Findings and Recommendations Pursuant to California Government Code 3505.4 and 3505.5
PERB Case # LA-IM-199-M

****

In the Matter of an Impasse Between

County of Santa Barbara
And
Santa Barbara County Deputy Sheriffs' Association

****

For the County:	Victoria Parks Tuttle Senior Deputy County Counsel County of Santa Barbara 105 E. Anapamu St., Suite 201 Santa Barbara, CA 93101
For the Union:	Richard A. Levine, Esq. Silver, Hadden, Silver & Levine 1428 Second Street, Suite 200 P.O. Box 2161 Santa Monica, CA 90407

Factfinding Panel:

Neutral Chair	David A. Weinberg Arbitration Mediation and Conflict Resolution
Union Member	Howard Liberman, Attorney
County Member	Joseph Pisano Employee Relations Manager

PROCEDURAL BACKGROUND

On February 29, 2016 the Public Employment Relations Board (PERB) notified me[1] that I was selected by the County of Santa Barbara and the Santa Barbara County Deputy Sheriffs' Association to serve as the Neutral Chair of the factfinding panel, pursuant to the Meyers-Milias-Brown Act. The panel held hearings on April 18 and 19, 2016, in Santa Barbara. At these hearings the parties presented testimony and evidence to the panel. Closing briefs were filed with the Neutral Chair on or before April 29, 2016. The parties' agreed to waive the applicable statutory time limits regarding the issuance of the factfinding report.

RELEVANT STATUTORY PROVISIONS

This factfinding is governed by recent amendments to the Meyers-Milias-Brown Act[2]. The sections of the amendments that are pertinent to this proceeding are as follows:

> 3505.4. Unable to effect settlement within 30 days of appointment; request for submission to factfinding panel; members; chairperson; powers; criteria for findings and recommendations
>
> (a) The employee organization may request that the parties' differences be submitted to a factfinding panel not sooner than 30 days, but not more than 45 days, following the appointment or selection of a mediator pursuant to the parties' agreement to mediate or a mediation process required by a public agency's local rules. If the dispute was not submitted to mediation, an employee organization may request that the parties' differences be submitted to a factfinding panel not later than 30 days following the date that either party provided the other with a written notice of a declaration of impasse. Within five days after receipt of the written request, each party shall select a person to serve as its member of the factfinding panel. The Public Employment Relations Board shall, within five days after the selection of panel members by the parties, select a chairperson of the factfinding panel.

[1] The letter from PERB was dated February 29, 2016
[2] AB646

(b) Within five days after the board selects a chairperson of the factfinding panel, the parties may mutually agree upon a person to serve as chairperson in lieu of the person selected by the board.
(c) The panel shall, within 10 days after its appointment, meet with the parties or their representatives, either jointly or separately, and may make inquiries and investigations, hold hearings, and take any other steps it deems appropriate. For the purpose of the hearings, investigations, and inquiries, the panel shall have the power to issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence. Any state agency, as defined in Section 11000, the California State University, or any political subdivision of the state, including any board of education, shall furnish the panel, upon its request, with all records, papers, and information in their possession relating to any matter under investigation by or in issue before the panel.
(d) In arriving at their findings and recommendations, the factfinders shall consider, weigh, and be guided by all 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 in comparable public agencies.
(6) The consumer price index for goods and services, commonly known as the cost of living.
(7) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays, and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
(8) Any other facts, not confined to those specified in paragraphs (1) to (7), inclusive, which are normally or traditionally taken into consideration in making the findings and recommendations.

(e) The procedural right of an employee organization to request a factfinding panel cannot be expressly or voluntarily waived.
3505.5. Dispute not settled within 30 days after appointment of factfinding panel or upon agreement by parties; panel to make advisory findings of fact and recommended terms of settlement; costs; exemptions

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

(b) The costs for the services of the panel chairperson selected by the board, including per diem fees, if any, and actual and necessary travel and subsistence expenses, shall be equally divided between the parties.

(c) The costs for the services of the panel chairperson agreed upon by the parties shall be equally divided between the parties, and shall include per diem fees, if any, and actual and necessary travel and subsistence expenses. The per diem fees shall not exceed the per diem fees stated on the chairperson's résumé on file with the board. The chairperson's bill showing the amount payable by the parties shall accompany his or her final report to the parties and the board. The chairperson may submit interim bills to the parties in the course of the proceedings, and copies of the interim bills shall also be sent to the board. The parties shall make payment directly to the chairperson.

(d) Any other mutually incurred costs shall be borne equally by the public agency and the employee organization. Any separately incurred costs for the panel member selected by each party shall be borne by that party.

(e) A charter city, charter county, or charter city and county with a charter that has a procedure that applies if an impasse has been reached between the public agency and a bargaining unit, and the procedure includes, at a minimum, a process for binding arbitration, is exempt from the requirements of this section and Section 3505.4 with regard to its negotiations with a bargaining unit to which the impasse procedure applies.

