SAN BERNARDINO	**)**	
	)	**FACTFINDING REPORT AND RECOMMENDED TERMS OF SETTLEMENT**
Employer	**)**	
- and-	**)**	
	)	**PERB CASE N0. LA-IM-192-M**
SAN BERNARDINO SAFETY EMPLOYEES' BENEFIT ASSOCIATION (SEBA)	**)**	**REPORT ISSUED April 8, 2016**
Exclusive Representative	**)**	

Hearing Held on February 29, March 1 & 2, 2016

COMPOSITION OF THE FACTFINDING PANEL:

Impartial Chairperson: Daniel R. Saling Esq.
33192 Ocean Hill Drive
Dana Point, CA 92629

County Member: Cynthia L. O'Neill Esq.
Deputy County Counsel
385 North Arrowhead Ave., 4th Floor
San Bernardino, CA 92415-0140

Association Member: Grant Ward, Detective
San Bernardino County Sheriff's Department
655 East Third Street
San Bernardino, CA 92415

MAKING PRESENTATIONS TO THE FACTFINDING PANEL:

For the County: Bob Windle
Assistant HR Director
157 West Fifth Street, First Floor
San Bernardino, CA 92415-0440

For the Association: Rockne A. Lucia, Jr. Esq.
Rains Lucia Stern, PC
2300 Contra Costa Blvd, Suite 500
Pleasant Hills, CA 94523

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BACKGROUND AND PROCEDURAL HISTORY

The County of San Bernardino is a county located in the southern portion of the United States in the state of California. As of the 2010 census, the population was 2,035,210, making it the fifth-most populous county in California, and the 12th-most populous in the United States. San Bernardino County is included in the Riverside-San Bernardino-Ontario, CA Metropolitan Statistical Area, also known as the Inland Empire, as well as the Los Angeles-Long Beach, CA Combined Statistical Area.

With an area of 20,105 square miles, San Bernardino County is the largest county in the United States by area. It is larger than each of the nine smallest states, larger than the four smallest states combined, and larger than 71 different sovereign nations.

Located in southeast California, the thinly populated deserts and mountains of this vast county stretch from where the bulk of the county population resides in two Census County Divisions, some 1,422,745 people as of the 2010 Census, covering the 450 square miles (1,166 km^2) south of the San Bernardino Mountains in San Bernardino Valley, to the Nevada border and the Colorado River.

The County's primary law enforcement agency is the San Bernardino County Sheriff's Department. The department provides law enforcement services in the unincorporated areas of the county and in 14 contract cities, operates the county jail system, provides marshal services in the county superior courts, and has numerous other divisions to serve the residents of the county.

The County employs a substantial number of employees in numerous departments throughout the county. The County collectively bargains with twenty-two (22) separate bargaining units and each bargaining unit has its own memorandum of understanding.

One of the bargaining units represents the Deputy Sheriffs, Sheriff Detective/Corporals, District Attorney Investigators and District Attorney Senior Investigators and comprises a bargaining unit of approximately 1,568 members. This unit is called the Safety Unit and is represented by SEBA (Association). The impasse and factfinding proceedings at issue arose from the negotiations between the County and the Association on a successor agreement.

BARGAINING HISTORY

The County and Association were parties to a Memorandum of Understanding, the ("MOU") that expires on September 17, 2016. The bargaining parties commenced bargaining on May 5, 2015. The parties were unable to agree to a successor agreement after twelve (12) bargaining sessions and on January 5, 2016, the Association declared impasse and requested that fact finding under the Meyer-Milias-Brown Act (MMBA) be conducted.

During their meet and confer sessions, a number of tentative agreements (TA's) were reached. During the factfinding process, the factfinding panel was asked to address only those issues that remained unresolved. The County and Association have reached tentative agreement on the following articles:

1. County Management Rights
2. Direct Deposit
3. Expense Reimbursement
4. Implementation
5. Leave Provisions – Section 4 Military Leave
6. Leave Provisions – Section 5 Political Leave
7. Life Insurance
8. Long-Term Disability
9. Me-Too Agreement
10. Merit Advancements
11. Pay Period
12. Payroll Deductions
13. Physical Fitness and Appearance
14. Preamble
15. Recognitions
16. Renegotiation
17. Retirement System Contributions
18. Safety Equipment
19. Vision Care Insurance

The bargaining parties did not propose any changes to the following contact provisions:

1. Access to Work Locations
2. Agency Shop
3. Demotions
4. Downgrading
5. Dual Appointments
6. Employee Rights

7. Layoff
8. Payroll Errors
9. Probationary Period
10. Prospective Lawsuits
11. Provisions of Law
12. Reassignments
13. Sheriff's Promotional Evaluations
14. Transfer
15. Upgrading
16. Use of County Resources
17. Work Disruption

