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February 24, 2017

FINDINGS AND RECOMMENDATIONS
PURSUANT TO
CALIFORNIA GOVERNMENT CODE 3505.4

In the Matter of a Controversy Between	)	
El Dorado Hills Community Services District	)	
Employer	)	
and	)	Collective Bargaining Impasse
El Dorado County Employees Association	)	Factfinding
Union	)	PERB Case No: xxxx

APPEARANCES:

For the Employer: Kristianne T. Seargeant, Attorney
Kronick, Moskovitz, Tiedemann & Girard
400 Capitol Mall, 27th Floor
Sacramento, CA 95814

For the Union: Richard Boyd, Director of Field Operations
Public Employees Union, Local 1
420 North Wiget Lane
Walnut Creek, CA 94598

FACTFINDING PANEL:

Appointed by the Employer: Kevin Loewen, General Manager
El Dorado Hills Community Services District.

Appointed by the Union: Rhonnie Tinsley (retired)
California Teachers Association

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

STATUTORY FRAMEWORK AND PROCEDURAL BACKGROUND

Under amendments to the Meyers-Milias-Brown Act that went into effect on January 1, 2012, and as amended again 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 El Dorado County Employees Association, affiliated with Public Employees Union Local One (AFSCME) is the exclusive representative for a bargaining unit with the El Dorado Hills Community

Services District (EDHCSD). The unit is a "wall to wall" unit representing maintenance, administrative and supervisory employees. At the time of the factfinding hearing, the unit was composed of twenty full-time employees.

The parties had a collective bargaining agreement (CBA) in place. That agreement became effective July 1, 2013 and expired June 30, 2016.

The parties conducted negotiating sessions but did not secure an agreement on a successor contract. The parties reached impasse and contacted the undersigned panel chairperson to initiate mediation. Three sessions were held in October 2016, but mediation proved unsuccessful. The parties proceeded to factfinding under the auspices of PERB. The parties selected the undersigned to be the chair of the factfinding panel in this matter pursuant to Government Code 3505.

From the outset of the process, the neutral chairperson 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 on each disputed issue. 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.

A hearing was held by mutual agreement on January 13, 2017 in El Dorado Hills, California. The panel took on-the-record evidence and argument from both sides concerning the matters 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. Accordingly, confidential mediation was also conducted on that date. Mediation again proved unsuccessful. The parties then went back on the record and submitted their final proposals and oral arguments for the panel's consideration.

BACKGROUND TO THE DISPUTE

EDHCSD is located in El Dorado Hills, CA, an unincorporated area of El Dorado County. It is the primary provider of park, recreation, and open space services over a 48 square-mile area. It owns and manages almost 294 acres of land, including 138 acres of parks and 29 acres of landscape and lighting assessment districts. It provides garbage collection and cable television services through private franchises.

The District operates on a budget of roughly $11 million in the current fiscal year. The proposed budget for fiscal year 2016-2017 projects over $13 million in revenue and over $11 million in expenses. Reserves are projected to be around $11 million at the end of that fiscal year. 65% of the District's revenue derives from property taxes collected by El Dorado County. The remainder derives from user fees and various miscellaneous sources. 45% of the District's expenses are for personnel costs.

The District sets aside general fund money each year for capital projects, such as parks improvements. The budget includes the following statement:

> It is the practice of the District to accumulate reserves over a period of time to complete certain specific capital improvements.

Entering the factfinding process, the parties were in dispute over salary, health benefits (for active employees and retirees), PERS pension contributions by employees, and the grievance procedure. However, as part of its final proposal in factfinding, the Union withdrew its grievance procedure proposal and agreed to the Employer's last proposal on retiree health benefits.

Therefore, the remaining issues in this dispute are salary, active employee health benefits, and employee pension contributions.

Total Compensation Study

In preparation for bargaining in 2016, the District commissioned a Total Compensation Study on classifications represented by the Union. (The Union offered no alternative comparability data.) The study, by Berkeley-based Koff & Associates, looked at total compensation at comparable California agencies. The study identified ten "benchmark" classifications at EDHCSD and compared their compensation to those of similar classifications at the studied agencies.[1] The District used the following California agencies as comparators:

Cameron Park Community Services District
Carmichael Parks and Recreation District
City of Folsom
Cordova Recreation and Parks District

[1] The term "benchmark" refers to a representative studied classification that other related classifications are then linked to for purposes of analysis. Only seven benchmark classes were ultimately used, since data were insufficient for three of the ten benchmark classes.