BACKGROUND AND RELEVANT FACTS AND FINDINGS

Santa Barbara County is located approximately 100 miles north of Los Angeles, with a population of 437, 643. There are eight incorporated cities within the County: Santa Barbara, Santa Maria, Lompoc, Goleta, Carpenteria, Guadalupe, Solvang, and Buellton. The County has on average 4,101 full-time equivalent employees.[3] The Santa Barbara County Deputy Sheriff's Association is recognized by the County as the exclusive bargaining representative for several classifications in the County of Santa Barbara including: Sheriff's Deputies, Sheriff's Deputy-Supervising/ Special Duty, Sheriff's Sergeants, Custody Deputies, Custody Sergeants, District Attorney Investigators, Supervising District Attorney Investigators, Communication Dispatchers, and Communication Dispatcher Supervisors.

Santa Barbara County like many other public jurisdictions in California has seen positive growth from the preceding historic recessionary period. The County CAFR cites for the fifth consecutive year positive economic trends, and in the past three years positive real estate and labor market growth. The General Fund ended FY 14-15 with a strategic reserve of 29.6 million with a target in FY15-16 of 29.9 million. The County's general discretionary revenues are expected to grow annually in the 4-6% range for the foreseeable future.[4] The bargaining unit represented by the Association contains approximately 450 members, with 400 Deputies/Sergeants.

Tom Alvarez the County Budget Director testified as to overall positive financial outlook, with 4+% property tax growth in the coming years.[5] He also testified to an increase in unfunded liabilities in pension costs due to lower than targeted investment returns, and increased unfunded liability in retiree medical cost.[6]

The County and the Association conducted a joint salary survey in April of 2015 consisting of Marin, Monterey, Placer, Santa Cruz, San Luis Obispo, Solano, and

[3] Association Exhibit K, CAFR Fiscal Year Ended June 30, 2015.
[4] Association Exhibit K, CAFR
[5] County Exhibit #1
[6] County Exhibit #1 pg. 37

Sonoma Counties. Based on this information the Association provided evidence that based on “salary only” the Communications Dispatcher II was -1.3%(from the mean), Custody Deputy was -12.8%, Custody Sergeant -13.6%, District Attorney Investigator II - 3.3%, Sheriff Deputy -10%, Sheriff Sergeant -10%.[7] The Association also entered evidence into the record that showed this disparity in salaries would increase if Ventura County were included in the survey.[8]

The County based on this salary survey completed a “total compensation survey”, which showed that if the County’s total retirement contributions are included, the bargaining unit classifications surveyed are at or above the mean, when compared to the other jurisdictions surveyed. The County entered into evidence a survey of Retirement Rates for the surveyed Counties, which indicate that with or without the offset, Santa Barbara County’s contribution is significantly higher than any other jurisdiction.[9] The Association entered into evidence a survey that included total compensation received, including the offset, but not including the County’s retirement contribution. This survey shows the Sheriff’s Deputy at -5.12%, the Sheriff’s Sergeant at -6.39%, Custody Deputy at -3.09%, Custody Sergeant at -4.68%, District Attorney Investigator +0.36%, Communication Dispatcher +6.60%, Dispatch Supervisor +3.43%.[10]

According to the Santa Barbara County Sheriff’s Office Human Resource Bureau, there are 20 Sheriff Deputy and 16 Custody Deputy vacancies as of April 2016.[11] The Association gave testimony that overtime hours increased from 10,000 hours in 2010 to 38,000 hours in 2015 for the Patrol Deputies, and Custody Deputy/ Sergeants were required to work 21 mandatory overtime shifts during a 4-month period in 2015. The County gave testimony that the Sheriff in budget workshops noted that the normal vacancy rate fluctuates between 3% and 5%, and the current rate is 8%. There are currently 49 people in process for backgrounds as Custody Deputy.[12]

---

[7] Association Exhibit B
[8] Association Exhibit C
[9] Association Exhibit E
[10] Association Exhibit F
[11] Association Exhibit M
[12] Association M

The CPI rate has been at or below 2% for the past 5 years, except in 2011, where the rate was 3.06%.[13]

Robert MacLeod testified that the County has negotiated out of the MOU of all other bargaining units except the Sheriff's Manager unit, the employer offset. He testified that the vacation cash out has been removed from all the other MOU's except Fire and Sheriff's Managers units; and that retroactivity has not been included in any of the bargaining agreements.

The parties began negotiations for a successor MOU in January of 2015 after the Association submitted a formal request for bargaining in November of 2014. The parties held eleven (11) bargaining sessions and reached a tentative agreement in August of 2015, for a contract that would expire on June 18, 2017. This agreement was rejected by the membership and the parties held five more bargaining sessions until impasse was declared on January 13, 2016. The County's Last, Best and Final Offer were presented to the DSA on October 21, 2015. This offer included a 2% base salary increase for all members effective upon adoption by the Board of Supervisors, elimination of the Employer offset in Section 17B, elimination of the County contribution to Retiree Medical for new employees, and elimination of the Vacation Cash out provision in Section 11D.[14] The Association membership rejected the County's one year LBF offer.

