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April 25, 2013

**RECEIVED**

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Kerianne R. Steele, Esquire  
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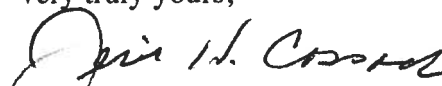
Re: County of Fresno and  
SEIU LOCAL 521  
PERB Case No. SA-IM-116-M

Dear Parties:

Enclosed please find a complete copy of the factfinding report in the captioned matter, including concurrences and dissents.

Thank you for your courtesy and consideration throughout these proceedings.

Very truly yours,



Jerilou H. Cossack  
Panel Chairperson

cc: Les Chisholm  
Enclosure



Shelline K. Bennett - County Appointed Member  
Vincent A. Harrington, Jr. - Union Appointed Member  
Jerilou H. Cossack - Chairperson

Both parties agreed to waive the statutory time constraints pertaining to the convening of the factfinding hearing and the submission of findings of fact and recommendations.

The parties entered into the following stipulations, with which the Panel Chairperson concurred:

1. Ten (10) days after the issuance of the Panel Decision it shall remain confidential and shall not be published.
2. The parties may mutually agree to extend that time.
3. The parties may disclose to those principles who are decision-makers for purposes of case solution - e.g. Board of Supervisors, bargaining team members - with the understanding that those parties are also bound by confidentiality.

The panel met and heard testimony on March 27 and 28, 2013. It met and deliberated in executive session on March 29, 2013. As to the issues remaining, the factfinding panel chairperson recommends as follows:

1. All previously agreed to Tentative Agreements would be honored.<sup>1</sup>
2. The term of the contract will be for three (3) years, beginning on July 1, 2013 and running until June 30, 2016.
3. The parties establish a labor/management committee to meet monthly to discuss issues which have arisen in the workplace. There shall be a third party facilitator who shall be present at least for the first three meetings and thereafter if desired by the parties.
4. On December 6, 2011 the Board of Supervisors imposed a nine (9) percent reduction in pay on employees. The Employer will return

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<sup>1</sup> Tentative agreements were reached on the following: Introduction/Purpose; Recognition; Agency Shop; Continuity of Operations; Class "B" Drivers License (Unit 2 only); Damage to Personal Property of Employee; Steward Notification; Direct Deposit of Payroll Checks; Mitigation of Correctional Officers Layoff (Unit 2 only); County's proposal on C.O. Uniform Allowance; Direct Deposit; Voluntary Term Life Insurance; Voluntary Long Term Disability- Language to match current long standing practice; Annual Leave; Special Salary Upgrading; Standby (on call) - BU 12; Call Back kPay - BU 12; LVN Classification Series Salary Adjustment - BU 12; Social Worker Supervisory Standby - BU 36; Benchmark Classification Salary; and Shop Steward.

seven (7) percent of the reduction to employees during the three-year period of this contract. Two (2) percent will be returned on July 1, 2013, two (2) percent will be returned on July 1, 2014, one and one-half (1 1/2) percent will be returned on July 1, 2015 and one and one-half (1 1/2) percent will be returned on April 1 or 15, 2016, whichever is closest to the payroll period.

5. The CCAIR shift differential for bargaining units 3 and 12 shall revert to the 14 percent differential<sup>2</sup> identified in Article 28.
6. The Enhanced Detention Facility Differential has been eliminated from the Addendum in bargaining units 3 and 12. The differential will revert to the rate identified as Detention Facility Differential in Article 47. Article 45 provides that employees who are assigned to the Psychiatric Health Facility (PHF) inpatient locked facility, Psychiatric Assessment Center for Treatment (PACT), and the Children's Crisis Assessment Intervention and Resolution (CCAIR) Unit shall be paid a \$5.00 per day differential when they spend four (4) or more hours in the facility and that employees assigned for less than four (4) hours per day shall be paid a differential of \$0.625 per hour.<sup>3</sup>
7. Since the Supervisory Classification Benchmark was eliminated from the Memorandum of Understanding for bargaining unit 36, the Supervisory Classification Benchmark Addendum is no longer relevant and shall be removed from the MOU.
8. Article 41 (On-The-Job Injuries/Health Plan Premiums) will be removed from the Memorandum of Understanding in as much as it was implemented before the protections of FMLA and CFRA were provided.

