

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

258



FROM: Human Resources Department

SUBMITTAL DATE:
July 21, 2014

SUBJECT: Action on advisory arbitration opinion in accordance with Section 10 of the County's Employee Relations Resolution (ERR) to modify County bargaining units. [District- All] [Total Cost - \$0]

RECOMMENDED MOTION: That the Board of Supervisors:

1. Reject a proposed recommendation made by Hearing Officer Michael Prihar (Prihar) on March 2, 2014 to modify certain County bargaining units.

BACKGROUND:

Summary

The Riverside Sheriff's Association (RSA) submitted petitions to the County of Riverside requesting to modify County bargaining units under Section 10 of the County's Employee Relations Resolution (ERR) 99-379. In lieu of a hearing before the Riverside County Board of Supervisors, as provided for in Section 10 of the ERR, the County of Riverside and RSA agreed to submit the issue(s) to a hearing officer who would make a recommendation to this Board as to whether to grant or deny RSA's petitions. The matter is outlined in detail below for this Board's consideration and motion.

Departmental Concurrence

Michael T. Stock
Asst. County Executive Officer/
Human Resources Director

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost:	POLICY/CONSENT (per Exec. Office)
COST	\$ 0	\$ 0	\$ 0	\$ 0	Consent <input type="checkbox"/> Policy <input checked="" type="checkbox"/>
NET COUNTY COST	\$ 0	\$ 0	\$ 0	\$ 0	
SOURCE OF FUNDS: N/A				Budget Adjustment: No	
				For Fiscal Year: 2014/15	

C.E.O. RECOMMENDATION:

APPROVE

BY: Samuel Wong 7/28/14
Samuel Wong

County Executive Office Signature

MINUTES OF THE BOARD OF SUPERVISORS

- A-30
- 4/5 Vote
- Positions Added
- Change Order

Prev. Agn. Ref.:

District: All

Agenda Number:

3-22

**SUBMITTAL TO THE BOARD OF SUPERVISORS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA
FORM 11: Action on advisory arbitration opinion in accordance with Section 10 of the County's
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Cost - \$0]**

DATE: July 21, 2014

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BACKGROUND:

Summary (continued)

The Petition:

This matter arises from Riverside Sheriffs' Association's petition under Section 10 of the County's ERR to modify County bargaining units as follows:

1. Reassign Supervising Welfare Fraud Investigators (SWFI's) from Service Employees International Union, Local 721 (SEIU) into RSA's Law Enforcement Unit (LEU);
2. Reassign Welfare Fraud Investigators (WFI's) from Laborer's International Union of North America, Local 777 (LIUNA) Inspection and Technical Unit (ITU) into RSA's Law Enforcement Unit; and
3. Reassign Community Services Officers (CSO's) from the ITU, to RSA's Law Enforcement Unit.

The County's Denial of the Petition:

On or about April 24, 2012, using the factors set forth by applicable law and Section 7 of the ERR, the County denied RSA's petitions on the merits as being inappropriate for a variety of reasons. Primarily:

1. All three of the classifications at issue are classified as "miscellaneous" for CalPERS retirement, whereas the vast majority of LEU classifications are classified as "safety" for CalPERS retirement.
2. There is a lack of community of interest between the classifications sought to be added to the LEU and current LEU members when it comes to matters of collective bargaining.
3. The Public Employment Retirement Law (Cal Gov't Code §§ 20000 et seq.) and the Public Employees' Pension Reform Act (Cal Gov't Code §§ 7522 et seq.) set forth different pension formulas and retirement criteria for miscellaneous and safety classified employees.
4. The County has already once been a defendant in a lawsuit filed by RSA with the Public Employment Relations Board, which was the direct result of having safety and miscellaneous classified employees in the same bargaining unit. Specifically, RSA claimed that the County had not negotiated pension reform for the miscellaneous employees of the LEU while the County believed that the negotiations for pension reform applied to all of the members of the LEU, both safety and miscellaneous.
5. As a result, the County has been moving away from blended bargaining units.
6. There are also important statutory distinctions between WFI's and CSO's, on the one hand, the Deputy Sheriffs and other investigators currently represented by the LEU.
7. Granting RSA's petitions would also affect the efficiency of the County's bargaining efforts and operations in that Human Resources (HR) would have to consider yet another department's budget with respect to the LEU.

In addition, denial of RSA's petition as it pertains to SWFI's and WFI's is appropriate for the following reasons:

8. There are critical distinctions concerning the powers and duties between the current members of the LEU and the WFI's.

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9. While Deputy Sheriffs investigate all crimes (ranging from traffic accidents to homicides) and receive training on the entire crime spectrum, SFWI's and WFI's are statutorily limited to investigating claims of welfare fraud.
10. Neither SWFI's nor WFI's investigate homicides, robberies, burglaries or any other crime not related to welfare fraud.
11. WFI's are afforded only limited peace officer status under Cal. Penal Code § 830.35, which further shows that there is no interchangeability of duties with the Sheriff Investigator and Deputy Sheriff positions.
12. Also unlike Deputy Sheriffs, the County has the discretion as to whether to allow Welfare Fraud Investigators to carry firearms.
13. RSA's petitions seek to blend supervisory employees (SWFI's) with subordinate (WFI's) and other non-supervisory employees.
14. It is inappropriate to mix supervisory employees (SWFIs) and their subordinates (WFI's) in the same unit, as they have substantially dissimilar job duties and responsibilities, and therefore have different interests that could complicate the bargaining process.
15. SWFI's and WFI's are employed under the County's Department of Public Social Services (DPSS). It would undermine the efficiency of bargaining to have to consider the budget of another department – DPSS – when negotiating a collective bargaining agreement with the LEU. Currently, the LEU covers only two departments: the District Attorney's Office and the Sheriff's Department.

Denial is appropriate as to the CSO's for the following reasons:

16. There are critical distinctions concerning the powers and duties between the current members of the LEU and the CSO's.
17. Unlike Deputy Sheriffs, CSO's are not armed and have no arrest powers, which is a crucial factual and legal distinction.
18. CSO's are not defined as peace officers by applicable California law (Cal. Penal Code §§ 830, et. seq.)
19. They have no power to arrest, carry a weapon or engage in a pursuit.
20. A CSO I is "basically an office worker."
21. CSO II's "perform the most responsible law enforcement support duties involving a variety of civil and criminal issues that do not require the authority of a sworn law enforcement officer, but have a high factor of responsibility, liability and criticality."

The Arbitrator's Recommendation

The parties then agreed to submit the matter to a hearing officer who would make a recommendation to the Board as to whether to grant or deny RSA's petitions. On or about March 2, 2014, Prihar issued his

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recommendation that the Board grant RSA's petitions. Prihar's recommendation was based in large part because he concluded that the CSO's, WFI's and SFWI's all perform law enforcement type activities. For the Board's reference, Prihar's Recommendation is attached hereto as Attachment A.

Reasons why HR proposes that the Board reject the arbitrator's recommendation:

1. The County is lawfully authorized under the Meyers Miliias Brown Act to determine the make-up of appropriate bargaining units and, so long as its determination is reasonable, its decision should not be disturbed. Applying the factors set forth in the County's ERR, HR's decision to deny RSA's proposed modifications was eminently reasonable for the reasons set forth above and below. Therefore, it was an inappropriate exercise of discretion for Prihar to recommend that RSA's petitions be granted.
2. Prihar overlooked the primary issues that further mixing of non-safety "miscellaneous" personnel in the same bargaining unit as "safety" personnel is untenable for many reasons, as set forth above.
3. While WFI's and CSO's do perform some law enforcement "type" activities, as set forth above, there are still critical distinctions concerning the powers and duties between the current members of the LEU and the classifications sought to be added which also renders adding them to the LEU inappropriate for a lack of community of interest.
4. For reasons associated with collective bargaining and to avoid further litigation, the County has been moving away from blended units. Prihar's recommendation would further blend the LEU.
5. There are far more differences than similarities between the classifications sought to be added to the LEU and the current LEU members.
6. Following Prihar's recommendation would lead to more inefficiency in bargaining with LEU as the County would have to consider the budget/staffing needs, etc. of another department (DPSS).
7. Prihar's recommendation would combine supervisory employees and their subordinates in the same bargaining unit, which is inappropriate and to be avoided when possible in collective bargaining.

For this Board's reference and convenience, attached as Attachments B and C are the respective parties' hearing briefs. Also included is a copy of the transcript from the hearing Attachment D and a copy of the ERR Attachment E.

Impact on Residents and Businesses

No Impact.

ATTACHMENTS:

- Attachment A – Hearing Officer's Recommendation
- Attachment B – RSAs Hearing Briefs
- Attachment C – CORs Hearing Briefs
- Attachment D – Copy of the Transcript
- Attachment E – Employee Relations Resolution 99-379

ATTACHMENT A

1 Michael Prihar
2 P.O. Box 3242
3 Granada Hills, CA 91394-0242

4 Tel. (818) 360-2091

5 Fax (818) 368-5441

6
7 In the Matter of Petition for Unit Modification Between

8 **Riverside Sheriffs' Association,**

9 Association/Petitioner

10 and

11 **County of Riverside,**
12 County/ Respondent.

Fact Finder's Findings, Opinion
and Recommendation

13 **Re: Unit Modification Petitions --**
14 **Welfare Fraud Investigators and**
15 **Community Service Officers**

16
17 This matter was submitted to the Fact Finder¹ pursuant to the Parties' agreement to do so
18 in lieu of a hearing before the Riverside County Board of Supervisors, as provided for in Section
19 10 of the Employee Relations Resolution of the County of Riverside, No. 99-379 (ERR) (JX 1)².
20 The matter was heard on July 18, 2013 at 1325 Spruce Street, Riverside, California. The Parties
21 were afforded the opportunity to examine and cross-examine witnesses under oath, introduce
22 relevant evidence, and propound arguments in support of their respective positions. The hearing
23 record was closed and the matter submitted for an advisory report following receipt and
24 exchange of the post-hearing briefs.
25

26
27 ¹ As reflected in the transcript, throughout the proceedings the reference is to Hearing Officer, whereas Section 3,
28 Definitions, of the governing Employee Relations Resolution refers to the process as a fact finding. Accordingly,
that reference is adopted for this report.

² All exhibits were submitted as Joint Exhibits and are hereby referenced as "JX."

APPEARANCES

For the Petitioner:

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San Diego, CA 92123

For the Respondent:

Edward P. Zappia, Esq.
The Zappia Law Firm
333 S. Hope Street, Suite 3600
Los Angeles, CA 90071

BACKGROUND

This is a matter between the Riverside Sheriffs' Association (Association/Petitioner) and the County of Riverside (County/Respondent). Petitioner represents County employees within Petitioner's Law Enforcement Unit (LEU) for purposes of collective bargaining. The existing structure of the LEU is the result of a negotiated Memorandum of Understanding (MOU) between the parties. (JX 4). The LEU currently represents approximately 2,500 employees (JX 33A) and is comprised of various classifications including Deputy Sheriffs, Sheriff Investigators, District Attorney Investigators, Deputy Coroners, Correctional Deputies, Correctional Counselors, and Supervising Correctional Counselors. (Article II, MOU (JX 4)). With the exception of the latter two classifications, all of these employees are peace officers within the meaning of Cal. Penal Code §§830.1, 830.35(c), or 830.5(a). All of the current members of the LEU work for either the Sheriff's Department or the District Attorney's office.

At issue is a petition filed by Petitioner on August 29, 2006 to modify bargaining units, pursuant to the procedures set forth in Section 10 of Respondent's Employee Relations Resolution 99-379 (ERR) (JX 1).³ The petition proposed to modify the LEU to incorporate Welfare Fraud Investigators (WFIs) and Supervising Welfare Fraud Investigators (SWFIs), who work within Respondent's Department of Public Social Services (DPSS). (JX 2). Employees in these two classifications currently are represented by the Inspection and Technical Bargaining Unit of Labors International Union of North America (LIUNA), Local 777, and the general

³ Cal. Gov't Code §3507 provides that "a public agency may adopt reasonable rules and regulations after consultation in good faith with representatives of a recognized employee organization or organizations for the administration of employer-employee relations ..." The agency's rules shall be followed when making appropriate unit determinations. (Cal. Gov't Code §3507.1(a)). Accordingly, Respondent adopted its own Employee Relations Resolution setting forth the County's rules and regulations. (JX 1).

1 Supervisory Unit of Service Employees International Union (SEIU), Local 721, respectively. (JX
2 5, 6).⁴ Exactly one year later, Petitioner filed another petition to modify the LEU to include
3 Community Service Officers (CSOs) (JX 3), who currently are members of the Inspection and
4 Technical Bargaining Unit of LIUNA.⁵ (JX 5).

5 WFI and SWFIs are peace officers within the meaning of Cal. Penal Code §830.35(a),
6 though Respondent noted that their authority as peace officers is limited and applies only when
7 they are performing their primary duty, the enforcement of the provisions of the Welfare and
8 Institutions Code, if there is immediate danger to person or property, or of the escape of the
9 perpetrator of that offense. (JX 34). The primary function of a WFI is to investigate welfare fraud
10 by gathering evidence through interviewing witnesses and compiling documentation, and
11 ultimately referring the case to the District Attorney's office if warranted. Specifically, the main
12 function of a WFI is to "conduct a variety of complex and sensitive enforcement investigations
13 related to suspected fraudulent receipt of aid and obtain and present facts and evidence in support
14 of administrative action or prosecution." (JX 7-a). The main job function of a SWFI is to
15 "supervise the activities of sworn and non-sworn personnel assigned to investigations related to
16 suspected fraudulent receipt of aid and obtain and present facts and evidence in support of
17 administrative action or prosecution." (JX 7-b). At present, Respondent employs 22 WFIs and 4
18 SWFIs.

19 CSOs work under the direction of Respondent's Sheriff's Department and perform a
20 variety of specialized law enforcement support activities, including assisting law enforcement
21 personnel with field investigations, observations, widespread crime and warrant sweeps, or
22 critical incidents where numerous specialized equipment is necessary. CSOs are "assigned a
23

24 ⁴ Enclosed with Petitioner's notice to Respondent were 20 employee authorization cards evidencing the WFIs and
25 SWFIs who desired representation by Petitioner. 20 WFI cards were submitted (out of approximately 25 WFIs that
26 were employed by Respondent at the time the petition was filed), and three SWFI cards were submitted (which
27 represented 100% of the SWFIs working for Respondent at the time). (JX 2, 37). Respondent claimed that the cards
28 are now outdated and argued that Petitioner's failure to submit any recent consent cards violates the intent of PERB
Regulation 61020(c), which generally provides that consent cards are valid for one year within the date they are
signed by the employee.

⁵ Enclosed with this second notice to Respondent were 116 employee authorization cards (out of approximately 125
CSOs employed by Respondent at the time) evidencing the CSOs who desired to designate Petitioner as their
employee organization. (JX 3, 37). Respondent raised the same objection to the timeliness and validity of these
cards as it did with the initial 2006 petition.

1 variety of law enforcement duties that typically have substantial face-to-face contact and require
2 knowledge of multiple ordinances, regulations and codes.” (JX 10-005, JX 7-c). CSO II’s
3 “perform the most responsible law enforcement support duties involving a variety of civil and
4 criminal issues that do not require the authority of a sworn law enforcement officer, but have a
5 high factor of responsibility, liability and criticality.” (JX 7-c). However, CSOs are not sworn
6 peace officers; thus, they do not carry firearms and do not have the same powers of arrest. There
7 are approximately 140 CSOs currently working for Respondent.

8 Section 8.a.3. of the ERR defines the LEU as “Peace officer employees who are safety
9 members of the Public Employees Retirement System, and other classes of employees whose
10 primary functions are directly related to law enforcement.” (JX 1, p. 5). The petitions were filed
11 based on Petitioner’s view that all three classifications primarily perform law enforcement
12 duties, which, according to Petitioner, evidences a strong community of interest with members of
13 the LEU.

14 Respondent opposes Petitioner’s petitions. On April 23, 2012, Respondent informed
15 Petitioner that its petition regarding the WFIs and SWFIs was substantively denied because: (1)
16 WFIs and SWFIs have “miscellaneous” CalPERS retirement status rather than the “safety”
17 retirement status afforded to employees in Petitioner’s Public Safety Unit (PSU); and (2) SWFIs
18 are supervisors and the PSU includes only non-supervisory positions. (JX 26, pp. 3-4).
19 Respondent did not render any substantive findings with respect to Petitioner’s petitions to
20 modify the LEU (as opposed to the PSU), and did not address Petitioner’s second petition to
21 incorporate CSOs into the LEU.⁶ (Respondent acknowledged that its April 24, 2012 denial of
22 Petitioner’s petitions inadvertently analyzed a petition to accrete WFIs into the PSU – rather than
23 the LEU – but contended that the reasons set forth in Respondent’s denial apply equally to the

24 ⁶ Respondent initially refused to process the petitions on procedural grounds. (JX 30). In response, Petitioner filed
25 two unfair practice charges with the Public Employment Relations Board (PERB). (JX 37). Following a formal
26 hearing that was held on August 17, 2009, an Administrative Law Judge (ALJ) issued a proposed decision in which
27 she concluded that Respondent’s refusal to process the petitions was “unreasonable” and “unlawful” under the
28 Meyers-Milias-Brown Act (MMBA), Gov’t Code §§3509(b), 3503 and 3506, and PERB Regulation 32603. (JX 37).
Respondent filed exceptions to the ALJ’s decision and, on February 24, 2012, PERB issued its decision denying the
exceptions and adopting the ALJ’s decision. Respondent was ordered to process Petitioner’s petitions pursuant to
the terms of the ERR, and thus Respondent’s April 23, 2012 written response followed

1 LEU.)

2 The ERR provides that when a challenge is made to the appropriateness of a proposed
3 unit and the challenge has not been resolved by amendment or withdrawal, the County Board of
4 Supervisors “shall make final determination on the appropriateness of the representation unit or
5 units.” (JX 1, Section 10.7). In lieu of this procedure, the parties agreed to submit the matter to
6 this Fact Finder.

7 Section 7 of the ERR states, “In the determination of the appropriate employee
8 representation units, the following factors, among others, are to be considered:

9 Community of interest among the employees.

10 The history of employee relations in a unit and among other employees of the County.

11 The effect of the unit on efficient operations of County Service and sound employee
12 relations.

13 Dividing any classification among two or more units is to be avoided whenever possible.

14 The existence of common skills and duties, comparable working conditions or similar
15 educational requirements.

16 Each unit should be the largest feasible group of employees having an identifiable
17 common or related interest without reference to geographical locations or same supervisors.

18 No unit shall be established primarily on the basis of the extent to which employees in the
19 proposed unit have organized. (JX 1, pp. 4-5).

20
21 **Petitioner’s Arguments**

22 Petitioner argued that the proposed unit modifications should be implemented because
23 they are appropriate under the factors listed in Section 7 of the ERR. First, the Union asserted
24 that there is a strong community of interest between the classifications referenced in the petitions
25 (WFIs, SWFIs, and CSOs) and those in the LEU, which is sufficient to establish an appropriate
26 employee representation unit pursuant to the ERR. Namely, like the members of the LEU, the
27 three classifications perform job duties that are primarily related to law enforcement because
28 they all perform investigatory functions in the field, including interviewing witnesses, gathering

1 and handling evidence, and transporting prisoners, and because they share similar concerns about
2 safety and use of force.