The Association has presented two offers before this panel, a three-year proposal, and a one-year proposal covering the term of February 16, 2015- February 15, 2016. The one year agreement consists of: 1) Effective February 16, 2015, salaries for the classifications represented by the Association shall be increased by 5%. 2) Eliminate County contribution to Retiree Medical for new employees. There are other provisions to this proposal that are not in conflict with similar County offers, except to note that the Association offer does not include the elimination of the County offset for retirement.

The Association's three-year final proposal was offered on December 17, 2015 and was rejected by the County. This proposal was to be effective February 16, 2015 and expires on February 15, 2018. While there are multiple provisions in this three-year proposal, the essential differences with the County seem to be: 1) the retention of the County offset

---

[13] County Exhibit #4

[14] The LBF includes other items some of which seem to not be is dispute in this factfinding. I include the County's LBF along with the DSA 's final offers as an addendum to this report.

through the life of the agreement; 2) an increase in bilingual allowance in the first year of the agreement, (the County agreed to this increase in the second year of the rejected TA) ; 3) a 6% base salary increase on July 1, 2017.[15]

ISSUES PRESENTED TO THE PANEL

The parties presented evidence and argument on several items, which are at issue in this factfinding. Since there are three proposals which were presented during this factfinding: 1) the County's LBFO of October 21, 2015, 2) the Association's Final offer of December 17, 2015, and 3) the Association's one year proposal dated April 21, 2016. I will be making a Recommendation based on what are the outstanding issues that remain as a result of these proposals. These issues can be summarized as follows: 1) Wage increase and term of the Agreement 2) Retroactivity 3) Elimination of the County offset in Section 17B 4) Elimination of the Vacation Cash Out provision in Section 11D 5) Increases in Bilingual allowance with broader application. On all other issues the parties seem to have reached an understanding, even though there might not be a final TA on that item.

POSITION OF THE PARTIES

The following represents a brief summary of the arguments of each party to this impasse.

Position of the County

The County argues it has 4.6 million dollars in unallocated funds to spend for next years budget and must use these funds for all County departments. The County has consistently offered the DSA a 2% salary increase, which was agreed upon by both sides in late August of 2015. The County has continued to offer a 2% increase, even in it's LBFO. None of these offers have included retroactivity, which is the past practice of the County in their offers to all bargaining units historically.

The DSA proposal for a 5% retroactivity salary increase is unreasonable and represents a 6.7% increase for this year when the retroactivity is factored in. The County's proposal for a 2% increase is consistent with the recent CPI figures. In addition

[15] This full proposal is included as an attachment to this Report.

many DSA members will also be receiving 5% step increases in addition to the 2% base salary increase.

The County is aware of the job classes that are below their respective markets, and the Board of Supervisors have approved 5% equity increases for those classes that are 20% or more out of market. None of the DSA classifications are close to 20% out of market. The DSA focus on take home pay does not take into account the fact that the employees pay much less towards their retirement than other comparison counties. The total compensation of DSA members must be used in comparing their pay with other jurisdictions, and on this basis their pay is largely above the mean.

Santa Barbara County is one of the four counties which have a retirement offset/employer pick-up for retirement costs, and Santa Barbara County contributes more than any other agency towards the employees retirement when compared to the other surveyed counties. Even with the removal of the employer pick-up the DSA members will still be above the mean. In addition the County has bargained to remove this pick-up in all the other MOU's (with the exception of Sheriffs Managers). The offset proposal by the County is reasonable and should be adopted.

The DSA argument for increasing pay by more than 2%, focuses on recruitment and retention issues, and the figures show that the current vacancy rate is not much higher than normal, which are impacted by seasonal variation. In addition, many classifications in the DSA unit have no or minimal vacancy's and there are multiple potential Custody Deputies in background.

The County argues that the provision for vacation cash out pay of 40 hours each year in lieu of vacation is hard to budget for, and has been eliminated in all bargaining units, except Fire and Sheriff Managers. The estimated cost of this benefit is only 0.5%, and there was no testimony why this was needed from the DSA.

The County argues that the factfinding panel adopts the County's positions on all remaining issues.

Position of the Association

The Association argues that the County's offers, either the rejected 2 ½ year proposal or the one year LBFO, would only net DSA members either zero(0) net worth in a one year contract, or 2% over 2 ½ years. These offers are not reasonable when applying the statutory factors to be considered in 3505.4, which are to guide the factfinding panel. The salary survey conducted shows that the majority of employees represented by the Association are 10-13% below the mean of comparison counties.

When newly negotiated increases for neighboring agencies like Santa Maria and Ventura County are put into the survey, the Deputies fall even further behind with respect to salary. Even when you factor in total compensation the Association members still fall well below the mean, if you take out the County's inflated costs for retirement. The Association's represented employees should not be penalized by the County's excessive retirement costs for the same benefit as exists in other counties. The panel is to consider the "overall compensation presently received by the employees", and not the cost to provide the benefit.