Cosumnes Community Services District
Sunrise Recreation and Parks District
Town of Discovery Bay

The comparator agencies were chosen using criteria of organizational type and structure; similarity of population, staff and operational budgets; scope of services provided; geographical location; and compensation philosophy.

The study looked at both salary and total compensation (including benefits). The following chart[2] summarizes the findings:

EDHCSD Benchmark Classifications Compensation Relative to Comparator Agencies Identified in Koff & Associates Survey		
Classification	**Salary: % Above or Below Median**	**Total Monthly Compensation: % Above or Below Median**
Accounting Specialist	-5.7%	-6.3%
Administrative Assistant II	2.0%	-4.2%
Maintenance Worker	-8.0%	-9.7%
Park Supervisor	4.9%	2.1%
Recreation Coordinator	-26.9%	-27.1%
Recreation Supervisor	-15.8%	-15.5%
Senior Accountant	5.8%	-0.8%

[2] The panel chairperson notes that the differences between salary and total compensation vary from classification to classification. The most likely explanation for this result is that different classifications matched up with different comparator agencies, depending on whether a comparator matching classification was available. Since the comparator agencies had differing ratios of salary to total compensation, results varied, as demonstrated by the above chart.

Other compensation study findings relevant to the disputes presented at factfinding are as follows:

Active Employee Health Benefits: The total cost of medical, dental, and vision benefits provided by the District are 29% lower than the comparator agencies. However, the District provided a "cash in lieu" or "medical opt-out" benefit that was an outlier. None of the comparators offered an opt-out benefit even close to that offered by EDHCSD. Three agencies offered no opt-out option. Four of the seven agencies provided an opt-out option. Three of those offering cash-in-lieu provided a benefit of $250 - $300 per month. One comparator offered up to $850 per month, depending on family category.[3]

The expired CBA (and status quo) provides for a maximum health insurance contribution for unit members of $1150 per month. Unit members receive that benefit regardless of whether they take the CalPERS medical insurance offered by the district. Unit members who opt not to take insurance are required by the CBA to provide proof of coverage. If unit members do take insurance, any funds left over may be taken in cash or applied to other district benefits, such as deferred compensation or life insurance. Fifteen of the twenty represented employees currently elect to receive the cash-in-lieu benefit rather than the health insurance offered by the District.

The comparator study included only the maximum contribution by each employer to health insurance. It did not provide the underlying data on how this maximum contribution was derived. It did not indicate whether the contribution was tiered by employee only, employee plus one, and family coverage. It did not indicate whether the maximum contribution rate was derived from a percentage of premium in the CBA or from a "hard cap" on the employer's contribution rate. For that reason, the study (at least as included in the hearing record) is not particularly helpful in resolving one of the disputes between the parties: whether the health benefit contribution should be set as a fixed dollar amount in the CBA or as a percentage of a benchmark premium.

Employer-Paid Member Contribution for Retirement: The study found that the District's defined benefit retirement formula for "classic" members is 2% @ 55 and is in line with comparator agencies.

[3] The study summary indicated that this comparator, Cordova Recreation and Parks District, pays $1200 cash-in-lieu. However, the chairperson's analysis of the underlying data is that the amount actually tops off at about $850 for family coverage eligible employees.

The District currently pays the entire 7% employee share of retirement contribution under CalPERS. The compensation study's summary reported that two of the seven comparator agencies pay a portion of the employee share. However, the underlying documentation indicates that only one, Cameron Park Community Services District (CPCSD), does so. At the time of the study, CPCSD paid 8% of the employee share.[4]

Also relevant in regard to this pension issue is a letter to member agencies sent out by CalPERS on December 3, 2012 in regard to the implementation of the Public Employees' Pension Reform Act (PEPRA) of 2013. In that letter, PERS included the following interpretation of the new state law as it impacted "classic" members (those hired prior to January 1, 2013):

> Beginning January 1, 2018, public agencies that have collectively bargained in good faith and completed impasse procedures (including mediation and fact-finding) will be able to unilaterally require classic members to pay up to 50% of the total normal cost of their pension benefit. It is important to note that the employee contribution may only be increased up to an 8% contribution rate for miscellaneous members…

It was undisputed in the hearing record that the District pays for the 7% pension contribution amount for "classic" members and that the above letter applies to the parties to this impasse.