3 Petitioner argued that SWFIs and WFIs share similar job duties, skills, training and
4 equipment with other investigators currently in the LEU, and that CSOs also have job duties
5 similar to Deputy Sheriffs, as they work together daily to perform a variety of law enforcement
6 support functions, including responding to and investigating the same crimes and gathering and
7 handling evidence. CSOs also have the same supervision and chain of command as Deputy
8 Sheriffs, are similarly subject to all Riverside County Sheriff's Department rules and regulations,
9 and have similar training, educational requirements, equipment and working conditions, which
10 implicate similar safety concerns. Petitioner claimed that the classifications identified in the
11 petition do not share such a community of interest with members of their current bargaining
12 units, many of whom have vastly different job duties that do not involve law enforcement. (JX
13 19, 20).

14 Petitioner contended that other relevant factors weigh in its favor, including that the
15 proposed changes to the LEU will not adversely impact employee relations, Respondent's
16 operation of service, or the bargaining power of LIUNA and SEIU. As to the latter factor,
17 Petitioner noted that both unions indicated non-opposition to Petitioner's petition. Petitioner
18 further noted that the modifications are sought by the majority of all the classifications at issue,
19 as demonstrated by the employee authorization cards. (JX 2, 3). Petitioner contended that WFIs
20 and SWFIs have indicated that their current representation is unacceptable, as evidenced by the
21 fact that some of these employees currently pay to have access to Petitioner's legal defense trust
22 so that they may be represented by Petitioner (rather than their current unions) in matters
23 involving use of force. Petitioner also noted a potentially illogical and unfair disparity in the
24 benefits and conditions of employment that currently exists between the WFIs and SWFIs, on
25 one hand, and employees within the Investigator classifications of the LEU, on the other hand,
26 despite the similarity in their job duties. In Petitioner's view, all parties would be better served to
27 negotiate law enforcement issues through one bargaining unit (the LEU). Moreover, the
28 proposed modifications would not dilute the bargaining power of the employees in the current

1 units because only a small number of employees would be leaving LIUNA and SEIU. (JX 31a;
2 32a).

3 Petitioner argued that the justifications proffered by Respondent for opposing the
4 petitions were unpersuasive and lacked merit. Petitioner noted that various management, non-
5 management, “safety” and “miscellaneous” employees are all currently included in the LEU (and
6 not kept separate in other County bargaining units) (JX 33), and Respondent failed to offer
7 evidence that merging them together in the LEU would detrimentally impact County operations
8 or employee relations. Respondent also failed to adequately explain why increasing the total
9 number of departments from two to three – due to the involvement of the DPSS that would be
10 required if SWFIs and WFIs were brought into the LEU – would be problematic, in light of the
11 fact that Respondent’s negotiations with LIUNA or SEIU, implicate, at a minimum, twelve
12 County departments each. (JX 4, 5). Petitioner also disagreed with Respondent’s claim that the
13 administrative costs of implementing proposed unit modifications that involve only a small
14 number of employees would be inefficient and disruptive to the stability of the bargaining
15 process.

16 In light of these factors, Petitioner argued that its proposal would create “a feasible group
17 of employees having an identifiable common or related interest,” thus satisfying Section 7.6 of
18 the ERR. (JX 1). Petitioner contended that the existence of these communities of interest should
19 take precedent over any similarities or differences that the employees in these units may have
20 based on statutory rights (for example, miscellaneous vs. safety retirement status). Petitioner
21 thereby requests that the Hearing Officer find that its proposed bargaining unit modifications are
22 reasonable pursuant to the Employee Relations Resolution.

23 24 **Respondent’s Arguments**

25 Respondent first maintained that it is lawfully authorized under the MMBA to determine
26 the constitutions of appropriate bargaining units and, so long as Respondent’s determination is
27 reasonable, its decision should not be disturbed. In this case, Respondent asserted that its
28 decision to deny the proposed modifications was reasonable because it considered Petitioner’s

1 proposed modifications to be inappropriate due to the following factors: (1) a lack of community
2 of interest between the three classifications at issue and current LEU members, as it relates to
3 collective bargaining; (2) the adverse effect the proposed modifications would have on the
4 efficiency of Respondent's operations; and (3) the lack of any showing of a history of problems
5 experienced by the employees in the three classifications at issue with their current unions.

6 As to the first reason, Respondent argued that there are differences in matters of civil
7 service classification, statutory retirement classification, and statutorily limited scope of duties,
8 all of which demonstrate a lack of community of interest between current LEU members and the
9 classifications sought to be added to the LEU. For example, different pension formulas apply,
10 and Respondent reasonably seeks separate representation for employees who have a CalPERS
11 "safety" retirement status (which includes approximately 96% of the current LEU members) as
12 opposed to those who have "miscellaneous" retirement status (which includes all of the WFIs,
13 SWFIs, and CSOs sought to be added to the LEU). In Respondent's view, avoiding blended units
14 in regard to retirement classifications is a reasonable objective given that pension reform has
15 been such a pivotal collective bargaining issue in recent years, and even was the subject of an
16 unfair practice charge filed against Respondent by Petitioner in 2011 (which was eventually
17 dismissed). (JX 35). Respondent also argued that it would be inappropriate to mix supervisory
18 employees (SWFIs) and their subordinates (WFIs) in the same unit, as they have substantially
19 dissimilar job duties and responsibilities, and therefore may have different interests that could
20 complicate the bargaining process.

21 Even considering the job duties of the respective positions (which Respondent maintains
22 is the least important factor in the analysis), Respondent contended that there are important
23 statutory distinctions between WFIs and CSOs, on the one hand, and the Deputy Sheriffs and
24 other investigators currently represented by the LEU. For example, Respondent noted that, while
25 Deputy Sheriffs investigate all crimes (ranging from traffic accidents to homicides) and receive
26 training on the entire crime spectrum, WFIs are generally limited statutorily to investigating
27 claims of welfare fraud. Additionally, CSOs are not armed and have no arrest powers, which
28 Respondent asserted is a crucial factual and legal distinction. Moreover, CSOs are not defined as

1 peace officers by applicable California law, and WFIs are afforded only limited peace officer
2 status, which further shows that there is no interchangeability of duties with the Sheriff
3 Investigator and Deputy Sheriff positions.

4 Second, Respondent argued that it would undermine the efficiency of bargaining to have
5 to consider the budget of another (third) department – DPSS – when negotiating a collective
6 bargaining agreement with the LEU. Currently, the LEU covers only two departments: the
7 District Attorney’s Office and the Sheriff’s Department. According to Respondent, the fewer
8 departments in a bargaining unit, the more efficient collective bargaining can be.

9 Third, Respondent argued that Petitioner failed to present any evidence that there has
10 been a history or past practice of problems for employees within the three classifications in their
11 current bargaining units, which is a relevant consideration in establishing an appropriate
12 employee representation unit according to Section 7.2 of the ERR.

13 In short, Respondent asserted that Petitioner presented no compelling reasons to move a
14 small number of employees to a different bargaining unit and potentially create bargaining
15 instability. Respondent thus argued that its decision to deny Petitioner’s petitions was neither
16 unreasonable nor unlawful, and should be affirmed.

18 ISSUES

19 The Parties were unable to reach agreement on the issue(s) to be addressed by the
20 Hearing Officer. The parties disagreed as to the standard to be applied by the Hearing Officer in
21 this matter.

22 According to Respondent, the proper standard is whether Respondent’s denial of
23 Petitioner’s petitions was reasonable, and Petitioner carries the burden of persuasion. Respondent
24 thus proposed the following issue:

25 “Was the County’s denial of the Association’s requested unit modifications –
26 which are (1) to take the Welfare Fraud Investigators who are currently within the
27 LIUNA technical unit and add them to the Association’s LEU; and (2) to take
28 Supervising Welfare Fraud Investigators who are currently within the Service

1 Employees International Union (SEIU) supervisors unit and add them to the
 2 Association’s LEU – reasonable under the terms of the County’s Employee
 3 Relations Resolution, Section 7?”

4 According to Petitioner, the reasonableness of Respondent’s denial is not relevant.
 5 Rather, the Fact Finder’s inquiry is whether the proposed unit modifications are appropriate in
 6 terms of the criteria set forth in Section 7 of the ERR. Petitioner thus proposed the following
 7 issue:

8 “Are the Association’s proposed unit modifications appropriate in terms of the
 9 criteria set forth in Employee Relations Resolution Section 7.1 through 7.8,
 10 entitled ‘Criteria for establishing an appropriate representation unit?’”

11 To resolve the distinctions between Petitioner and Respondent’s proposed statements of
 12 issues while recognizing both Parties’ distinctive theories, the issue is framed as follows:

13 “Is the proposed modification of the existing Law Enforcement Unit appropriate
 14 under the applicable terms of the County of Riverside Employee Relations
 15 Resolution, Resolution No. 99-379?”

16
 17 **RELEVANT LANGUAGE**

18 **EMPLOYEE RELATIONS RESOLUTION 99-379 (JX 1)**

19 ...

20 Section 6. COUNTY RIGHTS

- 21 a. The following rights and functions are vested exclusively in the County:
- 22 1. To determine the mission of each of its departments, institutions, boards and
 23 commissions, pursuant to law.
 - 24 2. To set standards of service to be offered to the public.
 - 25 3. To exercise control and discretion over its own organization and operations.
 - 26 4. To direct, discipline and discharge its employees, in accordance with law,
 27 ordinances and regulations.
 - 28 5. To relieve its employees from duty because of lack of work or for other
 legitimate reasons.
 6. To determine the methods, means and personnel by which its operations are to
 be conducted, including the performance thereof by contract, and to determine
 work loads and staffing patterns.
 7. To prescribe the qualifications for employment and determine whether they are
 met.
 8. To take all other action except as clearly and expressly otherwise provided for
 by or pursuant to this Resolution.
- b. The establishment, modification or exercise of County rights shall not be subject to the
 meet and confer process, but shall not preclude consultation as to the practical consequences that

1 decisions on such matters may have on wages, hours or other terms and conditions of
2 employment.

3 Section 7. CRITERIA FOR ESTABLISHING AN APPROPRIATE EMPLOYEE
4 REPRESENTATION UNIT. In the determination of appropriate employee representation units,
5 the following factors, among others, are to be considered:

- 6 1. Community of interest among the employees.
- 7 2. The history of employee relations in a unit and among other employees of the
8 County.
- 9 3. The effect of the unit on efficient operations of County Service and sound
10 employee relations.
- 11 4. Dividing any classification among two or more units is to be avoided wherever
12 possible.
- 13 5. The existence of common skills and duties, comparable working conditions or
14 similar educational requirements.
- 15 6. Each unit should be the largest feasible group of employees having an
16 identifiable common or related interest without reference to geographical
17 locations or the same supervisors.
- 18 7. No unit shall be established primarily on the basis of the extent to which
19 employees in the proposed unit have organized.

20 Section 8. REPRESENTATION UNITS. a. The following units are hereby established:

- 21 ...
- 22 3. LAW ENFORCEMENT UNIT. Peace officer employees who are safety
23 members of the Public Employees Retirement System, and other classes of
24 employees whose primary functions are directly related to law enforcement.
- 25 ...

26 Section 10. MODIFICATIONS OF UNITS.

- 27 1. A registered employee organization may propose the modification of an
28 established unit by filing a request with the Human Resources Director,
accompanied by proof that its represented members comprise 15 percent of the
employees in the unit. The Human Resources Director may also propose a
modification.
2. No such proposal shall be submitted except between July 1 and September 1, for
immediate determination.
3. The Human Resources Director shall give notice of the proposed modification in
writing to the affected organizations of the unit or units and shall post notice in a
place or places to which affected employees will have access.
4. If no challenge as provided below is filed and the Human Resources Director
determines that the requested modified unit or units are not appropriate, he shall
notify the employee organization which requested the unit of his determination
and the reason therefore in writing. The organization may within seven days,
modify its request or request the Human Resources Director to arrange a hearing
by the Board on its original request.
5. Within 15 days after the notice to employees is posted, any other registered
employee organization may challenge the appropriateness of the proposed unit
or units and request a different unit or units. The challenge shall be filed with the
Human Resources Director and must be accompanied by proof that the
represented members of the organization comprise 15 percent of the employees,
within any unit proposed by the challenging organization.
6. If a challenge is filed, the Human Resources Director shall notify the
organization which submitted the original request for modification of the unit: If
an amended request for modification of the unit; If an amended request for
modification is not filed within seven days of such notice, the original request
for modification and the challenge shall be submitted to the Board as provided

1 below. Upon the filing of an amended request, the original request shall be
2 deemed revoked and the amended request shall be considered on its own merits
as if originally filed.

- 3 7. If a challenging request has been filed and the challenge has not been resolved
4 by amendment or withdrawal, the Human Resources Director shall submit the
5 request and the challenge to the Board. The Board shall hold a hearing on the
6 request and challenge, at which time the organization which filed the
modification request, and the challenging organization shall be heard and the
7 Human Resources Director shall submit his recommendations. The Board shall
8 make final determination on the appropriateness of the representation unit or
units.

9 ANALYSIS AND OPINION

10 The Meyers-Milias-Brown Act (MMBA), Govt. Code §3500 *et seq.*, permits the County
11 to establish rules and procedures such as those found in the ERR. Included among these are the
12 guidelines for bargaining unit modification as set forth in ERR, Section 10. While Section 10
13 provides the County's criteria for modification of bargaining units, it is Section 7 that sets the
criteria for establishing an appropriate representation unit.

14 The Employer is empowered to make a determination as to the appropriateness of the
15 bargaining unit, and the standard to be used is reasonableness, but reasonableness is not totally
16 abstract, and may require consideration of factors such as community of interest among the
17 employees, history of representation, and the general field of work. *Reinbold v. City of Santa*
18 *Monica*, 63 Cal.App.3d 433, 440. Here, the ERR has delineated factors to be used in ascertaining
19 whether a proposed bargaining unit or modification of a bargaining unit is reasonable. Thus,
20 Respondent's discretion as to what is reasonable in such matters is governed by the ERR. The
21 petitioner for the unit modification bears the burden of establishing that the proposed unit
22 modification is appropriate in the context of the criteria set forth in Section 7 of the ERR.

23 I. Community of Interest and Attendant Considerations

24 In assessing whether classifications share a community of interest, it is recognized that
25 the measurement cannot be based on a comparison of the specific duties associated with any one
26 classification. Specific duties are bound to vary because of the difference in the operational
27 needs and functions served by the differing classifications. Petitioner begins by noting that all
28

1 current classifications within the LEU share a community of interest because their duties are
2 directly related to law enforcement. Whether employees share a community of interest in terms
3 of work performed for any employer is ascertainable by considering the following criteria:

- 4 • Similarities in the employees' duties, wages, hours, benefits, working conditions,
5 qualifications, training, and skills;
- 6 • Functional integration of the work to include work flow interchange and contact among
7 and between the employees; and
- 8 • The employer's organizational structure and lines of supervisory authority.

9 Thus, the overall Section 7 community of interest analysis inherently encompasses
10 numbers 3 (the effect of the unit on efficient operations and sound employee relations) and 5
11 (existence of common skills and duties, comparable working conditions, or similar education
12 requirements) of the enumerated Section 7 criteria.

13 Only those criteria for which evidence existed in this record are addressed. The absence
14 of evidence relating to the other criteria was deemed to indicate that the other criteria were not a
15 detriment to the petitioned-for modification of the LEU.

16 **II. As to WFI, SWFI, and Sheriff Investigator classifications**

17 **A. Similarities in duties, skills, working conditions, qualifications, and** 18 **training between WFI, SWFI, and Sheriff Investigator**

19 Petitioner asserts that employees in these three classifications share similar job functions
20 and often work alongside each other. They also receive training that is in many ways similar to
21 training provided to Deputy Sheriffs and Sheriff Investigators.

22 Respondent counters by noting that LEU members are sworn peace officers with peace
23 officer status, whereas WFI have limited peace officer status that is in effect solely when they are
24 performing their primary duty of enforcing the Welfare and Institution Code, in cases involving
25 immediate danger to person or property, or in pursuit of a perpetrator of such offenses. Where
26 Deputy Sheriffs are authorized as a matter of law to carry firearms, Respondent retains discretion
27 over whether to allow WFIs to carry firearms. And where Deputy Sheriffs may investigate a
28 universe of criminal matters (such as those involving robbery, homicide, burglaries, traffic

1 incidents, and others), WFI are limited to investigations relating to welfare fraud. A Sheriff
2 Investigator with over 25 years experience testified that during those years he did not recall ever
3 working together with a WFI on a matter, other than to turn to a WFI for information about
4 someone who might be involved in drug sales and who might also be receiving SSI benefits.

5 The nature of the investigations conducted by any WFI, SWFI, and a Sheriff Investigator
6 is patently different in some ways, particularly with respect to the scope of the crimes and areas
7 of investigation. But the techniques each could use often relate to similar sources of information,
8 similar interviewing techniques, and similar needs for tracking and recording their interviews
9 since their actions may be called into question in judicial proceedings. While the nature of the
10 criminal behavior differs, these Investigators all interact with the District Attorney's office in a
11 similar way, and the subject of a WFI or SWFI report to the District Attorney may include
12 allegations of burglary, forgery, perjury, and identity theft. Unlike other County staff members
13 who may be involved in personnel investigations, all three investigator classifications have the
14 power to prepare and serve search warrants. And to the extent that they share authority to
15 exercise legal powers and detain or arrest someone, they are alike. In this way they are also
16 different from Human Resource professionals, who may conduct personnel investigations
17 relating to personnel issues. That a WFI, SWFI, and a Sheriff Investigator possess this power
18 gives rise to mutual areas of concern relating to potential legal liabilities and obligations. The
19 record supports that the similarities between their duties are greater than the differences.

20 The extensive similarity between the duties of the two Investigator classifications – WFI
21 and Sheriff Investigator – is also reflected by the similarities in training these employees receive.
22 They attend the same training facility, the Ben Clark Training Center (BCTC). They must pass
23 the same POST⁷ physical agility test, and WFIs receive POST certification just as do Sheriff
24 Investigators. The training component for both is followed by participation in field training with
25 a field training officer. Training topics for a WFI include tactical communications, tactical
26 firearms, arrest and control, defensive tactics, and firearm qualifications, among others. These
27 are also training topics for Sheriff Investigators, and the similarity extends to the POST

28 ⁷ Peace Officers Standards and Training

1 perishable skills courses and certificates that both WFI and a Sheriff Investigator must acquire.
2 Employees in these two classifications often attend the same training at the BCTC. Thus, not
3 only is there similarity in duties, but a significant component of the underlying training required
4 by these classifications – WFI, SWFI, and Sheriff Investigator – is also similar.

5 The shared similarity also extends to working conditions. A WFI, SWFI, and Sheriff
6 Investigator all normally wear civilian attire while at work and drive unmarked police vehicles.
7 They are issued similar equipment, such as firearms, handcuffs, pepper spray, batons,
8 radios/telephones, and bullet proof vests or body armor. They all carry badges while on duty, and
9 all can make arrests. More significantly, all are subject to same discipline for alleged improper
10 use of force. Allegations of improper use of force by a WFI or a SWFI are investigated by the
11 Sheriff Department Internal Affairs Bureau. (JX 8). The Sheriff Department is also responsible
12 for any the investigation that follows a WFI- or SWFI-involved shooting. The three
13 classifications are also subject to the Law Enforcement Code of Ethics, and employees in these
14 classifications are subject to the protections afforded by the Public Safety Officers Procedural
15 Bill of Rights (POBRA)⁸.

