

RENÉE MAYNE
Arbitrator, Mediator
Labor-ADR
Post Office Box 1827
Sacramento, California 95812
530-802-0980

PERB CASE NO. SA-IM-179-M
FACTFINDER CASE NO. 18-05-05FF

FACTFINDING PROCEEDINGS PURSUANT TO
THE MEYERS-MILIAS-BROWN ACT

COUNTY OF YUBA

and

YUBA COUNTY DEPUTY DISTRICT ATTORNEY
ASSOCIATION

Issues: Impasse in 2017 Successor MOU Negotiations

NEUTRAL FACTFINDER
PANEL CHAIR
RECOMMENDATIONS

July 17, 2018

FACTFINDING PANEL

Factfinder for the Union:

Shiloh Sorbello
Deputy District Attorney
Yuba County

Factfinder for the Employer:

Jill Abel
Human Resources Director
Yuba County

Neutral Factfinder Panel Chair:

Renée Mayne
Arbitrator, Mediator

APPEARANCES

For the Union:

Jerry Camous
Labor Relations Consultant
Mastagni Holstedt PC

Toni Scannell
Accountant
Mastagni Holstedt PC

For the Employer:

Gage Dungy, Attorney
Liebert Cassidy Whitmore

Patrick J. McGrath
District Attorney

Grace Mull, Deputy County
Administrator, Yuba County

INTRODUCTION

This factfinding arose due to an impasse in collective bargaining under the State of California Meyers-Milias-Brown Act (MMBA) Government Code §3505.4 between the Yuba County Deputy District Attorney Association (Union) and the County of Yuba (Employer, County).

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. (PERB letter May 23, 2018) Jill Abel was appointed by the Employer as the Panel Member to represent the County, and Shiloh Sorbello was appointed by the Deputy District Attorney Association as the Panel Member to represent the Union.

The parties agreed all procedural requirements of the impasse had been met, and the dispute was properly before the Factfinding Panel to issue its recommendations to resolve the impasse in collective bargaining. The parties waived the applicable statutory timelines for these factfinding proceedings. (Employer and Union emails June 14, 2018)

The factfinding hearing was held on June 19, 2018, at the Yuba County Agricultural Commissioner Office, 915 8th Street, Marysville, California. 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 June 19, 2018, and the dispute was submitted for the Panel's review and recommendations.

ISSUES AT IMPASSE

- I. Salary
- II. Conversion of Vacation Accrual to Deferred Compensation
- III. Binding Arbitration for Grievances and Discipline

(Union-Employer Email May 9, 2018)

GOVERNING STATUTE

MMBA Government Code §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.

FACTUAL BACKGROUND

The Union and Employer were in negotiations for a successor Memorandum of Understanding (MOU) since March 2017. In the fall of 2017, the parties went to mediation and that failed to achieve an agreement. (Union June 19, 2018) On April 10, 2018, the County issued its last, best and final offer to the Union. (Employer Tab A) The Union declared impasse on May 7, 2018. (Employer Tab B).

There are nine budgeted bargaining units positions: seven Deputy District Attorneys and two Child Support Attorneys. Of the nine positions, five are CalPERS Classic members, and four positions are covered by the Public Employees' Pension Reform Act (PEPRA).

FACTUAL BACKGROUND

The Employer's cost for the Classic pension plan is higher than for the PEPRA plan.

(Employer Tab L)

The County's discretionary General Fund revenue has remained lower than before the Great Recession. For fiscal year 2018-19, revenue is estimated to be \$30.4 million, while in 2007-08 revenue was \$34 million. (Employer Tab I) The County workforce has also shrunk. There were 1,068 full time equivalent employees (FTE) in 2007-08, in contrast to the projected 884 FTE for 2018-19. Health insurance and pension costs have risen significantly and are projected to continue to rise. (Employer Tab L)

Ninety percent of the District Attorney's budget, which is part of the County's Public Safety Fund, are personnel costs. (District Attorney June 19, 2018) End of the year Public Safety Fund balances have been trending downward since the high in 2010-11 of \$5.2 million. The fund is projected to end 2017-18 with \$2.7 million. (Employer Tab K)

Both the Employer and Union conducted salary surveys of bargaining unit positions, and they used the same comparable counties: Butte, Nevada, Sutter and Yolo. Their surveys showed that the County's salaries in this bargaining unit were significantly below the average pay of these other counties. The parties were not in agreement as to which positions were exactly comparable, or the methodology for costing proposed salary increases. The County and Union each proposed a three-year agreement, commencing July 1, 2017 and expiring on June 30, 2020.