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<sup>2</sup> The amount of the differential set forth in Article 28 is 14 percent. The County's proposal described the differential as 4 percent. It is assumed the County's written proposal erroneously omitted the "1" in 14.

<sup>3</sup> The County's written proposal describes the differential as being reduced from \$75 per pay period to \$40 per pay period.

9. Article 77 (SWAP) allows employees in the classifications of Correctional Officer II/III/IV, Security Office I/II, Juvenile Correctional Officer I/II, and Senior Juvenile Correctional Officer to exchange work days or work hours. The number of employees who may be involved in any SWAP was reduced from five (5) to two (2); the SWAP must occur within two (2) pay periods for classifications of Correctional Officer II/III/IV. There may be only one SWAP for four (4) (previously five (5)) work days per pay period. Language specifying that "It is not the intention of the article for employees to be able to alternate their normal work schedule on an ongoing basis" was added. Finally, language stating that "If an employee fail [sic.] to complete the terms of the agreed SWAP the County may deduct the equivalent amount of hours from that employee's annual leave to reimburse the County for any and all costs they incurred to replace them" was added.

The parties shall create a form for persons participating in a SWAP to acknowledge that they will be subject to the language stated above.

10. Those alternative work schedules in effect in bargaining unit 2 shall remain in effect subject to management's right to change and/or eliminate the alternative work schedule for operational necessity on fourteen (14) days written notice.
11. Holiday pay shall be restored to pay based on the number of hours actually worked by the employee in bargaining unit 2 on the holiday.
12. Annual Leave Donations is not an Article in the Memorandum of Understanding. They are governed by Salary Resolution 610.6 effective December 10, 2012. The parties are directed to meet and confer about the following: (1) Identifying those employees who may appropriately receive such donated leave; and (2) Modifying the program to control the donation of leave to avoid existing annual leave caps.

13. Item 4 concerning Scheduling of Overtime and Item 7 concerning Vacation Sigh-Up Process in the Memorandum of Understanding for the Juvenile Justice Campus are remanded to the local parties to meet and confer. These are local issues and should be resolved at the local level. The County may send a participant to the local discussions regarding overtime. Agreements reached at the local level are subject to ratification by the County.
14. The Public Safety Officers Procedural Bill of Rights Appeal Process for Juvenile Correctional Officers in bargaining unit 2 shall be adopted as proposed by the Union on May 17, 2012.
15. The DCSS Attendance and Punctuality Policy shall be re-established in the Memorandum of Understanding in writing.
16. The Panel accepts the Union's withdrawal of its proposal concerning Extension of Paid Military Leave.

The Chairperson also recommends the promotional step increases for all six bargaining unit be increased from six (6) to nine (9) steps with a 3.125 percent salary increase per step, effective December 9, 2013, that the Memorandum of Understanding continues to omit any provision concerning Uninterrupted Process Time and recommends that the following Union proposal remain in the Memorandum of Understanding:

**ARTICLE 94 - PHYSICIAN'S STATEMENTS**

When an employee, after receipt of a counseling memo concerning attendance, is required by management to provide a physician's statement for the purpose of verifying his/her or a family member's illness which results in the employee being absent from work, the employee shall receive a notice in writing of this requirement and the notice shall inform the employee that all future absences by the employee due to illness of the employee or a family member will require that the employee provide a physician's statement verifying the illness. Sixty (60) working days after the date of the first physician's statement received from the employee, management will re-evaluate the necessity of the provision [of] physician's statements and inform the employee of their decision in writing.

The Chairperson cannot accept the Union's proposal with respect to Article 40 in bargaining unit 4 concerning Bilingual Caseload. The Chairperson recommends the parties

establish a procedure by which an employee with a bilingual caseload is able to request a reduction in that caseload. It is noted that numbers alone do not accurately reflect the complexity of an employee's caseload, in as much as the particulars of any given case vary widely. This provision only pertains to the social workers in bargaining unit 4. The procedure should be described in the Memorandum of Understanding pertaining to these employees.

