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PERB CASE NO. SA-IM-200-M
FACTFINDER CASE NO. 19-08-29FF

FACTFINDING PROCEEDINGS PURSUANT TO

THE MEYERS-MILIAS-BROWN ACT

COUNTY OF SISKIYOU

and

ORGANIZED EMPLOYEES OF SISKIYOU COUNTY

Issue: Impasse in 2019 Successor Contract Negotiations

NEUTRAL FACTFINDER
PANEL CHAIR
RECOMMENDATIONS

November 8, 2019

FACTFINDING PANEL

| Factfinder for the Union: | Factfinder for the Employer: | Neutral Factfinder Panel Chair: |
|---|---|---|
| Steve Allen<br>Labor Negotiator<br>Goyette & Associates, Inc. | Donald W. Turko<br>Consultant<br>Management Strategies Group | Renée Mayne<br>Arbitrator, Mediator |

APPEARANCES

For the Union:

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For the Employer:

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## INTRODUCTION

This factfinding arose due to an impasse in collective bargaining under the State of California Meyers-Milias-Brown Act (MMBA) Government Code Section 3505.4 between the County of Siskiyou (County, Employer) and Organized Employees of Siskiyou County (OESC, Union).

Under the procedures of the California Public Employment Relations Board (PERB), Renée Mayne was appointed by the parties to serve as the Neutral Factfinder Panel Chair. Donald W. Turko was appointed by the County as the Panel Member to represent the Employer, and Steve Allen was appointed by the OESC as the Panel Member to represent the Union.
(PERB letter August 20, 2019)

The parties agreed all procedural requirements of the impasse had been met, and the dispute was properly before the Factfinding Panel to issue their recommendations to resolve the impasse. The factfinding hearing convened on October 10, 2019, at the County's administrative office at 1312 Fairlane Road, Yreka, California. The witnesses were administered an oath of honesty by the Neutral Factfinder Panel Chair. The parties had full opportunity to present and submit relevant exhibits and evidence, and to discuss and argue the issues in dispute. After the conclusion of the hearing, the factfinding record was closed on October 10, 2019, and the dispute was submitted to the Factfinding Panel for their recommendations.

## ISSUES AT IMPASSE

*Term*
*Salary Increase*
*Health Benefits for Active Employees*
*Retiree Health Benefits*
*Exempt Employees Flexible Work Hours*
*Deferred Compensation*
*Vacation Accrual Cap* (Union Ex. 1.C; County Ex. 2:15)

## GOVERNING STATUTE

The MMBA Government Code Section 3505.4(d) sets forth the criteria to be used in the factfinding process.

> 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.

## SUMMARY OF FACTS

The County of Siskiyou is located in a rural region of northern California. The County has 583 employees. In anticipation of budget deficits, the County's bargaining objectives were to reduce salary and health insurance costs. The Union's main negotiation goals were to increase salaries to a level that was more in line with the cost of living in California, as well as the results of their salary study. The three bargaining units in the OESC, the Management, Professional and Miscellaneous units, are at an impasse with the County for successor contracts. With 342 unit members, the OESC represents the majority of the County's workforce.

(Union Exs. 1.D, 4; County Exs. 2:5-7, 13)

The parties held seven negotiation sessions between March 5 and June 20, 2019. On July 27, 2019, the parties submitted their dispute to mediation. After unsuccessful efforts in achieving a full tentative agreement through negotiation and mediation, the parties submitted the issues at an impasse to factfinding. (County Ex. 2:14)

The Union's expert witness, Timothy F. Reilly, CPA, disputed the County's projected budget deficits. With his report dated October 5, 2019, he testified that the County had healthy revenues to fund the salary and benefit increases proposed by the Union. He said the County had demonstrated over the last five fiscal year budgets that their financial projections understated revenues and overstated expenses. While the County had forecast three deficits in the past five budgets, the ending balances showed four surpluses, with one deficit in fiscal year 2017.
(Union Exs. 2:59, 83)