At the commencement of the factfinding hearing, the County and Association requested time to address several items that were listed as items to be presented during the factfinding proceedings. Following the meet and confer session, the bargaining parties reached agreement on the following items and they were removed from the issues to be addressed by the factfinding panel:

1. Definitions
2. Dependent Care Assistance Plan
3. Flexible Spending Account
4. Medical Emergency Leave
5. Reemployment
6. Section 125

Following the factfinding panel hearing, the bargaining parties met and agreed to the status quo language of the existing MOU language on the issues listed below. Therefore, the following issues were removed from consideration by the factfinding panel:

1. Assignment of Higher Positions
2. Employees and Authorized Employee Representatives
3. Extra Help Public Gatherings
4. Full Understanding, Modifications, Waiver
5. Leave Provision – Section 2 Annual Leave
6. Leave Provision – Section 3 Compulsory Leave
7. Non-Discrimination

8. Obligation to Support
9. On-Call Pay
10. Overtime
11. **Promotions Wage** Increase upon Promotion
12. Uniform Allowance
13. Wage Differentials

Following the factfinding hearing, the parties requested that they be allowed to meet and confer prior to presenting their last best and final offers. (LBFO) When the bargaining parties presented their LBFO on March 23, 2016, the factfinding panel was informed that the parties had reached agreement on the following issues and that these issues need not be addressed by the factfinding panel:

1. Notification of Assaults
2. Promotions

The bargaining parties were unable to reach tentative agreement on the following issues. Therefore, these issues will be addressed by the factfinding panel:

1. Benefit Plan - Medical Premium Subsidy
2. POST Pay
3. Promotions Wage List
4. Salary Adjustment
5. Salary Rate and Step Advancements
6. Term
7. Uniform Allowance

On February 17, 2016, Daniel R. Saling was chosen and appointed by the Public Employees Relations Board (PERB) to serve as the neutral chairperson of the factfinding panel. The County and the Association designated Cynthia L. O'Neill and Grant Ward to serve as their respective members of the panel. The County and the Association entered into a stipulation to waive statutory time limits for the holding of a hearing and for the issuance of the panel's report.

The panel is statutorily authorized to meet with representatives of the parties through investigation and/or hearing and, if an agreement settling all issues cannot be reached, to make a factual finding based on the evidence presented as well as to recommend terms of settlement. To initiate those quasi-legislative responsibilities, a hearing was held on February 28, and March 1 & 2, 2016, in San Bernardino, California, during which time the County and the Association were given full opportunity to present evidence on the outstanding issues. Following the presentations of the bargaining parties, an effort was made to resolve the impasse through mediation. The panel members met with their respective groups and then met together with the neutral chairperson to attempt to resolve the impasse. Following an effort to mediate, it was determined that while the parties had made concessions and moved from their impasse positions, there would not be a negotiated settlement reached as of March 23, 2016. The factfinding panel met in their executive session twice, March 16 & 30, 2016, to discuss the parties' presentations and the process they would use to reach a consensus with regard to the issuance of a factfinding report.

At the conclusion of the executive discussions of the panel, the chairperson indicated that he would prepare a draft of the factfinding report and recommendation. A copy of the proposed factfinding report would be emailed and/or faxed to the partisan members of the panel for their comments and/or suggestions. The partisan members of the panel were made aware of their right to either concur or dissent on all or part of the majority opinion. The chairperson prepared the final copy of this report and recommendations which were provided to the partisan panel members for their official signature.

RELEVANT FACTORS

Government Code Subsection 3505.4 (d) states as follows:

In arriving at their findings and recommendations, the factfinders shall consider, weigh, and be guided by all of the following criteria:

(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 comparable 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.

Both the County and Association put forth arguments regarding the County's ability to pay for and maintain the services provided by the Safety Unit. The County indicated that it had received higher amounts of income over the past several years but that it feared possible future revenue declines that required it to maintain certain levels of reserves for such unexpected financial crisis. The Association pointed out that it had made concessions because of the financial crisis that the County had faced over a number of years. As a result, the bargaining unit members' salaries were less than those of other sheriff departments in Southern California. Further, the Association expressed concern over the recruitment and retention of sheriff deputies because of the disparity in salary and overall compensation when compared to other sheriff departments and city police agencies.

The factfinding panel was presented significant evidence by both the Association and the County regarding the County budget and the ability and/or the inability of the County to pay for salary improvements and other economic proposals that would make the Safety Unit comparable with other sheriff departments and city police agencies.

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COUNTY'S GENERAL IMPASSE POSITION

It is the position of the County, that because of California's past financial crisis and the decline in revenues, the County must maintain a contingency reserve fund that is sufficient to provide county services should there be a loss of county revenues in the future. The County indicated that it had experienced a significant downturn in revenues for a number of years and at the same time, personnel costs and health costs had continued to increase.