The Association argues that the County has the financial ability to fund the DSA proposals, and that the financial outlook of the County is positive going forward. The County's own analysis states that the general discretionary revenues are expected to grow 4-6 % in the foreseeable future, and it's current offers are unreasonable given its financial condition.

The Association argues that the low salaries of the law enforcement personnel have resulted in serious retention and recruitment issues, which has led to chronic understaffing in the jails and forced overtime for Deputies and other personnel. The current vacancy rate shows that the salaries currently offered cannot attract the needed personnel for the jails, patrol and communication dispatch. The Sheriff's own study, by Crout and Sida, recommend at least 24 Deputies at a minimum for the Main Jail, which has not been implemented with the current staff, which they can't recruit.

The Association argues that their proposal to defer the elimination of the employer's offset to a later point is reasonable given that there will be discussions with "classic members" beginning in January 2018 under PEPRA.

The Association argues that either one of it's proposals with respect to salary is more reasonable than the County's net 0 proposal. The Associations three-year proposal at a net 10%, would bring the majority of the Association's membership to current median salary at the end of the agreement, and the one-year 5% is reasonable given how far behind the County is in terms of salary. The factfinding panel should adopt either of the Association's proposals.

RECOMMENDATIONS

The Neutral factfinder chosen by the parties believes that the statute under which this factfinding takes place is best viewed as an extension of the collective bargaining process. The best outcome of this factfinding process would be a negotiated agreement between the parties. The intent of these recommendations is to provide a framework for the parties to settle their dispute with an agreement. The statute lays out a set of criteria that is to guide the panel in making their findings. These criteria represent many of the basic factors that inform the parties when they are negotiating an agreement.

In this factfinding the Neutral factfinder will be recommending a three-year agreement as the best chance for the parties to find a reasonable basis for a negotiated agreement. To adopt the County's one year LBFO would simply place the parties in the same condition they are in now, no agreement, and back in bargaining. This recommendation taken as a package attempts to balance the needs of the County, the public and the employees, based on the criteria listed in the statute. The following represents my recommendations on each of the outstanding issues outlined earlier in this report:

1) <u>Wage Increase and Term:</u> I recommend a three-year term effective February 16, 2015 and expiring on February 15, 2018. Upon ratification by the Association and adoption by the Board of Supervisors, a 2% base salary increase, and an additional 2% base salary equity adjustment for Sheriff's Deputies and Sergeants, and Custody Deputies and Sergeants. On February 15, 2017 a 3% base salary increase, and a 2% base salary equity adjustment for the same classifications as listed above. This recommendation is based on the fact I believe the evidence shows that the DSA's Deputies and Sergeants are in fact below the mean when it comes to both overall compensation and salaries when compared to the other jurisdictions, which were used in the study and with whom the County must compete for recruits. While I believe the DSA made a compelling argument that most of the Associations members are falling below the mean and the County is having problems in recruitment of Deputies, it's recommended wage increase is too high and did not take into account the

County's other needs and priorities. In addition, whether you like it or not, the County does have to contribute higher than normal amounts of budgetary dollars into the retirement system on behalf of the employees. While the evidence I believe did show that the majority of the Association's classifications were below the mean in total compensation, not all classifications were so affected. Therefore, I believe the general wage increase for those classifications should be sufficient, and the equity adjustment would not apply to them. The general wage and equity adjustment should by the end of the agreement be sufficient to bring the Deputies and Sergeants up to a level where recruitment should be easier, which should limit the excessive overtime and help understaffing in the jails. Given that my recommendation assumes a first year (and longer) wage freeze, and the larger increase is in the last year, means that this package is back loaded and costs less. In addition, the equity adjustments do not apply to the entire unit. The total wage and equity adjustment is therefore less than 9% over three years, and as will be noted later, I recommend the adoption of the County's position regarding the offset, which reduces their costs by another 2%. Given the market data and the current finances of the County, I believe this is a reasonable recommendation for settlement of the wage issue and is supported by the MMBA criteria.

2) Retroactivity: As noted in the above, I recommend the adoption of the County position of **no** retroactivity in this agreement. The Neutral factfinder believes that it is important to maintain the parties historical practices unless there is compelling reason not to, and the record in Santa Barbara has been that the agreements have not included retro pay. In addition the County's argument that this approach to bargaining does has an effect on reaching agreements in a timely fashion is persuasive.

3) 17B offset: I recommend the adoption of the County position on ending the offset in 17B for the following reasons. The Association did present persuasive evidence that the salaries of most of the Associations members are below that of comparable jurisdictions. It is true that younger employees are less likely to look at retirement as a compelling factor in employment when compared to wages, and this makes recruitment of new and younger workers more difficult. To the extent that the money that the County spends on retirement can be funneled to salaries I believe helps both sides. Additionally, the trend in labor relations in

California with respect to pensions, is to move away from these types of arrangements and PEPRA and other factors are increasing this trend. While it is true that this represents a take-away from the Association's members, I have recommended significant wage increases, which should more than offset this deduction in take home pay. As part of the MOU the 17 B Employer Offset should be removed.