POSITION OF THE UNION

The Union said the Deputy District Attorney I position in Yuba County was comparable to the Deputy District Attorney II positions in Butte, Yolo and Sutter counties. The Union argued that the District Attorney I is the journey level at Yuba County, while the District Attorney I is the entry level position at Butte, Sutter and Yolo Counties. Only Nevada County

has the same type of District Attorney I journey level position as Yuba County.

(Union Comparisons and Job Descriptions June 19, 2018). The Deputy District Attorney I positions in Yuba and Nevada counties are working at a mid-career level of experience, the same as a Deputy II in the other counties referenced in the study. (Labor Representative June 19, 2018). Taking actual job duties into consideration, the Union averred that bargaining unit salaries were 12–18% below the comparable market.

Another point of contention for the Union was the County's calculation for the cost of bargaining unit salary increases. The Union argued the calculation was skewed, because the County's unfunded accrued liability for the CalPERS pension was included in the formula of a 1% salary increase. The Union said that the County's pension debt service would remain unaffected by salary increases, because that debt does not reflect the current normal pension cost which is a percentage of salary paid to CalPERS. (Employer Tabs G, L)

Salary

To begin to close the gap in average salary with comparable counties, the Union proposed a three-year agreement with a 10% salary equity adjustment in the first year. In the second and third years of the agreement, bargaining unit members would receive a 1% cost of living increase. This would result in a 12% salary increase over three years.

Conversion of Vacation Accrual to Deferred Compensation

Current MOU Article 9.11 *Conversion to Deferred Compensation* states the provision has been suspended for the term of the agreement that expired on June 30, 2017. The Union proposed to maintain this contract language, so that at some point in the future the language may become reactivated again. (Union proposal dated May 30, 2017)

POSITION OF THE UNION

Binding Grievance and Disciplinary Arbitration

To ensure independence and neutrality in decisions stemming from contract interpretation grievances and disciplinary actions eligible for appeal, the Union proposed binding arbitration. (Union proposals dated April 4, 2017) The current MOU provides for advisory arbitration to the Board of Supervisors for contract interpretation grievances, and for disciplinary actions limited to suspension, demotion or dismissal. However, where discrimination is alleged and proven in discipline, the employee's appeal bypasses the Board and goes directly to binding arbitration. (Employer Tab C)

POSITION OF THE COUNTY

The County said it has the largest budget deficit since the crash of the Great Recession, and the deficit is projected to continue through 2018-19. Personnel costs are the bulk of the County budget, and personnel reductions have been significant. (Deputy County Administrator, June 19, 2018) The County said all bargaining units have given up something.

While the County explained it had to give larger raises to the Sheriff's Deputies and Communications Dispatchers due to their crisis in recruiting and retaining these positions, the County said there is no apparent problem recruiting or retaining Deputy District Attorney and Child Support Attorney personnel. (Counsel for County, June 19, 2018)

The District Attorney budget is lean, but the department is part of a voluntary pooled fund with the Sheriff's Department and Probation. As the smallest department of the three, the District Attorney's budget has benefited from the Public Safety Fund. Now, with jail realignment, the Sheriff's detention costs have risen sharply and there are fewer funds to share

POSITION OF THE COUNTY

with the other public safety departments. Yet, jail realignment also created more work for the District Attorney's office. (District Attorney June 19, 2018)

The County pointed out how, with the exception of the Sheriff's Deputies and Dispatchers, it had settled with all the other bargaining units for far less in salary than the Deputy District Attorneys are demanding in impasse; the highest settlement for 2017-18 was a 2.75% salary increase with no salary equity adjustment. (Employer Tab D)

The County said its District Attorney I classification was the entry level position in the series, and that employees flex up to the next higher position when they are professionally ready, and a position is available. (District Attorney June 19, 2018)

In regard to the 1% formula used in labor negotiations to estimate the cost of proposed salary increases, the County defended adding its CalPERS unfunded accrued liability to the calculation for determining the cost of a salary increase, because their unfunded liability could potentially grow as a result of a salary increase.

