Findings and Recommendations Pursuant to California Government Code 3505.4 and 3505.5
PERB Case # SF-IM-131-M

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In the Matter of an Impasse Between

County of San Benito
And
SEIU Local 521

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For the County:	Jon Holtzman Renne Sloan Holtzman Sakai 350 Sansome Street, Suite #300 San Francisco, CA 94104
For the Union:	Sean D. Graham Weinberg, Roger, Rosenfeld 800 Wilshire Street, Suite 1320 Los Angeles, CA 90017

Factfinding Panel:

Neutral Member	David A. Weinberg Arbitration Mediation and Conflict Resolution
Union Member	Kristy Sermersheim SEIU Local 521
County Member	Dania Torres Wong Renne Sloan Holtzman Sakai

PROCEDURAL BACKGROUND

On November 21, 2013 the Public Employment Relations Board (PERB) notified me[1] that I had been selected by the County of San Benito and the Service Employees International Union, Local 521 to serve as the Neutral Chair of the Factfinding Panel pursuant to the Meyers-Milias-Brown Act. The Neutral Chair convened a conference call with the parties' advocates on December 2, 2013 to discuss scheduling and other related matters. A second conference call was held on December 10, 2013 to discuss witness subpoenas. The Panel held Hearings on December 18 and 19, 2013. At these hearings the parties presented testimony and evidence to the Panel. Closing briefs were filed with the Neutral Chair on January 3, 2014. The parties' agreed to waive the applicable statutory time limits only to the generation of the final report to no later than January 8, 2014.[2]

RELEVANT STATUTORY PROVISIONS

This factfinding is governed by recent amendments to the Meyers-Milias-Brown Act[3]. The sections of the amendments that are pertinent to this proceeding are as follows:

> 3505.4. Unable to effect settlement within 30 days of appointment; request for submission to factfinding panel; members; chairperson; powers; criteria for findings and recommendations
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> (a) The employee organization may request that the parties' differences be submitted to a factfinding panel not sooner than 30 days, but not more than 45 days, following the appointment or selection of a mediator pursuant to the parties' agreement to mediate or a mediation process required by a public agency's local rules. If the dispute was not submitted to mediation, an employee organization may request that the parties' differences be submitted to a factfinding panel not later than 30 days following the date that either party provided the other with a written notice of a declaration of impasse. Within five days after receipt of the written request, each party shall select a person to serve as its member of the factfinding panel. The Public Employment Relations Board shall, within five days after the selection of panel members by the parties, select a chairperson of the factfinding panel.
> (b) Within five days after the board selects a chairperson of the factfinding panel, the parties may mutually agree upon a person to serve as chairperson in lieu of the person selected by the board.
> (c) The panel shall, within 10 days after its appointment, meet with the parties or their representatives, either jointly or separately, and may make inquiries and investigations, hold hearings, and take any other steps it deems appropriate. For the purpose of the hearings, investigations, and inquiries, the panel shall have the power to issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence. Any state agency, as defined in

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[1] The letter from PERB was dated November 19, 2013 and I received a call from the County counsel regarding my selection on November 20 or 21, 2013.
[2] The final report was sent to the parties on January 9, 2014 due to a power blackout at the neutral factfinders office, which the parties were informed of, and did not object to.
[3] AB646

Section 11000, the California State University, or any political subdivision of the state, including any board of education, shall furnish the panel, upon its request, with all records, papers, and information in their possession relating to any matter under investigation by or in issue before the panel.
(d) In arriving at their findings and recommendations, the factfinders shall consider, weigh, and be guided by all the following criteria:
(1) State and federal laws that are applicable to the employer.
(2) Local rules, regulations, or ordinances.
(3) Stipulations of the parties.
(4) The interests and welfare of the public and the financial ability of the public agency.
(5) Comparison of the wages, hours, and conditions of employment of the employees involved in the factfinding proceeding with the wages, hours, and conditions of employment of other employees performing similar services in comparable public agencies.
(6) The consumer price index for goods and services, commonly known as the cost of living.
(7) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays, and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
(8) Any other facts, not confined to those specified in paragraphs (1) to (7), inclusive, which are normally or traditionally taken into consideration in making the findings and recommendations.
(e) The procedural right of an employee organization to request a factfinding panel cannot be expressly or voluntarily waived.
3505.5. Dispute not settled within 30 days after appointment of factfinding panel or upon agreement by parties; panel to make advisory findings of fact and recommended terms of settlement; costs; exemptions