POSITIONS AND ARGUMENTS OF THE PARTIES

Both parties are proposing an agreement that expires June 30, 2019. The parties have tentatively agreed to implement the compensation study in a manner proposed by the Employer (to bring all classifications to the median of the surveyed agencies by the midway point in the contract). The parties have also agreed on retirement medical benefits, grievance procedure, and other matters tentatively agreed-to during the negotiating process prior to mediation. Three remaining issues separate the parties: across-the-board salary increases, health benefits for active employees, and employee PERS retirement contributions. What follows is a summary of the status quo on each issue, the parties' positions, and arguments on disputed issues.

[4] PERS assigns either a 7% or an 8% normal cost to each agency for its miscellaneous employees, depending on an actuarial valuation.

Salary: The current expired CBA included a 3.25% across the board salary increase for all unit members effective September 8, 2013, and two additional 2.5% across the board salary increases for all unit members effective July 1, 2014 and July 1, 2015.

For the successor agreement, the **Union** proposes across-the-board increases as follows:

8/1/16 – 8%
7/1/17 – 4%
7/1/18 - 3%

The **Employer** proposes increases as follows:

10/1/16 – 8%
7/1/17 – 3%
1/1/19 – 2%

In addition, the Employer proposes to adjust salaries such that all positions are at least at the market median, as defined by the compensation study, on January 1, 2018. This proposal would impact two classifications: recreation supervisor, and recreation coordinator. Recreation supervisors, of which there are currently five filled positions, would receive a 4% additional increase on 1/1/18. The recreation coordinator position, currently not filled, would also receive an additional increase. The Union has agreed to this element of the Employer's proposal.

The Union argues that, with the Employer's proposal to take away the cash-in-lieu (as detailed below) and require employees to pay for PERS retirement, the net result for most unit employees (even after the District-proposed wage increases) is a reduction in compensation.

The Union contends that the Employer has excessive reserves, amounting to nearly one year of revenue, and can afford the Union's proposal.

The Employer argues that the wage offer, combined with the implementation of the compensation study, puts all positions at or above the market. The District defends its budget and reserves, noting that many capital projects are on a waiting list for sufficient funds. The District's offer maintains the percentage of the budget going to personnel costs.

Active Employee Health Benefits: Currently, the District pays $1150 per month to each employee for benefits. Unit members may elect to use the money to pay for district-offered health benefits (through CalPERS medical), and dental and vision benefits. Alternatively, they may take the benefit as cash or a combination of benefits and cash. Employees who opt out of the employer-offered medical insurance are required to show proof of coverage elsewhere. The record of the hearing suggested that this proof-of-coverage rule may have been unevenly enforced.

The **Union** proposes the following for health benefits:

Through December 31, 2018 - continue the status quo ($1150 per month per unit member)

1/1/19 - Employee only – 100% of the Kaiser rate (plus dental and vision)
Employee plus one – 85% of the Kaiser rate
Employee plus two – 85% of the Kaiser rate
Cash-in-lieu - $400 per month for those opting out of benefits

The **Employer** proposes the following for health benefits:

Through December 31, 2017 - continue the status quo ($1150 per month per unit member)

1/1/18 – Employee only - $800
Employee plus one - $1350
Employee plus two - $1780
Cash-in-lieu - $650 per month for those opting out of benefits

1/1/19 - Employee only - $800
Employee plus one - $1350
Employee plus two - $1780
Cash-in-lieu - $300 per month for those opting out of benefits

The Union contends that the cash-in-lieu should be retained as long as possible. Employees were promised this benefit when they were hired. Many rely on it as part of their salary.

The Employer states that the organization has a goal of offering robust health benefits and phasing out cash-in-lieu. This proposal does that. The Employer argues that the Union's calculation of "net loss" does not account for the money unit members are paying for outside health coverage. Employees would no longer have to rely on outside insurance under the new more generous employer health benefit contributions.

