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January 21, 2014

FINDINGS AND RECOMMENDATIONS  
PURSUANT TO  
CALIFORNIA GOVERNMENT CODE 3505.4

In the Matter of a Controversy Between	)	
<b>County of Mendocino</b>	)	
Employer	)	
and	)	Collective Bargaining Impasse
<b>SEIU Local 1021</b>	)	Factfinding
Union	)	PERB Case No: SF-IM-133-M

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APPEARANCES:

For the Employer: Che Johnson, Attorney  
Liebert Cassidy Whitmore  
5250 North Palm Ave., Suite 310  
Fresno, CA 93704

For the Union: Matthew J. Gauger, Attorney  
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428 J St. Suite 520  
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FACTFINDING PANEL:

Appointed by the Employer: Donna Williamson, Attorney  
Liebert Cassidy Whitmore

Appointed by the Union: Jason Klumb, Area Field Director  
SEIU Local 1021

Neutral Chairperson: Paul D. Roose, Arbitrator and Mediator  
Golden Gate Dispute Resolution

**STATUTORY FRAMEWORK AND PROCEDURAL BACKGROUND**

Under amendments to the Meyers-Miliias-Brown Act that went into effect on January 1, 2012 (and subsequently amended on January 1, 2013), local government employers (cities, counties, and special districts) and unions in California have access to factfinding in the event they are unable to resolve contract negotiations. At the request of the exclusive representative, the parties are required to go through a factfinding process prior to the employer implementing a last, best and final offer. In accordance with regulations put in place by the California Public Employment Relations Board (PERB), the exclusive representative can request factfinding either after mediation has failed to produce agreement or following the passage of thirty days after impasse has been declared. Each party appoints a member of the factfinding panel. A neutral chairperson is selected by PERB unless the parties have mutually agreed on a neutral chairperson.

Under the statute, the factfinding panel is required to consider, weigh and be guided by the following criteria in formulating its findings and recommendations:

- 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 parties have a collective bargaining agreement (CBA) that was set to expire on June 30, 2013, and was extended for one month and then expired on July 31, 2013. Through negotiations, the parties were unable to reach agreement on a successor contract. The Union conducted a one-day strike on September 24, 2013. The parties participated in mediation with state mediator Steve Pearl in October, 2013. Absent an agreement, the Union filed a request for factfinding with PERB. The Employer did not oppose this request. On December 10, 2013, the parties notified the undersigned that he had been mutually selected as the chair of a factfinding panel in this matter pursuant to Government Code 3505.

The factfinding panel convened on January 7, 2014 in Ukiah and took on-the-record evidence and argument from both sides concerning the issues in dispute. The parties also requested that the neutral factfinder act as a mediator in assisting the parties in off-the-record discussions to attempt resolution of the matter. Accordingly, the panel met in a confidential off-the-record session on that date, and via conference call on January 10. Settlement discussions proved unsuccessful.

From the outset of the process, the undersigned made it clear to both parties that he is not inclined to recommend a middle ground between the parties' proposals, but rather to select one or the other. In a similar fashion to "last offer" interest arbitration, the neutral chair believes that the parties are best served by this understanding. Taking this approach encourages each side to move off their opening positions and make proposals that are more likely to win the support of the panel majority. This guideline tends to produce a majority report on each issue in dispute, which the undersigned reads as the intended outcome in the factfinding statute. In conjunction with this guideline, the chair also informed the parties that he welcomed modifications to the parties' positions up until the close of the record.

In accordance with this dictum, the parties submitted their final proposals and arguments for the panel's consideration through the submission of written briefs on January 13. The Union modified its economic position, dropping the second and third years of its proposal and reducing its overall salary increase demand from 10% to 3%. It also dropped the ongoing component of its health benefits proposal. The Employer chose to retain its proposal that it held going into the factfinding process. The chair offered the Employer an opportunity to take additional time to consider the Union's new proposal, but this offer was not accepted by the Employer. The record was closed at the end of the day on January 13, 2014 and the matter was submitted to the panel for its findings and recommendations.

### **BACKGROUND TO THE DISPUTE**

Mendocino County has approximately 87,000 residents, and it is located just north of what are considered to be the nine San Francisco Bay Area counties. It is a primarily rural county covering 3,878 square miles. Government is the largest employer in the county, providing jobs to approximately 18% of the county's workforce. The county seat is the city of Ukiah, California.