The County projected its 2019-20 fund balance would be $.37 cents. The 2018-19 closed budget deficit was nearly $1 million. The County held that the 2019-20 budget deficit did not include salary increases and that the County Administrative Officer had recommended reducing general fund positions. Every dollar in salary increase for OESC positions in the County costs an additional $.71 cents for health, dental, vision and life insurance, pension, and other post-employment benefits. The County's share of the 2019-20 CalPERS pension rate is 27.75% for the OESC unit members. Salaries and benefits for all county employees are 44% of the County budget. The County proposed a two-year contract term due to their financial concerns.
(County Exs. 2:16, 25-26, 28, 32)

Charts submitted into the factfinding record showed that in its past four fiscal years, the County's budgeted labor costs were higher than the actual labor costs. Except for 2018-19, its labor costs rose each year. Yet, the County made equity adjustments for recruitment and retention.
(County Exs 2:30-31, 8:1-2)

*Summary of Facts*

The parties submitted testimony, documents, and evidence under the criteria found in Government Code §3505.4(d). The following is a summary of the relevant facts, evidence, and arguments the Union and County presented at the factfinding hearing for the issues at an impasse.

*Term of Agreement and Salary Increase*

The County had proposed a two-year agreement and the Union proposed a three-year. Under the County's offer, unit members would receive a 2% salary increase on July 1, 2019 and 2.75% on July 1, 2020. The Union proposed salary increases of 5%, 3% and 2% on July 1 of each year of the agreement, equal to peace officer settlements in the County.

The Union conducted a salary comparability study using four rural counties in Northern California: Del Norte, Shasta, Tehama and Lake. A map of California showed that the four counties are in proximity to Siskiyou: Shasta and Del Norte border Siskiyou; Tehama borders Shasta, and Lake County is two counties removed from Tehama. (Union Ex. 4; County Ex. 2:16)

The Union's salary study included 120 unit member classifications. With the exception of 15 classes, all others were below the comparable market. However, the County said that since fiscal year 2016-17, it has implemented salary increases for 68% of the OESC represented employees, 231 full time equivalent, ranging from 3% to 15%. The Union's salary survey showed that its unit member classifications were behind the average of this market from .5% to 71.5%, with most in the double-digits. (Union Ex. 4; County Ex. 2:31)

*Health Benefits for Active Employees*

The County contracts with CalPERS for health insurance, which offers plan options for preferred provider, health maintenance, exclusive provider, and association organization models of insurance. Pursuant to the Public Employees Medical & Hospital Care Act (PEMHCA), the

Employer is required to make a minimum contribution for active employees and retirees' health insurance premiums. (County Exs. 4-7)

The County's last proposal was to provide a capped health insurance contribution equal to the PERS Select plan for the employee, employee plus one, and family tiers, for the 2020 plan year. The County said this amount would likely cover most or all of the increases in this plan in 2021. The current terms in the labor agreement are an 85/15 county-employee share of the PERS Choice plan for each tier, a more expensive plan in which 89% of the OESC unit members are enrolled. No other bargaining unit has a capped flat-dollar health insurance contribution in their health plan. (County Exs. 2:16; 4-7)

The Union argued that the employees' cost is too steep between the current and proposed County health insurance contributions. Further, the Select plan's medical provider network is more limited than the Choice plan. Employees would have to travel a great distance for certain types of health care. The Union proposed to maintain the status quo for the County's contribution to OESC unit members' health insurance. (Union Ex. 1.B; County Exs. 2:16, 36)

*Retiree Health Benefits*

Regarding health benefits for retired employees, the County proposed reducing the benefit to the PEMHCA minimum contribution effective January 1, 2020 for all new hires. The current benefit is 50% of the PERS Choice plan. Presently, the retiree health benefits are codified in a Board of Supervisors resolution, and the Union proposed to include retiree health benefits within the labor contract. Current employees and retirees would not be affected by the County's proposal. (Union Ex. 1.D.2; County Ex. 2:16)

*Exempt Employees Flexible Work Hours*

The OESC proposed on behalf of overtime exempt unit members that the County permit flexibility in the work day provided that it does not interfere with required work. An employer can require exempt employees to work beyond the regular work day without additional pay. The Union proposed flexible work days because there had been an inconsistent approach within the County. Some departments allowed daily flex time and others did not. The Union maintained that flexible work days would increase job satisfaction for exempt employees.