Respectfully submitted,  
Jerilou H. Cossack  
Factfinding Panel Chairperson



Submitted this 19th day of April 2013  
Lafayette, California

Shelline K. Bennett  
On Behalf of the County



I concur   
I dissent

Date: 4-25-13

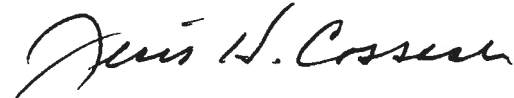
Vincent A. Harrington, Jr.  
On Behalf of the Union

I concur \_\_\_\_\_  
I dissent \_\_\_\_\_

Date: \_\_\_\_\_

establish a procedure by which an employee with a bilingual caseload is able to request a reduction in that caseload. It is noted that numbers alone do not accurately reflect the complexity of an employee's caseload, in as much as the particulars of any given case vary widely. This provision only pertains to the social workers in bargaining unit 4. The procedure should be described in the Memorandum of Understanding pertaining to these employees.

Respectfully submitted,  
Jerilou H. Cossack  
Factfinding Panel Chairperson



Submitted this 19th day of April 2013  
Lafayette, California

Shelline K. Bennett  
On Behalf of the County

I concur \_\_\_\_\_  
I dissent \_\_\_\_\_

Date: \_\_\_\_\_

Vincent A. Harrington, Jr.  
On Behalf of the Union

I concur  \_\_\_\_\_  
I dissent \_\_\_\_\_

Date: April 23, 2013

See the attached Concurrence



CONCURRENCE OF UNION PANEL MEMBER

I concur in the Chairperson's overall recommendations set forth in the Factfinding Report. I do so because in its totality it represents a fair resolution of the significant issues which remained on the table at the conclusion of the most recent round of bargaining. Although in the last set of negotiations the County unilaterally imposed a nine percent reduction in wages on all bargaining unit employees, the Factfinding Panel's recommendation is a balanced approach which permits bargaining unit employees to recoup the vast majority of the economic losses by the conclusion of the recommended three-year term. The County does not claim any inability to pay the proposed wage increases. The recommended three-year term will provide the parties with stability in their relationships and will create an environment for a return to more harmonious labor relations over the term of the Agreement. As is typical in collective bargaining, the Factfinding Chairperson's recommendations, with which I concur, contain compromises in the strong positions that each of the parties had during the bargaining, but it is an equitable approach to those competing interests.

I write to express concern about two issues only in the Report. First, it is my firm hope that the local parties can amicably adjust the issues remanded to them by the Panel in Item 13. I was impressed by the fact that these were described as local issues of concern to specific Departments, and thus recommended that those issues be sent back to that level for adjustment. It is my hope that the parties in good faith can equitably resolve those issues without the necessity of further "big table" negotiations. As to Article 40, concerning bilingual caseload, the Report recommends a change from the existing procedure to one in which employees may request a reduction in caseload due to the issues associated with a monolingual caseload. Historically, this is a matter of significant concern to workers with these caseloads, because practical experience has demonstrated over time that these cases simply take longer to process. It is my hope that a fair process can in fact be adopted which reflects this workplace reality.

Fresno County and SEIU, Local 521  
Case No. SA-IM-116-M

Fresno County's Representative to Factfinding Panel  
Shelline K. Bennett

**Concurring and Dissenting Opinion to the Findings of Fact and Recommended Terms of Settlement:**

As the representative for Fresno County (County) to the Factfinding Panel, I concur with some portions of the Finding of Fact and Recommended Terms of Settlement (Report). There are several 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 Panel Chairperson Cossack on the following matters:

- 1) **The County should implement the step structure proposal contained in its Last, Best, and Final Offer dated September 6, 2012 for Bargaining Units 2, 3, 4, 12, 22, and 36, which increased the current steps from 6 steps to 9 steps for most unit members.**
- 2) **The County should reject the Union's proposal concerning Uninterrupted Process Time.**
- 3) **I concur that the interests of the Parties would best be served by a multiyear agreement.**
- 4) **I concur that the County and the Union should continue to hold regular labor/management meetings to discuss issues which arise in the workplace.**
- 5) **I concur that the Supervisory Classification Benchmark provision of the MOU for bargaining unit 36 is no longer relevant and should be removed.**
- 6) **I concur that the County's On-the-Job Injuries/Health Plan Premiums proposals contained in the County's Last, Best, and Final Offer should be implemented.**

**II. DISSENT**

I respectfully dissent from the Report's recommendations regarding: a) 7% salary increase to Union members; 2) reinstatement of salary differentials; 3) reinstatement of the SWAP program; 4) reinstatement of the DCSS Attendance and Punctuality Policy, 5) increases in holiday pay; and 6) that further meet and confer sessions should be held regarding the Annual Leave Donation program.