Service Employees International Union (SEIU) Local 1021 is the exclusive representative for the miscellaneous employees of the County of Mendocino and related agencies. There are approximately 700 - 800 members in the bargaining unit. Classifications in the bargaining unit include most non-safety non-management County positions. The classifications cover the full range of blue collar, white collar, technical and professional jobs.

The Employer has seven other bargaining units. As of the date of the factfinding hearing, two of the seven units had a current collective bargaining agreement. The Management unit has an agreement through September 30, 2014. The Confidential unit has an agreement through August 31, 2014. Both of these agreements have "me-too" clauses requiring the Employer to provide to these units any salary improvements negotiated with other bargaining units during the term of agreement. Five other bargaining units have agreements that expired on various dates in 2013 and are currently in negotiations. The miscellaneous unit is by far the Employer's largest. The second-largest is the Deputy Sheriffs Association (DSA) unit that includes 138 unit members. According to an exhibit provided by the Employer, the contract with DSA expired on June 30, 2013.

The County, like nearly all governmental entities in the state, suffered significant fiscal challenges due to the economic recession. In addition, employee pension and healthcare costs were escalating. By 2010, County reserves were depleted, and there were substantial delays in addressing capital improvement needs. In 2010, the County proposed substantial salary rollbacks as well as temporary work week reductions for County employees. Unable to reach an agreement with the Union, the Employer unilaterally imposed a 12.5% salary reduction on unit employees. The parties then went back to the bargaining table and negotiated a restoration of 2.5% of that reduction, resulting in a net decrease of 10% effective February 2012. All other County employees ended up taking this same 10% rollback. It was that agreement, reached in January 2012, which expired in June 2013.

It should be noted that the County modified its reserves policy in 2012, establishing a target of 6.35% or a minimum of \$10 million in general reserves.

#### **ISSUES IN DISPUTE**

As per the final on-the-record submissions of the parties, there remain the following issues in dispute: salary, performance-based salary increases, on-call pay, bilingual pay premium, health insurance, clothing and tool allowance, contracting out, grievance procedure, and new employee orientation. Both parties at this juncture are proposing a one-year agreement that expires on June 30, 2014. What follows is a summary of the current status quo on these issues, the parties' proposals and arguments, and the panel's findings and recommendations.

**Salary:**

Salary is the major disputed issue in these negotiations. The salary schedule is currently 10% below what it was in January 2009, five years ago. It is at a par with the salary schedule in effect in 2007. The parties do have a history of providing across-the-board increases to the bargaining unit, plus some market-based adjustments. The parties also have negotiated a set of comparable jurisdictions (cities and counties) and some survey methodologies for salary comparison purposes. The cost of a 1% pay increase is approximately \$170,000 out of the general fund.

The Union proposes a 3% salary increase, effective January 1, 2014. The Union argues that the County can afford it, should make it a priority in its budget, and by agreeing to this would begin a process of restoring the recent salary reductions. The Union argues that the cost of this increase would be 1.5% for this fiscal year, a cost of approximately \$250,000. This expenditure would not impede the Employer's efforts to continue to build its reserves. The Union asserts that the County has already met its reserve targets.

The Employer proposes status quo on salary. The Employer argues that the Union has not justified its proposal based on the statutory factors of comparisons with other jurisdictions and the consumer price index. All County employees took the 10% reduction, and no employees have had any of that restored. The unit is being treated like all others. While the Employer is not making an argument that it cannot afford the Union's proposal, it is contending that to grant it would be to violate the Board's reserves policy.

The panel was asked to reach findings on a number of issues relating to salary. In the view of the panel, most of those requests are outside the scope of this panel's assignment. Since the Employer is not claiming an inability to pay, then most of the issues in regard to the disputed budget numbers are moot. The panel will not opine on the issue of whether the Board's reserves policy is wise, or even whether the County has met the reserves target.

What the panel will do is examine the two proposals in the light of the parties' bargaining history and in light of the Employer's current year budget. The current year budget 2013-2014 sets aside a certain amount for additional designation to reserves – approximately \$1.6 million. This is consistent with the Board's philosophy, and is the kind of decision that has helped the County enhance its bond rating. The most recent outside audit report of the 2012-2013 fiscal year, released on January 10, 2014, confirms that the County has continued to grow its reserves.