4) Elimination of Vacation Cash Out: There was not much evidence provided regarding this issue, however the County position is reasonable in that this benefit is difficult to budget for, and I believe that the dollars saved in this provision are better spent on salaries. I recommend the County position on Section 11D.
5) Increase the Bilingual Pay: The parties in the tentative agreement did agree to this in the rejected TA. I recommend this benefit should be added to the MOU in the second year of the agreement.

The Neutral Member of this Panel agrees that these recommendations are in accord with California Government Code Sections 3505.4 and 3505.5, and endorses these recommendations.

Dated May 20, 2016 ___________________________________

David A. Weinberg: Neutral Chair Factfinding Panel

I concur with recommendations 1 2 3 4 5

I dissent with recommendations 1 2 3 4 5

County Panel Member: Joseph Pisano______________________________

I concur with recommendations 1 2 3 4 5

I dissent with recommendations 1 2 3 4 5

Association Panel Member: Howard Liberman___________________________

Addendum to follow

California with respect to pensions, is to move away from these types of arrangements and PEPRA and other factors are increasing this trend. While it is true that this represents a take-away from the Association's members, I have recommended significant wage increases, which should more than offset this deduction in take home pay. As part of the MOU the 17 B Employer Offset should be removed.

4) Elimination of Vacation Cash Out: There was not much evidence provided regarding this issue, however the County position is reasonable in that this benefit is difficult to budget for, and I believe that the dollars saved in this provision are better spent on salaries. I recommend the County position on Section 11D.
5) Increase the Bilingual Pay: The parties in the tentative agreement did agree to this in the rejected TA. I recommend this benefit should be added to the MOU in the second year of the agreement.

The Neutral Member of this Panel agrees that these recommendations are in accord with California Government Code Sections 3505.4 and 3505.5, and endorses these recommendations.

Dated May 12, 2016 ______________________________

David A. Weinberg: Neutral Chair Factfinding Panel

I concur with recommendations 1 2 3 4 5

I dissent with recommendations 1 2 3 4 5

County Panel Member: Joseph Pisano Joseph Pisano

I concur with recommendations 1 2 3 4 5

I dissent with recommendations 1 2 3 4 5

Association Panel Member: Howard Liberman______________________

Addendum to follow

Howard A. Liberman, Esq.
California State Bar No. 183634
SILVER, HADDEN, SILVER & LEVINE
1428 Second Street
P.O. Box 2161
Santa Monica, CA 90407-2161
(310) 393-1486
(310) 395-5801 (FAX)
hliberman@shslaborlaw.com

IN THE MATTER OF IMPASSE BETWEEN THE COUNTY OF SANTA BARBARA AND THE SANTA BARBARA COUNTY DEPUTY SHERIFFS' ASSOCIATION Respondent.	)	ASSOCIATION'S FACTFINDING PANEL MEMBER'S CONCURRENCE IN PART AND DISSENT IN PART TO FINDINGS AND RECOMMENDATIONS OF NEUTRAL CHAIR

I. INTRODUCTION.

The Association's Panel Member appreciates the vast majority of the findings and recommendations in Mr. Weinberg's (the Chair) proposed opinion. In expert fashion, the Chair has recognized the fundamental needs of the parties and crafted a decision which is a fair compromise.

II. ASSOCIATION PANEL MEMBER'S RATIONALE.

The Chair has recognized the basic needs of both parties. The Association's need for increased compensation (especially in the patrol and custody classifications which are woefully behind in the marketplace) and the County's need for "pension reform" in the form of the elimination of the17B offset. I will take each recommendation in order.

A. NUMBER 1 - WAGE INCREASE AND TERM - ASSOCIATION CONCURS.

The Chair recommends a three-year term with an across-the-board salary increase of 2% for all represented classification effective upon ratification and another 3% across-the-board salary increase effective February 15, 2017. Additionally, the Chair recommends an additional equity adjustments of 2% for all represented patrol and custody classifications effective upon ratification and an additional 2% equity adjustment on February 15. 2017 for the same classifications. While the Association would have preferred these compensation increases for all classifications, the additional compensation for patrol and custody classifications makes perfect sense to alleviate the obvious pay disparity issues as well as the proven recruitment and retention problems faced by the Sheriff's Department in the Patrol and Custody ranks.

There is no question that the County can afford to pay these pay increases. The County did not invoke financial inability to pay and the County's own financial analysis states that general discretionary revenues are growing 4-6% annually for the foreseeable future.

B. NUMBER 2 - NO RETROACTIVITY - ASSOCIATION CONCURS.

This is self explanatory.

C. NUMBER 3 - ENDING THE 17B OFFSET - ASSOCIATION CONDITIONALLY CONCURS.

The Association concurs with the Chair's recommendation provided that the above wage increases and equity adjustments are enacted to offset the negative impact of this "takeaway" in our members' paychecks.