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

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

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

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

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

BACKGROUND AND RELEVANT FACTS AND FINDINGS

San Benito County is located in the northwestern part of the State of California and is located approximately 85 miles south of San Francisco. The County of San Benito currently occupies over 1,396 square miles and serves a population of approximately 57,000. San Benito County is a General Law County, and has ten publicly elected officials including a five-member Board of Supervisors. The major industry is agriculture, and Hollister is the major city in the County. Averaging 409 full time equivalent employees[4], the County government provides a full range of government services including public safety, roads and facilities, social services, health services, parks and recreation among other general government services. SEIU is by far the largest employee organization in the County and has currently 245 represented employees in its unit. Other employee organizations include law enforcement and a middle management Association.

San Benito County currently has General Fund Revenues of $32.9 million for the 2013-2014 adopted budget. In 2007-08 the revenue was approximately $34.8 million, and by the 2011-12 budget year had dropped to $29.6 million[5]. Total Revenues experienced a similar pattern of decline and a beginning resurgence. This trend was consistent with most California jurisdictions. The General Fund Revenues largely rely on property taxes and other forms of taxation (40%), other governmental agency funds (18%), and charge for services (16%). Most all of these sources of revenue declined during what have been characterized as the “Great Recession”. Over this time period expenditures did not significantly decrease and therefore the County reserves have been utilized to make up the shortfall. The General Fund Reserves have dropped from a high of approximately $25 million in 2008-09 to $10 million in 2011-12. The reserves are predicted to drop further in 2012-13, but level off in 2013-14.[6] The levels of reserves that have and currently exist are above the recommended best practice level as defined by

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[4] Based on the 2012 CAFR

[5] All the preceding figures were based on County of San Benito, Adopted Budgets, 2007-2014.

[6] These figures are based on the available CAFR reports of which the most recent years are not available yet.

GFOA.[7] Because of the decrease in revenues the County has reduced its General Fund staffing positions from a high of 276 in 2008-09 to 169 in 2012-13. Labor costs represent approximately 67% of total expenditures for the County.[8] The staffing reductions have led to reduced hours and service levels for many basic public services.

All other non-safety units have paid since 2012, 4% towards the employee share of the CalPers pension costs. SEIU in 2011 rejected this County proposal regarding pension allocation, but did agree to a temporary 5% unit member furlough and a freeze on step increases, that expired on June 30, 2013.

On June 3, 2013, SEIU sent the County a demand to bargain and a request for information. The parties had an existing MOU, which had been extended several times and which had an expiration date of September 30, 2013. The parties held approximately 10 bargaining sessions from July through the beginning of October and reached tentative agreements on approximately 30 issues. On October 4, 2013 the County issued its last best and final offer upon request of the Union. On October 8, 2013, SEIU rejected the County's last best and final offer and obtained strike authority from its members. On October 8, 2013 the County declared impasse. SEIU and the County agreed to mediation and a request for factfinding on October 28, 2013. The mediation was held on November 6, 2013 and a tentative agreement was reached. On November 18, 2013, SEIU members rejected the tentative agreement.

The parties presented evidence and argument on the remaining items, which are at issue in this factfinding. The parties stipulated that the following issues remain unresolved and are placed before this panel. These issues can be summarized as follows: 1) Salary/Wages; 2) Employee Pension Contributions; 3) Active and Retiree Employees Medical Contributions, including CalPers 22893 Vesting Schedule; 4) Elimination of Step G; 5) Sick Leave Cash Out; 6) License Reimbursement; 7) Term of the MOU.

POSITION OF THE UNION

The Union contends that the County is fiscally sound, and there is little chance that they will run a deficit any time soon. The County meets and exceeds the level of reserves recommended by GFOA, by two to three times depending on which metric is used. The County has the highest General Fund balance as a percentage of expenditures, compared to the surrounding counties. The County has emerged from the "Great Recession" and is fiscally stable. The County has consistently under-projected revenues and over projected expenditures the past seven years, showing a pattern of budgetary bias. There is also the possibility that the County has an additional 1.7 million dollars, which is unaccounted for. The County has not prepared a five or ten year financial plan, which is recommended by GFOA. Given that the Board of Supervisors has not even received the mid year projections, it would be unreasonable to impose long-term takeaways.