In the same article, the OESC proposed to delete two sentences: contract language regarding the requirement to work beyond 40 hours as needed, and the language that grants flexibility only if the employee worked far beyond the scope of duties and administrative leave (which is provided in lieu of overtime). (Union Ex. 1.D.2)

*Deferred Compensation*

The OESC proposed that the County provide to the Management and Miscellaneous units the same deferred compensation as the Professional unit: $30 per month. The County argued that it needs to reduce its post-employment benefit obligations.

Evidence presented at the hearing showed that the Board of Supervisors and department heads receive $300 per month in deferred compensation. The Deputy Sheriff management receives $165 monthly, and the assistant department heads and confidential employees receive $150. Probations Officers receive $20 monthly. The Corrections Officers do not receive a set amount; theirs is a matching benefit up, to $40 per month. (Union Ex. 1.D.1)

*Vacation Accrual Cap*

The Union proposed to increase the vacation accrual cap for employees with more than 10 years of service, from 272 hours to 312 hours. (Union Ex. 1.B)

## POSITION OF THE UNION

The Union averred that the County's salary offer will not improve recruitment and retention. As important, the County's health insurance proposals would result in significant out of pocket costs for active and retired employees and their families. The Union's deferred compensation proposal is reasonable, because the Management and Miscellaneous units should receive the same benefit as the Professional unit.

## POSITION OF THE EMPLOYER

The County maintained that it is facing a budget deficit that would create almost no ending balance in the general fund. Potential layoffs are being considered. Based upon the County's financial situation, its last salary proposal is reasonable. The County's proposal to reduce health benefits for active and retired employees represents a fair compromise between cost reduction and providing health insurance.

## NEUTRAL FACTFINDER PANEL CHAIR DISCUSSION

The most persuasive information submitted in the factfinding proceedings was the amount the County pays for benefits for the OESC unit members and all other employee groups. It is not a surprise that the County is projecting budget deficits; these levels of benefits may not be sustainable in the future.

However, based upon the County's rural location and the limited number of medical providers in the PERS Select plan, the personal impact of the County's health insurance proposals was very persuasive. The Neutral Factfinder Panel Chair finds that the potential out-of-pocket health insurance and health care costs could have a severe impact on employees and their families.

Also persuasive was the Union's market study regarding competitive salaries, and the testimony regarding the importance of flex time for exempt unit members.

*Term of Agreement and Salary Increase*

The OESC proposed wage increases equal to public safety bargaining unit settlements at the County. The County said that the reasons for those salary increases were recruitment and retention issues in the peace officer positions. However, it is also difficult to recruit qualified personnel in all sectors of work with low unemployment. Though, for many potential employees, public employment offers some of the best benefit packages available in the job market.

Based upon the high cost of benefits that increase with salary, and that the County had for four years increased OESC salaries for hard to recruit or retain classifications with salary adjustments, the Neutral Factfinder Panel Chair recommends a two-year agreement with a 2.5% salary increase effective in July 1 of each year.

*Health Benefits for Active Employees*

Regarding health insurance, the Neutral Factfinder Panel Chair understands how challenged employees may be to afford the high cost of premiums. While the County is attempting to cap health benefit premium costs and provide a health plan with a 100% paid premium in the 2020 plan year, no other bargaining unit in the County has a capped, flat dollar contribution to health insurance. However, the cost of benefits may need to be stemmed to be sustainable.

The Neutral Factfinder Panel Chair will not recommend the benefit change go into effect until the employees had the opportunity to change plans during open enrollment. Further, the Neutral Factfinder Panel Chair finds that the cost impact of the County's proposal is too severe as a first step to cap the employees' insurance benefits.

