

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

232



FROM: Human Resources Dept.

SUBMITTAL DATE:
August 16, 2006

SUBJECT: Action on advisory arbitration opinions as required by the Memoranda of Understanding between the County of Riverside and Service Employees International Union, Local 1997, Laborers' International Union of North America, Local 777, and Riverside Sheriff's Association

RECOMMENDED MOTION: That the Board of Supervisors: 1) Accept the nine advisory arbitration opinions issued by neutral arbitrators during Fiscal Year 2005/06, without further testimony from the parties; and 2) Reject the August 21, 2002, advisory arbitration opinion of Arbitrator Prihar in the matter involving a grievance filed by Wayne Tillett, without further testimony from either party because: (a) the neutral arbitrator exceeded his authority under the MOU between the County and RSA, and (b) the opinion no longer provides a legally correct interpretation of the requirements for granting compensatory time off under the *Fair Labor Standards Act*.

BACKGROUND: The Memoranda of Understandings (MOU) between the County and the various unions that represent County employees each contain a clause that provides for advisory arbitration as part of the grievance resolution procedure. After receipt of an advisory arbitration opinion the Board is empowered to accept, reject, or accept part of a decision and reject the rest, without further testimony from either party.

Ronald W. Komers
Asst. County Executive Officer/Human Resources Dir.

FINANCIAL DATA	Current F.Y. Total Cost:	\$ -	In Current Year Budget:	NO
	Current F.Y. Net County Cost:	\$ -	Budget Adjustment:	NO
	Annual Net County Cost:	\$ -	For Fiscal Year:	2006/2007

SOURCE OF FUNDS: Department Budgets	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION: **APPROVE**

County Executive Office Signature

- Policy
- Consent
- Policy
- Consent

Dep't Recomm.:
Per Exec. Ofc.:

Prev. Agn. Ref.:

District:

Agenda Number:

3.45

BACKGROUND (continued)

The Board determined that it preferred to consider advisory arbitration decisions on a periodic basis rather than considering each case as it is received by the County. The Board instructed the Human Resources Department to produce a report of all advisory arbitration decisions for the Board's consideration and action. Initially, the Board instructed that this be done on an annual basis, subject to modification in the future depending on the volume of advisory arbitration opinions received.

Attached hereto is the report from the Human Resources Department for the nine (9) advisory arbitration opinion received by the County during Fiscal Year 2005/06. Four of these cases were decided in the County's favor. In one case the County had admitted a breach of the MOU, so the only issue was remedy and the County prevailed on that issue. In the remaining four cases the County was found to have violated the MOU and in each case it has implemented remedy contained in the advisory arbitration opinion.

In addition, we have attached a summary of a 2002 advisory arbitration opinion in the matter of a grievance filed by Wayne Tillett, an RSA member. The Board has previously declined to take any action with respect to this particular advisory arbitration opinion.

Since that time the advisory arbitration opinion has been reviewed by the California Court of Appeal. The appeal court determined that the arbitrator exceeded his authority under the MOU and that his decision was not supported by more recent interpretation of the *Fair Labor Standards Act* by the federal 5th and 9th Circuit Courts of Appeal. RSA has recently filed a writ in Superior Court to compel the County to accept or reject the original 2002 arbitration decision.

RECOMMENDATION:

We recommend that the Board exercise its authority - recognized by the MOU's between the County and SEIU, Local 1997, RSA, and LIUNA, Local 777, respectively - to accept or reject the identified advisory arbitration opinions without further testimony from any party.

SUMMARY OF ADVISORY ARBITRATION OPINIONS - FY 2005-2006

Grievance Number	Name of Employee	Union	Date of Decision	Arbitrator's Decision	Recommended Action
S0304-10	Jon Swanson	SEIU	3/15/05	It is the award of the undersigned neutral Arbitrator that the County did not violate the Memorandum of Understanding when it unilaterally recouped wages paid the Grievant. The grievance is therefore denied.	Accept Advisory Opinion
S0304-029	Renee Duncan	SEIU	11/23/05	It is the award of the undersigned neutral Arbitrator that the County did not violate MOU Article IV, Section 3, G.1., Critical Care Requirements and G.2., Critical Care - Registered Nurses, by not paying the Grievant the Critical Care differential for all hours worked in the Emergency Room at Riverside County Regional Medical Center from November 2003 to the present. The grievance is therefore denied.	Accept Advisory Opinion
S0304-036	Jennifer Puni	SEIU	11/30/05	It is the award of the neutral Arbitrator that the County violated Article IV, Section 3C. And/or 6 of the MOU by not paying the Grievants double time pay.	Accept Advisory Opinion
S0304-035	Carla Lambert	SEIU	11/30/05	It is the award of the neutral Arbitrator that the County violated Article IV, Section 3C. And/or 6 of the MOU by not paying the Grievants double time pay.	Accept Advisory Opinion
R0405-002	Cynthia Cervello	RSA	6/6/05	It is the award of the undersigned neutral Arbitrator that the denial of the Grievant's access to sick leave did not violate the Memorandum of Understanding or other pertinent provisions of County policy.	Accept Advisory Opinion
R0405-001	Senior Pay	RSA	1/12/06	It is the award of the undersigned neutral Arbitrator that the County violated Article V, Section 4 of the MOU by failing to provide, upon promotion, a new salary at a rate equal to two (2) higher steps than that paid on the range for the former position.	Accept Advisory Opinion