The Union argues that although other bargaining units in 2011 agreed to pick-up 4% of the employee PERS contribution, and SEIU did not, SEIU agreed to other concessions in the form of furloughs and step freezes. These concessions were at least

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[7] Government Finance Officers Association best practices with respect to levels of unrestricted fund balances is set at no less than 2 months.

[8] This includes all County employees, not just SEIU.

as valuable. SEIU has proposed in negotiations to pick-up 4% of the employee contribution, and PEPRA does not mandate employees pay the full share at this point and may not even need to in 2018. Given that employees are going to have a significant take-away in terms of pension and no wage increase, it is unreasonable to put the entire burden of increased health care costs on the employee. Therefore the employees increased costs for medical should be capped at $50 per month. The County's retiree medical proposal would eliminate survivor benefits and new employees when they retire would only receive the PEMHCA minimum. This reduction would have a detrimental impact on the ability to attract and retain employees. Currently the surrounding counties already pay better and diminishing retiree health would drain the County of talented employees. The County proposal for a retroactive wage reduction is not warranted given the fiscal condition of the County and after years of concessionary bargaining and at a minimum a $1,500 "retention bonus" is justified. The elimination of Step G would have minimal impact on the County's finances and is one of the few incentives experienced employees have to remain with the County. This also applies to the County proposal for a reduction in sick-leave cash-out. SEIU employees should compensate employees for any examinations or licenses that are required.

The Union recommendations for the factfinding panel are as follows:

1) *Employee Pension Contribution:* "Classic employees" contribute no more than 4%
2) *Active Employee Medical Contribution:* Maintain the status quo whereby the County pays the equivalent of the full value of the premiums for Employee-Only coverage under the PERS Choice Plan, but limit the amount employees must pay for any increases in premiums to $50 per month
3) *Retiree Medical Contribution:* Maintain the status quo, but limit the amount the retirees must pay for any increases to $50 per month
4) *Salary/Wages:* No reduction in wages and a $1500 "retention bonus"
5) *Step G:* County to maintain Step G
6) *Sick-Leave Cash-Out:* Maintain the status quo
7) *License Reimbursement:* The County should reimburse SEIU unit employees for any licenses or exams they must acquire or take to satisfy employment conditions
8) *Term:* Two-year term

POSITION OF THE COUNTY

The County of San Benito has a structural deficit which can be shown by a decline in the General Fund balance of nearly $3 million a year, and is now less than half of what it was in FY2008-09. The County's expenditures have exceeded its revenues each year since FY 2007-08. The County's General Fund has decreased from over $25 million in 2008-09 to less than $11 million in 2011-12. This method of balancing the budget is unsustainable. By sharing pension and healthcare costs with its employees, the County will be able to manage its structural deficit. This budget deficit has occurred despite huge reductions in staff of over 100 FTE since FY2008-09. This has resulted in a decline of public services. There is no proof that there is any money being hid by the County and no indication that there is an extra $1.7 million hidden in the budget.

The County's proposal on pensions represents the standard supported by PEPRA, which is that employees shall pay at least half of the normal cost of their pension. If CalPERS adopts a modified mortality table and if it is going to reduce its discount rate, all of which are anticipated, then the employer contributions will probably increase. The County's other bargaining units and many of its safety units have been paying between 4.0% and 9.0% of their pension costs as early as 2011. All new employees under PEPRA are already paying 6.25%.

The County's proposal to flat rate health care benefits is in line with the concept of making benefits subject to bargaining and not automatic escalation. The proposal to flat rate the retiree health care costs will reduce the County's unfunded liability and will likely reduce the County's ARC.

The additional County proposals to eliminate dual healthcare coverage, reduce sick leave cash outs, eliminate Step G, eliminate the CalPERS vesting schedule, and the reduction in wages of 1.5% is needed to address the County's structural deficit.