Also in the current budget is an expenditure line item entitled "Appropriation for Contingencies." That amount in 2013-2014 is \$650,000. Management presenters at the hearing asserted that this line item is for "emergencies." However, the Board's policy is explicit on this matter. It reads:

The General Fund Contingencies shall not be accessed to fund programmatic or operational expansion or to leverage funds for the purposes of programmatic or operational expansion. Outside of the above limitations, the Board of Supervisors shall retain full discretion to access General Fund Contingency Reserve throughout the fiscal year by a four-fifths vote, as required under Government Code 29125.

There is no reference to expenditures on "emergencies" only. The panel sees no compelling reason why the Appropriation for Contingencies line in the existing budget cannot be utilized to fund support of existing programs, i.e. salary increases for existing employees. The County could do so without violating its reserves policy<sup>1</sup>. By spending all or part of this line item on a salary increase, the adopted budget that designates an additional \$1.6 million to general fund reserves would not be impacted. If the County chose to offer this same proposal to other bargaining units, it could still do so within the money allocated to contingencies for this fiscal year.

From a labor relations standpoint, the Union's proposal is squarely within the mainstream. It acknowledges the County's continuing caution by placing the increase in the middle of the year, hence cutting the current year cost in half. It allows for renegotiation of this agreement in a mere few months, providing the County an early opportunity to propose adjustments if needed. While the proposal is not justified by salary comparisons with other jurisdictions<sup>2</sup>, it is in line with inflation increases over the last few years, as evidenced by the consumer price index information that was presented to the panel.

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<sup>1</sup> While there was no evidence or testimony presented on this matter, the panel also notes that the unit engaged in a one-day strike during the current fiscal year. Presumably, this one day of unpaid leave for many employees resulted in some salary savings to the Employer that could also be applied to a salary increase.

<sup>2</sup> Neither party presented comparability data.

The County's proposal of status quo on wages seems overly conservative to the panel. At a time when revenues are stabilizing and the Employer has made significant strides in beefing up its reserves, it seems an appropriate time to begin reversing the compensation reductions of the last five years.

In sum, the panel recommends the adoption of the Union's proposal of a 3% salary increase effective January 1, 2014.

**Performance-Based Salary Increases:**

The current CBA includes 5% merit increases at six months, twelve months, eighteen months, and twenty four months of employment. There are no further step or merit increases contained in the contract.

The Union proposes to add a performance-based salary increase program that allows for an additional 2.5% increase to salary at five years, ten years and fifteen years of service. The Union cites the Employer's contract with the Management unit as the justification for this proposal.

The Employer proposes the status quo in this area.

The panel does not believe that the Union has developed an adequate justification for this proposal. The fact that the Management unit has this provision may have its roots in other CBA trade-offs, or may merely reflect the fact that FLSA-exempt managers often work under a different compensation model. The Union has not met its burden of persuasion on this issue.

Therefore, the panel recommends the Employer's position of status quo on this issue of performance-based increases.

**On-Call Pay:**

The current agreement in Article 9 Section 2 establishes a \$2.50 per hour on-call rate of pay for unit employees. The Union proposes to increase this to \$4.00 per hour, and to expand this to include telephone compensation and emergency call back. The Employer proposes status quo.

The Union has not provided a rationale for this proposed increase. Therefore, the panel recommends the adoption of the Employer's proposal of status quo.

**Bilingual Premium Pay:**

The current contract includes a bilingual pay premium of \$32.50 per pay period for eligible unit members. The Union proposes to increase it to \$60.00 per pay period. The Employer has counter-proposed to raise it to \$40.00 per pay period.

The Union has not justified this proposal, except to note that the bilingual premium is calculated differently in other of the Employer's agreements with other unions.

Therefore, since the Employer's proposal constitutes an enhancement and not a takeaway, the panel recommends the adoption of the Employer's counterproposal of \$40.00 per pay period.

**Health Insurance:**

The County is self-insured for health benefits. The current CBA includes a provision that the Employer pays 75% of the actuarially-determined premiums. The CBA allows the Employer to raise employee contribution levels accordingly at the beginning of each calendar year. However, the Employer may not raise employee premium contributions more than 16% in any one year without meeting and conferring with the Union.