Salary

The County's salary survey showed that the bargaining unit positions are approximately 10–12% below its comparable counties. (Employer Tab H) The Counties last, best and final offer was a 3% salary equity increase upon ratification, a 1% cost of living adjustment in 2018-19, and 2% cost of living adjustment in 2019-20. This included an additional 1% employee pick up of the Employer's CalPERS pension cost in the second year of the agreement. Under this proposal, bargaining unit employees would receive a base salary increase of 6% over three years and pay a total of 2% of the Employer's pension cost. (Employer Tab D)

Conversion of Vacation Accrual to Deferred Compensation

The County argued that the current contract language had been suspended since 2009,

POSITION OF THE COUNTY

and that it could not reactivate the language without incurring significant costs. Under this provision, an employee could sell back accrued vacation leave and have the funds deposited in their deferred compensation account. The County offered, as part of its last, best and final offer, a one-time last opportunity to convert vacation to deferred compensation. (Employer Tab C)

Binding Grievance and Disciplinary Arbitration

The Employer held that no County bargaining unit had binding arbitration – that they all have advisory arbitration to the Board of Supervisors. The County said that binding arbitration was not necessary for this bargaining unit, because there have been no grievances and only two disciplinary appeals in recent memory. (District Attorney June 19, 2018)

Pursuant to the current MOU, grievances and disciplinary actions can be heard by a hearing officer, and the findings are advisory to the Board of Supervisors, with one exception. While the contract language in Article 7.4 *Grievance Procedures* states that the Board renders a final decision on grievances, under Article 8.6 (A)(B) *Decision*, the Board of Supervisors makes the final decision on discipline (suspension, demotion or dismissal) except for allegations of discrimination that are proven in cases of discipline. For these cases there is binding arbitration in Yuba County.

NEUTRAL FACTFINDER PANEL CHAIR DISCUSSION

Salary

The Union and County each proposed a three-year agreement. The Union proposed a 10% salary equity adjustment in the first year of the agreement, and the County offered 3%. For the second year, the Union and County offered 1%, but the County proposed bargaining unit

NEUTRAL FACTFINDER PANEL CHAIR DISCUSSION

employees pay an additional 1% of the Employer's contribution to CalPERS. For the third and final year of the proposed agreement, the Union proposed 1% and the County proposed 2%.

There was insufficient information submitted to determine which of the salary studies, the Union or the County, was closer to accurately describing the regular job duties of the Deputy District Attorney I and II positions. There was also insufficient information to determine whether the County calculation for costing salary increases was actuarially accurate in relation to the impact of a salary increase to the Employer's CalPERS pension debt service. Therefore, these issues will not be included in the Panel Chair's recommendation.

The Panel Chair finds that the Union's salary proposal is too high considering the County's rising pension and health insurance costs. The Panel Chair also finds the County's proposal is too low considering the Employer's own market study of bargaining unit positions with its comparable counties.

In accordance with Government Code §3505.4(d)(4)(5)(6), the Neutral Panel Chair recommends the County proposal for a 3% equity increase upon ratification of the agreement. The Panel Chair also recommends a 2% cost of living adjustment effective July 1, 2018, and the County proposal for a 2% increase effective July 1, 2019. The Panel Chair does not recommend the County's proposal for bargaining unit employees to pay an additional 1% of the Employer's portion of CalPERS costs.

Conversion of Vacation Accrual to Deferred Compensation

The County proposed to delete the language, and the Union wants to maintain the current language held in suspense since 2009, in case it may become feasible to activate again. The Neutral Panel Chair finds that it is unlikely that the parties will reactivate the 2009 suspended MOU language in the foreseeable future, because it will be a cost to the Employer. Therefore, in

NEUTRAL FACTFINDER PANEL CHAIR DISCUSSION

accordance with Government Code §3505.4(d)(4)(7) the Neutral Panel Chair recommends the County proposal to delete the language from the MOU.