16 The preponderance of evidence supports that there is extensive similarity in the these
17 employees' duties, qualifications, training, and working conditions. To the extent that WFIs and
18 SWFIs become aware of information that may lead to further criminal investigations by the
19 Sheriff Department, there is also a degree of integration of the work to include work flow
20 interchange. And contact among and between the employees is evident not only in the similarity
21 in training but in the interactions between employees receiving the training at the same BCTC
22 facility at the same time.

23 B. Organizational and supervisory structure considerations relating to
24 inclusion of SWFI and WFI in the same unit

25 With regard to the proposed accretion of both the WFI and SWFI into one bargaining
26 unit, Petitioner persuasively countered Respondent's argument that blending safety and non-
27 safety employees in the same unit could be problematic should the Parties reach impasse in
28

⁸ Govt. Code §3300 *et seq.*

1 negotiating the unit contract. Respondent had noted that impasses involving safety employees are
2 within the jurisdiction of the Superior Court, whereas impasses involving miscellaneous
3 employees fall under PERB's jurisdiction. However, as Petitioner noted, this issue already exists
4 with the current makeup of the LEU, thus the accretion of the three classifications into the LEU
5 would not alter this element.

6 A more significant issue is the Petitioner's motion to blend supervisory with non-
7 supervisory employees, the SWFI and the WFIs in the same unit. Supervisory employees are
8 entitled to their own bargaining unit under the MMBA, but they may voluntarily forego that
9 option, as apparently is the case here with the SWFI. (JX 2). From a management perspective
10 there is a potential operational impact when one member of a bargaining unit is compelled to
11 discipline a subordinate who is a member of the same bargaining unit. Management is entitled to
12 operate with the belief that a supervisor will exercise supervisory authority as may be required
13 and without concern for the impact such discipline may have on the solidarity of the bargaining
14 unit. That said, there is significant evidence that such interactions and concerns have not affected
15 the composition of other County bargaining units. The current Supervisory unit contains such
16 relationship as exemplified by the Custodial Supervisor and Lead Custodian classifications. (JX
17 31). The LEU includes both Supervising Correctional Counselors and Correctional Counselors.
18 The Public Safety Unit (PSU) includes both Supervising Probation Officers and Deputy
19 Probation Officers. Notably, this is not an issue with regard to the CSO classification.

20 Equivalence among classifications utilized by one employer, such as the County, occurs
21 in some situations, but equivalence is not necessary to determine whether different classifications
22 should be part of the same bargaining unit. This record established a high degree of commonality
23 among a significant segment of the skills and duties associated with WFIs, SWFIs, and Sheriff
24 Investigators.

1 **II. As to CSO and Sheriff Deputy classifications**

2 A. Similarities in duties, skills, working conditions, between CSO and Sheriff
3 Deputy

4 The CSO assists the Sheriff Department primarily by performing administrative tasks
5 within an office environment. Those in the CSO classifications (CSO I and CSO II) are not
6 sworn law enforcement officers. They are not peace officers under applicable California law, and
7 they have no arrest powers. They do not carry weapons, and they cannot engage in any pursuit.
8 They can assist Sheriff Deputies by taking police reports from citizens, taking care of equipment,
9 fingerprinting, and at times assisting with traffic control at the scene of accidents. They
10 otherwise assist law enforcement personnel as directed. They share a similarity, because a CSO
11 must also have some familiarity with various code provisions and must know how to collect and
12 transport evidence, interview witness, and take a crime report. A CSO II may also detect
13 violations of law or ordinance and issue a warning or a citation.

14 Training received by a CSO has some similarity with that received by a Deputy Sheriff.
15 Both must learn laws of arrest, restraint tactics such as use of pepper spray and takedowns,
16 searches, transport of witnesses, and report writing. Some of the courses a CSO may take are
17 POST-certified courses. Unlike Deputy Sheriffs, a CSO does not have a minimal educational
18 requirement such as a high school degree or attainment of a satisfactory on a GED test. But, both
19 classifications are provided with and use a number of significant tools, such as handcuffs, body
20 armor or bullet proof vests, and pepper spray.

21 B. Functional integration of CSO and Deputy Sheriff work, contact between
22 the two classifications, and shared lines of supervisory authority

23 The two classifications – CSO and Deputy Sheriff - interact daily. Testimony established
24 that CSOs report to crime scenes, assist in the collection and transportation of evidence, take
25 crime reports, and interview witnesses. Along with Deputies, they attend daily briefings.
26 Additionally, CSOs share a chain of command with Deputy Sheriffs. They are supervised by the
27 same shift sergeants, and these same supervisors evaluate and prepare the performance
28 evaluation for both classifications. The majority of the Sheriff Department rules that govern the

1 performance and conduct of a Deputy Sheriff also apply to a CSO; both classifications may be
2 subject to discipline for violations of the Sheriff Department Field Operations Manual or Manual
3 of General Orders. Other than the text on their badges, both classifications wear the same badge
4 and uniform. They drive similar Sheriff Department vehicle, a standard black and white Ford
5 Crown Victoria. They also work the same hours and shifts.

6 The preponderance of evidence supports that significant similarity exists in a number of
7 the duties performed by CSOs and Deputy Sheriffs. Because they often work together, with
8 CSOs frequently assisting the Deputies, their working conditions are also similar. There is a
9 marked degree of integration of their work because of the very nature of their duties, which
10 obviously must result in extensive work flow interchange. And contact among and between these
11 categories of employees is also evident in their mutual chain of command. The two
12 classifications are intertwined not solely by the nature of their duties, but they also share a
13 command structure. And other than the specific occasions such as when Deputy Sheriffs are
14 responding to major criminal events entailing exchange of gunfire, the two classifications are
15 subjected to comparable working conditions and environments.

16 These two classifications share a community of interest as required by the ERR.

17 **III. Benefit considerations as a community of interest component affecting all**
18 **three classifications**

19 With regard to benefits, approximately 96% of the current LEU members are classified as
20 safety officers and entitled to the “safety” CalPERS retirement benefit. The CSOs, WFI, and
21 SWFIs are beneficiaries of “miscellaneous” CalPERS retirement benefits. The fact that LEU
22 already contains, albeit a very small percentage, of employees who are not safety officers and
23 therefore are not entitled to the “safety” retirement benefits, gave rise to issues during the last
24 LEU contract negotiations between Respondent and Petitioner. Respondent aims to rectify the
25 problem by moving towards “unblended” units.

26 As to the retirement benefits, the existing LEU structure already consists of both “safety”
27 members and “miscellaneous” members, as those categories apply to CalPERS retirement status.
28 The inclusion of “miscellaneous” status employees resulted from a CalPERS Board of

1 Administration hearing, in which Respondent argued in favor of inclusion. (JX 25). This history
2 suggests that the retirement status is not a consistent or significant factor from Respondent's
3 perspective as to whether the addition of more miscellaneous retirement-status employees would
4 diminish the LEU community of interest.

5 **IV. Additional Considerations**

6 A. Absence of evidence of deleterious effects on County operations or labor
7 relations

8 The petitioned-for accretion to the LEU will not result in any additional bargaining units.
9 It merely transfers the three classifications from their current bargaining units. The transfer is not
10 challenged by the representatives of the two existing bargaining units (SEIU and LIUNA), and it
11 reflects the desire of the majority of the incumbents in the three classifications, as reflected by
12 the authorization cards submitted with the original petitions for the WFI and SWFIs on August
13 29, 2006, (JX 2), and the CSOs on August 29, 2007. (JX 3). The WFI and SWFI petition
14 included 20 authorization cards from the 25 incumbent WFIs employed by the County at that
15 time, and all of the incumbent SWFIs. The CSO petition was accompanied by authorization
16 cards signed by 116 of the approximately 125 incumbents.

17 B. Relevant labor relations history

18 The relevant history of employee relations relating to the LEU in this record is that
19 relating to Respondent's attempt in 2004 to modify the LEU and the Public Service Unit (PSU)
20 by creating four new public safety units. The expressed rationale for that proposed modification
21 was the anticipated impact of legislation that would have required interest arbitration following
22 bargaining impasse in fire fighter and police negotiations. As previously noted, Respondent at
23 that time sought to include supervisors in the same unit as their subordinates. Respondent at that
24 time proposed the creation of a Public Safety Probation Officers Unit (PSPOU) that would have
25 included Supervising Probation Officers along with Deputy Probation Officers. Another
26 proposed unit, the Public Safety Deputy Coroner/Coroner Unit (PSDCU) would have included
27 Coroner Lieutenant, Supervising Deputy Coroners, Deputy Coroners, and Deputy Coroner
28 Trainees. This history evidences Respondent's belief that units combining supervisory and

1 subordinate members are manageable from an operational perspective and from a bargaining
2 perspective.

3 The only other example of relevant history cited by Respondent in support of its
4 objection relates to the last round of negotiations with the LEU. The record suggests that the
5 focus of discussions was retirement benefits for members covered by the safety members
6 provisions of CalPERS, the State retirement system. The Parties reached impasse, and
7 Respondent attempted to implement its Last Best and Final (LBF) offer. That offer included
8 changes to the LEU members covered by CalPERS miscellaneous employees plan, and the
9 Parties had not met and conferred over those propose changes. The attempted implementation of
10 the LBF offer resulted in Petitioner-initiated litigation that was subsequently withdrawn after the
11 Parties reached agreement over a successor Memorandum of Understanding. The cited matter
12 undercuts rejection of the proposed unit modification based on the fact that the LEU unit would
13 consist of members covered by different retirement plans. The fact remained that these Parties
14 were able to successfully negotiate an agreement that covers both categories of employees.
15 Additionally, such units exist in other circumstances, such as those where parties have negotiated
16 varying retirement benefits associated with an employee's hire date.

17 **V. Respondent's tangential arguments**

18 Respondent argues that Petitioner has not been able to cite any issues or problems
19 associated with, or stemming from, the current structure of the affected units (LEU, SEIU, and
20 the Inspection and Technical Unit (ITU) represented by LIUNA). The argument presumes to
21 interject into the ERR a new criteria for unit determination or modification. Neither Section 7 or
22 Section 10 of the ERR include any reference to exiting issues as a basis for modifying a unit.

23 Respondent argues that the authorization cards are dated in that they were obtained in
24 2006, and Petitioner should be required to submit more current evidence the members' desires.
25 The gap between the acquisition of signatures and this proceeding is the result of delays
26 associated with the initial denial of the petitions. To credit the argument would be an invitation
27 to resist any future petitions by this Petitioner, or any other petitioner, and thereby compel
28 additional delays associated with the acquisition of more current authorization cards.

1 Additionally, the evinced lack of objection from either SEIU or LIUNA as to Petitioner's
2 petitions supports that Petitioner is not engaged in "raiding" the SEIU or LIUNA-represented
3 units. Similarly, no evidence substantiates the argument that the shifting of the three
4 classifications affected by the petitions will destabilize labor relations between Respondent and
5 Petitioner, or that they will result in unpredictable shifts in the bargaining power between unions
6 and bargaining units, as otherwise argued by Respondent.

7 Respondent argues that it retains the discretion as to the creation and modification of
8 bargaining units as long as its actions are reasonable. Section 6 of the ERR sets out the County
9 rights, but more significantly, Section 2 of the ERR includes the following statement of purpose:

10 The purpose of this Resolution is to promote the improvement of employee relations between the
11 County of Riverside and its employees by the establishment of formal procedures not otherwise
12 established by or pursuant to law or ordinance, to provide for the orderly and systematic
13 presentation, consideration and resolution of employee relations matters concerning wages, hours,
14 and other terms and conditions of employment, and to assure at all times the orderly and
15 uninterrupted operations and services of County government.

16 The ERR reflects Respondent's established procedures for dealing with the very issues
17 presented by the petitions to modify the LEU – the desires of the affected employees as
18 represented by their signed authorization cards as to who they wish to represent their interests in
19 matters relating to their wages, hours, and working conditions. Whether the decision to deny the
20 petitions is reasonable is answered by examining whether the procedures and associated
21 conditions as set forth in the ERR have been met, and there is no countervailing persuasive
22 evidence that the proposed modification would have deleterious effects on Respondent's
23 operations and ultimately its abilities to meet the needs of its citizens. The Fact Finder concludes
24 that Petitioner has met that burden as to both petitions.

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RECOMMENDATION

Based on the foregoing analysis and findings, it is recommended that the Board of Supervisors find the following:

1. Petitioner’s proposed modification of the Law Enforcement Unit is appropriate under the applicable terms of the County of Riverside Employee Relations Resolution, Resolution No. 99-379.
2. The Petitions to modify the Law Enforcement Unit by transferring the Community Service Officer, the Welfare Fraud Investigator, and the Supervising Welfare Fraud Investigators to that Unit are granted.

Respectfully submitted,



Michael Prihar
Fact Finder
Date: March 2, 2014
Los Angeles, California

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9 BEFORE IMPARTIAL ARBITRATOR

10 MICHAEL PRIHAR

11 IN THE MATTER OF A CHALLENGE TO) **RE: RSA Unit Modification Petitions re**
12 PROPOSED BARGAINING UNIT) **Welfare Fraud Investigators and**
13 MODIFICATIONS BETWEEN,) **Community Service Officers**
14)
15 COUNTY OF RIVERSIDE,)
16)
17 Challenger and Employer,) **RSA'S POST-HEARING BRIEF**
18)
19 and)
20)
21 RIVERSIDE SHERIFFS' ASSOCIATION,)
22)
23 Respondent and Union.)
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25)
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1 **I. INTRODUCTION**

2 This dispute dates back to over seven years ago when RSA filed a petition to modify its
3 Law Enforcement Unit (LEU) to include Welfare Fraud Investigators (WFIs) and Supervising
4 Welfare Fraud Investigators (SWFIs). A year later, RSA filed another petition to modify the LEU
5 to include Community Service Officers (CSOs). RSA sought inclusion of all three classifications
6 in the LEU because all three positions primarily perform law enforcement duties. The County
7 vigorously fought RSA’s proposed changes to the LEU despite the fact that neither LIUNA nor
8 SEIU (the only other employee organizations impacted by the proposal) opposed RSA’s petitions.
9 The County would not even process the petitions initially relying on its misinterpretation of the
10 County’s Employee Relations Resolution No. 99-379 (ERR). RSA was forced to seek relief from
11 PERB to order the County to process the petitions. When RSA successfully obtained such an
12 order the County still refused to provide a rationale for opposing either of RSA’s petitions on any
13 grounds.

14 The County’s ERR provides that when a challenge is made to the appropriateness of a
15 proposed unit(s), the County Board of Supervisors has the power to determine whether the
16 proposed unit is appropriate pursuant to certain criteria contained in the ERR. While not all of the
17 ERR criteria are relevant in this instant matter, applying the applicable criteria strongly favors a
18 finding that the proposed unit modifications to the LEU are appropriate under the ERR.

19 First, there is no question that these employees share a strong community of interest with
20 other members of the LEU as they all primarily perform law enforcement duties. WFIs, SWFIs,
21 and CSOs all perform investigatory functions in the field. For example, they all interview
22 witnesses, gather and handle evidence, and transport prisoners. They share the same concerns
23 with respect to safety and use of force considerations with members of the LEU. Second, the
24 proposed unit will not negatively impact labor relations or the County’s operation of service. The
25 employees in the impacted classifications overwhelmingly support being moved into RSA. With
26 respect to WFIs and SWFIs, including them in the LEU will improve sound employee relations as
27 the representation they have received from their current employee organizations is unacceptable
28 from their perspective. Currently, some of these employees already pay to have access to RSA’s

1 legal defense trust to enable RSA representation during a use of force investigation. Third, SWFIs
2 and WFIs share similar job duties, skills, training, and equipment with all other investigators in
3 the LEU—including Sheriff Investigators, Coroner Investigators, and District Attorney
4 Investigators. CSOs also have similar job duties to Deputy Sheriffs and work hand-in-hand with
5 them performing a variety of law enforcement support functions including responding to and
6 investigating the same crimes and gathering and handling evidence. CSOs also have the same
7 supervision and chain of command as Deputy Sheriffs, are subject to all Riverside Sheriff
8 Department rules and regulations like Deputy Sheriffs, and have similar equipment and working
9 conditions to Deputy Sheriffs.

10 At the hearing in this matter, the County set forth a few easily disposed of justifications
11 for opposing RSA’s petitions. The County argued that it wants to separate management and non-
12 management employees and CalPERS “safety” retirement employees from “miscellaneous”
13 retirement employees. The County’s own actions cast doubt as to the sincerity of the positions it
14 now takes as the County previously agreed to include the same types of employees it now seeks to
15 exclude in the LEU. Management, non-management, “safety”, and “miscellaneous” employees
16 are all currently included in the LEU. Management and non-management employees are also
17 included in other County bargaining units. Additionally, the County was unable to articulate why
18 excluding these groups from the LEU would make a difference. Finally, the County argues to
19 exclude SWFIs and WFIs from the LEU because their inclusion would necessitate the
20 involvement of the Department of Social Services (DPSS), their governing department, in the
21 bargaining process. Such a change would bring the total number of departments included within
22 the LEU to three. Again, the County’s own actions contradict its position as the County’s
23 negotiations with LIUNA or SEIU implicate, at a minimum, twelve County departments each.
24 Certainly, adding DPSS employees into the LEU is not cause to deny the petitions. The County’s
25 reasoning for opposing the petitions falls woefully short of proving that the modifications posed
26 are not appropriate pursuant to the criteria set forth in the ERR.

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1 For these reasons and for those explained in further detail below, RSA's proposed unit
2 modifications should be deemed appropriate pursuant to the ERR. RSA requests that the
3 Arbitrator make such a finding.

4 **II. FACTUAL AND PROCEDURAL BACKGROUND**

5 **A. RSA'S LAW ENFORCEMENT UNIT**

6 The Riverside Sheriffs' Association ("RSA") represents County employees within the
7 Law Enforcement Unit ("LEU") for purposes of collective bargaining pursuant to the Meyers-
8 Milias Brown Act, Government Code Section 3500, et seq ("MMBA").

9 The existing structure of the LEU is the result of a negotiated agreement between the
10 parties. The current LEU Memorandum of Understanding ("MOU") is in full force and effect
11 from 2012-2016. (Joint Exhibit ("JX") 4). The LEU is comprised of approximately 2,500
12 employees. (JX 33a). Article II of the LEU MOU defines the LEU as comprising employees in
13 various classifications including: Deputy Sheriffs, Sheriff Investigators, District Attorney
14 Investigators, Deputy Coroners, Correctional Deputies, Correctional Counselors, and Supervising
15 Correctional Counselors. (JX 4). With the exception of Correctional Counselors and Supervising
16 Correctional Counselors, the employees within these classifications are peace officers within the
17 meaning of Penal Code Section 830.1, Penal Code Section 830.35(c), or Penal Code Section
18 830.5(a).

19 Since 1987 the classifications of Correctional Deputy, Deputy Coroner, Bailiff,
20 Correctional Counselors, and Supervising Correctional Counselors were added to the LEU as the
21 result of negotiated agreements between the parties. (JX 15, pg. 12; JX 24).