This arrangement has resulted in various premium increases over the last ten years. In some years, such as 2005, 2006, and 2012, there was no increase. In 2007, there was a 12% increase and in 2008 the increase was 17.59%. During the current year, a 3% increase was implemented effective January 1, 2014.

The Union is not, at this point, proposing to modify the contractual language in this area. However, the Union does propose that this year's 3% employee premium increase be rescinded retroactive to January 1, 2014.

The Employer proposes to continue the status quo, including the current year 3% increase.

The panel recognizes that self-insured health plans create special challenges to a collective bargaining relationship. The Employer assumes a role not often undertaken by public entities – directly managing health benefit risks. In a rural area like Mendocino County, where health insurance options are more limited, such a path is understandable. Yet it creates special problems of transparency and comparability. Can the plan participants, the County's employees, have full confidence that it is being managed fairly and efficiently? How can the value of such a plan be compared to another jurisdiction's, where the costs of health insurance are more readily discernible? Perhaps it is because of these challenges that both parties have expressed interest in exploring other healthcare options.

In the meantime, the parties are dealing with the current self-insured plan. The Employer's proposal of continuing status quo, including the 3% increase this year, is a reasonable and moderate one. In the context of the overall economic package being recommended by the panel, it is affordable for unit members. And it continues a longstanding agreement to share costs on a 75% to 25% basis.

For these reasons, the panel recommends that the parties adopt the Employer's proposal of status quo on health benefits, including the 3% increase in the employee share of premium effective January 1, 2014.

**Expenses, Materials and Reimbursements:**

The current CBA has a Clothing and Tool Allowance Chart, modified effective October 1, 2007. It includes annual reimbursement amounts for many classifications within the unit for items such as tools and safety boots.

The Union proposes a 5% across-the-board increase to the chart, citing a more favorable reimbursement provided to some County public safety employees. The Employer has counter proposed adding language to reimburse unit members for the purchase of certified high visibility work clothing and an increase from \$50.00 to \$100.00 for the purchase of reflective outer clothing.

The Union has not met its burden of persuasion on this issue. Since the Employer is proposing improvements, not reductions, in allowances, the panel recommends the adoption of the Employer's proposal.

**Contracting Out:**

The current agreement has no explicit restriction on contracting out bargaining unit work. The Management Rights clause includes a reference to services that might be "contracted for." However, that same clause requires management to meet and confer with the exclusive representative on the "impact of County actions on matters within the scope of representation."

The Union proposes a total ban on contracting out bargaining unit work. The Union cites a problem with the contracting of County mental health services, and refers to current litigation between the Union and County on this issue. The County proposes status quo.

The burden is on the Union to show that County policies on contracting out are impacting the bargaining unit. The Union could not point to any bargaining unit member laid off or having reduced hours due to contracting out of unit work.

The panel therefore recommends the County’s proposal of status quo on this issue<sup>3</sup>.

**Grievance Procedure:**

The current agreement has a grievance procedure that applies to grievances other than disciplinary matters. Those latter issues go before the Civil Service Commission. Non-disciplinary grievances are subject to final and binding arbitration as the last step in the procedure. However, there is a section entitled “Award Limit.” It reads:

The arbitrator’s award shall be binding upon the Union. To the extent that the award of the arbitrator is not in excess of \$2500 per individual grievant, it is advisory. If within sixty (60) days of receiving notice of decision and award requiring an expenditure in excess of \$2500 per individual grievant, final action is not taken by the County to implement it, then the arbitrator’s decision and award shall have no force or effect whatsoever as the amount in excess of \$2500 per individual grievant. The Union may then resort to a court of competent jurisdiction to pursue other available legal remedies.

The Union proposes to delete this section, stating that there has only been one contract interpretation matter that has gone to arbitration in the past twelve years. The Employer proposes the status quo, arguing that to eliminate the clause opens up the County to potential extensive financial liability.

The panel finds that the clause, on its face, eliminates all binding arbitration from the CBA. Whether or not that was the intention of the parties, that is the plain meaning of the section. Although entitled “award limit,” the language makes all awards, whether over or under \$2,500 per individual, subject to reversal by the County. The clause goes on to suggest legal action on the part of the union to enforce the agreement.

The County argues for retention of this clause for the reason of fiscal responsibility. However, going to court for contract enforcement could expose the Employer to far greater costs than arbitration. And the existing grievance procedure already limits the County’s liability for grievances to ten days before the filing of grievance. The contract also has built-in time limits designed to move grievances forward in an expeditious manner.