Grievance Number	Name of Employee	Union	Date of Decision	Arbitrator's Decision	Recommended Action
R0205-010	Holiday Pay	RSA	2/8/06	...it is the award of the Arbitrator that: 1. Subject to the stipulation that any affected employees in the Law Enforcement and Public Safety Bargaining Units in the Sheriff's Department, who worked on Friday, December 24th, 2004, and Friday, December 31st, 2004, were paid holiday pay for those days, the County did not violate Article 9 of the respective MOUs by not paying holiday pay to those employees for Saturday, December 25, 2004, and Saturday, January 1, 2005.	Accept Advisory Opinion
R0405-019	Promotional List	RSA	2/27/06	Further, it does not appear that the Department's failure to comply here with the provisions of Article XVII manifested any proscribed motive or animus. It appears instead that such was attributable to administrative oversight or neglect compounded by the Department's intent to negotiate the elimination of the Senior Correctional Deputy position. Under all the extant circumstances, the Arbitrator is not prepared to order the somewhat extraordinary remedy requested by the Association. However, a cease and desist order as well as an order directing that the Department forthwith develop and promulgate an eligibility list for the Senior classification and forthwith fill the Senior Correctional Deputy vacancy at the Southwest Detention Center consistent with the applicable MOU provisions is warranted and appropriate.	Accept Advisory Opinion
L0304-030	Christine VanMatre	LIUNA	3/24/05	Having carefully considered all of the evidence presented and the arguments made, it is the Award of the Arbitrator that: 1. The County has violated Article V, Section 9 of the MOU. 2. The County is ordered to complete a study of the Grievant's positions no later than April 29, 2005 and to identify any duties or responsibilities she is performing of a higher rated classification. 3. If Grievant's position is reclassified she should be paid in accordance with the MOU beginning in 2004. 4. If Grievant's position is not reclassified but she is found to have been performing some of the duties of a higher rated classification, the Department is ordered to determine how many hours she spent on those duties and to pay her in accordance with the provisions of the MOU for any and all hours over 480 spent annually performing those duties beginning in 2004.	Accept Advisory Opinion

SUMMARY OF WAYNE TILLETTS ADVISORY ARBITRATION OPINION ISSUED AUGUST 22, 2002

Grievance Number	Name of Employee	Union	Date of Decision	Arbitrator's Decision	Recommended Action
R001-008	Wayne Tillett	RSA	8/21/02	... it is the advisory award of the Arbitrator that: 1. The denial of the 7/20/00 request for compensatory time off for 8/30/00 - 9/1/00 violated the MOU. 2. Since the Grievant was off on the dates in question on workers compensation leave, and since the Grievant did not otherwise lose the benefit of the accumulated comp time he would have used on those dates, the advisory award is that the Employer cease and desist from denying employees use of comp time other than those occasions where the resulting absences would create an undue disruption to the Employer's operation.	Reject Advisory Opinion Reasons: 1. the arbitrator exceed his authority under the MOU, and 2. the arbitrator's opinion does not accurately describe the current state of the law.

Decision of California Court of Appeal - Fourth Appellate District - Case No. E039131

Association seeks to expand the issue to be decided by the arbitrator by contending that the arbitrator's charge "in this case was to resolve a dispute between RSA and the County regarding how the contract governed the relationship of the parties vis-a-vis comp time procedures." Not so. The issue is very precise ... The arbitrator's decision clearly exceeded the scope of the issue submitted to him. ... Two rather recent cases have interpreted that section to mean that the county in question is merely obliged to allow accrued compensatory time off within a reasonable period following the date of the request providing the request does not "unduly disrupt the operations of the public agency." ... The County is not required to grant the compensatory time off on the precise dates requested by the employee.