The Report's recommendations for which I dissent are contrary to the County's stated goals of reducing long and short-term operational costs. The Panel Chair recommends that the County assume cost and obligations in excess of 20 million dollars without making any finding regarding the County's ability to cover these obligations.

As testified to at the hearing, the County's current economic state continues to be difficult with stagnant home prices, continued problems in mortgage markets, tight credit availability, and significant job losses that continue to batter the economy of California and the County. The Report's recommendations make no comment regarding the County's increasing retirement costs, which have increased by over 90 million dollars in recent years. The Report's recommendations are also silent as to the County's General Fund decreases, most recently of 11 million dollars.

Regarding the specific recommendations of the Panel Chair, I find as follows:

**1) Panel's Recommendation for 7% increase in salaries for all SEIU represented Units**

I cannot agree with the Report recommendation that the County should increase salaries for SEIU by 7%. The recommendation makes no mention that the County estimates that a 7% increase in salaries would cost the tax payers over 20 million dollars. Nor does the recommendation mention that nearly all of the County's other bargaining units have agreed to significant wage concessions, some in excess of 10%. The Report makes no findings regarding a rational or reason as to why the Union's members should receive pay increases of 7% when the County's other employees agreed with the County of salary concessions without promise of wage increases. Further, the Panel Chair's recommendation makes no mention that the SEIU represented Units received wage increases of 30.75% from 2005 to 2010. The Report's recommendation would disproportionately and inequitably favor SEIU's members over the other County's employees.

The Report also omits any discussion regarding the comparable salaries of the surrounding Counties. Notably, according to the State Controller's data, employees for Fresno County have higher average wages than those of Kings County, Stanislaus County, Tulare County, Merced County, and Madera County.

Finally, the Report does not take into account the County's lifting of promotion freezes in October of 2012. The County calculates that over 465 employees in SEIU represented classifications have received promotions at a benefit costing over 2 million dollars.

Accordingly, I cannot recommend that the County provide a 7% salary increase to employees represented by the Union.

**2) Panel Chair's Recommendation Against Elimination of Shift differentials for CCAIR and Enhanced Detention Facilities.**

I dissent from the Panel Chair's recommendations that the County not eliminate the differentials for CCAIR and enhanced detention facilities. The County testified that these

proposals were necessary to establish conformity in the reductions of differentials achieved in 2011. The County had inadvertently omitted these differentials from elimination. I do not believe that adequate evidence was provided to justify why these differentials should remain.

**3) Reinstatement of SWAPs**

I dissent from the Panel Chair's recommendation that the County reinstitute the SWAP program which was eliminated in December of 2011. The County provided compelling evidence that the program had become unmanageable and consumed an unreasonable amount of administrative time. Employee abuse and manipulation led the County Departments to strongly oppose the program. In light of the Department's strong opposition, I cannot agree with the Report recommendation.

**4) DCSS Attendance and Punctuality Policy**

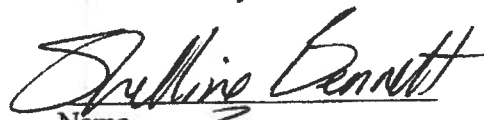
I dissent from the Panel Chair's recommendations that the County reinstitute the DCSS attendance and punctuality policy which was eliminated in December of 2011. The County provided testimony that the policy is still in effect and was only removed from the MOU. Given that the MOU provision was duplicative of existing policy, I do not see any compelling reason to reinstate it.

**5) Holiday Pay Restoration**

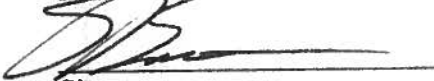
I dissent from the Report's recommendation that the Holiday pay should be increased as proposed by the Union for the same reasons articulated above regarding the County's attempt to reduce long and short-term operational costs.

**6) Annual Leave Donation Program**

I dissent from the Report's recommendations that the parties continue to meet and confer regarding the Annual Leave Donation Program. The County established that because the program is without a cap, it has the potential for unlimited liability. Further, the County established that the program was duplicative of existing law including FMLA, CFRA, PDL, and State Disability Insurance.



Name



Signature

4-25-13

Date