ASSOCIATION'S GENERAL IMPASSE POSITION

The Association contends that it has made substantial contributions to the County by reducing staff compensation and other benefits. After having made concessions to the County, the Safety Unit indicated that it had fallen behind in total compensation when compared to other Southern California counties and city police agencies. Further, the Association contends that as a result of the decrease in overall compensation, the Sheriff's Department has and will continue to have problems in recruiting qualified new deputies and retaining those deputies currently employed by the Department.

FACTFINDING PANELS FINDINGS AND RECOMMENDATIONS REGARDING A SUCCESSOR MOU

- **Benefit Plan - Medical Premium Subsidy:**

County's Position: The County proposed to maintain the current fixed dollar subsidy amounts and to update and reorganize the article.

SEBA's Position: SEBA proposed that the County pay a biweekly Medical Premium Subsidy (MPS) maximum amount of $614.65 in year one of the contract, equivalent to 80% of the current Kaiser-Employee plus 2 biweekly rate. In the second year of the contract, the County shall pay a maximum amount of $633.86, equivalent to 82.5% of the current Kaiser-Employee plus 2 biweekly rate, in the third year of the contract, the County would pay a maximum amount of $653.06 per year, equivalent to 85% of the current Kaiser-Employee plus 2 biweekly rate. The increase would be effective July 1, 2016.

Analysis: The Association proposed to change the flat dollar amount currently provided by the County to a percentage rate of the premium cost of the current Kaiser-Employee plus 2 biweekly rate. Further, the percentage rate would increase each year of the agreement. SEBA proposed that the County would pay a biweekly MPS maximum amount of $614.65 in year one of the contract, equivalent to 80% of the current Kaiser-Employee plus 2 biweekly rate. The percentage rate would increase to 82.5% for the second year ($653.06) and 85% for the third year ($653.06). The advantage to the Association is that it has a built-in increase in insurance contributions for each year of the three year agreement.

The County has proposed that it maintain its current fixed dollar subsidy amount throughout the term of the agreement. If the cost of medical insurance increases, the additional amount over the fixed dollar amount would be paid by bargaining unit members. While health premium costs increases have not been substantial over the past few years, it is possible that there could be substantial increases in the future. Such increases would not be shared by the County and members of the bargaining unit but would be the sole responsibility of the bargaining unit members.

Recommendation: It is the recommendation of the factfinding panel that the County's current biweekly Medical Premium Subsidy be as follows during the three year agreement:

Kaiser:

	July 1, 2016	July 1, 2017	July 1, 2018
Employee Only	$197.75	$200.72	$203.73
Employee + 1	$407.22	$413.33	$419.53
Employee + 2	$576.23	$584.87	$593.65

Blue Shield:

	July 1, 2016	July 1, 2017	July 1, 2018
Employee Only	$178.60	$181.28	$184.00
Employee + 1	$357.20	$362.56	$368.00
Employee + 2	$505.43	$513.01	$520.71

- **POST Pay:**

County's Position: The County has proposed the following:

- Add the current flat dollar Intermediate and Advanced POST Pay amounts into base salary in January 2017;
- Establish a new 2% POST Pay for the Intermediate and Advanced levels.

SEBA's Position: SEBA has proposed that the current POST wage differential incentive pay be added to the corresponding POST Certificate base wage. With the new wage, SEBA proposed the following POST wage amounts:

- 1 % Basic POST Certificate
- 3 % Intermediate POST Certificate and
- 5 % Advance POST Certificate
- The effective date of the proposed increase will be July 1, 2016.

Analysis: The cost associated with the Association's POST Pay proposal is substantial over the term of the agreement. Both the Association's and the County's LBFO moved away from the hourly rate for the Intermediate and Advanced POST. The County's proposal is to move the flat dollar for the Intermediate and Advanced POST Pay amounts into base salary in January 2017 which would improve the salary schedule. The Association desires to have a percentage rate for Basic (1%); Intermediate (3%); and Advanced POST (5%), while the County has proposed a 2 % amount for the Intermediate and Advanced POST and nothing for the Basic POST.

Recommendation: It is the recommendation of the factfinding panel that the POST pay should be established in the new agreement by moving the current flat dollar Basic, Intermediate and Advanced POST Pay amounts into the base salary effective July 1, 2016. Further, effective July 1, 2016, the Basic POST Pay should be 1%; the Intermediate POST Pay should be 2% and the Advanced POST Pay should be 3%.

- **Promotions Wage List:**

County's Position: The County proposed to clarify, consistent with the current administration of the article, that an employee who is promoted receives an increase of mathematically closest to *5%* above his/her current wage.

SEBA's Position: SEBA has proposed that an employee who is promoted receives an increase of at least 5% above his/her current wage.