Binding Grievance and Disciplinary Arbitration

The Union proposed binding arbitration for grievances and disciplinary actions. The County's position is that the Board of Supervisors have rarely received appeals for grievances and disciplinary actions from this bargaining unit.

The Neutral Panel Chair finds that the County was persuasive as to why the Union did not need binding arbitration for contract interpretation grievances, because the bargaining unit members rarely filed grievances. In regard to disciplinary appeals, however, the record showed there have been two cases of discipline taken against attorneys in this bargaining unit in recent memory. (District Attorney June 19, 2018)

The bargaining unit members are attorneys, and as a condition of employment, they are required to hold a juris doctorate degree and have been admitted to the bar in the state of California. A disciplinary action taken against an attorney could potentially impact their status as a member of the state bar, and their entire legal careers. These bargaining unit members should have the right to appeal to an independent neutral arbitrator, to decide if there was just cause for discipline.

Therefore, in accordance with Government Code §3505.4(d)(7) the Neutral Panel Chair recommends the Union's proposal for binding disciplinary arbitration. The Panel Chair does not recommend the Union's proposal for binding arbitration for contract interpretation grievances.

NEUTRAL FACTFINDER PANEL CHAIR RECOMMENDATIONS

Salary

In accordance with Government Code §3505.4(d)(4)(5)(6), the Neutral Panel Chair recommends the County proposal for a 3% equity increase upon ratification of the agreement. The Panel Chair also recommends a 2% cost of living adjustment effective July 1, 2018, and the County proposal for a 2% increase effective July 1, 2019. The Panel Chair does not recommend the County's proposal for bargaining unit employees to pay an additional 1% of the Employer's portion of CalPERS costs.

Conversion of Vacation Accrual to Deferred Compensation

In accordance with Government Code §3505.4(d)(4)(7) the Neutral Panel Chair recommends the County proposal to delete the language from the MOU.

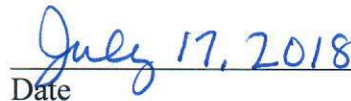
Binding Grievance and Disciplinary Arbitration

In accordance with Government Code §3505.4(d)(7) the Neutral Panel Chair recommends the Union's proposal for binding disciplinary arbitration. The Panel Chair does not recommend the Union's proposal for binding arbitration for contract interpretation grievances.



RENÉE MAYNE

Neutral Factfinder Panel Chair



Date

Factfinder for the Union: Shiloh Sorbello, Deputy District Attorney provided in the attached letter, the Yuba County Deputy District Attorney Association's concurrences and dissents with the recommendations contained in this Factfinding Report.

Factfinder for the District: Jill Abel, Human Resources Director, provided in the attached letter, the County of Yuba's concurrences and dissents with the recommendations contained in this Factfinding Report.

Yuba County Deputy District Attorneys Association

PO Box 846 – Marysville, CA 95901 – (530)749-7761

Mechele Cook – Secretary

Michael Byrne – President

Shiloh Sorbello – Treasurer

July 17, 2018

Renée Mayne
Arbitrator/Mediator
Labor-ADR
PO Box 1827
Sacramento, CA 95812

COUNTY OF YUBA and YUBA COUNTY DEPUTY DISTRICT ATTORNEYS ASSOCIATION (“YCDDAA”)

YCDDAA’s Concurrence and Dissent to Neutral Factfinder’s Report and Recommendations in PERB Case No. LA-IM-179-M; Factfinder Case No. 18-05-05FF

Dear Panel Chair Mayne:

On behalf of the Yuba County Deputy District Attorneys Association (“YCDDAA”), I want to acknowledge the effort of both the Panel Chair, Factfinder Abel, and others, in the process of presenting evidence at the factfinding hearing on June 19, 2018. I appreciate the respect and professionalism demonstrated by everyone at the hearing. The YCDDAA concurrence and dissent to the Neutral Factfinder’s recommendations, are as follows:

Issue 1: Salary

YCDDAA concurs in part and dissents in part to the recommendation of a 3% equity increase upon ratification and 2% COLAs effective July 1 of 2018 and 2019. YCDDAA concurs that an equity increase is appropriate, given the workload of Yuba County prosecutors, as testified to by the County’s witness, District Attorney Patrick McGrath. He testified that the average prosecutor in Yuba County has 17 years of experience. DA McGrath also testified that the “gold standard” in terms of workload is 200 cases reviewed per prosecutor annually. He testified that the workload for Yuba County DDAs is far in excess of that amount. In fact, he testified that we would have 22 prosecutors (instead of eight) if we had the same average workload as Sacramento County prosecutors. DA McGrath acknowledged that the DA’s Office would be undergoing changes given his retirement at the end of 2018, the experience-heavy staff, and the fact that a recently-vacated Deputy DA position would be eliminated in the 2018-19 budget. Therefore, it can only be presumed that the average prosecutor would shoulder even more of a caseload going forward. The County witnesses uniformly expressed that public safety was the Board’s priority, but that is endangered when prosecutors are overworked.

YCDDAA also concurs that both the County's and YCDDAA's salary surveys showed that YCDDAA attorneys were at least 10-12% below the mutually-agreed-upon comparisons—even before the recent compensation increases in the comparison counties. YCDDAA argues that the County did not demonstrate an inability to supplement the District Attorney's Office budget with additional general fund money, as it has with other bargaining units, to bring prosecutors to equity.

Witness Scannell, an accountant, testified on behalf of YCDDAA and pointed out that the County's asset to liability ratio of 8.28 is above the benchmark of 5.00. Furthermore, in the past six fiscal years, actual revenues for the County have exceeded actual expenditures, leaving the County with an operating surplus every year. The County's actual expenses have been consistently below budget over the same six year timeframe.

For the reasons stated above, YCDDAA respectfully dissents with the recommended 3% equity adjustment and opines that any equity adjustment over the life of a 3-year (or even 2-year) contract should actually attain or come closer to true equity with the comparison counties.

On the other hand, YCDDAA concurs with the Neutral Factfinder that 2% COLAs are appropriate and that YCDDAA members should not pay an additional 1% of the Employer's portion of CalPERS costs. YCDDAA members are already paying the entire employee's share of CalPERS costs.

Issue 2: Conversion of Vacation Accrual to Deferred Compensation

Because YCDDAA members are subject to the demands of trial work and extreme caseloads, members are not always able to expend all accrued vacation hours each year. Therefore, YCDDAA respectfully dissents from the Neutral Factfinder's recommendation to delete the language on converting vacation to deferred compensation. If YCDDAA members cannot use all of their vacation due to work obligations, a conversion to deferred compensation is at least some recompense.

Issue 3: Binding Grievance and Disciplinary Arbitration

YCDDAA concurs with the Neutral Factfinder's recommendation on this issue.

Conclusion

Over all, I support and appreciate the efforts of the Factfinding panel to attempt to reach advisory recommendations, which could lead to agreement and avoid further impasse procedures. YCDDAA believes that its request for equitable compensation is reasonable, in light of the County's own comp-survey, which admittedly fails to account for increases in compensation for prosecutors in the comparison counties. The request for a more significant equity adjustment is also reasonable given the negligible financial impact to the County, given the size of the County's budget (\$30,000,000) and the small size (eight members) of this bargaining unit. Furthermore, salaries of two (25%) of the YCDDAA members (Child Support Attorneys) come from pass-through money and have no impact on the County's General Fund. Paying Yuba County prosecutors what they are worth—i.e., equitably or at least close—would demonstrate

the County's stated commitment to public safety, and we remain hopeful that a mutually agreeable resolution to MOU Negotiations will occur.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Shiloh Sorbello". The signature is fluid and cursive, with the first name "Shiloh" and last name "Sorbello" clearly distinguishable.

Shiloh Sorbello
Deputy District Attorney, County of Yuba
Factfinder for YCDDAA

**County of Yuba and Yuba County Deputy District Attorney Association
Case No. SA-IM-168-M**

County of Yuba's Representative to Factfinding Panel
Jill Abel

**Concurring and Dissenting Opinion to Neutral Factfinder Panel Chair Recommendations
Pursuant to California Government Code 3505.4 and 3505.5:**

As the representative for County of Yuba ("County") to the Factfinding Panel, I concur with many portions of the Findings and Recommendations Pursuant to California Government Code 3505.4 and 3505.5 ("Report"). There are a few significant points, however, with which I disagree, and for that reason, I am providing this concurring and dissenting opinion.