D. NUMBER 4 - ELIMINATION OF VACATION CASH OUT - ASSOCIATION CONCURS IN PART/DISSENTS IN PART.

The Association wishes to retain vacation cash out only for exceptional circumstance in cases of "extreme financial hardship." With this slight deviation from the Chair's position, the Association concurs.

E. NUMBER 5 - INCREASE THE BILINGUAL PAY - ASSOCIATION CONCURS.

This item is non-controversial as there is consensus between the parties regarding this issue.

III. CONCLUSION.

The best labor agreements are the product of mutual compromise and not unilateral implementation of terms by the employer.

The Chair's findings do not seek to unfairly reward either party but rather to solve real and practical problems facing the County, the Sheriff's Department, and Association members (and their dependent families) such as:

1. The pay disparity in Custody and Patrol classifications when compared to the marketplace;
2. Real recruitment and retention issues facing the Sheriff's Department which affect the quality of law enforcement and safety of the citizens; and
3. The County's desire for pension reform.

Based on the above, the Association submits.

Dated: 5/17/16

Respectfully submitted,

SILVER, HADDEN, SILVER & LEVINE

By: [signature]
HOWARD A. LIBERMAN

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SANTA BARBARA

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 1428 Second Street, P.O. Box 2161, Santa Monica, California 90407-2161.

On May 17, 2016, I served the foregoing document described as ASSOCIATION'S FACTFINDING PANEL MEMBER'S CONCURRENCE IN PART AND DISSENT IN PART TO FINDINGS AND RECOMMENDATIONS OF NEUTRAL CHAIR on the neutral chair in this matter. I sent the above-referenced document by PDF to the e-mail address noted below.

David Weinberg
via electronic mail to:
dwmedarb@gmail.com

Matt McFarlin, President
Santa Barbara County Deputy Sheriff's Association
via electronic mail to:
mgm2515@aol.com

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on May 17, 2016, at Santa Monica, California.

LINDA M. BORNMAN

County of Santa Barbara and Santa Barbara County Deputy Sheriffs' Association

PERB Case # LA-IM-199-M

May 17, 2016

Santa Barbara County Panel Member Joseph Pisano, Employee Relations Manager

Concurring and Dissenting Opinion to the Panel Chair's Findings of Fact and Recommendations

I. CONCURRENCE

I concur with the recommendations of Panel Chair David Weinberg on the following matters:

Recommendation 2) Retroactivity: I concur with the recommendation that there be no retroactive wage increases. As the report notes, historically collective bargaining agreements between the County and employee organizations have not included retroactive base pay increases.

Recommendation 3) 17B (Retirement) Offset: I concur with the recommendation that the County paid offset of employee retirement costs be eliminated. As the report notes, "the trend in labor relations in California ... is to move away" from such provisions; in addition, similar retirement offsets have been eliminated for every other exclusive bargaining group in the County except the Sheriff's Managers Association, which is currently in negotiations with the County.

Recommendation 4) Elimination of Vacation Cash Out: I concur with the recommendation that the provisions for Deputy Sheriffs' Association (DSA) members to cash out accrued vacation leave hours be eliminated. Vacation cash out provisions have been eliminated for every other exclusive bargaining group in the County except for the Sheriff's Managers Association and the Fire Fighters Local 2046, both of which are currently in negotiations with the County.

Recommendation 5) Increase the Bilingual Pay: I concur with the recommendation that an increase in bilingual pay per the terms of the tentative agreement rejected by the DSA membership be added to the MOU in the second year of the agreement.

II. DISSENT

I dissent from the report's recommendations for general wage increases totaling 5% for all DSA represented classifications and equity increases for Deputy and Sergeant classifications totaling an additional 4% for a contract term expiring in February 2018.

Recommendation 1) Wage Increase and Term: The report recommends "a three-year term effective February 16, 2015 and expiring on February 15, 2018." The report also recommends two across the board wage increases for all DSA represented classifications: 2% in 2016 upon Board adoption and 3% in February 2017; in addition, it recommends two equity adjustments for all Deputy and Sergeant classifications: 2% in 2016 upon Board adoption and 2% in February 2017.

Given that it is now May 2016, a successor MOU expiring in February 2018 would actually be 20 months, less than two years in duration rather than three, and all wage increases would be implemented within nine months. Within that context, the recommended wage increases are not reasonable. The vast majority (90%) of DSA members are Deputies or Sergeants. The recommended actions would increase wages for this group by at least 9% by February 2017, and the approximately 28% of Deputies/Sergeants who are not at the top of their salary band would be eligible for at least one step increase of approximately 5% during the 20 months of the agreement, bringing their total increase to at least 14% in less than two years.

The Chair's recommendation is based in part on a finding that "the DSA's Deputies and Sergeants are in fact below the mean when it comes to both overall compensation and salaries when compared to the other jurisdictions, which were used in the study and with whom the County must compete for recruits." The DSA's total compensation data shows the classification of Sheriff's Deputy 5.12% below market, Sheriff's Sergeant 6.39% below market, Custody Deputy 3.09% below market, and Custody Sergeant 4.68% below market.