22 **B. RSA PROPOSED THAT THE LEU BE MODIFIED TO INCLUDE**
23 **WELFARE FRAUD INVESTIGATOR CLASSIFICATIONS AND**
24 **COMMUNITY SERVICE OFFICERS**

25 On August 29, 2006, RSA notified the County that it proposed modification of the LEU to
26 include Welfare Fraud Investigators ("WFIs") and Supervising Welfare Fraud Investigations
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1 (“SWFIs”).¹ (JX 2). The WFIs were then, and currently are, members of the Inspection and
2 Technical Bargaining Unit represented by Labors International Union of North America, Local
3 777 (“LIUNA”). (JX 5). The SWFIs were then, and currently are, members of the Supervisory
4 Unit represented by Service Employees International Union, Local 721 (“SEIU”). (JX 6).
5 Enclosed with RSA’s notice to the County were 20 employee authorizations cards evidencing the
6 WFIs who desired to designate RSA as their employee organization.² (JX 2). Three cards were
7 submitted for SWFIs, which represented 100% of the SWFIs working for the County at the time.
8 (JX 37).

9 On August 29, 2007, RSA notified the County that it proposed modification of the LEU to
10 include Community Service Officers (“CSO”). (JX 3). The CSOs were then, and currently are,
11 members of the Inspection and Technical Bargaining Unit represented by LIUNA. (JX 5).
12 Enclosed with this notice were 116 employee authorizations cards evidencing the CSOs who
13 desired to designate RSA as their employee organization. (JX 3). At this time there were between
14 120 and 125 CSOs employed by the County. (JX 37).

15 **C. THE COUNTY REFUSED TO PROCESS RSA’S PETITIONS IN**
16 **VIOLATION OF THE MMBA**

17 The County refused to process RSA’s petitions because RSA allegedly failed to submit
18 proof that it represented 15% of the employees in the impacted SEIU and LIUNA bargaining
19 units. (JX 30). The County erroneously believed that Section 10 of the ERR contained such a
20 requirement. (JX 30).

21 In response to the County’s refusal, RSA was forced to file two unfair practice charges
22 with PERB. (JX 37). PERB issued complaints on both charges and the two cases were
23 consolidated. (*Id.*) A formal hearing was held on August 17, 2009. (*Id.*) The Administrative
24 Law Judge (“ALJ”) that presided over the hearing issued her proposed decision on December 30,
25 2009 finding that the County’s refusal to process the petitions was unreasonable and unlawful.
26 (*Id.*) The County filed exceptions to the ALJ’s decision and on February 24, 2012, PERB issued

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28 ¹ This notification was provided pursuant to the procedures set forth in the County’s Employee Relations Resolution
99-379 (“ERR”).

² At the time RSA filed its notice with the County approximately 25 WFIs worked for the County. (JX 37).

1 its decision denying the exceptions and adopting the ALJ decision. (*Id.*) The County was ordered
2 to process RSA's petitions pursuant to the terms of the ERR. (*Id.*)

3 **D. THE PARTIES AGREED TO FOREGO THE BOARD HEARING**
4 **PROVIDED FOR IN THE ERR AND SUBMIT THE ISSUE TO A NEUTRAL**
5 **HEARING OFFICER INSTEAD**

6 Following PERB's order, on April 23, 2012, the County notified RSA that its petition with
7 respect to the WFIs and SWFIs was substantively denied because: (1) WFIs and SWFIs have
8 "miscellaneous" CalPERS retirement status and the employees in the Public Safety Unit ("PSU")
9 have a "safety" retirement status; and (2) SWFIs are supervisors and the PSU includes only non-
10 supervisory positions. (JX 26, pgs. 3-4). The County did not make any substantive findings with
11 respect to RSA's petitions to modify the *LEU* as required by the ERR.

12 Thereafter, the County and RSA agreed to submit the issue of whether the units were
13 appropriate to an impartial hearing officer.³ On July 18, 2013, the hearing was held before the
14 impartial hearing officer Michael Prihar. Raquel A. Ortega represented RSA and Edward Zappia
15 represented the County. The parties agreed to submit post-hearing briefs in lieu of oral argument.

16 **III. RELEVANT LANGUAGE OF THE ERR**

17 Riverside County Employee Relations Resolution, 99-379, Section 10 sets out the
18 County's requirements for unit modification:

19 1. A registered employee organization may propose the modification of an
20 established unit by filing the request with the Human Resources Director, accompanied
21 by proof that its represented members comprise 15 percent of the employees in the unit.

22 The Human Resources Director may also propose a modification.

23 2. No such proposal shall be submitted except between July 1 and September 1,
24 for immediate determination.

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27 ³ As described in further detail below, the parties agreed to engage in this same process back in 2005 when the
28 County attempted to remove certain classifications from the LEU and PSU. (JX 15). Arbitrator Prihar was also
selected to serve the parties in that instance. (*Id.*) Ultimately, Arbitrator Prihar determined that the County's
proposed modifications did not satisfy the criteria of the ERR. (*Id.*)

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3. The Human Resource Director shall give notice of the proposed modification to the affected organization of the unit or units and shall post notice in a place or places to which affected employees will have access.

4. If no challenge as provided below is filed and the Human Resources Director determines that the requested modified unit or units are not appropriate, he shall notify the employee organization which requested the unit of his determination and the reason therefore in writing. The organization may within seven days, modify the request or request the Human Resources Director to arrange a hearing by the Board on its original request.

5. Within 15 days after the notice of employees is posted, any other registered employee organization may challenge the appropriateness of the proposed unit or units and request a different unit or units. The challenge shall be filed with the Human Resources Director and must be accompanied by proof that the represented members of the organization comprise 15 percent of the employees, within any unit proposed by the challenging organization.

6. If a challenge is filed, the Human Resources Director shall notify the organization which submitted the original request for modification of the unit: If an amended request for modification of the unit; If an amended request for modification is not filed within seven days of such notice, the original request for modification and the challenge shall be submitted to the Board as provided below. Upon the filing of an amended request, the original request shall be deemed revoked and the amended request shall be considered on its own merits as if originally filed.

7. If a challenging request has been filed and the challenge has not been resolved by amendment or withdrawal, the Human Resources Director shall submit the request and the challenge to the Board. The Board shall hold a hearing on the request and challenge, at which time the organization which filed the modification request, and the challenging organization shall be heard and the Human Resources Director shall

1 submit his recommendations. The Board shall make final determination on the
2 appropriateness of the representation unit or units.

3 [JX 1, ERR, Section 10].

4 The ERR, Section 7.1-7 (p. 4-5), provides the criteria for establishing an appropriate employee
5 representation unit as follows:

6 Section 7. CRITERIA FOR ESTABLISHING AN APPROPRIATE
7 EMPLOYEE REPRESENTATION UNIT. In the determination of the appropriate

8 employee representation units, the following factors, among others, are to be considered:

- 9 1. Community of interest among the employees.
- 10 2. The history of employee relations in a unit and among other employees
11 of the County.
- 12 3. The effect of the unit on efficient operations of County Service and
13 sound employee relations.
- 14 4. Dividing any classification among two or more units is to be avoided
15 whenever possible.
- 16 5. The existence of common skills and duties, comparable working
17 conditions or similar educational requirements.
- 18 6. Each unit should be the largest feasible group of employees having an
19 identifiable common or related interest without reference to geographical
20 locations or same supervisors.
- 21 7. No unit shall be established primarily on the basis of the extent to which
22 employees in the proposed unit have organized.

23 The ERR, Section 8. a. 3. (p. 5) defines the Law Enforcement Unit as follows:

- 24 3. LAW ENFORCEMENT UNIT. Peace officer employees who are safety
25 members of the Public Employees Retirement System, and other classes
26 of employees whose primary functions are directly related to law
27 enforcement.

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1 **IV. STATEMENT OF THE ISSUE**

2 As highlighted above, the ERR provides that “[i]n the determination of the appropriate
3 employee representation units” several factors must be considered. It further provides:

4 “If a challenging request has been filed and the challenge has not been
5 resolved by amendment or withdrawal, the Human Resources Director shall
6 submit the request and the challenge to the Board. The Board shall hold a
7 hearing on the request and challenge, at which time the organization which
8 filed the modification request, and the challenging organization shall be
9 heard and the Human Resources Director shall submit his
10 recommendations. *The Board shall make final determination on the
11 appropriateness of the representation unit or units.*” (JX 1, Section 10, ¶
12 7).

13 RSA’s proposed issue statement purposefully tracks the language of the ERR. RSA’s
14 proposed issue is as follows:

15 “Are Riverside Sheriffs’ Association’s proposed unit modifications
16 appropriate in terms of the criteria set forth in Employee Relations
17 Resolution Section 7.1 through 8 entitled ‘Criteria for establishing an
18 appropriate representation unit.’ ?” (TR 10:21-11:2).

19 The County’s proposed issue statement is as follows:

20 “Was the County’s denial of the Riverside Sheriffs’ Association’s requested
21 unit modifications reasonable under the terms of the County/Employer
22 Relations Resolution Section 7?” (RSA’s requested unit modifications are:
23 1) to take the welfare fraud investigators who are currently within the
24 LIUNA technical unit and add them to Riverside Sheriff’s Association Law
25 Enforcement Unit; and (2) take supervising welfare fraud investigators who
26 are currently within the Service Employees International Union supervisors
27 unit and add them to Riverside Sheriff’s Association Law Enforcement
28 Unit.) (TR 10:3-20).

 The County is bound to follow the rules and regulations it adopted in the ERR when
making unit determinations. (Cal. Gov’t Code §§ 3507; 3507.1(a); *International Brotherhood
of Electric Workers v. City of Gridley* (1983) 34 Cal.3d 191 (“It is now well settled that the
Legislature intended that the MMBA ‘set forth reasonable, proper and necessary principles which
public agencies must follow in their rules and regulations for administering their employer-
employee relations . . .’ ”). RSA’s proposed issue statement was formulated with the
understanding that the rules and regulations set forth in the ERR are controlling. The ERR’s

1 governance in unit determinations was recognized in a prior administrative hearing between the
2 parties concerning the County's request to modify the LEU and PSU. (JX 15). One of the issue
3 statements analyzed in that matter was as follows: "Can the proposed unit modifications be
4 sustained in terms of the criteria set forth in ERR, Section 7.1-8 entitled, "Criteria For
5 Establishing An Appropriate Representation Unit?" (JX 15, pg. 7). The County's proposed issue
6 statement seeks to apply a more lenient standard that is not referenced in the ERR. The ERR does
7 not mention whether the County's denial was reasonable, only whether the employee
8 representation units sought are appropriate.⁴ The County, at least at one time, understood that
9 the issue in unit modification requests is whether the proposed unit is appropriate. (See Letter
10 from former Assistant County CEO/Human Resources Director Ron Komers at JX 18, "The
11 County's Employee Relations Resolution requires me to make a determination as to the
12 appropriateness of the modified unit.")

13 Moreover, the County's proposed issue statement is also irreconcilable with the evidence
14 presented in this matter as the County never denied RSA's requested unit modifications. The
15 County only refused to process the petitions because of its incorrect interpretation of the ERR's
16 15% requirement. (JX 30; JX 37). After PERB ordered the County to substantively process the
17 petitions, the County still did not do so. (JX 37). The County only substantively analyzed
18 whether moving WFI and SWFI into the *Public Safety Unit* ("PSU") was appropriate. (JX 23).
19 However, RSA's petition does not involve the PSU whatsoever. (JX 2). Additionally, the County
20 issued no substantive determination with respect to RSA's request to move CSOs into the LEU.
21 Thus, the County's "denial" could not have been reasonable because it does not exist with respect
22 to either of RSA's Petitions.

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26 ⁴ The MMBA provides that rules and regulations adopted by local public agencies must be "reasonable". (Cal.
27 Gov't Code § 3507). An agency's decision with respect to a unit determination must be reasonable. However, in
28 this case the County has not made such a determination yet as the decision by the County is being made through
the submission agreement with the RSA to have this Arbitrator make the determination the County has the power
to make pursuant to the ERR. The County is confusing the standard for analyzing whether the agency's decision
was proper versus the standard contained in the ERR for actually determining whether the unit is appropriate.

1 **V. LEGAL ARGUMENT**

2 **A. THE PROPOSED UNIT MODIFICATIONS ARE APPROPRIATE UNDER**
3 **THE FACTORS LISTED IN THE ERR**

4 1. The Classifications Share A Community of Interest With Current LEU
5 Members That Does Not Exist With Members of Their Current
6 Bargaining Units

7 All members of the LEU share a community of interest with one another because their
8 primary job duties are directly related to law enforcement. (See JX 1- Section 8. a. 3., p. 5).
9 While many classifications within the LEU have distinct job responsibilities (for example, a
10 Sheriff Deputy assigned to the aviation squad compared to a Sheriff Deputy assigned to the
11 courts), these employees all share similar interests unique to law enforcement personnel such
12 as personal safety concerns.

13 WFIs, SWFIs, and CSOs share a community of interest with members of the LEU as
14 their job duties are also primarily related to law enforcement.⁵ (July 18, 2013 Hearing
15 Transcript (“TR”) 59:22-60:1; TR 92:15-18). The County’s own job descriptions acknowledge
16 that the job duties of the Classifications are primarily related to law enforcement.⁶ (JX 7a-c).
17 Thus, employees in these Classifications share the same interests and concerns with members
18 of the LEU as their job duties are primarily related to law enforcement.

19 It should be noted that in 1993 the County agreed to include Deputy Coroner
20 classifications into the LEU. (JX 15, pg. 22). When the County attempted to remove the
21 Deputy Coroner classifications from the LEU in 2005 it was determined that a community of
22 interest did exist between the Deputy Coroner classifications and those in the LEU, specifically
23 Deputy Sheriffs/Investigators. (JX 15, pg. 22-24). The similarities between WFIs and SWFIs
24 to the Investigator Classifications in the LEU are discussed in further detail below.⁷ No
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27 ⁵ WFIs, SWFIs, and CSOs shall be collectively referred to as the “Classifications”.

⁶ The common job duties shared by employees within the Classifications and those in the LEU are discussed in further detail below.

28 ⁷ Investigator Classifications refers to Sheriff Investigators, District Attorney Investigators, and Coroner Investigators.

1 distinctions exist to justify a finding that WFIs and SWFIs do not share a community of
2 interest with the Investigator Classifications.

3 The Classifications do not share a community of interest with the employees in their
4 current bargaining units. For example, WFIs and CSOs are in the Inspection & Technical
5 Bargaining Unit which also includes the following classifications: agricultural inspector;
6 graphics arts illustrator; parking attendant; engineering aide; ophthalmology aide; and
7 construction inspector. (JX 20). SWFIs are in the Supervisory Unit which contains the
8 following classifications: airport operations and maintenance supervisor; accounting
9 technician; associate public health professional engineer/geologist; laundry manager; lead
10 custodian; crossing guard supervisor; waste management program coordinator; and senior
11 pharmacist. (JX 19). Not only do these positions implicate radically different job duties that
12 do not involve (let alone focus) on law enforcement, employees within the Classifications do
13 not work in the same departments, assist these employees with the performance of their jobs, or
14 have any interaction by way of their County employment. (TR 59:16-21; TR 93:2-14; JX 19;
15 JX 20).

16 2. There Has Been A History Of Strained Employee Relations Between
17 WFIs And SWFIs And Their Current Bargaining Units

18 WFIs and SWFIs have been attempting to leave their current bargaining units to join RSA
19 since at least 1997. (TR 90:1-6, 91:19-20). SWFI Kristina Zaragoza testified that WFIs had a
20 concern with the representation they were receiving by LIUNA and SEIU with respect to handling
21 use of force issues. (TR 92:6-9). WFIs are often required to conduct investigations in really
22 dangerous areas and LIUNA and SEIU are not equipped to represent investigators in a use of
23 force case. (TR 91:22-92:13). In order to secure this type of specialized representation many
24 WFIs pay to be members of RSA to obtain representation through its legal defense fund. (TR
25 92:8-13). Significantly, it is the County that is challenging RSA's proposed modifications—not
26 LIUNA and not SEIU. (See JX 18).

27 Additionally, as explained in further detail below, WFIs and SWFIs share many
28 similarities with the jobs of the other Investigator Classifications within the LEU. However,

1 although they generally perform similar tasks there is a disparity in the benefits and conditions of
2 employment resulting from negotiating two different Memoranda of Understanding. This vast
3 distinction in pay may lead to significant morale issues. For example, even the highest paid
4 welfare fraud investigator has a maximum hourly rate of \$36.0041 (see JX 23, pg. 32) which is
5 more than \$6/hr less than the lowest paid Sheriff's Investigator whose maximum hourly rate is
6 \$42.0750. (JX 23, pgs. 25 & 32). The lead class of Sheriff's Investigators (Master investigator
7 IV-B) has a maximum hourly rate of \$54.6959 which is nearly 35% more than the equivalent WFI
8 (welfare fraud investigator-B). (*Id.*) Yet both positions need an Advanced POST Certificate and
9 both positions' primary job duties are to investigate crimes. (JX 7a; JX 11b). Notably, the Master
10 Investigators' maximum hourly rate is even over 28% higher than the Supervising Welfare Fraud
11 Investigators' maximum hourly rate of \$39.0224. (JX 23, pg. 31). Additionally, RSA
12 successfully negotiated a Career Investigator Program ("CIP") with the County wherein new
13 Sheriff Investigator classifications were added in order to provide incentives to becoming and
14 remaining investigators. (JX 11). No such program is available to WFIs and SWFIs. These
15 disparities in the benefits and conditions of employment may very well lead to significant morale
16 issues. It's not hard to imagine the frustration an experienced SWFI must feel when she is
17 charged with the responsibility of supervising other District Attorney investigators who may be
18 making \$10/hour more than her. (TR 75:1-4).

19 3. The LEU Has Contributed To The Efficient Operations Of County Service
20 And Sound Employee Relations And Will Continue to Do So If The
21 Proposed Modifications Are Implemented

22 a. **The LEU Has Contributed To The Efficient Operations of**
23 **County Service and Sound Employee Relations**

24 The proposed modifications to remove the Classifications from their respective
25 bargaining units would not negatively impact employee relations. The underlying purpose of
26 the MMBA is to provide a level playing field for negotiations between a public employer and
27 its employees. (Gov. Code § 3500, *et seq.*) As the units are currently configured the needs of
28 the law enforcement personnel in the Classifications are downplayed and not adequately

1 represented. Both parties would be better served to negotiate law enforcement issues with one
2 bargaining unit—the law enforcement unit.⁸ Moreover, the proposed modifications would not
3 dilute the bargaining power of the employees in the current units because only a small number
4 of employees would leave LIUNA and SEIU by removing WFIs, SWFIs, and CSOs. For
5 example, SWFIs comprise only .28% of the SEIU supervisory bargaining unit and WFIs
6 comprise only 1.62% of LIUNA’s Inspection and Technical Unit. (JX 31a; JX 32a).⁹ Any
7 argument from the County in support of that proposition should be rejected as the County at
8 one time proposed that the WFIs and SWFIs be removed from the LIUNA and SEIU
9 bargaining units at issue. (JX 22; TR 93:19-94:8).