I. CONCURRENCE

I concur with the recommendations of Neutral Factfinder Panel Chair Renée Mayne on the following matters:

1. **Salary (*Concur in Part*)**
 - Concur with 3% Equity Increase Upon Ratification of the Agreement
 - Concur with 2% Cost of Living Adjustment Effective July 1, 2018
 - Concur with 2% Cost of Living Adjustment Effective July 1, 2019
2. **Conversion of Vacation Accrual to Deferred Compensation**
3. **Binding Grievance and Disciplinary Arbitration (*Concur in Part*)**
 - Concur with Recommendation Not to Implement Binding Arbitration for Contract Interpretation Grievances

The County notes that its concurrence on the matters above is also contingent on inclusion of those additional proposals as part of its April 10, 2018 Last, Best, and Final Offer ("LBFO") (*See County Exhibit "A"*) that were stipulated by the Yuba County Deputy District Attorneys Association ("DDAA") to not be disputed issues at impasse (*See County Exhibit "B"*), including:

- **County LBFO Proposal #3 – Paid Holidays:**
 - A. Provide additional paid holiday to DDAA on December 31st annually.

- **County LBFO Proposal #4 – Health, Dental, Vision and Life Insurance (Accepting DDAA’s March 27, 2018 Proposal):**
 - A. Agrees to mutual agreement by the parties for any decision to move out of PEMHCA health care insurance plan (Section 4.1);
 - B. Effective January 1, 2019, modifies the County’s premium payment of 90% for Employee Only, 70% for Employee Plus One Dependent/Employee Plus More than One Dependent to be based on the lowest cost PPO health plan available to all employees (Section 4.1);
 - C. Increases Opt-Out provision to \$250/month (Section 4.2); and
 - D. Various Cleanup Provisions in Article 4.

- **County LBFO Proposal #5 – Vacation Leave Policy and Vacation Conversion to Deferred Compensation (In Part):**
 - A. Modify policy to now allow new employees to begin accruing vacation leave in the first day of the month following the month in which the employee begins work. However, if the employee begins work within the first three working days of the month, the employee’s vacation accrual will begin in that month (Section 9.2);
 - B. Eliminate Section 9.3 (Date of Appointment);
 - C. Increase maximum vacation accrual from 350 to 384 hours and put accrual cap in place until employee falls below maximum vacation accrual (Former Section 9.7, New Section 9.6)
 - D. Eliminate provision preventing re-employment of former employee until number of days of unused vacation payout at time of separation had lapsed. (Former Section 9.8, New Section 9.7); and
 - E. Various Cleanup Provisions in Article 9.

- **County LBFO Proposal #6 – Sick Leave Policy:**
 - A. Modifications to definitions to clarify application of Family Sick Leave and to remove department head approval language duplicative of other language in Article 6 (Section 6.2);
 - B. Modifications to conditions for accrual and to limitations on accrual where employee on unpaid leave of absence of 15 calendar days or more (Section 6.4);
 - C. Modifications to sick leave payout and CalPERS sick leave conversion for service credit (Section 6.10);
 - D. Elimination of Section 6.11 (Catastrophic Leave) where duplicative of existing County Policy on catastrophic leave; and
 - E. Various Cleanup Provisions in Article 6

- **County LBFO Proposal #7 – Merit/Longevity Index:**
 - A. Modify Article to have existing policy comply with CalPERS reporting requirement.

II. DISSENT

I respectfully dissent from the recommendations of Neutral Factfinder Panel Chair Renée Mayne on the following matters and find as follows:

1. Salary (Dissent in Part)

- Dissent with Recommendation Not to Have DDAA Bargaining Unit Employees Pay an Additional 1% of the Employer's portion of CalPERS costs.