However, these figures do not account for the disparity in the contributions to their pension benefit made by most (81%) of DSA employees in these classifications compared with their counterparts in the survey agencies. Overall compensation must take into consideration the amount paid, or frankly *not* paid, by employees toward their pensions. When taking this more accurate and total approach to public employee compensation, the picture significantly changes: the take home pay of employees increases considerably, which reduces or in some cases entirely eliminates any real inequity between DSA represented Deputies and Sergeants and those in the other agencies. This is a key fact that overrides other data just on salary alone.

This information is calculated by looking at the median age of DSA members' entry into the Santa Barbara County Employees Retirement System (which is 28). At that age of entry, a DSA member in a legacy plan (the 81% noted above) is required to contribute 5.80% of pensionable wages to pay for his or her retirement benefit; similarly situated employees in the other survey jurisdictions pay anywhere between 8.00% and 19.27% before any employer pickup of the employees' cost.

The report further justifies the across the board salary recommendations because it assumes "a first year (and longer) wage freeze, and the larger increase is in the last year, means that this package is back loaded and costs less." This justification seems to be based on the fact that it has been more than a year since the most recent collective bargaining agreement between the parties has expired and therefore before any wage increases for DSA members could take effect (absent a provision for retroactivity). This is different than reaching a multi-year agreement that includes a wage freeze for the first year or longer. Moreover, although there have been no across the board wage increases, there has not been a wage freeze. In fact, there were 170 step increases for DSA represented employees from February 2015 through April 2016 – the time period the Association has been working since the most recent Memorandum of Understanding expired.

In addition, even if one equates the absence of negotiated unit wide wage increases to a wage freeze, it is largely a consequence of the DSA's actions. If the DSA ratified the tentative agreement between the parties that was reached in September 2015, wages for all DSA members would have increased by 2% last summer; many more DSA members would have seen income growth because of changes in the criteria for receiving education incentives at that time, and all members would be receiving an additional 2% wage increase on July 4, 2016 – approximately six weeks from the date of this dissenting opinion. In addition, there would be other modest increases in bilingual pay and in other areas for some DSA members at that time.

Finally, the Chair adds that the 5% general wage increases and 4% equity adjustments for Deputies and Sergeants is "a reasonable recommendation for settlement of the wage issue and is supported by the MMBA criteria." As the Chair notes, "In arriving at their findings and recommendations, the factfinders shall consider, weigh, and be guided by all 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 in comparable public agencies.

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

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

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

The Chair justifies his recommendations primarily by discussion and argument related to criteria 4, 5, 6, and 8.

Related to criteria 4, the Chair states that "Tom Alvarez the County Budget Director testified as to an overall positive financial outlook with 4+ % property growth in coming years" and "an increase in unfunded liabilities in pension costs due to lower than targeted investment returns, and increased unfunded liability in retiree medical cost."

Mr. Alvarez also testified that the County was already committed by previous Board policy to begin addressing the back log of deferred maintenance, to reserve funds for the North County Branch Jail, and to designate 25% of any property tax growth to the Fire District for its current infrastructure needs. Mr. Alvarez noted that these three significant investments in its future leave the County with very limited ability for expansions or actions that will increase General Fund costs.

The recommended 2% wage increase plus 2% equity increase has substantial cost. Ninety percent of the bargaining unit would receive 9% over the term of the agreement. These 90% would receive the full 4% in total 2016 increases, the annualized cost of which is approximately $2.7 million. Similarly, these 90% would also receive the 3% wage increase plus 2% equity increase in February 2017, the annualized cost of which is approximately $3.5 million. Moreover, the second 5% increase in 2017 would take effect a mere nine months after the initial 4% increases in 2016.

The relative standing of DSA represented classifications per criteria 5 has been discussed above. In applying criteria 6, the Chair notes that, "The CPI rate has been at or below 2% for the past 5 years, except in 2011, where the rate was 3.06%." The CPI data does not support minimum increases of 5% for the entire DSA unit in a 20 month contract, much less minimum increases of 9% for the 90% of the unit that would be affected by the recommended equity adjustments.

Two other facts "which are normally or traditionally taken into consideration in making the findings and recommendations" per criteria 8 include difficulty recruiting and retaining staff and recent wage increases for employees in other County bargaining units.

As the Chair notes, "The Association argues that the low salaries of the law enforcement personnel have resulted in serious retention and recruitment issues, which has led to chronic understaffing in the jails and forced overtime for Deputies and other personnel." Law enforcement agencies both nationwide and locally are currently experiencing difficulty recruiting and retaining staff. Recent information from other local agencies shows that current vacancy rates and problems filling positions are similar, or even more serious in these agencies than in Santa Barbara County, including in some agencies the DSA cites as having better compensation.

The Santa Barbara Sheriff's Office looked at vacancy rates for all law enforcement agencies within the County lines, and as of May 6, 2016, vacancy rates were 7% for CHP, 8% for Santa Barbara Sheriff's Office and Santa Barbara Police Department, 10% for Guadalupe Police Department, 11% for Santa Maria Police Department, and 12% for Lompoc Police Department.