Analysis: As a matter of practice, the County has increased an employee's salary, following his/her promotion to an amount that is mathematically closest to 5% of his/her current wage. The Association contends that all employees should receive not less than a 5% increase in their wage and the County's practice has resulted in some employee's receiving less than a 5% increase.

In reviewing past pay increases for employees that were promoted, it was clear that most promoted employees received increases in excess of 5% and a few received one to two tenths of a percent below 5%. In order to insure that no one would receive less than 5%, the County would be required to allow some employees to gain substantially more than 5% on the salary schedule.

Recommendation: It is the recommendation that the new agreement reflects the past practice of the Department and that an employee who is promoted should receive a salary increase that is mathematically closest to 5% above his/her current wage.

- **Salary Adjustment:**

  County's Position:

  Across the Board Increases: The County has proposed the following increases:

  - 2.00% across-the-board salary increase in September 2016
  - 2.00% across-the-board increase in January 2018
  - 3.00% across-the-board increase in January 2019.

  SEBA's Position:

  - **Across the Board Increases**: SEBA has proposed a 4% wage adjustment for each of the three years of the agreement. Pay adjustment during the term of the agreement will become effective as of July 1st of each year of the agreement with the first salary adjustment taking effect on July 1, 2016.

Analysis: Both the Association and the County gave extensive presentations on the financial condition of the County. The presentation clearly indicated that the County had projected income and available reserves to make improvements in the total compensation package of the Safety Unit.

The County expressed concern of a possible future financial downturn in revenues that would require it to rely on its reserves to provide necessary services to the citizens of San Bernardino County. The Association presented evidence and testimony during the hearing that indicated that the County is having difficulty in recruiting and retaining qualified deputies. The Association believes that this is substantially because of the disparity between their total compensation package when compared to neighboring county safety units.

The County indicated that the safety unit's total compensation may be less in salary but the unit enjoyed a 3% at 20 years retirement program which none of the other counties provided. Yet, the 3% at 50 years does not apply to new deputies and the new deputies have a 2% at 50 years, which is the same program offered by other neighboring counties.

Recommendation: The factfinding panel recommends the following salary increases:

- 3% across the board effective July 1, 2016
- 3% across the board effective July 1, 2017
- 3% across the board effective July 1, 2018

- **Salary Rate and Step Advancements:**

SEBA's Position: SEBA previously proposed to adjust the current step advancements, but then withdrew its proposal.

County's Position: The County maintains its proposal to eliminate the first three steps of the Deputy Sheriff range. Elimination of the first three steps would have the effect of making the current step 4 the new step 1.

Analysis: The Association expressed a concern that the number of steps needed to reach the top of the salary schedule was substantially greater than other safety units in neighboring counties. The Association did not offer a proposal regarding the restructuring of the current salary schedule and expressed that the proposal offered by the County was an increase for new hires but that it did not increase the salaries for a vast majority of the deputies.

The elimination of steps 1 through 3 of the existing salary schedule would give new hires an increase in base pay but would not impact most of the career deputies. The newly hired are not covered by the retirement plan of 3% at 20 years but are covered by a 2% at 20 years. Therefore, this increase in base pay would be a benefit to those who are covered by a less beneficial retirement program.

Recommendation: The factfinding panel recommends that the first three steps of the current salary schedule for the Deputy Sheriff range be eliminated.

- **Term:**

  County's Position: The County has proposed a term of 3 years from the expiration of the current MOU; therefore, the proposed MOU would expire on September 17, 2019.

SEBA's Position: SEBA has proposed a contract term of 36 months with the effective date of the MOU to be July 1, 2016.

Analysis: The Association and County have both proposed that the term of the agreement be 3 years (36 months). The only issue is when the new agreement would become effective. The County desires to have the new agreement become effective on September 17, 2016 with an expiration date of September 16, 2019. While the Association agrees to a 3 year agreement, it has proposed that the effective date of the new agreement should become effective on July 1, 2016 with an expiration date of June 30, 2019.

Recommendation: It is the recommendation of the factfinding party that the new agreement be for a term of 3 years with an effective date of July 1, 2016.

- **Uniform Allowance:**

County's Position: The County proposes that during the term of the MOU only, the annual uniform allowance payment shall be increased to $1,400. The County has proposed that this amount "sunset" at the conclusion of the MOU.

SEBA's Position: SEBA proposes to increase the amount of annual Uniform Allowance from $675.00 to $1200.00 per year.

Analysis: From the bargaining parties LBFO, it appears that both agree the current annual uniform allowance of $675 needs to be increased. The Association has proposed that the current uniform allowance be increased to $1,200 per year and that it would be an ongoing allowance until renegotiated. The County has proposed an annual $1,400 uniform allowance for the term of the new agreement but the new amount would sunset when the new agreement expires and the allowance would return to the current sum of $675.00 annually.