10 Moreover, it should be noted that the parties have enjoyed a successful labor-
11 management relationship with respect to bargaining over public sector labor contracts. There
12 is no evidence of any animosity between the classifications contained in the LEU. The LEU
13 MOUs have been overwhelmingly ratified and adopted by resolution. Moreover, until the last
14 negotiations for a successor agreement, the County never unilaterally implemented any terms
15 and conditions on the LEU.¹⁰ Negotiations have not been impeded by the current LEU
16 configuration and until recently the result of negotiations has always been an MOU.

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19 ⁸ The ERR seeks to reduce or eliminate these problems by mandating that employees be placed in the largest
20 feasible group having an identifiable common or related interest. (JX 1). The proposed configuration meets that
21 mandate.

22 ⁹ The SEIU supervisory bargaining unit’s “Union Code” is “SES”. (JX 23). That unit is comprised of 1,418
23 bargaining members. (JX 31a). LIUNA’s Inspection & Technical bargaining units code is “UP4”. (JX 23). In
24 total the unit has 1,253 members. (JX 32a). It should be noted that these figures were calculated based on
25 documents the County produced. However, the County failed to produce the documents it claimed that it would at
26 the arbitration. (TR 9:8-14; TR 135:15-20). While the County indicated it would produce documents indicating
27 the amount of persons within classifications in the relevant bargaining units it did not do so. For example, the
28 utilization review supervisor listed on Exhibit 31 is not included on Exhibit 31a. The same deficiencies exist with
respect to Exhibits 32 and 32a. It should also be noted that although Exhibit 33a purports to show the incumbents
in the LEU job classifications it is not complete. Many of the job classifications listed on Exhibit 33 are not
included on Exhibit 33a. Exhibit 33 lists 5 coroner corporal positions (Job Codes: 37497, 37504, 37508, 37502,
and 37512) which are not listed on Exhibit 33a. The bailiff classification is also not included on Exhibit 33a. An
adverse inference should be drawn against the County should it rely on the figures presented in these exhibits in
its post-hearing brief.

¹⁰ In August 2011 RSA filed an unfair labor practice charge with PERB as a result of the County’s unilateral
implementation of Terms and Conditions of Employment for the LEU. (JX 35). However, the parties reached a
successor MOU prior to receiving a PERB ruling; and therefore, the unfair practice charge settled and did not
affect the negotiations or prevent the parties from reaching an agreement in 2012. (JX 4; JX 35).

1 The LEU has always had classifications of Deputy Sheriff, Sheriff Investigator, and DA
2 investigator. The addition of Correction/Coroner/Bailiff classifications to LEU did not result in
3 inability of parties to reach an agreement. The parties separately negotiated different items for
4 different classifications even though these classifications were in the same unit. In fact, the
5 tentative agreement for the LEU MOU shows that the negotiated step increases in salaries for
6 different classifications (Deputy Coroners, Sheriff Investigators) are at different levels even
7 though in the same unit. (JX 4-pgs.5, 12). Specialized pay based on skills, certifications,
8 degree of hazard and responsibilities were also separately negotiated for classifications within
9 the LEU. (JX 4.)

10 The County will be unable to establish that the proposed formation of the LEU will
11 have any adverse affect on bargaining. The existence of different classifications in a unit, all
12 of which are related to law enforcement, has not prevented the parties from addressing the
13 individual needs of all classifications in negotiations, even small groups such as Deputy
14 Coroner classifications who would not otherwise have the bargaining power to negotiate on
15 their own.

16 **b. Contrary To The County's Contentions The Proposed**
17 **Changes To The LEU Will Not Adversely Impact Employee**
18 **Relations**

19 The County's rationales for denying the proposed modifications to the LEU all concern
20 its belief that the modifications will negatively impact negotiations. However, as will be
21 explained in detail below, the County's justifications for objecting to RSA's petitions do not
22 withstand scrutiny and can be easily dismissed.

23 At the hearing the County argued that it denied RSA's requests for two significant
24 reasons. (TR 20:4-22:13). First, the County seeks to avoid intermingling employees who have
25 a CalPERS safety retirement status with those that have a miscellaneous retirement status.
26 Second, the County seeks to avoid intermingling supervisors and subordinates into the same
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1 unit.¹¹ The County also argued that creating a bargaining unit that includes County employees
2 from different County departments is problematic and that the size of the proposed
3 modifications could lead to bargaining instability. (TR 22:17-25; 24:18-25:8). Each of these
4 arguments will be addressed, and refuted, in turn.

5 *i. Combining “Safety” and “Miscellaneous” Employees In*
6 *the LEU Will Not Change The Current Operations of*
7 *County Service and Sound Employee Relations*

8 The County’s main reason for objecting to RSA’s proposals is based on the fact that the
9 employees within the Classifications have a “miscellaneous” CalPERS retirement status
10 whereas the majority of the LEU has a “safety” retirement. First, it is crucial to note that the
11 current configuration of the LEU already includes both types of retirement status—safety
12 employees and miscellaneous employees. (JX 33). Moreover, not only are the groups already
13 comingled, the County caused the intermingling. The County is the party who insisted on
14 blending the LEU with miscellaneous and safety retirement status employees. Back in 2006
15 when the parties agreed to include supervising correctional counselors and correctional
16 counselors in the LEU, the County designated the employees within those classifications with a
17 miscellaneous retirement status. (JX 24). Thereafter, when RSA challenged that finding and
18 argued that the members were entitled to a safety status in front of CalPERS, the County
19 argued to the contrary. (JX 25). Yet now it’s a problem to have these mixed classifications in
20 the LEU? The County should not be permitted to rely on the proposed intermingling of
21 retirement statuses to justify its challenge to RSA’s proposed modifications when it was the
22 party who insisted and created the intermingling of these employees within the LEU.

23 The County argues that the PERB charge filed by RSA regarding the County’s failure
24 to negotiate the employer paid member contributions (EPMC) with respect to the
25 miscellaneous retirement employees evidences that blended bargaining units are problematic.¹²
26

27 ¹¹ This justification only arguably applies to SWFIs, which total 4 employees, as WFIs and CSOs are not
28 supervisors.

¹² RSA’s PERB charge alleged that the County, during negotiations with RSA for a successor LEU, corresponded
with CalPERS about changing the retirement contribution for miscellaneous members but not with RSA at the

1 (TR 115:19-116:16; 118:13-119:6). Additionally, the County argues that blending the
2 retirement status of a bargaining unit is problematic because should the parties reach impasse
3 during negotiations jurisdiction resides in the Superior Court for safety employees while
4 miscellaneous employees are subject to PERB's jurisdiction. (TR 118:13-119:2). Thus, the
5 County claims that RSA could bring charges against the County before both PERB and the
6 Superior Court, alleging that the County committed an unfair labor practice during
7 negotiations, and the separate adjudication of those charges could result in potentially
8 conflicting decisions. The County made this same argument with respect to SB 739 in the
9 previous Unit Determination Hearing held in 2005. (JX 15).

10 There are various problems with this argument. First, this is a hypothetical problem that
11 has not surfaced in the real world. RSA has never filed unfair labor practice charges with both
12 PERB and the Superior Court regarding the same representation unit. RSA and the County
13 have never reached impasse resulting in conflicting decisions. (TR 124:24-125:8).
14 Additionally, the alleged problems that intermingling these groups have caused the County will
15 exist whether RSA's petitions are granted or not. Adding the Classifications into the
16 bargaining unit will not further complicate negotiations or create additional issues that do not
17 already exist because both types of employees are already included in the LEU. Finally, if
18 having a blended retirement unit was so problematic the County could have taken action to
19 modify the LEU per the ERR but there is no evidence that following the PERB charge the
20 County sought to remove miscellaneous employees from the LEU.

21 ***ii. Including WFIs and SWFIs In the LEU Will Not***
22 ***Negatively Impact The Operations of County Service and***
23 ***Sound Employee Relations***

24 The County's next reason for challenging RSA's petitions is based on its desire to avoid
25 intermingling four supervisors with their subordinates into the LEU. Again, the County relies
26 on hypothetical problems. The LEU as it currently stands includes both supervisors and
27 subordinates—supervising correctional counselors and correctional counselors. (JX 33; JX 7n;

28 bargaining table. (JX 35). That was the basis for the PERB charge. The parties settled the matter when they
reached an agreement as to the 2012-2016 MOU. (JX 4).

1 JX 7o). And again the County agreed to include them in the unit. (JX 24). The County
2 presented absolutely no evidence that the inclusion of supervisors and subordinates in the LEU
3 has created any problems. The County cited no example of how including supervisors in the
4 LEU has caused problems with collective bargaining. Arguing now that SWFIs are not
5 properly included is disingenuous.

6 When pressed to specify how including supervisors and subordinates in the LEU would
7 negatively impact the County, County representative Sarah Franco testified that including these
8 two groups in the same bargaining unit would complicate things because: (1) supervisors are
9 entitled to their own bargaining unit under the MMBA; and (2) if an employee or supervisor is
10 involved with a discipline investigation the investigator may have concerns about the
11 credibility/integrity of the investigation. (TR 113:20-114:3; 133:9-134:13). Notably, while
12 supervisors may be entitled to their own bargaining unit under the MMBA—the SWFIs have
13 obviously decided to forego that right when authorizing their move into the LEU. (JX 2). The
14 County does not have the power to make that decision for these employees and it is not
15 adversely impacted when a group decides to waive that right. Next, the manner in which RSA
16 represents these two groups of employees during an investigation is of no concern to the County
17 and the County’s “guess” that this is a concern is not convincing. (TR 133:25-134:7). Even
18 within the Supervisory Unit, subordinate classifications are included such as a lead custodian.
19 (JX 19; JX 23). The lead custodian position is supervised by custodial supervisors who are also
20 in the Supervisory Unit. (*Id.*) The County presented absolutely no evidence that discipline
21 investigations have been negatively impacted because of such inclusion.

22 Moreover, at least at one time, the County did not have a problem with including
23 supervisors and subordinates in bargaining units, including the LEU and PSU. RSA’s public
24 safety unit also includes subordinates and supervisors as 76 supervising probation officers and
25 172 deputy probation officers are in the PSU. (JX 33a). LIUNA’s MOU also covers
26 subordinates and supervisors such as senior construction inspectors and construction inspectors
27 and code enforcement officers and senior code enforcement officers. (JX 32). Here, RSA seeks
28 to add 4 SWFI into the unit and 22 WFIs. This will not cause any problems with discipline

1 investigations, supervisors' rights under the MMBA, or with negotiations and the County's
2 speculation that problems will exist is not convincing.

3 *iii. DPSS Employees Will Not Negatively Impact The*
4 *Operations of County Service and Sound Employee*
5 *Relations If Added To The LEU*

6 Once again conveniently ignoring the make-up of the LEU, the County also argued that
7 the proposed modifications are not appropriate because adding employees to the LEU who are
8 in a new County department, DPSS, will cause inefficiency in the bargaining process.¹³ (TR
9 22:17-25). This argument ignores reality. Not only is the LEU comprised of employees who
10 are within the Sheriff's Department and the District Attorney Department, the County's own
11 witness Sarah Franco testified that LIUNA has "a lot" of the County's 60 departments
12 represented within the bargaining unit. (TR 128: 4-24). On the face of the LIUNA MOU it can
13 be readily ascertained that employees in the following County departments are covered by that
14 MOU: DPSS; Sheriff's Department; Transportation Department; Purchasing Department; Fleet
15 Services Department; Waste Management Department; Flood Control Department; Riverside
16 County Regional Medical Center (RCRMC); Department of Mental Health; Probation
17 Department; Code Enforcement Department; Department of Animal Services; and Agricultural
18 Department. (JX 5). In addition, on the face of the SEIU MOU it is readily apparent that the
19 following County departments are included: Fire Department; Department of Mental Health;
20 RCRMC; Transportation Department; DPSS; Sheriff's Department; Veteran's Services
21 Department; Department of Environmental Health; Assessor-County Clerk-Recorder
22 departments; Auditor-Controller Office; Fleet Department; Waste Management Department.
23 (JX 4). Obviously, adding one more department into the LEU for a total of three is not
24 anywhere akin to the numerous departments included in the County's current bargaining units.
25 The same concerns with respect to dealing with a blended bargaining unit apply to all
26 bargaining units comprised of more than one County department. (TR 130:2-24).

27
28 ¹³ Apparently acknowledging the contradictory nature of this argument, the County failed to raise it in its denial of the WFI/SWFI petition as required by the ERR. (JX 26).

1 The County also claims that adding the DPSS into the LEU would cause problems with
2 regard to the fact-finding required under Assembly Bill 646. (TR 129:23-130:17). The so-
3 called problems and concerns including the DPSS into the LEU would cause are exaggerated
4 and speculative. Ms. Franco admitted that the concern with respect to reaching impasse would
5 exist with any County bargaining unit that has more than one County department (including the
6 LEU as it currently exists). (TR 130:18-24).

7 *iv. The Size of The Proposed Modification Will Not Cause*
8 *Bargaining Instability*

9 Finally, the County argues that implementing the proposed modifications to the LEU
10 would lead to bargaining instability because of the size of the proposed modification. (TR
11 24:18-25:8). The County apparently has administrative concerns with processing unit
12 modification requests, which implicate a small number of employees. (*Id.*) The County glosses
13 over the fact that the administrative concerns it has are a consequence of its own actions.
14 RSA's petitions (filed back in 2006 and 2007) are still pending final resolution because of the
15 County's failed attempt to prohibit RSA from the rights afforded to it under the MMBA. (See
16 JX 37). Any administrative concerns it now has are a creation of its own unlawful conduct. (JX
17 37). The ERR does not address the size of the proposed unit modification and it certainly does
18 not prohibit the requests made by RSA. (JX 1). If the County did not want to allow
19 modification requests on behalf of classifications who have minimal incumbents it should have
20 adopted such a rule in the ERR.

21 Moreover, the County also ignores that it agreed to move a small number of employees
22 into the LEU when it agreed to move Supervising Correctional Counselors as well as
23 Correctional Counselors into the unit. (JX 24). The number of incumbents in those
24 classifications is only seven. (JX 33a). The County presented no evidence that moving those
25 small classifications into the LEU created any bargaining instability.

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1 **B. THERE EXISTS COMMON SKILLS AND DUTIES, COMPARABLE**
2 **WORKING CONDITIONS AND SIMILAR EDUCATIONAL**
3 **REQUIREMENTS AMONG WFIS, SWFIS, AND LEU EMPLOYEE**
4 **CLASSIFICATIONS**

5 1. Welfare Fraud Investigators, Supervising Welfare Fraud Investigators,
6 And Sheriff Investigators Have Common Job Duties

7 WFIs and SWFIs are peace officers within the meaning of Penal Code Section
8 830.35(a). (JX 8—0004; See Cal. Pen. Code § 830.35(a); JX 34). A WFI and SWFI possess
9 sworn peace officer status and are assigned cases requiring personnel capable of exercising the
10 legal powers of arrest and detention within the State of California. (JX 7a). Sheriff
11 Investigators (“SI”) are also sworn peace officers that have the power of arrest and detention.
12 (JX 10-0003, 0010).

13 There are 22 welfare fraud investigators and 4 supervising welfare fraud investigators in
14 Riverside County. (TR 84:2-4; JX 31a; JX 32a). Kristina Zaragoza, a WFI for approximately 2
15 years and currently serving as a SWFI for the last 14 years testified as to their duties and
16 responsibilities.¹⁴ (TR 63:23-64:15).

17 A welfare fraud investigator’s main function is to investigate welfare fraud although
18 they are not prohibited from investigating and responding to other crimes as well, including but
19 not limited to, shootings and domestic violence incidences. (TR 67:6-7; TR 100:15-20; TR
20 102:23-103:2). Investigators receive tips thorough a variety of sources and investigate whether
21 the allegations made are true or not. (TR 67:7-10). For example, if an individual is receiving
22 welfare of public assistance but is working and has not reported it that may be considered fraud.
23 (TR 67:16-25). The investigators job is to gather evidence—through interviewing witnesses
24 and gathering documentation—and ultimately refer the case to the District Attorney’s office if
25 warranted. (TR 67:23-68:18; JX 7a). When a referral is made to the District Attorney’s office
26 the investigator writes a “report of investigation”, and sends the D.A. an evidence packet, and
27 arrest declaration. (TR 68:19-69:11). The report is not limited to addressing fraud charges,
28

¹⁴ SWFI generally perform the same duties as WFI but have a lighter caseload. (TR 84:11).

1 WFI also may file charges for perjury, forgery, embezzlement, identity theft, and/or burglary.
2 (TR 101:9-25).

3 WFI often work with other law enforcement personnel on task forces. (TR 73:17-22).
4 For example, the IHSS fraud task force required WFI to work with D.A. Investigators to
5 combat welfare fraud relating to in-home supportive services program. (TR 74:12-24).
6 Investigator Zaragoza testified that she was supervisor of the task force who had the
7 responsibility of supervising the other D.A. Investigators who were on that task force. (TR
8 75:1-4). WFI may also assist Sheriff Investigators during a criminal investigation by providing
9 information regarding individuals receiving public assistance. (TR 38:9-15). SIs are also
10 required to provide assistance to WFI in connection with their investigations. (JX 10-0022).

11 WFI also conduct special investigations of internal affairs matters, applicant's
12 background, alleged civil rights violations, and DPSS court dependent problems such as finding
13 runaways placed in group/foster homes. (JX 7a; TR 65:2-11). These matters may include
14 conducting internal criminal investigations (i.e. employee embezzlement) and administrative
15 investigations on behalf of Human Resources such as a breach of the duty of confidentiality.
16 (TR 65:20-67:2).

17 Similarly, a SI's main job function is "to initiate and conduct investigations for
18 suspected criminal activities and actual law violations . . ." (JX 10-0010). SIs are assigned to
19 investigate specific areas of criminal activity such as homicide, narcotics, burglary, or juvenile.
20 (JX 11b). Master Sheriff's Investigator, and RSA president, Robert Masson testified as to the
21 typical homicide investigation. SIs must respond to the scene, gather evidence by interviewing
22 subjects, photograph the scene, and collect hard evidence from the scene. (TR 30:11-31:7).
23 When the investigation is concluded and a suspect is identified the SI presents the case to the
24 D.A. (TR 31:19-32:13).

25 WFI, just like Sheriff Investigators, may be required to testify in court regarding a case
26 they investigated and forwarded to the D.A. (TR 32:14-26; TR 73:12-16; see also JX 7a; JX 7I).
27 WFI and SIs also have the power to prepare and serve search warrants from a judge. (TR 75:8-
28 21; JX 7a; JX 10-0010). Other common duties WFI and SIs share include: preparing photo-

1 line ups; preparing and processing extradition forms; preparing and submitting reports;
2 preparing evidence; and identifying and arresting suspects. (JX 7a; JX 10-0010, 0023-0031; JX
3 11b).

4 2. Welfare Fraud Investigators And Sheriff Investigators Are Similarly
5 Trained

6 WFI's just like SIs have to complete the basic peace officers academy to obtain the basic
7 POST certificate. (TR 76:22-77:14; JX 14-0004, 0005). This academy is the same academy
8 attended by Sheriff's Department personnel offered at the Ben Clark Training Center. (TR
9 77:14). Successful completion of the academy requires WFI's to pass the POST physical agility
10 test just like Deputy Sheriffs. (TR 77:15-23). Following the academy, WFI's just like Deputy
11 Sheriffs, must also engage in field training with a field training officer. (TR 78:15-25).