Therefore, the Neutral Factfinder Panel Chair recommends a modified version of the County proposal: the equivalent of 80% toward the health insurance premium in each tier of the PERS Choice plan, effective January 1, 2021.

*Retiree Health Benefits*

The County proposed that for all unit members hired after January 1, 2020, the County would contribute the PEMHCA minimum to retiree health benefits. The current benefit of 50% contribution toward PERS Select would remain the same for employees hired before January 1, 2020 and current retirees. Due to the high cost of benefits for the County and the employees' total benefits package, the Neutral Factfinder Panel Chair recommends the County's proposal.

*Exempt Employees Flexible Work Hours*

The Union's proposal would modify the language to allow flexibility so long as the employee generally works a full-time schedule of 80 hours per pay period. The Neutral Factfinder Panel Chair recommends the Union's proposal, with the exception of deleting the language that states exempt employees may be required to work beyond a 40-hour work week. This language reflects a provision of the Fair Labor Standards Act; removing the language could give the impression that the County decided to provide a benefit beyond what the law required.

*Deferred Compensation*

The Union proposed that Management and Miscellaneous bargaining units receive the same deferred compensation benefit as the Professional unit: $30 per month into the employee's designated deferred compensation plan. While the County has high benefit costs, it has not reduced the deferred compensation for elected officials or department heads. Therefore, the Neutral Factfinder Panel Chair recommends the Union's proposal for parity in deferred compensation for its Union members.

*Vacation Accrual Cap*

The Union proposed to increase the vacation accrual cap from 272 to hours to 312 hours. There was insufficient evidence presented to fully analyze the importance and impact of this proposal. Since this is a potential future cost to the County, the Neutral Factfinder Panel Chair does not recommend increasing the OESC unit members' vacation cap.

## NEUTRAL FACTFINDER PANEL CHAIR RECOMMENDATIONS

*Term of Agreement and Salary Increase*

In accordance with Government Code Section 3505.4(d)(4)(5)(7), the Neutral Factfinder Panel Chair recommends a modified version of the Union's and County's proposals: two-year agreement with a 2.5% salary increase effective in July 1 of each year.

*Health Benefits for Active Employees*

In accordance with Government Code Section 3505.4(d)(4)(7)(8), the Neutral Factfinder Panel Chair recommends a modified version of the County's proposal dated June 20, 2019: 80/20 employer-employee share of the PERS Choice health insurance premium in each tier of the plan (employee, employee plus one, and family), effective January 1, 2021.

*Retiree Health Benefits*

In accordance with Government Code Section 3505.4(d)(4)(7)(8), the Neutral Factfinder Panel Chair recommends the County's proposal dated June 20, 2019.

*Exempt Employees Flexible Work Hours*

In accordance with Government Code Section 3505.4(d)(1)(8), the Neutral Factfinder Panel Chair recommends the Union's proposal dated June 7, 2019, with the exception of deleting the language that states exempt employees may be required to work beyond a 40-hour work week.

*Deferred Compensation*

In accordance with Government Code Section 3505.4(d)(8), the Neutral Factfinder Panel Chair recommends the Union's proposal dated June 7, 2019: The OESC unit members in the Management and Miscellaneous units receive the same deferred compensation as the Professional unit: $30.00 per month.

*Vacation Accrual Cap*

In accordance with Government Code Section 3505.4(d)(8), the Neutral Factfinder Panel Chair does not recommend increasing the vacation cap for OESC unit members.

This Factfinding Report is respectfully submitted to the Organized Employees of Siskiyou County and the County of Siskiyou.

Renée Mayne — November 8, 2019

RENÉE MAYNE — Date
Neutral Factfinder Panel Chair

Factfinder for the Union

Steve Allen, Labor Negotiator with Goyette & Associates, Inc, provided the Union's concurrences and dissents with the recommendations contained in this factfinding report in the attached letter.