Recommendation: It is the recommendation of the factfinding panel that the uniform allowance be increased to $1,200 per year and that this amount should remain in full force and effect until a successor agreement is negotiated.

All Other Issues:

1. All other existing wages, hours and other terms and conditions of employment shall remain in full force and effect, unless subsequently modified in writing by the parties.

CONCLUSION

3505.5. Findings of fact

(a) If the dispute is not settled within 30 days after the appointment of the panel, or, upon agreement by both parties, within a longer period, the panel shall make findings of fact and recommend terms of settlement, in which recommendations 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.

This report regarding the legal and jurisdictional requirement of Government Code 3505.5, et. Seq. as referenced above has been met. This Factfinding proceeding was concluded as required by law within the thirty (30) day requirement of the law even though the parties had agreed to a timeline that exceeded the thirty (30) day requirement.

Concur_________	Concur_________
Dissent_________	Dissent_________
Concur in part_________	Concur in part_________
Dissent in part_________	Dissent in part_________
___________________________ Cynthia L. O'Neill Esq. County Panel Member	_____________________________ Grant Ward Association Panel Member

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Daniel R. Saling Esq.
Panel Chairperson

Report Issued: April 8, 2016
Dana Point, California

Attachments:

The County and Association dissents are attached hereto and made a part of this factfinding report.

In the Matter of the Impasse Between
The County of San Bernardino and the Safety Employees Benefit Association
PERB Case No. LA-IM-192-M

County of San Bernardino's Dissenting Opinion to the Factfinding Report and Recommended Terms of Settlement

County of San Bernardino's Representative to the Factfinding Panel
Cynthia L. O'Neill

As the County of San Bernardino's representative to the factfinding panel, the County respectfully but significantly dissents to the Factfinding Report and Recommended Terms of Settlement issued by impartial chairperson Daniel Saling (Fact-finder). The report fails to consider certain relevant factors as required by California Government Code Section 3505.4, including the interests and welfare of the public and the financial ability of the employer; comparisons with wages, hours, and conditions of employment of other employees performing similar services; the consumer price index for goods and services; and overall compensation of employees. Additionally, the report largely fails to address the extensive data provided by the County to support it's position during the three day factfinding hearing.

The factfinding report recommends many significant salary increases for the Safety Unit. The total cost of the fact-finder's recommendations is $62 million over the term of the recommended three-year contract.

Accordingly, the County dissents to the following findings and recommendations in the report.

I. Benefit Plan- Medical Premium Subsidy

The fact-finder recommends an increase to the Safety Unit medical premium subsidy (MPS) during each year of a proposed 3-year contract which would result in a cost of $2.7 million. The MPS is a county-paid benefit and is provided to Safety Unit employees to offset a portion of employees' costs of medical insurance premiums. In coming to this recommendation the fact-finder ignores significant internal and external comparable MPS data and San Bernardino County's historical trend of very modest medical premium increases.

The County's position with respect to the Safety Unit MPS has remained consistent, which is that the current MPS amounts should remain unchanged. First, and which fails to be mentioned in the fact-finder's recommendation, is that employees in the Safety Unit who select the Employee +1 or Employee +2 medical plans (i.e., currently 71% of the Safety Unit) already receive the same or higher MPS amounts than the vast majority of County employees. In fact, only a tiny grandfathered fraction of the County's Supervisory Nurses Unit has a higher MPS amount. Therefore, any increase to these medical subsidies would only serve to put the Safety Unit even farther ahead of virtually all other County employees. Additionally, the County's proposal to maintain the current subsidy amounts provided to employees in this bargaining unit keeps the Safety Unit competitive with comparative counties (i.e., Kern, Orange, Riverside, Los Angeles, and San Diego) for all benefit levels (i.e., "Employee Only", "Employee + 1", and "Family" coverage). The fact-finder fails to address how the rates provided in comparable counties were considered in arriving at the recommended subsidy increases.

Next, in coming to the recommendation to increase the MPS the fact-finder states that there "could be" substantial increases to medical premiums. What the fact-finder fails to contemplate, but was provided by the County during factfinding, is that the County already has the rates for next year. Specifically, Safety Unit employees enrolled in the Kaiser Permanente Plan will benefit from a .55% rate reduction for the 2016-17 Plan Year and those enrolled in the Blue Shield Plan will receive a very modest 1.0% increase. Despite knowing these rate reductions/minimal increases for the next year, the fact-finder has proposed a significant increase to the MPS which runs contradictory to the rationale that large MPS increases are needed because there "could be" large increases in premiums.

It is also important to note that last year those employees in the Kaiser Plan benefitted from a 1.3% rate reduction. And since 2012 the Blue Shield rates, which is what the majority of the Safety Unit elects, has only seen an average premium increase of 1.4%/year. Therefore, based on the facts, the fact-finder's finding that there "could be" substantial increases to medical premiums is speculative at best and clearly does not comport with the County's historical trend of very modest premium increases, and in some cases notable decreases in premiums for a substantial amount of Unit employees.