12 The POST requirements regarding on the job training, education units and training
13 components are the same for both groups. WFI's have POST certification similar to Deputy
14 Sheriffs. (See JX 9—0006 (must meet POST training and background requirements); JX 14-
15 0001-0005). WFI's as well as SWFI's are also required to complete the POST perishable skills
16 training since they are part of a POST certified agency. POST-certified trainers provide this
17 training in-house or at the Ben Clark Training Center. (TR 79:21-25). Training topics include
18 tactical communications, background investigations, arrest and control, baton training, first aid
19 & CPR, tactical communications, tactical firearms, narcotic enforcement, defensive tactics,
20 firearms qualifications, racial profiling and elder abuse. (JX 12; JX 13; JX 14-0006, 00012-
21 0015; TR 79:17-80:4; TR 87:2-88:8). POST sets and overseas training requirements and issues
22 certificates when requisites are achieved. WFI's have the same POST perishable skills courses
23 and certificates as Deputy Sheriffs. (JX 7a; JX 7g).

24 WFI's attend the exact same trainings with members of the Sheriff's Department at the
25 Ben Clark Training Center. (TR 81:3-15). Members of the Sheriff's Department have also
26 provided trainings to members of the Special Investigations Unit at the DPSS in areas such as
27 gang awareness and drug recognition. (TR 81:16-82:7).

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1 3. Welfare Fraud Investigators Have Similar Minimum Qualifications As
2 Deputy Sheriffs And Sheriff Investigators

3 Welfare Fraud investigators must pass the same physical—a Class 1 physical—as Deputy
4 Sheriffs. (JX 21; JX 7a; TR 70:2-25). WFIs, Deputy Sheriffs, and SIs, must all pass physical
5 agility tests and are all subject to criminal background investigations when initially hired as
6 well. (TR 38:19-24; JX 11b; JX 7a; JX 7b; JX 7g).

7 WFIs, like Deputy Sheriffs, must have a high school diploma or GED. (TR 75:24-76:2;
8 JX 10-0008). Currently Sheriff Investigators must have completed 10 semester units at a
9 recognized college to qualify for the position (back in approximately 2011) no educational
10 experience was necessary. (TR 32:20-33:2; JX 10-0010).

11 WFIs need to have two years experience as an Investigative Technician 2 (either at
12 DPSS, D.A., or Sheriff’s Department), a court services investigator for 2 years, or 2 year of
13 criminal investigative experience in a sworn status as well as 2 years in sworn status of patrol.
14 (TR 76:9-21). SIs must have two years of law enforcement experience with a governmental
15 agency, including one year as a deputy Sheriff with the County or three years of law
16 enforcement experience. (JX 10-0010).

17 4. Welfare Fraud Investigators And Sheriff Investigators Have Similar
18 Working Conditions

19 WFIs and SWFIs do not wear uniforms but instead are in plain clothes when
20 investigating crimes. (TR 82:8-26; TR 89:8-11). Sheriff Investigators also wear plain clothes
21 in the field. (TR 37:1-7). The equipment they utilize is also very similar. Both WFIS and
22 Sheriff’s Investigators drive unmarked police vehicles. (TR 37:22-38:8; TR 83:2-26; TR 89:14-
23 18). They both are issued firearms, handcuffs, pepper spray, batons, radios/phones, and an extra
24 magazine. (TR 37:8:17; TR 82:17-23; TR 89:12-13). Both are also issued bullet proof
25 vests/body armor. (TR 82:24-83:1; TR 57:21-23; JX 8-0029). Additionally, both positions
26 carry similar badges while on duty. (TR 37:8-21; 82:17-23).

27 WFIs have the power to make arrests and are trained in the use of force. (TR 79:3-7; JX
28 8-0007-0012). SIs are also trained in use of force and WFIs and SIs are subject to discipline for

1 force used beyond the scope of Departmental policies/guidelines; the penalties for violations are
2 identical as well. (TR 36:21; JX 8 0007-0017; JX 9-0022-0023.) In fact, DPSS contracts with
3 the Riverside Sheriff Department (“RSD”) Internal Affairs Bureau (“IAB”) to investigate the
4 circumstances surrounding any use of deadly force and “conforms to the Riverside Sheriff’s
5 Office protocol for investigating investigatory-involved shootings.” (JX 8-0013, 0014). Thus,
6 the Sheriff’s Department Firearms Discharge Review Panel investigates the discharge of a
7 firearm by a SWFI or WFI. (JX 8-0013). When an investigator involved shooting occurs the
8 SWFI assigned must contact the Sheriff’s Department to respond to the shooting as the RSD has
9 the responsibility for the investigation. (TR 84:16-85:11; JX 8-0013). SWFIs (as well as WFIs)
10 were provided training by the Sheriff’s Department on how to handle these types of scenarios.
11 (*Id.*)

12 WFI and SWFI are also subject to search and seizure and handling of evidence
13 training and policies/guidelines similar to members of the RSD. (JX 8 -0020-0028; JX 9-008-
14 0010). Both are also subject to the Law Enforcement Code of Ethics and covered under the
15 Public Safety Officers Procedural Bill of Rights Act. (TR 25:16-25; TR 78:8-14; JX 8-003; JX
16 9-005; TR 92: 25-93:1; Cal. Govt. Code § 3301).

17 5. Welfare Fraud Investigators Have Common Duties, Comparable Working
18 Conditions, And Similar Education Requirements to All Investigator
19 Classifications Within the LEU

20 For brevity’s sake, RSA has focused on comparing WFIs/SWFIs to Sheriff
21 Investigators. However, these classifications are also similar to the District Attorney
22 Investigator and Coroner Investigator classifications within the LEU.¹⁵

23 As an initial matter, on February 21, 2006 this Arbitrator issued findings, opinions, and
24 recommendations with respect to proposed modifications to the LEU and PSU proposed by the
25 County back in 2004. (JX 15). Part of the analysis conducted included comparing Coroner
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28 ¹⁵ The true classification is entitled “Deputy Coroner”. However a Deputy Coroner’s function is investigatory in
nature and they identify themselves as, “Coroner Investigator.” (JX 16 at 219:5-219:18.)

1 Investigators to Sheriff Investigators. (JX 15, pgs. 21-22). It was ultimately determined that
2 these classifications shared a community of interest. (JX 15 pg. 24).

3 Coroner Investigators are peace officers within the meaning of Penal Code Section
4 830.35(c). Their primary job duty is to investigate deaths and report their findings to the DA
5 for prosecution. (JX 7f; JX 17, pg. 2; see April 22, 2005 Hearing Transcript (“JX 16”) at
6 181:13-182:10). They are subject to the same POST requirements as WFIs and they receive
7 trainings in similar subjects relating to investigative work. (JX 16 at 174-175). They respond to
8 crimes in civilian clothes, carry similar equipment including firearms, and drive unmarked
9 police vehicles. (JX 16 at 176-178). They are sworn officers just like WFIs and have the power
10 to make arrests. (JX 16 at 178). Coroner Investigators only need a high school diploma or
11 GED just like WFI/SWFIs. (TR 75:24-76:2; JX 7f).

12 D.A. Investigators like WFIs, also investigate crimes, gather evidence, serve subpoenas,
13 make arrests, and may need to testify in court. (JX 7h). They are peace officers subject to same
14 POST requirements as WFIs. (JX 7h). District attorney Investigators provide trainings to
15 WFIs and WFI may work alongside District Attorney Investigators on tasks forces. (TR 81:16-
16 23).

17 As explained above, there exists a strong community of interest between WFIs/SWFIs
18 and various LEU classifications including Sheriff Investigators, Deputy Sheriffs, Coroner
19 Investigators, and D.A. Investigators based on their similar job duties, training, interaction,
20 minimum qualifications, and working conditions.

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1 **C. THERE EXISTS COMMON SKILLS AND DUTIES, COMPARABLE**
2 **WORKING CONDITIONS AND SIMILAR EDUCATIONAL**
3 **REQUIREMENTS AMONG CSOS AND LEU EMPLOYEE**
4 **CLASSIFICATIONS**

5 1. CSOs And Deputy Sheriffs Perform The Same Law Enforcement Duties
6 On A Regular Basis

7 There are approximately 1,300 Deputy Sheriffs and 140 CSOs working for the County.
8 (JX 33a; 32a). Scott Urquhart, a CSO who has worked for the County as a CSO for 27 years,
9 testified as to the duties and responsibilities of CSOs. (TR 52:3-10).

10 CSO-Is perform a variety of law enforcement related functions. They typically fill a
11 station position but they are also responsible for under filling CSO-II positions and performing
12 those same duties in a training capacity. (JX 7c; JX 10-0006-0007). In that capacity they are
13 responsible for taking police reports, taking care of equipment, and logistic work. (TR 53:1-5;
14 54:4-15; 61:13-22). They may also perform background checks and take fingerprints, assist to
15 secure and manage traffic following a traffic accident, and “assist law enforcement personnel
16 with a variety of duties and special projects such as field investigations, observations, and
17 widespread crime and warrant sweeps, or critical incidents where numerous specialized
18 equipment is necessary.” (JX 7c). CSO-Is are responsible for knowing multiple ordinances,
19 regulations and codes. (JX 7c).

20 CSO-IIs perform patrol functions just as Deputy Sheriffs. (TR 53:19-22). The Human
21 Resources’ job description for a CSO-II states, “The purpose of the Community Service Officer
22 II is to ensure overall efficiency by performing those duties that do not require a sworn officer,
23 but would be performed by a sworn officer if a Community Service Officer II were not
24 available.” (JX 7c). The RSD job description states that CSOs “perform a variety of
25 specialized law enforcement support activities.” (JX 10-005). Both positions respond to
26 crimes, collect and transport evidence, take crime reports, interview witnesses. (TR 54:19-

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1 55:19; JX 7c; JX 7g; JX 10-0005-0007). CSO-IIs, like Deputy Sheriffs, are also responsible for
2 detecting violations of laws, ordinances and regulations and issue warning or citations for such
3 violations. (JX 7c; JX 10-0005).

4 2. CSOs And Deputy Sheriffs Receive Comparable Training And Have
5 Similar Educational Requirements

6 CSOs must pass a CSO academy when initially hired and are also sent to additional
7 trainings through the duration of their employment. (TR 55:20-24). Topics covered in training
8 include legal requirements of the Penal Code such as the laws of arrest, restraint tactics such as
9 use of pepper spray and takedowns, searches, transports of prisoners, and report writing. (TR
10 56:1-21). CSOs may also take POST certified courses such as the basic traffic officers'
11 investigation course. (TR 56:14-18). Deputy Sheriffs must attend an academy as well but it is
12 longer in duration. (TR 38:25-39:6). In general, Deputy Sheriffs must undergo more extensive
13 training due to their sworn officer status but many of the same topics are covered for both
14 classifications. (JX 7g).

15 CSOs do not have any particular educational requirements but CSO-IIs must have one
16 year of experience performing various law enforcement support duties, which include both
17 issuing warnings and citations to enforce County ordinances or codes, investigating law
18 enforcement situations such as missing persons or burglaries, or handling evidence used for
19 investigation or judicial purposes including drugs, weapons, and money. (JX 10-0006).
20 Deputy Sheriff's must possess a high school diploma/GED but do not have any requirements to
21 have experience in law enforcement. (JX 10-0008). Both positions must complete a pre-
22 employment physical exam and criminal background investigation. (JX 7c; JX 7g).

23 a. **CSOs And Deputy Sheriffs Interact Daily**

24 Deputy Sheriffs and CSOs interact a great deal in their duties. CSOs perform patrol
25 functions just as Deputy Sheriffs. (TR 53:19-22). Both positions respond to crimes, collect and
26 transport evidence, take crime reports, and interview witnesses. (TR 54:19-55:19). The main
27 difference is that CSOs have limited peace officer duties as they are not sworn officers. Thus,
28 they do not carry firearms and do not have the same powers of arrest. (TR 54:19-25).

1 However, because they perform patrol functions they interact with Deputy Sheriffs daily. CSOs
2 attend the same daily briefings as deputy sheriffs, respond to the same crimes alongside deputy
3 sheriffs, transport prisoners, and transport evidence (TR 41:17-42;14; 55:17-19; 58:6-21). For
4 example, CSO Urquart testified that while on patrol he observed a stolen vehicle in front of him,
5 notified dispatch, kept the vehicle in sight, and as soon as a deputy sheriff showed up it was able
6 to pursue the vehicle and apprehend the suspect. (TR 60:12-25). The two classifications work
7 together to prevent and respond to criminal conduct.

8 **b. CSOs And Deputy Sheriffs Share the Same Chain of**
9 **Command And Are Both Under RSD Jurisdiction**

10 All CSOs and Deputy Sheriffs are members of the Sheriff's Department and have the
11 same chain of command. (TR 59:3-13). CSOs are supervised by shift sergeants who are
12 responsible for supervising everybody on the shift, including CSOs and Deputy Sheriffs. (TR
13 58:22-59:6). These supervisors are responsible for writing employee evaluations and issuing
14 discipline to both CSOs and deputies. (TR 58:23-59:2). CSOs, like Deputy Sheriffs, are under
15 the jurisdiction of the Riverside County Sheriff's Department and are subject to all rules,
16 regulations, and policies, of the department. (TR 59:7-13). Both are also subject to the Law
17 Enforcement Code of Ethics. (TR 25:16-25; TR 78:8-14; JX 8-003). All RSD members may be
18 disciplined for violating the RSD Field Operations Manual and/or General Orders Manual. (JX
19 10-0013).

20 **c. CSOs And Deputy Sheriffs Both Have Safety Concerns**

21 Because CSOs and Deputy Sheriffs both perform law enforcement duties safety is a big
22 concern. All RSD employees must "perform all tasks with consideration for personal safety and
23 the safety of others." (JX 10-0013). CSOs, like Deputy Sheriffs, are issued handcuffs,
24 bulletproof vests, and pepper spray. (TR 57:13-23). CSOs must "tolerate exposure to
25 hazardous materials including body fluids". (JX 7c). Presumably for this reason CSOs may
26 carry latex gloves so that they are not exposed to fluids such as blood when out in the field.
27 (TR 57:18-20). Both positions receive training in defensive tactics, arrest and control, the use
28 of force, and pepper spray. (TR 56:1-21).

1 **d. CSOs And Deputy Sheriffs Have Similar Working**
2 **Conditions**

3 CSOs have the same uniform as worn by Deputy Sheriff classifications, with the
4 exception that Deputy Sheriffs have different wording on their badge to reflect their position.
5 (TR 57:2-12). CSOs carry the same type of equipment with them when they are out in the field
6 as Sheriff Deputies with the exception of carrying a firearm. They carry handcuffs, pepper
7 spray, knife keys, latex gloves, and a bulletproof vest. (TR 57:13-23). Both CSOs and Deputy
8 Sheriffs drive the standard Sheriff's black-and-white, Crown Victoria. (TR 57:24-58:5).
9 Additionally, Deputy Sheriffs and CSOs work the same hours and shifts. (TR 59:3-6).

10 As set forth more fully above, there exists a strong community of interest between CSOs
11 and Deputy Sheriffs based on their similar job duties, training, interaction, chain of command,
12 and concerns for safety.

13 **e. The Remaining ERR Factors Support A Finding That The**
14 **Proposed LEU Configuration Is Appropriate**

15 As set forth above, WFIs, SWFIs, and CSOs all share with members of the LEU the
16 commonality of predominantly performing law enforcement functions. Consequently, the two
17 groups share common or related interests unique to law enforcement. RSA's proposal would
18 create "a feasible group of employees having an identifiable common or related interest" thus,
19 satisfying ERR Section 7.6. (JX 1). Under the ERR, the existence of these communities of
20 interest should take precedent over any similarities or differences these employees in these units
21 may have based on statutory rights (e.g. miscellaneous vs. safety).

22 The remaining factors/prohibitions do not apply as RSA is not proposing to divide any
23 classification and RSA's proposal is not based on the extent to which WFI, SWFI, and CSOs or
24 members of the LEU have organized.

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1 **VI. THE COUNTY'S REFUSAL TO PERMIT THE PROPOSED**
2 **MODIFICATIONS TO THE LEU IS DESIGNED TO WEAKEN RSA'S**
3 **BARGAINING POWER**

4 The implementation of RSA's proposals would result in expanding the LEU. There is
5 no question that RSA has been very successful in negotiating favorable wages, terms and
6 conditions of employment for all members of the LEU and PSU. One only must look at the
7 wages paid to WFIs and SWFIs in comparison to the wages of similar classifications in the
8 LEU. (JX 23). The County has attempted to weaken RSA's bargaining power before when
9 proposing to fragment the LEU and PSU in 2004. (JX 15). That proposed modification was a
10 transparent attempt to weaken the bargaining power of RSA as is the County's denial in this
11 instance. From the beginning, the County has focused its attention on trying to preclude
12 processing RSA's petitions rather than engaging in any substantive analysis about the proposals.
13 (JX 18). The County failed to articulate why the proposals were not appropriate even after the
14 PERB ordered it to do so. (See JX 36). The County's opening statement was the first clue RSA
15 received as to why the County was opposing the petitions, when the implicated employee
16 organizations, LIUNA and SEIU, were not. The reasons articulated were telling as the
17 County's own actions contradict the position it now takes. The County agreed and fought to
18 include miscellaneous, safety, supervisory, and subordinate employees all in the LEU. The
19 County's existing bargaining units, including the LEU, also have employees from numerous
20 County departments included. If these types of intermingling really caused such employee
21 relations issues for the County, it would have proposed placing classifications with those
22 characteristics in the same unit. But the County has not.

23 Further evidence that the County's reasoning for rejecting the petitions is a mere pretext,
24 is the fact that even in light of the existing composition of the units, the only shred of evidence
25 the County was able to present in support of its position that the petitions should be denied was
26 RSA's PERB charge filed concerning miscellaneous employees in the LEU.¹⁶ If including

27 _____
28 ¹⁶ If the County would have bargained in good faith under the MMBA such a charge would not have been
necessary. (JX 35). RSA's PERB charge did not prevent the parties from reaching a successor MOU a month
later. (JX 4).

1 supervisors and subordinates in the same unit created such problems where is the evidence?
2 The County once again fabricates problems that do not exist in an effort to prevent RSA from
3 improving its bargaining power. It was happy to move and even suggested that WFIs and
4 SWFIs leave their respective bargaining units to join an unrepresented unit but not into RSA.
5 (JX 22).

6 **VII. RESERVATION OF JURISDICTION**

7 RSA respectfully requests that the Arbitrator reserve jurisdiction over this matter for all
8 purposes.

9 **VIII. CONCLUSION**

10 Although their duties and responsibilities may be very different, all of the members of
11 the LEU do share one similar factor: all of their work is related to law enforcement. The
12 evidence submitted on the record conclusively establishes that WFIs, SWFIs, and CSOs also
13 perform work directly related to law enforcement. For this reason and the reasons explained
14 above, RSA requests that the Arbitrator find that pursuant to the ERR, all such classifications
15 are appropriately included within LEU.

16
17 Dated: October 7, 2013

HAYES & CUNNINGHAM, LLP

18
19 

20 By: _____

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13 **ADVISORY ARBITRATION**

14 **BEFORE THE IMPARTIAL HEARING OFFICER MICHAEL PRIHAR**

15 RIVERSIDE SHERIFFS' ASSOCIATION,

16 Grievant,

17 vs.