Factfinder for the Employer:

Donald W. Turko, Consultant with Management Strategies Group, provided the County's concurrences and dissents with the recommendations contained in this factfinding report in the attached letter.

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## OESC Fact Finding Hearing - Statement of Steve Allen, OESC Panel Member

Although not required by law, Hearing Officer Mayne has graciously provided an opportunity for panel members Turko and Allen to submit letters of concurrence/dissent with respect to her findings. This opportunity is not required by statute and should be used carefully and sparingly, as dissenting views have already been presented to Hearing Officer Mayne in the context of an evidentiary hearing that including testimony under oath and an abundance of written documentation. The hearing was not closed until each side had the full and unqualified opportunity to make its case, using experienced labor attorneys to advocate their respective positions on each issue.

It is my respectful opinion that panel members, including myself, should not use this opportunity to resubmit the same arguments that were extensively reviewed at the evidentiary hearing. Although it is tempting to rehash strongly held opinions, these issues have been expertly adjudicated and a formal finding issued by a highly competent, experienced and mutually selected hearing officer.

The time for disagreement has passed.

The time for agreement has arrived.

It is in the public's interest to hire and retain competent employees by paying a fair wage and benefits package as quality public service is best provided by quality public employees. Hearing Officer Mayne's findings provide the basis for a negotiated settlement.

It will be my recommendation to the OESC Board and membership to accept Hearing Officer Mayne's report as a fair compromise of all issues. With publication of the report, OESC will hold an expedited meeting, consider and discuss Hearing Officer Mayne's formal report and vote whether or not to approve a new Memorandum of Understanding based on that report.

Respectfully submitted,

Steve Allen

**Partial Dissent and Partial Concurrence of Don Turko, County of Siskiyou Panel Member, in the matter of *Organized Employees of Siskiyou County* and *Siskiyou County*, factfinding proceedings pursuant to the Meyers-Milias-Brown Act.**

As the County Member of the Factfinding Panel in the matter of *Organized Employees of Siskiyou County* and *Siskiyou County*, I respectfully dissent in part, and concur in part, from the Neutral Factfinder Panel Chair Recommendations, issued on November 8, 2019.

## I. Introduction

Just recently, the California State Auditor's Office unveiled a new "dashboard" evaluating the fiscal health, or lack thereof, of cities throughout the state.[1] The analysis by the Auditor's Office revealed that while the state budget may be flush with a $21 billion surplus, and unemployment may be at historic lows, the wealth is not spread evenly among California cities.[2] The same holds true for California counties.

Siskiyou County is a rural county with approximately 43,000 people. Median household income is $40,884, which is 39% lower than the median household income in California as a whole.[3] Per capita income in Siskiyou County is $24,605, which is 26% lower than the per capita income in California as a whole.[4] The poverty rate in Siskiyou County is 17.7%, which is 38% greater than the poverty rate in California as a whole.[5] These statistics result in a County fiscal situation that is much more stressed than that of other counties.

For example, the County budget for fiscal year 2019-20 is barely balanced—with an anticipated fund balance of $0.37—even without ***any*** increases in employee compensation. It appears undisputed that for many years the County's expenses have increased faster than increases in revenues. The main driver of the increases is employee compensation, particularly a dramatic increase in the cost of employee pension and benefits. Currently, for each $1.00 paid in employee salary, the County pays an additional $.071 to $0.89 for benefits. These benefit costs continue to increase and are unsustainable.

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[1] https://www.auditor.ca.gov/bsa/cities_risk_index

[2] https://www.sacbee.com/news/politics-government/capitol-alert/article236610128.html

[3] County Exh. 2, p. 6.

[4] *Ibid.*

[5] *Ibid.*

Because these continued increases are unsustainable, the County with this round of bargaining has sought to lay a foundation to contain, if not reduce, the rate of growth of its expenses. In doing so, the County recognizes the contributions of its employees and its obligation to compensate employees fairly. However, in evaluating its options the County identified several areas where cost containment can be achieved fairly and with minimal immediate impact on employees. Unfortunately, the Panel Chair only recommends some of these proposals and leaves others to be achieved at a future date.