The County recommendations for the factfinding panel is consistent with its last best and final offer (LBFO):

1) *Employee Pension Contribution:* SEIU bargaining unit members increase their pension contribution from 0.0% to 7.0% or an equivalent salary reduction.
2) *Active and Retired Employee Health Benefits:* For both active and retired employees, the County will contribute a flat rate, comprised of PEMHCA minimum plus an additional contribution towards a cafeteria plan. The total contributions are: Employee only/ $464.71; Employee plus 1/ $949.22; Employee plus family/ $1213.83. Eliminate dual coverage; employees whose "alternative insurance" is received through a spouse or domestic partner who is also a County employee shall be ineligible for the $150.00 per month payment in lieu of insurance. Reopener regarding elimination of CalPERS 22893 vesting schedule.
3) *Salary and Wages:* Given the delay in reaching an agreement with SEIU, a proposed one time 1.5% wage reduction. No wage increase for term of the agreement.
4) *Step G:* Eliminate Step G for new hires
5) *Sick Leave Cash-Out*: Reduce sick leave cash out upon retirement from 50%-25% for new hires only.

6) *Term*: 1.5 years and reopener to negotiate with the Union if the new payroll system affects wages and hours.

RECOMMENDATIONS

The Neutral factfinder chosen by the parties believes that the statute under which this factfinding takes place is best viewed as an extension of the collective bargaining process. The best outcome of this factfinding process would be a negotiated agreement between the parties. The intent of these recommendations is to provide a framework for the parties to settle their dispute with an agreement. The statute lays out a set of criteria that is to guide the Panel in making their findings. These criteria represent many of the basic factors that inform the parties when they are negotiating an agreement. There is no doubt that the County of San Benito, as almost all counties in California, have faced a serious decline in revenues because of the recession. The decline in the stock markets in the recession years, which greatly affected the pensions held in retirement investment funds, and the unrelenting increases in health care costs, have created severe financial pressures on the counties and their employees. It is a fact that the reserves of the County have been depleted because of these factors. It is also true that the County was forced to lay off many employees with a decline in the service they can offer to the public. The employees and the Unions that represent them were forced to make many painful concessions including layoffs, furloughs, and wage freezes. Currently based on the latest facts provided in this proceeding it appears that some of the worst effects of the recession are receding and an economic recovery is beginning. While the finances of the County are getting better, there still is the pressure of increasing health care costs especially for retirees and retirement pressures. While the County is not facing an immediate financial crisis now and has sufficient funds, it must of course be careful especially since the reserves were in decline for several years. Both sides while they were bargaining this contract were aware of this environment, and found a way to reach a tentative agreement. Based on the criteria, which the factfinding panel is required to consider I believe that the tentative agreement should be recommended by this panel.

The tentative agreement, which was reached by the parties on November 6, 2013, was not ratified by the membership of the Union. It is understandable that this occurred given that it represented compromises and concessions by the Union(as well as the County). It should be noted that the tentative agreement I am recommending is by nature somewhat different than the agreement reached on November 6, 2013. The passage of time has reduced to a small extent the cost savings to the County especially with regard to the pension pick-up. This alone should make the agreement more attractive to the employees especially given that the alternative of an implemented last best contains far more concessions. For the County, I still think the agreement, while reduced in value is far better than a short term imposed contract with labor uncertainty.

The following represents a summary of the tentative agreement reached on November 6, 2013. A copy of this agreement appears in County exhibit #7, and is Appendix A to this award:

1) *Healthcare*: Flat rate contribution as listed in County Exhibit #7, and Appendix A

2) *Retiree Health*: Agree to PEHMCA minimum and County contribution listed in above referenced chart for employees hired prior to 10/1/13 and currently retired. County contribution includes the PEHMCA minimum. Employees hired on or after 10/1/13 shall receive the PEHMCA minimum upon retirement.
3) *Retirement*: Effective upon ratification of this agreement, employees agree to contribute 5% to PERS retirement. Effective 10/1/14 employees agree to contribute an additional 2% to PERS retirement for a total of 7%.
4) *Holiday Closures*: See agreement for dates of holiday closure
5) *Steps*: Step G will be eliminated for all new employees hired after ratification of this agreement. No elimination of steps for current employees.
6) *Sick Leave reduction of Payouts*: Union agrees to reduce payout of sick time upon retirement to 25% for employee hired on or after ratification of this agreement, only if all other management, executive, safety and non-represented positions TA and ratify same reduction to 25%.
7) *Elimination of 22893*: Union agrees to meet and confer on this matter within 6 months of ratification of this agreement in order to address this matter.
8) *ULP's*: Union agrees to withdraw the ULP on pre-set condition imposed by County with prejudice if TA reached and ratified by both parties. Union agrees to hold ULP in abeyance on the overtime at this time. The parties agree to meet by January 2, 2014 and no later than July 31, 2014, in order to meet and confer on the overtime matter, in order to resolve the ULP. Should the parties fail to reach agreement, the Union shall move forward with the ULP charge held in abeyance.
9) *Term*: October 1, 2013 through September 30, 2015.
10) All other articles not specifically mentioned above will remain no change or have already been TA'D.[9]

[9] This represents a summary of the TA, please refer to the actual document for exact terms.