Neither party made on-the-record arguments for or against a fixed dollar contribution versus a percentage of a benchmark plan, a feature that distinguishes the two proposals.

Employee Contribution Toward CalPERS Retirement: Currently, the District pays the entire 7% employee share of the PERS contribution, in addition to the employer share. Both parties propose that this employee share cost be shifted to employees within the life of the CBA.

The **Union** proposes the following cumulative employee pick-up of this contribution:

Upon ratification – 2.5%

1/1/18 – 2.5%

1/1/19 – 2%

The **Employer** proposes the following cumulative employee pick-up of this contribution:

Upon ratification – 3%

1/1/18 – 3%

1/1/19 – 1%

Neither party made arguments in favor of their proposed implementation timetable for shifting the PERS contribution.

PANEL FINDINGS

The panel's recommendation is based strictly on the on-the-record proposals made by the parties. This recommendation should not be read as a commentary on any off-the-record proposals that might have been exchanged by the parties during mediation or at any other time. For the sake of sound labor relations, any ultimate resolution of this matter should not involve retreating from earlier informal proposals.

The Panel Majority Concludes that the Employer's Proposal on Salary Most Closely Conforms to the Statutory Criteria: Due to extensive mediation efforts and the Union's new proposal at the end of the factfinding process, the parties are relatively close on the issue of wages. The District proposes 13% over three years, and the Union proposes 15%.

It is understandable that the Union is looking for a higher overall wage package in the face of the "double whammy" of the ending of the employer pick-up of employee share of pension costs and the cessation of high cash-in-lieu contributions.

However, the District has made a salary proposal that makes a substantial and sustained effort to offset the pension pick-up change and lessen the impact to many unit members who took the cash-in-lieu benefits. Combining the salary increases and the PERS contribution shift, the net gain for unit members over the span of the agreement is 6%.[5]

Notable in the Employer's proposal (as well as in the Union's proposal) is that eight of the thirteen percent salary increase goes into effect immediately upon ratification of the agreement. This constitutes significant "front loading" and puts more salary into the bank accounts of unit members earlier and more often over the life of the agreement.

The Union argues that the full $1150 per month that had been going to some members as cash-in-lieu of health benefits must be directly deducted from total compensation to calculate net gain or loss. The panel majority does not see it this way. Absent from this equation is the member's cost of purchasing medical insurance on the outside. Many members, presumably, will discontinue buying outside insurance when the new higher district health premium contributions go into effect.

Some unit members may be on their spouse's medical insurance at no additional cost and therefore will ultimately lose $850 per month (under the district's proposal) if they continue taking cash-in-lieu. However, the Union did not present to the panel a comprehensive list of the current alternative health coverage status of each unit member. Therefore, the panel was unable to evaluate the total effect from that standpoint. In order to justify its compensation proposal, the burden was on the Union to show the actual impact on each member. It did not meet that burden.

Based on this analysis of the health benefits, the Union did not persuade the panel that the compensation package proposed by the District results in a net loss. On its face, the District's salary proposal results in a 6% net gain, and has other beneficial effects on current and future compensation outlined in footnote 5.

Of the statutory factors, the one most relevant in this case is external comparability. The District commissioned and paid for a professional total compensation survey. The panel credits this survey as being sufficiently relevant and reliable to serve as a measuring stick. By this standard, the District's proposal (including the special increases for behind-market classes) brings all classifications in the bargaining unit to median or above.

[5] The actual benefit to individuals is significantly greater than 6%. Salary increases, as offered in this case, have a multiplier effect on overtime compensation and PERSable compensation that will increase unit member pension levels.

The Union argues that the Employer's reserves are out of line and can afford a more generous package. The Employer did not assert an inability to pay for the Union's proposal. But the Employer put forward a plausible reason for its relatively high level of reserves, and asserted without contradiction that its proposal maintains the current percentage of expenditures going to personnel costs. While the Employer may be financially capable of paying for the Union's salary proposal, the statutory factors suggest that it is not obligated to do so.