18 COUNTY OF RIVERSIDE,

19 Respondent.

20 RSA Unit Modification Petition re Welfare
21 Fraud Investigators and Community Service
22 Officers

23 **HEARING OFFICER MICHAEL PRIHAR**

24 **RESPONDENT COUNTY OF RIVERSIDE'S
25 POST HEARING BRIEF**

26 Hearing Date: July 18, 2013

27 TO HEARING OFFICER MICHAEL PRIHAR AND TO GRIEVANT RIVERSIDE
28 SHERIFFS' ASSOCIATION AND ITS COUNSEL OF RECORD:

Respondent COUNTY OF RIVERSIDE ("the County") submits its post hearing brief as follows:

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1 **I. INTRODUCTION**

2 Over the past ten years, the Riverside Sheriffs' Association ("RSA") has been on a mission to
3 increase its membership, and thereby increase the dues it receives from its members and presumably, its
4 bargaining power. As part and parcel to this quest, RSA filed petitions for modification seeking to
5 accrete Supervising Welfare Fraud Investigators from the Supervisory Unit represented by Service
6 Employees International Union, Local 721 ("SEIU"), and Welfare Fraud Investigators and Community
7 Services Officers ("CSO's") from the Inspection and Technical Unit ("ITU") represented by Laborers
8 International Union of North America, Local 777 ("LIUNA") into the Law Enforcement Unit ("LEU"),
9 which is not so coincidentally, represented by RSA. The County denied RSA's petitions initially
10 because RSA had not provided the required showing of support from the donor unit from which the
11 employees were sought to be moved. However, after the County was ordered by the Public
12 Employment Relations Board ("PERB") to consider the petitions on their merits, applying the factors set
13 forth by applicable law and the County's Employee Relations Resolution 99-379 ("ERR"), the County
14 denied the petitions on the merits for a variety of reasons.

15 Specifically, the County denied RSA's petitions because there is a lack of community of interest
16 between the classifications sought to be added to the LEU and current LEU members when it comes to
17 matters of collective bargaining. Indeed, there are differences from the LEU members in civil service
18 classification, statutory retirement classification and statutorily limited scope of duties. To be sure, all
19 of the employees sought to be added to LEU by RSA via these petitions are classified as
20 "miscellaneous" for CalPERS retirement purposes while 96% of the employees in LEU are classified as
21 "safety" for CalPERS retirement purposes. This is certainly a concern as pension reform has been THE
22 main issue in collective bargaining negotiations over the past five years. In fact, the blended
23 composition of LEU has already been a problem for the County as RSA previously sued the County for
24 an alleged failure to meet and confer over pension reform for miscellaneous employees when the County
25 believed it was negotiating pension reform for all of LEU, safety and miscellaneous employees. Second,
26 RSA's petitions also seek to combine supervisory employees (Supervising Welfare Fraud Investigators)
27 with their subordinates (Welfare Fraud Investigators) and other non-supervisory employees, who have
28 different interests, which is simply inappropriate. Thus, the County has a reasonable objective to avoid

1 the further blending of bargaining units and its denial was reasonable based on these factors.

2 Further, the standard by which this hearing officer is to review the County's denial of RSA's
3 petitions is whether it was reasonable. RSA carries the burden of persuasion before the hearing officer
4 in proving that the County's denial was unreasonable or unlawful. Put simply, even if there is a
5 disagreement as to the County's decision, so long as the County's decision complies with its ERR and is
6 reasonably based, then RSA's grievance must be denied. Here, for the reasons set forth above, and
7 additional reasons set forth in more detail below, the County's denial was not only reasonable, but
8 appropriate. The County's denial must, therefore, be afforded deference and RSA's grievance should be
9 denied.

10 **II. ISSUE PRESENTED**

11 Was the County's denial of the Riverside Sheriffs Association's requested unit modification to
12 accrete Supervising Welfare Fraud Investigators, Welfare Fraud Investigators and Community Services
13 Officers into the Law Enforcement Unit reasonable under the terms of the County Employer Relations
14 Resolution ("ERR") Section 7?

15 **III. REASONS WHY THE COUNTY'S DENIAL OF RSA'S UNIT MODIFICATION**
16 **PETITION WAS REASONABLE AND RSA'S GRIEVANCE MUST BE DENIED**

17 1. RSA has not carried its burden of proving that the County's denial of its petitions for
18 modification was unreasonable. Instead, the evidence reveals that the County's denial of RSA's petition
19 based upon its conclusion that the proposed modifications were inappropriate was reasonable. At best,
20 RSA proved that there are a few similarities in the job duties of Welfare Fraud Investigators and
21 Sheriff's Department Investigators and that some Welfare Fraud Investigators and Community Service
22 Officers were interested in changing bargaining units and having RSA represent them.

23 2. RSA cannot satisfy the factors set forth in section 7 of the ERR as the County's denial
24 was reasonably based on concerns with the community of interest, efficiency of operations and
25 bargaining history.

26 3. The Supervising Welfare Fraud Investigators, Welfare Fraud Investigators and
27 Community Service Officers do not have a community of interest with the employees in the Law
28 Enforcement Unit when it comes to collective bargaining.

1 4. The County’s denial of RSA’s request was reasonable because the large majority (2400
2 of 2500) of current LEU members are classified to receive a CalPERS safety retirement while the
3 Supervising Welfare Fraud Investigators, Welfare Fraud Investigators and Community Service Officers
4 are all classified to receive a CalPERS miscellaneous retirement. The County’s reasonable goal is to
5 further separate, not combine, safety employees from miscellaneous employees when it comes to
6 collective bargaining. This desire is eminently reasonable as demonstrated by a recent lawsuit by RSA
7 against the County before the Public Employment Relations Board (“PERB”) in which even though the
8 County had collectively bargained over changes to the retirement formulas for the LEU employees as a
9 whole (both safety and miscellaneous members), RSA complained that the County had failed to meet
10 and confer with it over pension reform as to the miscellaneous members of LEU. This is exactly the
11 scenario the County reasonably aims to prevent.

12 5. The County also reasonably endeavors to keep supervisory employees in separate
13 bargaining units than subordinate employees for collective bargaining purposes as those employees have
14 substantially dissimilar job duties and responsibilities. In fact, the County has a “Supervisory”
15 bargaining unit consisting solely of supervisors or employees performing supervisory duties, and even
16 the law enforcement officers are divided into the LEU and a Law Enforcement Management Unit
17 (“LEMU”) for this very reason. Placing Supervising Welfare Fraud Investigators in a unit with mainly
18 non-supervisor employees defeats this purpose.

19 6. Accreting Welfare Fraud Investigators, who work in the Department of Public Social
20 Services, into the LEU, which consists of employees from the Sheriff’s Department and District
21 Attorneys office only, would adversely affect the efficiency of collective bargaining by requiring the
22 County to consider the budget of yet another department when negotiating a collective bargaining
23 agreement with LEU.

24 7. Even considering the job duties of the respective positions, which the County contends is
25 the least important factor in this analysis, there are important distinctions between the duties of Welfare
26 Fraud Investigators, Community Service Officers and Deputy Sheriffs who perform investigatory duties,
27 to whom RSA compares them. While Deputy Sheriffs investigate all crimes from a traffic accident to
28 homicide, and receive training on across the spectrum of crimes, Welfare Fraud Investigators are

1 generally statutorily limited to investigating claims of welfare fraud only. Community Service Officers
2 are not armed and have no arrest powers, which is a crucial factual and legal distinction. Community
3 Service Officers are also not peace officers as defined by applicable California law. Thus, there is no
4 interchangeability of duties between the positions.

5 8. RSA presented absolutely no evidence that there has been a history or past practice of
6 problems for Supervising Welfare Fraud Investigators, Welfare Fraud Investigators or Community
7 Service Officers in their current bargaining units.

8 9. RSA has not submitted any recent consent cards from any of the Welfare Fraud
9 Investigators or Community Service Officers, despite the fact that the consent cards submitted with the
10 initial petitions are now over six years old. This is violative of the intent of PERB Regulation 61020(c).
11 At most, RSA has shown that two employees, one Supervising Welfare Fraud Investigator and one
12 Community Services Officer, who testified at the hearing, have consented to the proposed modifications.

13 **IV. STATEMENT OF FACTS**

14 **A. The County's Employee Relations Resolution 99-379**

15 The "MMBA" provides that "a public agency may adopt reasonable rules and regulations after
16 consultation in good faith with representatives of a recognized employee organization or organizations
17 for the administration of employer-employee relations..." (Cal. Gov't Code § 3507.) The agency's
18 rules shall be followed when making appropriate unit determinations. (Cal. Gov't Code § 3507.1(a).)
19 As such, the County adopted its own Employment Relations Resolution setting forth the County's rules
20 and regulations. (Exh. 1.)

21 Relevant here, section 8 of the ERR defines the bargaining units relevant to and/or affected by
22 RSA's proposed unit modifications as follows:

- 23 1. SUPERVISORY UNIT. Includes supervisory employees and employees having
24 substantial managerial functions, major administrative control, or primary responsibility
25 for the performance of an essential specific function. It does not include department
26 heads.

27 * * *

1 3. LAW ENFORCEMENT UNIT. Peace officer employees who are safety
2 members of the Public Employees Retirement System, and other classes of employees
3 whose primary functions are directly related to law enforcement.

4 4. INSPECTION AND TECHNICAL UNIT. Includes work requiring use of
5 specific skills, involving substantial academic preparation, involving or derived from
6 extensive experience in related work in the inspection of facilities or conditions as to
7 compliance with rules and regulations. Relates to techniques as opposed to a general or
8 theoretical field of knowledge; employs practical knowledge related to the performance
9 of specific techniques.

10 * * *

11 11. LAW ENFORCEMENT MANAGEMENT UNIT. Supervisory and middle-
12 management employees of the Sheriff's Department who are safety members of the
13 Public Employees Retirement System.

14 (Exh. 1.)

15 Section 10 of the ERR sets forth the procedures to be followed when either the County or an
16 employee organization proposes to modify bargaining units. It provides, in pertinent part, as follows:

17 1. A registered employee organization may propose the modification of an
18 established unit by filing a request with the Human Resources Director, accompanied by
19 proof that its represented members comprise 15 percent of the employees in the unit. The
20 Human Resources Director may also propose a modification.

21 * * *

22 4. If no challenge as provided below is filed and the Human Resources Director
23 determines that the requested modified unit or units are *appropriate*, he shall notify the
24 employee organization in writing which requested the unit of his determination and the
25 reason therefore in writing. The organization may with seven days, modify its request or
26 request the Human Resources Director to arrange a hearing by the Board on its original
27 request.

28 * * *

1 7. If a challenging request has been filed and the challenge has not been resolved by
2 amendment or withdrawal, the Human Resources Director shall submit the request and
3 the challenge to the Board. The Board shall hold a hearing on the request and challenge,
4 at which time the organization which filed the modification request, and the challenging
5 organization shall be heard and the Human Resources Director shall submit his
6 recommendations. The Board shall make the final determination on the *appropriateness*
7 of the representation unit or units.

8 (Exh. 1 (emphasis added).)

9 Additionally, pursuant to Section 7, the County considers the following factors, among others, in
10 determining whether the modification of an employee representation unit is appropriate:

- 11 1. Community of interest among the employees;
- 12 2. The history of employee relations in a unit and among other employees of the County;
- 13 3. The effect of the unit of efficient operations of County Service and sound employee
14 relations;
- 15 4. Dividing any classification among two or more units is to be avoided wherever possible;
- 16 5. The existence of common skills and duties, comparable working conditions or similar
17 educational requirements;
- 18 6. Each unit should be the largest feasible group of employees having an identifiable
19 common or related interest without reference to geographical locations or the same supervisors; and
- 20 7. No unit shall be established primarily on the basis of the extent to which employees in the
21 proposed unit have organized.

22 (Exh. 1.)

23 **B. RSA's Petitions To Modify Bargaining Units**

24 On or about August 29, 2006 RSA petitioned the County for bargaining unit modifications to
25 reassign County job classifications as follows: (1) 25 Welfare Fraud Investigators from LIUNA's
26 Inspection and Technical Unit ("ITU"), which at the time had 1,405 members; and (2) 3 Supervising
27 Welfare Fraud Investigators from SEIU's Supervisory Unit, which at the time had 1,327 members, to
28 RSA's Law Enforcement Unit ("LEU"). (Exh. 2.) With its petition, RSA submitted three employee

1 authorization cards signed by the supervising welfare fraud investigators and 17 employee authorization
2 cards signed by the welfare fraud investigators. (Exh. 2.) The County had denied a previous request
3 made by RSA to do the same. (Exh. 18.) On or about September 1, 2006, the County denied RSA's
4 August 29, 2006 request because it concluded that RSA had not shown the required proof of
5 representational support. (Exh. 30.)

6 On February 15, 2007, RSA filed an unfair practice charge with the Public Employment
7 Relations Board ("PERB") alleging that the County violated the Meyers Milias Brown Act ("MMBA")
8 by "unlawfully denying RSA's petition for unit modification" with respect to the August 29, 2006
9 petition. (LA-CE-353-M) (Exh. 37.)

10 On August 29, 2007, RSA again proposed a modification to the LEU, but this time requested that
11 Community Services Officers ("CSOs") be removed from their existing bargaining unit, the ITU, and
12 placed in LEU to be represented by RSA. (Exh. 3.) With its petition, RSA submitted proof of support
13 from 116 CSOs. (Exh. 3.) At the time, there were 125 CSOs. (Exh. 37.) On or about October 11,
14 2007, the County denied the petition on the basis that there was not a 15 percent showing of support
15 from the donor unit, the ITU represented by LIUNA. (Exh. 37.)

16 On March 19, 2008, RSA filed another unfair practice charge with PERB alleging that the
17 County violated the MMBA with respect to its petition for modification to move the CSOs to LEU.
18 (LA-CE-438-M) (Exh. 37.) RSA again claimed that it was not required to provide the County mandated
19 15% showing of support from the donor unit.

20 After about four years, in February 24, 2012, PERB issued a decision on both unfair practice
21 charges (LA-CE-353-M and LA-CE-438-M) concluding that the County must process RSA's unit
22 modification petitions for substantive consideration without the 15% showing of consent. (Exh. 37.) As
23 a result, on or about April 24, 2012, using the factors set forth by applicable law and the County's
24 Employee Relations Resolution 99-379 ("ERR"), the County denied RSA's petitions on the merits for a
25 variety of reasons.¹ (Exh. 26.)

26
27 ¹ The County's April 24, 2012 denial of RSA's petitions inadvertently analyzed a petition to accrete Welfare Fraud
28 Investigators into RSA's Public Safety Unit. However, the reasons set forth in the County's denial apply equally to RSA's
petition to accrete the employees into the LEU. In addition, as set forth below, there are even more reasons why the accretion
of Community Service Officers into LEU is inappropriate.

1 Specifically, the County denied RSA's petitions because there is a lack of community of interest
2 between the classifications sought to be added to the LEU and current LEU members when it comes to
3 collective bargaining. (Id.) RSA's petitions unreasonably attempted to add employees classified as
4 miscellaneous for CalPERS retirement purposes to a unit that is 96% composed of employees classified
5 as safety members. (Id.) It also sought to blend supervisory employees with subordinate and other non-
6 supervisory employees. (Id.) Finally, the County's denial was based on a lawsuit, which was pending at
7 the time, filed by RSA against the County at PERB, which was the direct result of having safety and
8 miscellaneous classified employees in the same bargaining unit. (Id.)

9 **C. Supervising Welfare Fraud Investigators and Welfare Fraud Investigators**

10 At the time of RSA's petition, there were approximately three (3) Supervising Welfare Fraud
11 Investigators. (Exh. 26; Exh. 35.) Supervising Welfare Fraud Investigators are members of the
12 Supervisory Bargaining Unit, represented by SEIU. (Exh. 31; Hearing Transcript ("HT") 98:11.) They
13 are also classified as miscellaneous for purposes of CalPERS retirement. (Exh. 31-A; HT 98:6.) Their
14 main job function is to "supervise the activities of sworn and non-sworn personnel assigned to
15 investigations *related to suspected fraudulent receipt of aid* and obtain and present facts and evidence in
16 support of administrative action or prosecution." (Exh. 7-B (emphasis added).) They work under the
17 County's Department of Public Social Services. (Exh. 7-B; HT 99:6.)

18 At the time of RSA's petition, there were approximately twenty five (25) Welfare Fraud
19 Investigators. (Exh. 26; Exh. 35.) Welfare Fraud Investigators are members of the Inspection and
20 Technical bargaining unit ("ITU"), represented by LIUNA. (Exh. 7-A.) They are also classified as
21 miscellaneous for purposes of CalPERS retirement. (Exh. 32-A; HT 98:6.) Their main job function is
22 to "conduct a variety of complex and sensitive enforcement investigations *related to suspected*
23 *fraudulent receipt of aid* and obtain and present facts and evidence in support of administrative action or
24 prosecution." (Exh. 7-A (emphasis added).) They also work under the County's Department of Public
25 Social Services. (Exh. 7-A.)

26 Both Supervising Welfare Fraud Investigators and Welfare Fraud Investigators only investigate
27 matters arising out of a welfare fraud investigation or an internal personnel matter, such as if an
28 individual Welfare Fraud Investigator was accused of stealing money. (HT 65:22, 66:7.) In fact, the

1 peace officer status provided to Welfare Fraud Investigators is limited. Pursuant to Cal. Penal Code §
2 830.35, welfare fraud investigators are peace officers, but their authority is limited and only applies
3 when they are performing their primary duty, the enforcement of the provisions of the Welfare and
4 Institutions Code, or if there is immediate danger to person or property, or of the escape of the
5 perpetrator of that offense. (Cal. Penal Code 830.35; Exh. 34.) Moreover, the County has the discretion
6 as to whether to allow Welfare Fraud Investigators to carry firearms. (Id.) Neither Supervising Welfare
7 Fraud Investigators nor Welfare Fraud Investigators investigate homicides, robberies or burglaries. (HT
8 101-102.)

9 **D. Community Service Officers**

10 Community Service Officers I are “assigned a variety of law enforcement duties that typically
11 have substantial face-to-face contact and require knowledge of multiple ordinances, regulations and
12 codes.” (Exh. 7-C.) A Community Service Officer I is “basically an office worker.” (HT 53:1.)
13 Community Service Officers I are also classified as miscellaneous for purposes of CalPERS retirement.
14 (Exh. 7-C.) They work under the direction of the Riverside County Sheriffs’ Department. (HT 59:9.)

15 Community Service Officers II “perform the most responsible law enforcement support duties
16 involving a variety of civil and criminal issues that *do not require the authority of a sworn law*
17 *enforcement officer*, but have a high factor of responsibility, liability and criticality.” (Exh. 7-C
18 (emphasis added).) Community Service Officers II are also classified as miscellaneous for purposes of
19 CalPERS retirement. (Exh. 7-C.) They work under the direction of the Riverside County Sheriffs’
20 Department. (HT 59:9). Community Service Officers are not considered peace officers under
21 applicable California law. (Cal. Penal Code §§ 830, et. seq.) They have no power to arrest, carry a
22 weapon or engage in a pursuit. (HT 61:25, 62:6.)