In addition, as noted in the Chair's report and recommendations, the County is aware that base pay for many classifications agency wide is substantially below that of comparable classifications in their defined survey markets. Most recently the County provided 5% equity adjustments for classifications that were at least 20% below market, which still leaves these employees with more significant equity issues than DSA represented classifications. Moreover, bargaining groups representing over 90% of County employees, including one safety unit, agreed to overall wage increases of 4% over the two to three year terms of their most recent agreements.

For the above reasons, I both concur and dissent from the Report's recommendations.

Joseph M. Pisano

Joseph M. Pisano
May 17, 2016

County Of Santa Barbara

Mona H. Miyasato
County Executive Officer

Jeri R. Muth
Human Resources Director

County Executive Office
Human Resources

1226 Anacapa Street
Santa Barbara, CA 93101
805.568.2800
Fax: 805.568.2833
www.sbcountyhr.org

October 21, 2015

Richard A. Levine, Esq.
Silver, Hadden, Silver & Levine
1428 Second Street, Suite 200
Santa Monica, California 90401

Re: Last, Best and Final Offer

Dear Mr. Levine:

The County of Santa Barbara and the Santa Barbara County Deputy Sheriffs Association met and conferred in good faith in an effort to reach an agreement regarding the Memorandum of Understanding between the parties which was scheduled to expire on February 15, 2015. The parties had not achieved an agreement by February 15, 2015 and the terms and conditions of employment contained in the Memorandum of Understanding remained in effect while negotiations continued.

The parties arrived at a Tentative Agreement for a successor Memorandum of Understanding on August 27, 2015. On September 18, 2015, the County was advised that the members of the bargaining units represented by the Deputy Sheriffs Association had failed to ratify the tentative agreement.

The parties met and discussed possible alternatives on October 5, 2015, and subsequently arranged to meet today, October 21, 2015.

The County now makes the following Last, Best and Final offer to the Deputy Sheriffs Association:

2% increase in base salary for all members of the bargaining units 14 and 15

An additional 30 cents per hour increase to the hourly rate of pay for Deputy Sheriff Trainees

Custody and Dispatch classifications to receive two additional holidays for a total of twelve

Custody and Dispatch classifications annual vacation accumulation to decrease by 16 hours for employees with 25 or more months service

Renée E. Bahl
Assistant County Executive Officer
rbahl@co.santa-barbara.ca.us

Terri Maus-Nisich
Assistant County Executive Officer
tmaus@countyofsb.org

Add existing Safety Plan 8 to Retirement Section

Eliminate Employer Offset – Section 17B

Eliminate County contribution to Retiree Medical for new employees

Eliminate Vacation Cash Out – Section 11D

Modify Educational Incentive degree requirement on a prospective basis only to remove limitations on specific degrees which qualify for the benefit. Only degrees from accredited colleges or universities shall qualify employees for Educational Incentive

Add existing Helicopter Pilot Classification to listing of job classifications

All items to be effective upon final adoption by the Board of Supervisors.

In the alternative, the County would be willing to consider implementation of the tentative agreement of August 27, 2015.

Sincerely,

Robert J. MacLeod

Robert J. MacLeod
Chief of Employee Relations

SANTA BARBARA COUNTY DEPUTY SHERIFFS' ASSOCIATION NEGOTIATION PROPOSAL FOR A SUCCESSOR MEMORANDUM OF UNDERSTANDING
December 17, 2015

Three (3) year term effective February 16, 2015 and expiring on February 15, 2018

Effective upon ratification of Association and adoption by Board of Supervisors:
1. 2% base salary increase
2. Increase Bilingual Allowance to $57.69 per pay period
3. Broaden application of Bilingual Allowance
4. Modify Education Incentive degree requirements on a prospective basis
5. Custody and Dispatch Holiday and Vacation modifications
6. Eliminate Retiree Medical for new hires
7. Vacation cash out provision in MOU to be limited to cases of extreme financial hardship
8. Pilot classification added to MOU
9. Deputy Sheriff Trainee/Custody Deputy salary inversion (salary relationship)
10. Add Safety Plan 8 to MOU

Effective on July 4, 2016:
1. 2% base salary increase
2. Specialty Pay of $75.00 per pay period to Emergency Medical Dispatch certified Dispatchers and Supervising Dispatchers
3. Dispatchers and Supervising Dispatchers eligible for Educational Incentive
4. Increase uniform allowance for custody classifications in Alternative Sentencing and Electronic Monitoring programs to $825.00 per year

Effective on July 1, 2017:
1. 6% base salary increase

Effective September 1, 2017:
1. Reopener to discuss increased employee contribution to retirement under PEPRA and corresponding offsetting base salary increases. In the event of impasse during the reopener, the parties agree that the impasse resolution procedures under state law and/or County's Employer-Employee Relations Policy would apply.

To the extent not otherwise provided herein, all other terms and benefits of the existing MOU, Side Letters and other benefits shall continue in full force and effect.