Despite knowing the next year's rates and the County's historical rate trend the fact-finder has recommended significant year over year increases to the MPS with no supporting analysis as to how the recommended increases were formulated or why such increases are necessary, which, again is contradictory to the rationale that large MPS increases are needed because there "could be" large increases in premiums.

II. **POST Pay**

The fact-finder recommends that the current flat dollar POST amounts be added to base salary of all members of the unit and, effective July 9, 2016, a 1% differential be applied to those with Basic POST, a 2% differential to those with Intermediate POST, and a 3% differential to those with Advanced POST. The total cost of the fact-finder's recommendation is $13 million over the term of the contract.

This proposed term of settlement is significantly more generous than the County's proposal to add the Intermediate and Advanced flat dollar POST amounts to base salary, and apply a 2% differential to both the Intermediate and Advanced levels only.

First, the fact-finder's report provides no justification for this recommended increase. Government Code Section 3505.4 mandates that the panel consider wages and benefits received by similarly situated employees employed by comparable agencies. Given this, it is perplexing that the fact-finder would recommend such a significant increase to San Bernardino County's current Basic POST given the fact that 5 of the 6 comparable counties (i.e., Kern, Ventura, Riverside, Orange, and San Diego) <u>do not</u> provide a Basic POST Differential.

Finally, and of notable significance, is that the fact-finder has made no recognition that county proposed to convert Intermediate and Advanced POST to a percentage. The County and SEBA have maintained POST Pay as a fixed dollar amount for nearly 20 years. Over that period the parties have agreed to increases to the fixed dollar amounts, but have never agreed to convert POST back to a percentage. The County's proposal, to convert the Intermediate and Advanced Post to a percentage is a significant step given the parties longstanding bargaining history. Additionally, this is a significant advantage to employees because by converting POST to a percentage, the POST Pay will increase with each wage increase (e.g., across the board, annual merit increase) the employee receives.

III. **Salary Adjustment**

The fact-finder's report concludes that a salary adjustment of 3% each year in fiscal years 16/17, 17/18, and 18/19 is the recommended term of settlement. This salary increase would cost $38 million over the term of the contract. The County's current proposed wage increase is 2% in September 2016, 2% in January 2018, and 3% in January 2019.

The fact-finder's report states that the County has projected income and available reserves to make improvements in the total compensation package of the Safety Unit. However, the fact-finder provides no detailed analysis of what "improvements" are truly feasible in light of the County's desire to provide responsible fiscal management to best serve the interests of the public. The fact-finder's recommendation would result in the County spending more than it brings in every year. As such, the County would necessarily be required to use one-time monies to pay ongoing costs. That is exactly the position, as pointed out by the County in the hearing in this matter, Riverside County now finds itself. To do so is unsustainable and fiscally irresponsible.

For example, the fact-finder fails to address the evidence presented by the County that while property tax revenues have rebounded in the years since the Great Recession, much of recent revenue growth also includes revenue related to the dissolution of Redevelopment Agencies, a significant portion of which is ***not*** ongoing revenue. Also ignored in the report was evidence that the County's costs have surged at an alarming rate that far exceeds the pace of inflation. For example, the County's safety retirement contribution rate has increased by over ***536%*** in the past 13 years (i.e., from 11.42% to 61.28%), and 90% since 2010/2011(i.e., from 32.77% to 61.28%). This means that in the short period from 2011 to 2016 the County is now paying an ***additional*** $0.28 ***more*** for every dollar of salary that a Safety Unit employee is paid (i.e., from $0.33 in 2011 to $0.61 in 2016). While employees do not see these increased dollars immediately in their pockets, they are benefiting from them at the time of retirement.

Also presented by the County is that fact that the increases in retirement costs are continuing to grow. Through December 31, 2015 (which excludes the substantial market losses in January 2016), the County's Pension Fund has lost 3.5% in value (which is the equivalent of an 11% loss because the Fund expects a 7.5% rate of return). If the fund does not make any investment growth for the remainder of the year, this would result in an additional ***$900 million*** in unfunded liability, on top of the existing nearly $2 billion unfunded liability. Since these losses are paid back by the employer, the County General Fund would see approximately ***$23.4 million in additional ongoing costs***.

Also presented by the County is that fact that in addition to higher costs, the County continues to grapple with the realignment of many state services. San Bernardino County, similar to other counties, has become increasingly dependent on *more volatile* sales tax revenue. For example, when looking specifically at the Safety Unit, currently Sales Tax pays for approx. 36% of the total costs of the Unit, which is ***50% higher*** than it was before Public Safety Realignment in 2011. This increased dependency on the more volatile sales tax is a particular concern because it tends to be much more variable and quicker to react to changes in the economy. These concerns with unstable funding sources have culminated in greater need for the County to build reserves. The County's approach to increasing reserves reflects a fiscally prudent recognition of the resource shift from property tax revenues, which historically had been stable, to more *immediate* and *fluctuating* sales tax sources.