The Panel Majority Concludes that the Employer's Proposal on Health Benefits Most Closely Conforms to the Statutory Criteria: As with the issue of salary, the parties have succeeded in closing the gap on health benefits through negotiation and mediation. Both propose a phasing out of high cash-in-lieu amounts that incentivized members to forego District-paid health benefits. Both propose a three-tiered health benefits contribution (based on family status) that shifts District resources toward those with greater dependent obligations. And both propose a gradual phase-out of the current system to give unit members an opportunity to plan for the changes in advance.

The differences lie in the length of the transition period and whether the District's health benefit contribution will be a fixed dollar amount or a percentage of CalPERS benchmark premiums.

Both proposals are generally consistent with the comparable agencies in terms of the amount that will be contributed by the District to health benefits. As noted above, the compensation survey did not identify the contractual agreements in the comparative agencies to the level of detail sufficient to determine whether comparators paid a flat dollar amount or a percentage of premium. Absent that information, the panel majority tilts in favor of the District's flat dollar proposal. That proposal is consistent with the parties' bargaining history.

Under the current arrangement, the District pays $1150 per person per month per employee, regardless of family status. This high value cash-in-lieu system has no match among the comparable agencies. The District's proposal continues the practice of a fixed dollar contribution, but divides it into three tiers of $800, $1350 and $1780. It is intended to cover 100% of employee-only coverage and a high percentage of employee-plus-one and employee-plus-two premiums. Judging from likely CalPERS premium increases, it will probably be sufficient to do that.

On the issue of phasing out the current cash-in-lieu system, the District's proposal makes a concerted effort to smooth the transition. Not only does it leave the current system intact until January 2018, but it reduces the cash-in-lieu in two phases: first to $650 in year two, and then to $300 in year three. The Union maintains the current system for an additional year.

For those two reasons – flat dollar contributions and a gradual phase-out of cash-in-lieu – the panel recommends the Employer's proposal on active employee health benefits.

The Panel Majority Concludes that the Union's Proposal on PERS Retirement Contribution Most Closely Conforms to the Statutory Criteria: The Employer, for reasons that were not in evidence in the hearing record, has historically paid the employee's share of the CalPERS pension. The California legislature, in 2012, enacted legislation to contain pension costs for public employers in the state. One aspect of that legislation was to allow local government employers to require that all "classic" members (those hired prior to 2013) pay their minimum pension contribution.

Rather than invite the Employer to exercise its statutory authority to impose this cost-shifting, the Union has made the commendable decision to include this change in a negotiated agreement. In the context of this overall economic package, the PERS contribution reallocation is much "easier to swallow" for unit members. Moreover, this 2% @ 55 pension defined benefit plan that classic members enjoy is a high-value form of deferred compensation. That unit members would willingly contribute to the continued viability of this valuable pension plan is a solid assumption.

Nonetheless, a seven percent cost-shift over three years is a substantial change in the compensation package. The Employer proposes front-loading almost half of this change (3%) into the first year of the agreement, and an additional 3% in year two, with only 1% remaining for year three. The Union proposes a more gradual phase-in of the member payment of the employee contribution. The Employer did not explain why it needed to frontload the contribution shift in this manner.

Since the Union's proposal phases in the statutory contribution level over the life of the contract, but implements the change more gradually, the panel supports the Union's proposal on pension contribution.

SUMMARY PANEL RECOMMENDATIONS

1) The factfinding panel majority recommends that the parties adopt the Employer's proposal of 8%, 3% and 2% salary increases on the dates proposed by the Employer.
2) The factfinding panel majority recommends that the parties adopt the Employer's proposal on health benefits for active employees.
3) The factfinding panel majority recommends that the parties adopt the Union's proposal on employee PERS retirement contributions.

Paul D Roose

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Paul D. Roose, Neutral Chairperson

Date: February 24, 2017

/s/___Rhonnie Tinsley_____________________

Rhonnie Tinsley, Union-appointed Panel Member

Date: February 24, 2017

___x__I concur in part with the Recommendations

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

/s/____Kevin Loewen______________________

Kevin Loewen, Employer-appointed Panel Member

Date: February 24, 2017

__x___I concur with the Recommendations

_____I dissent from the Recommendations (see attached explanation)