I cannot agree with the recommendation of the Neutral Factfinder Panel Chair not to implement the County's proposal to have the DDAA bargaining unit employees pay an additional 1% of the Employer's portion of CalPERS costs. While the County has worked in good faith with all of its bargaining units, including DDAA, to provide salary improvements, it has also worked with each bargaining unit to find cost saving measures to address ongoing costs increases through the collective bargaining process. For the other County bargaining units, the following cost saving measures were collectively bargained into recent MOU agreements:

- A. Modifications to overtime policies (YCPPOA, MSA, YCEA, DSA),
 - B. Modification of specialty pays to flat rate (MSA, DSA),
 - C. Elimination of ability to convert vacation to deferred compensation (YCPPOA, MSA, YCEA, DSA), and
 - D. An increase in an employee's cost sharing of CalPERS employer contributions (YCPPOA, MSA, YCEA, DSA).
- (See *County Exhibit "D"*).

With DDAA consisting solely of exempt employees who do not receive overtime or any specialty pays, those two avenues for seeking ongoing cost savings measures are not applicable. While the Neutral Factfinder Panel Chair did recommend the elimination of the ability to convert vacation to deferred compensation (and the County concurs with this recommendation), the County's position is that DDAA should also partake in other ongoing cost savings measures as did the County's other bargaining units (YCPPOA, MSA, YCEA, and DSA) as referenced above. As acknowledged by the Neutral Factfinder Panel Chair's recommendations, the County has "*rising pension and health insurance costs*". Having DDAA bargaining unit employees pay an additional 1% of the Employer's portion of CalPERS costs would help address the County's ability to absorb such increasing costs, while also providing another means of overall cost savings to the County, in line with such cost savings measures agreed to with the County's other bargaining units.

Accordingly, I cannot agree with the recommendation of the Neutral Factfinder Panel Chair not to implement the County's proposal to have the DDAA bargaining unit employees pay an additional 1% of the Employer's portion of CalPERS costs and respectfully dissent from that recommendation.

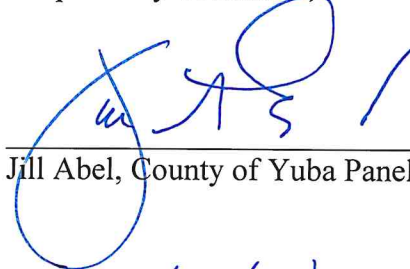
3. **Binding Grievance and Disciplinary Arbitration (Dissent in Part)**

- Dissent with Recommendation to Implement Binding Arbitration for Disciplinary Matters.

I cannot agree with the recommendation of the Neutral Factfinder Panel Chair to implement binding arbitration in disciplinary matters for DDAA bargaining unit members. While the Neutral Factfinder Panel Chair acknowledged in her recommendations “*that no County bargaining unit had binding arbitration*”, she then recommended that DDAA bargaining unit members be provided binding arbitration for disciplinary matters merely because “*a disciplinary action taken against an attorney could potentially impact their status as a member of the state bar, and their entire legal careers.*” However, it is unclear where this finding comes from as it was never argued by DDAA during collective bargaining or stated on the record by DDAA during the factfinding hearing. The County’s current disciplinary appeals process provides for advisory arbitration, where an independent arbitrator conducts an evidentiary hearing and makes a recommended decision that can be appealed to the Board of Supervisors or otherwise becomes final. While the County and the District Attorney noted that there had been two disciplinary appeals for DDAA unit members that they could recall under this advisory arbitration procedure, **it is important to note that the District Attorney also pointed out during the factfinding hearing that both disciplinary actions were upheld by the advisory arbitrator and at no time in his over 20 years as the elected District Attorney could he recall the Board of Supervisors ever overturning a DDAA unit member’s advisory arbitration decision.** From the County’s perspective, there is no reason to modify the existing advisory arbitration disciplinary procedure that exists for all other for-cause County employees to binding arbitration where there is no specific evidence presented by DDAA of the need for such a change nor based on the speculative findings of the Neutral Factfinding Panel Chair in her recommendation.

Accordingly, I cannot agree with the recommendation of the Neutral Factfinder Panel Chair to implement binding arbitration in disciplinary matters for DDAA bargaining unit members and respectfully dissent from that recommendation.

Respectfully Submitted,



Jill Abel, County of Yuba Panel Member

7/17/18

Date