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

Dated January 9, 2014 ____________________________________

David A. Weinberg: Neutral Chair Factfinding Panel

I concur with these recommendations ___________________________

I dissent with these recommendations X Dania Torres Wong

County Panel Member: Dania Torres Wong

I concur with these recommendations ____________________________

I dissent with these recommendations____________________________

Union Panel Member: Kristy Sermersheim

Appendix A

Union Supposal #2 – 11/6/13
San Benito County

1. **Healthcare**

	Premium	County Contribution	Employee Contribution	County's Previous Contribution
Choice – EO	$641.08	$550.	$91.08	$641.08
E+1	$1282.16	$1050	$232.16	$1041.83
E +F	$1666.81	$1315	$351.81	$1213.83
Select – EO	$613.99	$550	$63.99	$641.08
E+1	$1227.98	$1050	$177.98	$1041.83
E+F	$1596.37	$1315	$281.37	$1213.83

*Kaiser rates not reflected for purposes of sample. County Contribution rates apply.

Retiree Health:
Agree to PEHMCA minimum and County Contribution listed above for employees hired prior to 10/1/1 and currently retired. County Contribution includes the PEHMCA minimum.

Employees hired on or after 10/1/13 shall receive the PEHMCA minimum upon retirement

2. **Retirement**

Effective upon ratification of this agreement, employees agree to contribute 5% to PERS retirement.

Effective 10/1/14 employees agree to contribute an additional 2% to PERS retirement for a total of 7%.

3. **Holiday Closures**

Non-essential departments shall close effective 12 noon on December 24, 2013 through December 31, 20 for purposes of cost savings and efficiency. Employees shall be paid for the closure days equivalent to 4 days, including the Holidays. No changes in admin time use for Christmas Eve and New Years Eve.

Essential departments that are unable to close during the above mentioned time period shall be given 4 flo days to use 2 weeks prior to December 24th or during the month of January 2014, at the employees discretion, upon supervisory approval. No employee shall lose the float days as a result of denying time o requests. No changes in admin time use for Christmas Eve and New Years Eve.

Non-essential departments shall close effective 12 noon on December 24, 2014 through December 31, 201 for purposes of cost savings and efficiency. Employees shall be paid for the closure days equivalent to 4 days, including the Holidays. No changes in admin time use for Christmas Eve and New Years Eve.

Essential departments that are unable to close during the above mentioned time period shall be given 4 flo days to use 2 weeks prior to December 24th or during the month of January 2015, at the employees discretion, upon supervisory approval. No employee shall lose the float days as a result of denying time o requests. No changes in admin time use for Christmas Eve and New Years Eve.

4. **Steps**

Step G will be eliminated for all new employees hired after ratification of this agreement. No eliminatio steps for current employees.

5. **Sick leave reduction of payouts**

Union agrees to reduce payout of sick time upon retirement to 25% for employee hired on or after ratification of this agreement, only if all other management, executive, safety and non- represented positi TA and ratify same reduction to 25%.

6. **Elimination of 22893**

Union agrees to meet and confer on this matter within 6 months of ratification of this agreement in order address this matter.

7. **ULP's**

Union agrees to withdraw the ULP on pre-set condition imposed by County with prejudice if TA reached and ratified by both parties.

Union agrees to hold ULP in abeyance on the overtime at this time. The parties agree to meet by January 2014 and no later than July 31, 2014, in order to meet and confer on the overtime matter, in order to resol the ULP. Should the parties fail to reach agreement, the Union shall move forward with the ULP charge held in abeyance.

8. **Term**

October 1, 2013 through September 30, 2015

ALL OTHER ARTICLES NOT SPECIFICALLY MENTIONED ABOVE WILL REMAIN NO CHANGE OR HAVE BEEN T.A.'D.

Final Tentative Agreement pending Board approval and SEIU 521 Ratification.

DATED: November 6, 2013

Dania Torres Wong, Esq. (San Benito)

Bill Freitas, SEIU 521 Chief Negotiator

Martha Booker

Denise Quintana

Suzy Caston