While the County appreciates the Panel Chair's efforts to strike a balance between the parties' positions, the County cannot agree to recommendations that "kick the can" further down the road. Accordingly, I partially dissent, and concur, in the Panel Chair's recommendations as set forth below.

## II. Term of Agreement and Salary Increase

The County does not concur with the Panel Chair's recommendation on term of agreement and salary increase. Specifically, the County cannot agree to make any salary increase retroactive to July 1, 2019. The County never offered a retroactive increase at the bargaining table. Further, the County believes that OESC understood that any salary increase would be prospective only. While the salary increases of 2.5% and 2.5% are not unreasonable on their face, the County finds that the overall recommendations of the Panel Chair do not adequately address other areas of potential cost containment necessary to grant any modest salary increase.

## III. Health Benefits for Active Employees

The County does not concur with the Panel Chair's recommendation on health benefits for active employees. Health insurance is the primary area where the County believes long-term cost containment/reduction can be achieved with minimal immediate impact on employees. Currently, the County pays for 85% of the premium for CalPERS Choice, the more expensive of the two primary options with CalPERS. The County's proposal is to move to a set dollar amount based on CalPERS Select. CalPERS Select is a carefully developed health plan based on Value-Based Insurance Design that aims to improve the quality of health care while lowering its cost.[6] In order to minimize the impact on current employees, the County proposed a set dollar amount equal to 105% of 2019 CalPERS Select premiums. Notably, premiums for 2020 have generally increased by less than 5%, which means that under the County's proposal employees can still have 100% of their health insurance premiums covered by the County. This is more than fair. Under the County's proposal, employees who choose a higher-level health plan will pay the difference. That is also only fair.

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[6] https://www.calpers.ca.gov/page/active-members/health-benefits/plans-and-rates/pers-select-vbid

It is critical to note that 90% of employees in the OESC Unit are currently enrolled in PERS Select and the County's current proposal will have no negative impact to them in 2020. Additionally, the County believes there is very little risk of a negative impact in 2021 as rates have been fairly stable over the past several years. Even if rates increase slightly in 2021, the County believes that it is fair to ask employees to contribute at least some of the cost for their health care.

Based on the above, the County cannot accept the Panel Chair's recommendation to set County health benefit contributions at 80% of the PERS Choice Plan. First, this recommendation ignores the opportunity to move to CalPERS Select which was expressly designed to provide quality health care and a lower cost for public agencies. Second, this recommendation ignores the need for the County to begin to achieve some cost containment on health care costs. For these reasons, I dissent from the Panel Chair's recommendation on this issue.

## IV. Retiree Health Benefits

The County concurs with the Panel Chair's recommendation to accept the County proposal dated June 20. The County is currently facing an unfunded Post Employment Benefit liability of nearly $50,000,000. Adoption of the County proposal will assist the County in reducing the cost of retiree health care premiums for employees hired after January 1, 2020, which as noted by the Panel Chair are not sustainable.

## V. Exempt Employees Flexible Work Hours

The County does not concur with the Panel Chair's recommendation on flexible work hours for exempt employees. By law exempt employees are not eligible for overtime pay, nor should they be treated similar to employees who are overtime eligible. The County made substantial efforts to mitigate employees concerns in the previous round of negotiations, however the County is willing to continue to work with departments to ensure consistent application of the existing MOU language.

## VI. Deferred Compensation

The County does not concur with the fact-finder's recommendation on deferred compensation. The County has eight represented bargaining units, each with different and unique benefits, some of which were based on employee work conditions. It is not realistic or reasonable to expect all employees to have the same benefits.

### VII. Vacation Accrual Cap

The County concurs with the fact-finder's recommendation not to increase the vacation cap for OESC unit members.

Respectfully Submitted,

Don Turko

Donald W. Turko
Consultant, Public Management Group
Sloan Sakai Yeung & Wong LLP