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<sup>3</sup> This recommendation should not be read in any way as an endorsement of either side’s position in any litigation that may be pending in regard to County contracting out of work.

For these reasons, the panel recommends the Union’s proposal to eliminate Article 19 Section 12 “Award Limit” from the agreement.

**New Employee Orientation:**

Current contract language requires the Employer to notify new employees that the Union is their bargaining representative and give new employees a packet of information provided by the Union. There is currently no requirement that the Union be allowed to make a presentation at new employee orientation.

The Union proposes that the Union be provided with an opportunity to make a presentation at new employee orientation for bargaining unit members. The County has counter proposed that the Union be extended this opportunity, but as a pilot program for the duration of this agreement.

The panel believes that offering the Union an opportunity to address, in person, new employees would be a positive step for County – Union labor relations. It also seems reasonable that, since it is a new procedure, it be implemented initially on a pilot basis. The panel therefore recommends that the County’s proposal of adopting this on a pilot basis be incorporated into the CBA.

**SUMMARY OF RECOMMENDATIONS**

The panel makes the following recommendations to the parties for resolution of all issues in its collective bargaining impasse. For an agreement that would expire June 30, 2014, the panel recommends:

**Salary:** The Union’s proposal of a 3% salary increase effective January 1, 2014.

**Performance-Based Salary Increases:** The Employer’s proposal of current contract language.

**On-Call Pay:** The Employer’s proposal of current contract language.

**Bilingual Premium Pay:** The Employer’s proposal of increasing bilingual premium to \$40 per pay period.

**Health Insurance:** The Employer’s proposal of status quo on health benefits, including implementing the 3% increase in the employee share of premium effective January 1, 2014.

**Expenses, Materials and Reimbursements:** The Employer’s proposal of adding language to reimburse unit members for the purchase of certified high visibility work clothing and an increase from \$50.00 to \$100.00 for the purchase of reflective outer clothing.

**Contracting Out:** The Employer’s proposal of current contract language.

**Grievance Procedure:** The Union’s proposal to eliminate Article 19 Section 12 “Award Limit” from the agreement.

**New Employee Orientation:** The Employer’s proposal of providing the Union an opportunity to make a presentation at new employee orientation to bargaining unit members, on a pilot basis.

### **CONCLUSION**

The parties are caught up in a spiral of conflict over their collective bargaining agreement and labor-management relations in general. Components of this spiral are the one-day strike that took place in 2013, multiple unfair practice charges filed by each party against the other, and even litigation over contracting out of work. The fact that the parties have not yet reached agreement on a contract, after months of negotiations, mediation and now factfinding, suggests the need for a shift in direction.

Mendocino is a county with a small population, and Ukiah is a small town. It can be safely assumed that this dispute is straining the community, pitting co-worker against co-worker and neighbor against neighbor. As a consequence of the factfinding process, the parties are now closer to settling the agreement, but they still have a ways to go. The panel urges the parties to reflect further on their positions and stretch to reach a labor agreement. While the panel was constrained to work within the proposed remarkably short-term agreement offered by both parties, it would be much more beneficial to the parties’ relationship if they were to find a way to reach a longer term agreement. This would provide some breathing room for the parties to work on improving their overall relationship, laying the foundation for more successful bargaining in the next round.

There is no easy path to a better labor-management relationship between Mendocino County and its largest union, SEIU Local 1021. However, the panel suggests that the parties begin with small confidence-building steps to rebuild trust. After the contract settles, working together to find an alternative health benefit system that saves the County money and provides better benefits for the

employees might be just such a step. There are dedicated and skilled individuals on both sides of this dispute who are well-equipped to lead the parties in a new more positive direction.



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Paul D. Roose, Neutral Chairperson

Date: January 21, 2014

/s/ Jason Klumb\_\_\_\_\_

Jason Klumb, Union-appointed Panel Member

Date: January 21, 2014

I concur with the Recommendations

I dissent from the Recommendations (see attached explanation)

/s/ Donna Williamson\_\_\_\_\_

Donna Williamson, Employer-appointed Panel Member

Date: January 21, 2014

I concur with the Recommendations

I dissent from the Recommendations in part (see attached explanation)