The County presented ample evidence of its prudent fiscal policies, which as noted by SEBA's own fiscal expert seem about "average" when compared to other public agencies. These policies serve the interest and welfare of the public, which is a factor the fact-finder is required to consider pursuant to the Government Code section. However, the public accountability inherent in the County's fiscal approach was ignored by this fact-finder and not considered in the report. If the County were to provide compensation in line with the fact-finder's report, the result would be additional service reductions to the public and an inability to react to any operational, legislative, or economic changes that may occur over the 5-year horizon. Department requests for additional ongoing funding total $34.8 million for 2016-17 alone. Further, the County's forecast of available resources over the upcoming five year period is optimistically premised on the current economic expansion exceeding by at least 2 years the longest previous economic expansion in the last 50 years. It is important to point out any blip or downturn in the economy would force the County to implement layoffs, wage and hiring freezes, office closures, and/or cut services like Riverside County is now contemplating.

In another example, the fact-finder fails to address the fact that the Safety Unit's financial expert provided testimony to the panel that the County could not afford a contract according to the Safety Unit's terms. The Safety Unit's financial expert did, however, say the County could afford contract terms that are approximately $20 million per year, but that the $20 million assumes that none of the other County bargaining units receive any wage increases. Puzzlingly, the settlement terms recommended by the fact-finder total $28 million per year on an on-going basis, ***$8 million more*** per year than SEBA's own expert said the County could afford. The fact-finder seemingly assumes that the County will provide no wage increases to any of the other County bargaining units, and again appears to arbitrarily arrive at the recommended wage increases. It seems clear that the fact-finder's recommendation fails to take into consideration the interests and welfare of the public and financial ability of the County to pay for the proposed increases.

The fact-finder also fails to evaluate the County's proposed wage increases in comparison to the agreements reached with 10 other County bargaining units (covering 12,000 employees), including the Safety Management Unit which has agreed to the same increases the County has proposed for the Safety Unit (i.e., 4.00% in year one (2% Post Pay + 2% ATB), 2.00% in year two, and 3.00% in year three). The County's proposals to the Safety Unit are similar in structure to agreements it has reached with the Safety Management Unit and the 9 other units, while at the same time addressing specific needs of the Safety Unit and demonstrating the County's continued commitment to the interest and welfare of the public and to its public safety employees.

The report also fails to consider the consumer price index for goods and services in evaluating whether the recommended terms of settlement are appropriate. From 2008 through 2015 the total consumer price index increase was 11.9% and during that same time period the Safety Unit received 19.75% in total wage increases, which far exceeded the consumer price index. Recent CPI data released by the Bureau of Labor Statistics shows that for the month of December 2015, CPI was -0.1%. If this trend continues the County's proposal to provide the Safety Unit with a total of 4% in the first year and 9.00% in wage increases over three years would far exceed CPI.

The fact-finder's report also fails to note that San Bernardino County's proposed compensation is extremely competitive with comparable Southern California counties that offer the 3% @ 50 retirement formula. When looking at the four Counties that offer the 3% @ 50 formula (i.e., Kern, Orange, Riverside, and San Diego), San Bernardino County's proposed overall compensation is highly competitive. For example, the proposed maximum compensation over the term of the MOU for a Deputy Sheriff at top step with Advanced POST is slightly above (i.e., 0.04%) the mean of the comparable counties. San Bernardino County's proposed wages are even more competitive with all other Southern California counties on a relative basis after taking into consideration the cost-of-living and median household income in other counties in Southern California.

While the fact-finder noted the Safety Unit's concern over the recruitment and retention of sheriff deputies in the report recommending salary increases, he failed to note that evidence was presented that any recruitment or retention issues are only very recent and are largely isolated to short-term deputies (i.e., those with less than 5 years of service). For example from 2010 through 2015 San Bernardino County hired 122 Deputies from outside agencies and lost 66 to outside agencies.

Further, the County has proposed to address deputy sheriff recruitment and the retention of short-term deputies, at a significant cost to the County, by proposing to *eliminate the first three steps* of the deputy sheriff range. Elimination of the first three steps would have the effect of increasing the starting deputy sheriff salary by approximately *7.5%*. This would result in the County providing a starting salary for deputy sheriff's that is extremely competitive with the counties of Kern, Riverside, San Diego, and Orange counties.

IV. **Term**

The fact-finder recommends a three-year contract term, beginning on July 1, 2016. The County proposed a three-year term with a start date of September 18, 2016, after the expiration of the current memorandum of understanding on September 17, 2016. Again, this results in additional costs to the County in that proposed increases would take effect more than two months earlier than expected.

The County provided evidence that historically MOUs run continuously from the date of expiration into the successor MOU. However, this evidence was not addressed in the report, therefore, it remains unclear how the fact-finder selected the July 1, 2016 start date.

Additionally, the fact-finder does not seem to give consideration to the impact of the additional costs in light of costs associated with the implementation of other MOUs. The County's overarching policy of fiscal prudence and public accountability has again not been fully considered by the fact-finder and the County dissents to this recommendation.

V. **Uniform Allowance**

The term of settlement recommended by the fact-finder is to increase the existing uniform allowance from $675 per year to $1200 per year with no sunset clause. This finding is consistent with SEBA's proposal, and results in increased costs of $3.6 million over the term of the contract.

The County's proposal was that the annual uniform allowance payment should be increased to $1,400, but should include a "sunset" clause which would allow the parties to revisit the amount at the conclusion of the MOU. The fact-finder's recommendation that no sunset clause be implemented ignores the volatility of the the County's revenue streams and its potential inability to continue such a substantial increase to the Uniform Allowance.

The recommendation of the fact-finder fails to evaluate how the recommended $1200 uniform allowance compares to the uniform allowance provided to other comparable bargaining units in Southern California counties. For example, the current uniform allowance provided by the other comparable Counties are as follows: Los Angeles $1,250; San Diego $1,000; Kern $900; and Ventura $875 (Orange and Riverside do not provide a uniform allowance). The fact-finder's recommendation to nearly double the existing allowance to $1,200, without a sunset provision, seemingly ignores that such a recommendation would place the Safety Unit ahead of 5 of the 6 other counties.

Due to the fact that the large increase to the uniform allowance is unprecedented and higher than the amounts provided to similarly situated employees, the County disagrees with the recommendation that the allowance does not contain a sunset clause. The uniform allowance should be carefully evaluated at the conclusion of this contract, and the County respectfully dissents to the fact-finder's recommendation.

Conclusion

Based on all of the above, on behalf of the County of San Bernardino I hereby dissent in significant part to the Chairperson's Factfinding Report and Recommended Terms of Settlement.

Respectfully Submitted,

Cynthia L. O'Neill, County of San Bernardino's representative to the factfinding panel.

Cynthia O'Neill

CYNTHIA L. O'NEILL

April 7, 2016

Date

In the Matter of the Impasse Between **COUNTY OF SAN BERNARDINO** **Employer** - and- **SAN BERNARDINO SAFETY EMPLOYEES' BENEFIT ASSOCIATION (SEBA)** **Exclusive Representative**	**FACTFINDING REPORT AND RECOMMENDED TERMS OF SETTLEMENT** **PERB CASE N0. LA-IM-192-M** **Dissent In Part of Panel Member Grant Ward** **REPORT ISSUED April 8, 2016**

The undersigned concurs with all recommendations except for the recommendation on the County proposal identified as "Salary Rate and Step Advancements." The following is a partial dissent on the Step Advancement recommendation:

As the majority correctly points out, during the actual negotiations for a successor memorandum of understanding, SEBA had made a proposal "to adjust the current step advancements". The actual proposal attempted to make comprehensive and sweeping changes to the step advancement and increases currently in effect. The SEBA proposal would have brought the step increase and advancement schedule in line with all competing agencies by compressing the step advancement schedule. The proposal attempted to restore the schedule that had been in effect for decades. Specifically, the SEBA proposal provided that a deputy would reach top step in approximately 7.5 years versus the current schedule which requires deputies to serve 15.5 years before they reach top step. The counterproposal from the County merely attempted to modify the schedule for the least senior deputies and in effect ignored the inequitable disparity for more senior deputies. Despite repeated attempts at fixing the problem for all the deputies, the County would not relent. SEBA finally withdrew the proposal and focused on securing salary increases for all deputies.

The recommendation by the panel to adopt a modified step advancement schedule to eliminate the "first three steps of the current salary schedule" for deputies, certainly is an attempt to rectify a recruitment problem for new deputies and retain younger deputies.

SEBA does not oppose economic enhancements for any of its membership.

Therefore, this dissent in part should not be construed as an objection or a "vote" against the recommendation. This "dissent" is merely a commentary on the fact that the County continues to ignore the serious structural problem associated with the current step advancement schedule. Until the County addresses the entirety of the step schedule problem, the Department will be at a distinct disadvantage in recruiting and retaining qualified deputies.

Dated:
4-8-16

Grant Ward, Panel Member

Concur________

Dissent________

Concur in part________

Dissent in part________

Cynthia L. O'Neill Esq.
County Panel Member

Concur________

Dissent________

Concur in part________

Dissent in part ___X____

Grant Ward
Association Panel Member

Daniel R. Saling Esq.
Panel Chairperson