23 **E. Deputy Sheriffs and Sheriffs Investigators**

24 Riverside County Sheriff’s Investigators are members of the Law Enforcement Unit and work
25 under the Riverside County Sheriffs’ Department. (Exh. 7-L.) They are classified as safety members
26 for purposes of CalPERS retirement. (Exh. 33.) They are also in a separate bargaining unit from the
27 Department’s management personnel, who are in the Law Enforcement Management Unit (“LEMU”).
28 (HT 44:22) Unlike Welfare Fraud Investigators, Sheriffs’ Department Investigators are not limited to

1 any particular crime, and can perform investigations on any crime from narcotics, homicide, auto theft,
2 theft, burglary, fraud, traffic citations, and are trained on every crime. (HT 45:5, 45:23-46:4, 47:17,
3 50:7.) They are also armed and have the power to arrest. (Exh. 7-L.) Both Deputy Sheriffs and
4 Sheriff's Investigators are statutorily classified as peace officers. (Cal. Penal Code § 830.1.)

5 **F. The Law Enforcement Unit**

6 The LEU consists of approximately 2,400 members. (HT 118:1.) Out of those 2,400 members,
7 approximately 2,300, or 96%, are classified as safety member for purposes of CalPERS retirement. (HT
8 118:1, Exh. 33.) The remaining 100 are classified as miscellaneous for retirement purposes. (HT
9 115:18.) All of the employees represented by SEIU and LIUNA, including all members of the
10 Supervisory Bargaining Unit and the ITU, are classified as miscellaneous for retirement purposes. (HT
11 116; 6-11, Exhs. 31 and 32.) Additionally, all of the members of LEU are either employed by the
12 Sheriff's Department or the District Attorney's Office. (HT 120:1-3.)

13 **G. RSA's Lawsuit Against the County**

14 The blended nature (safety and miscellaneous members) of LEU was recently an issue for the
15 County when it was sued by RSA at PERB over collective bargaining negotiations.² (Exh. 35.)
16 Beginning in January 2011 and through May 2011, the County and RSA conducted at least 18 collective
17 bargaining sessions for a successor Memorandum of Understanding for the LEU. (Exh. 35.) During
18 those negotiations, the main issue was pension reform for all of the members of LEU. (HT 43:11, 44:1,
19 115:18.) Specifically, the County negotiated pension reform for new members of LEU and changes to
20 the employer paid member contributions for both new and current members of LEU. (HT 115:18.)
21 During the five months of negotiations, the parties negotiated as to LEU as a whole, and no one from
22 RSA or the County addressed miscellaneous members of the LEU. (HT 116:16.) However, after
23 negotiations failed to yield an MOU and impasse was reached, the County attempted to implement the
24 terms and conditions of its Last Best and Final Offer. (Exh. 35.) When it did so, RSA claimed that the
25 County committed an unfair practice by failing to negotiate in good faith because it unilaterally made
26 changes to the pension formulas for miscellaneous employees without first meeting and conferring about
27

28 ² RSA's unfair practice charge (LA-CE-715-M) was dismissed with prejudice as a result of a settlement agreement when a
successor collective bargaining agreement was reached between the County and RSA over the LEU.

1 miscellaneous employees during collective bargaining. (Exh. 35.) Although the suit was eventually
2 dismissed when a successor collective bargaining agreement was reached with RSA, the suit caused the
3 County to recognize problems with blended units, and as a result, move towards unblended units. (HT
4 119:12)

5 **V. RSA DID NOT AND CANNOT MEET ITS BURDEN TO ESTABLISH THAT THE**
6 **COUNTY’S DENIAL OF ITS PETITIONS WAS UNLAWFUL OR UNREASONABLE.**

7 As the evidence presented at the hearing proves, the County’s denial of RSA’s petition to modify
8 existing bargaining units and to accrete Welfare Fraud Investigators and Community Services Officers
9 into the LEU was neither unreasonable nor unlawful; rather the decision was in compliance with
10 applicable County rules and considerations and was appropriate. For these reasons, RSA has not met its
11 burden and the County’s denial of RSA’s petitions must be upheld.

12 **A. The County is Lawfully Authorized to Determine the Constitutions of Appropriate**
13 **Bargaining Units, And So Long as the County’s Determination Is Reasonable, It**
14 **Must Not Be Disturbed.**

15 Under the Meyers Miliias Brown Act (“MMBA”), the employer is empowered to make the
16 determination as to the appropriateness of the bargaining unit. (*Covina-Azusa Fire Fighters Union v.*
17 *City of Azusa* (1978) 81 Cal.App.3d 48, 60.) The standard by which the County’s decision to deny a
18 request for modification of bargaining units is simply whether it is reasonable. (*Reinbold v. City of*
19 *Santa Monica* (1975) 63 Cal.App.3d 433, 440.) A local government employer does not need to
20 determine the ultimate unit or the most appropriate unit. (*City of Glendale*, (2007) PERB Decision No.
21 A-361-M.) The act requires only that the unit be appropriate. (*Ibid.* (citations omitted).) The party
22 challenging a unit determination decision carries the burden of demonstrating that the decision was not
23 reasonable. (*Organization of Deputy Sheriffs v. County of San Mateo* (1975) 48 Cal.App.3d 331, 338.)
24 A determination is presumed reasonable. “If reasonable minds can differ as to the wisdom of [an
25 agency]’s action, its action is conclusive [,] and courts should not substitute their judgment for that of
26 the [agency].” (*Ibid.*)

27 This long held principle was recently reiterated by PERB in a case involving the County.
28 (*County of Riverside* (2011) PERB Decision No. 2119). In that case, similar to here, the County denied

1 a petition to establish a bargaining unit of temporary employees to be represented by SEIU, Local 721.
2 (*Id.*) The County denied SEIU's petition for a variety of reasons, but mainly for lack of community of
3 interest when it came to collective bargaining. (*Id.*) After the ALJ's Proposed Decision upheld the
4 County's denial, PERB's board agreed and concluded that "when evaluating whether a local agency has
5 determined an appropriate bargaining unit under local rules adopted pursuant to the MMBA, PERB
6 considers whether the agency's determination was reasonable. If reasonable minds could differ over the
7 appropriateness of the determination, PERB should not substitute its judgment for that of the local
8 agency." (*Id.*) Thus, PERB deferred to the County's unit determination even when some community of
9 interest factors weighed in favor of the proposed unit, but some weighed against it.

10 Similarly, section 10 of the ERR echoes the MMBA and only requires that the Human Resources
11 Director determine whether the requested modified unit or units are appropriate. (Exh. 1.) Additionally,
12 even if the HR Director's decision is challenged, pursuant to the ERR, the standard the Board uses on
13 review is also whether the proposed modified unit is appropriate. Here, for reasons set forth in great
14 detail below, RSA cannot meet its burden that the County's denial was unreasonable with respect to any
15 of the Supervising Welfare Fraud Investigators, the Welfare Fraud Investigators or the Community
16 Services Officers. Thus, the hearing officer must defer to the County's reasonable denial and deny
17 RSA's grievance.

18 **B. Applying the ERR, the County's Denial of RSA's Petitions for Modifications Was**
19 **Eminently Reasonable.**

20 **1. Supervising Welfare Fraud Investigators, Welfare Fraud Investigators and**
21 **Community Services Officer Do Not Have the Legal Requisite "Community**
22 **of Interest" With LEU members Rendering RSA's Petitions Inappropriate.**

23 A factor considered in determining an appropriate employee representation unit is the
24 "community of interest among employees." (Exh. 1). The key issue in analyzing this factor is "to
25 reveal the interests of employees and [to] ascertain whether they share substantial mutual interests in
26 *matters subject to meeting and negotiating.*" (*Monterey Peninsula Community College Dist. (1978)*
27 *PERB Dec. No. 76* (emphasis added).) The County also may consider the extent to which employees
28 "share education and other special qualifications, training, and skills; job functions; method of wages or

1 pay schedule; hours of work; fringe benefits; supervision; frequency of contact with other employees;
2 integration with work functions of other employees; interchange with other employees; and other
3 relevant factors.” (Zerger, Janiak, Johnson & Kay, CALIF. PUBLIC SECTOR LABOR RELATIONS
4 (Labor & Employment Law Section State Bar of California 2007), § 5.40[1].)

5 PERB analyzed the interchangeability of job functions in determining whether there was a
6 community of interest in *South Bay Union Elem. School Dist.* ((1990) PERB Decision No. 816, p. 10.)
7 PERB found no evidence of there being interchange between most of the positions, which included
8 secretarial staff, custodians, and instructional aides, to name a few. (*Id.* at pp. 3-5, 10-11.) Therefore,
9 PERB found the recognition petition inappropriate due to the lack of community of interest. (*Id.* at p.
10 12.) Here, it is reasonable for the County to conclude that the employees sought to be added to LEU do
11 not possess sufficient community of interest.

12 **a. RSA’s Petitions Seek To Further Blend Employees With Safety**
13 **Retirements With Employees With Miscellaneous Retirements**

14 First, as set forth above, all of the employees RSA seeks to add to the LEU are statutorily
15 classified as miscellaneous for purposes of CalPERS retirement whereas 96% of the current LEU
16 members are classified as safety members. (HT 118:1, Exh. 33.) All of the employees represented by
17 SEIU and LIUNA have miscellaneous retirement status with CalPERS. (HT 117:6; Exh. 31; HT
18 117:11; Exh. 32.)

19 Sarah Franco, a Principal Human Resources Analyst for the County’s Employee Relations
20 Division (HT 106:8-21) who has been employed since 2001 and sat second chair on the most recent
21 collective bargaining with RSA regarding LEU, testified that the County and RSA negotiated pension
22 reform and negotiated changes to pensions and the employer paid member contribution. (HT 115:18)
23 In fact, pension reform was the major issue at the bargaining table as even RSA’s President
24 acknowledged. (HT 43:11, 44:1.) During negotiations, the County believed it was negotiating for LEU
25 as a whole and intended to apply pension reform to all of the employees in LEU for which it was
26 bargaining. Indeed, at no time during the five months of negotiations did either RSA or the County
27 distinguish the miscellaneous members from the safety members. (HT 116:16.) However, after the
28 negotiations concluded without a deal, and the County attempted to implement its Last, Best and Final

1 Offer; RSA filed an unfair practice charge with PERB claiming that the County had violated the MMBA
2 failing to meet and confer over pension reform as it affected the miscellaneous employees in LEU.
3 (Exh. 35; HT 116) The County denied that it had committed any unfair practice charge as its belief was
4 that it was negotiating pension reform for all members of LEU, and not just the safety members. That
5 said, the County was required to defend itself against RSA's charge, which cost the County additional
6 and unnecessary taxpayer funds, until the charge was dismissed.

7 As a result of the RSA initiated litigation, as Mrs. Franco explained, the County is moving away
8 from, not towards, blended bargaining units as follows:

9 "We have recognized that the blending of the units has caused litigation, and there has
10 been dialogue with the County about moving towards unblending units and having
11 cleaner bargaining units to make collective bargaining easier and a lot less cumbersome
12 and a lot less litigation is hopefully the result."

13 (HT 199:12-18.)

14 Thus, it is clear that blended units regarding retirement classifications alone have been
15 problematic for the County when it comes to collective bargaining and has resulted in challenges in the
16 past. (HT 118:15.) RSA's petitions would further blend the LEU by adding even more miscellaneous
17 members to a unit which is overwhelmingly comprised of safety members. The County's denial of the
18 petitions on that basis alone, therefore, was not only reasonable, but appropriate.

19 **b. RSA's Petitions Seek To Further Blend Supervisory With**
20 **Subordinate and Other Non-Supervisory Employees**

21 RSA's petitions seek to take Supervising Welfare Fraud Investigators out of the Supervisory
22 Unit and combine them with Welfare Fraud Investigators, from the ITU, into the LEU. However,
23 supervisory and non-supervisory employees also lack the community of interest required to render such
24 a joinder appropriate. (*See State of California (Department of Forestry and Fire Protection) (1997)*
25 *PERB Decision No. 1216.*) In *State of California (Department of Forestry and Fire Protection)*, PERB
26 analyzed whether Forest Logistics Officers I ("FLO I's") and Forest Logistics Officers II ("FLO II's")
27 should be placed in the same bargaining unit as a result of a proposed unit modification by the union.
28 (*Id.*) The Department opposed the modification on numerous grounds, but relevant here, argued that it

1 was inappropriate to place FLO I's and FLO II's in the same bargaining unit because FLO II's were
2 supervisors. Citing the duties of the FLO II's, PERB first concluded that FLO II's were indeed
3 supervisors and stated that "allocating regular work assignments, assigning specific additional tasks, and
4 reviewing and correcting work demonstrate supervisory status." (*Id.* citing *Sweetwater Union High*
5 *School District* (1976) EERB Decision No. 4; *Campbell Union High School District* (1978) PERB
6 Decision No. 66.) PERB then concluded that because the FLO II's were supervisory employees, placing
7 them in the same bargaining unit as their subordinates was inappropriate. (*Id.*) PERB stated, "When an
8 employee's duties reach the point that the involvement in supervisory functions outweighs the right to
9 participate in rank and file unit activity, the employee's supervisory obligations preclude a finding that
10 the employee's duties are substantially similar to those of subordinates." (*Id.* citing *State of California*
11 (*Dept. of Personnel Administration*) (1989) PERB Decision No. 727.)

12 Here, the same sound reasoning applies. The County's objective is keep supervising employees
13 in separate bargaining units from their subordinates (HT 113:24-114:3) in order to avoid complications
14 between supervising and non-supervisory employees. (HT 132:2) To that end, the County has an entire
15 bargaining unit devoted only to supervisory employees, of which the Supervising Welfare Fraud
16 Investigators are already members. (Exh. 1.) The County has also mostly separated supervisors from
17 non-supervisors within the Sheriff's Department. (Exh. 1.) While the LEU contains Deputy Sheriffs
18 and Correctional Deputies, the Law Enforcement Management Unit ("LEMU") is comprised of their
19 superiors, Sergeants and above. (Exh. 1; HT 114:6-9.) As Mrs. Franco noted, "Placing supervisory with
20 non-supervisory employees complicates bargaining." (HT 120:1)

21 There can be no doubt that Supervising Welfare Fraud Investigators are in fact supervisors.
22 First, the title of their position gives them away. But second, their duties do as well. As indicated at the
23 hearing and in the job description, Supervising Welfare Fraud Investigators have the ability to draft
24 performance evaluations of the Welfare Fraud Investigators and to initiate discipline. (HT 98:25-99:3)
25 The Supervising Welfare Fraud Investigators' duties also include planning, assigning, supervising and
26 reviewing the work of subordinate investigators in the DPSS. (Exh. 7-B.) They also assist in the
27 selection of new employees, and train and supervise the training of unit employees. (Exh. 7-B.)
28 Applying the PERB holdings above, it is clear that the Supervising Welfare Fraud Investigators' duties

1 as supervisors are not substantially similar to those of the Welfare Fraud Investigators. Thus, keeping
2 Supervising Welfare Fraud Investigators in a separate bargaining unit than Welfare Fraud Investigators
3 is a reasonable and appropriate objective. The County's denial of RSA's petitions on the grounds that
4 the proposed modifications would inappropriately combine Supervising Welfare Fraud Investigators and
5 Welfare Fraud Investigators in the same bargaining unit was reasonable and must not be disturbed.

6 **c. LEU Members Do Not Share A Community of Interest When**
7 **Analyzing Job Duties.**

8 RSA's position that the petitions for modification should have been granted is entirely based on
9 its argument that Supervising Welfare Fraud Investigators, Welfare Fraud Investigators and Community
10 Services Officers share similar job functions and training as Riverside County Deputy Sheriffs and
11 Sheriffs Investigators, and sometimes work alongside of them. The County considers this the least
12 important factor as specific job duties are never discussed during collective bargaining. (HT 122:3.)
13 Regardless, although the County cannot deny that there are some similar job functions and training
14 between the various positions, there are even more significant differences in the job duties, which
15 renders a conclusion that the employees still do not share a sufficient community of interest.

16 First, there is an important statutory distinction as LEU is comprised of sworn individual with
17 peace officer status. (Exh. 1.) Indeed, Deputy Sheriffs' peace officer status under Cal. Penal Code §
18 830.1 is essentially unlimited and applies as follows:

19 (1) *As to any public offense committed or which there is probable cause to believe has*
20 *been committed within the political subdivision that employs the peace officer or in*
21 *which the peace officer serves.*

22 (2) *Where the peace officer has the prior consent of the chief of police or chief, director,*
23 *or chief executive officer of a consolidated municipal public safety agency, or person*
24 *authorized by him or her to give consent, if the place is within a city, or of the sheriff, or*
25 *person authorized by him or her to give consent, if the place is within a county.*

26 (3) *As to any public offense committed or which there is probable cause to believe has*
27 *been committed in the peace officer's presence, and with respect to which there is*
28 *immediate danger to person or property, or of the escape of the perpetrator of the offense.*

(Cal. Penal Code § 830.1 (emphasis added).)

To the contrary, the peace officer status provided to Welfare Fraud Investigators is limited.
They are only considered peace officers by statute when they are performing their primary duty, the

1 enforcement of the provisions of the Welfare and Institutions Code, or if there is immediate danger to
2 person or property, or of the escape of the perpetrator of that offense. (Cal. Penal Code 830.35; Exh.
3 34.) Moreover, unlike Deputy Sheriffs, the County has the discretion as to whether to allow Welfare
4 Fraud Investigators to carry firearms. (Id.)

5 In further demonstration of the disparity between the powers and duties of a Sheriff's
6 Investigator and a Welfare Fraud Investigator, Robert Masson testified that he has performed thousands
7 of investigations over his career, from homicides to thefts to burglaries to traffic citations. (HT 45:5)
8 To the contrary, Welfare Fraud Investigators are limited to investigations regarding "suspected
9 fraudulent receipt of aid." (Exhs. 7-A, 7-B.) Kristina Zaragosa, a Supervising Welfare Fraud
10 Investigator who testified at the hearing, worked as a Welfare Fraud Investigator for two years and
11 confirmed that Welfare Fraud Investigators only investigate matters that arise out of a welfare fraud
12 investigation, or recipients of public services. (HT 63:2-15; 101-102.) Unlike Deputy Sheriffs, Welfare
13 Fraud Investigators do not investigate homicides, robberies or use of force, and are not trained to do so.
14 (HT 101-102.) Thus there is no interchangeability between job duties of a Sheriff's Investigator and a
15 Welfare Fraud Investigator.

16 In addition, despite RSA's implication that Welfare Fraud Investigators and Sheriff Investigators
17 often work hand-in-hand, the evidence supports the opposite conclusion. RSA President Masson
18 testified that over his 25 year career as an investigator, he does not recall ever working on a welfare
19 fraud investigation. (HT 46:13.) In addition, he has only worked with Welfare Fraud Investigators when
20 using them as a tool to get information on people receiving SSI benefits, who might also have been
21 selling drugs. (HT 38:11.) Thus, it is clear that despite RSA's contention, Sheriffs Investigators
22 seldom, if ever, work alongside and/or with Welfare Fraud Investigators.

23 Moreover, the mere fact that Welfare Fraud Investigators conduct investigations like Deputy
24 Sheriffs, and are trained to do so, still does not satisfy a community of interest standard. Sarah Franco,
25 again a Principal Human Resources Analyst, testified that she too conducts personnel investigations
26 following the same procedures as Deputy Sheriffs and Welfare Fraud Investigators. (HT 107:17.) Mrs.
27 Franco explained that she would receive allegations of misconduct from her supervisor or department
28 and that she was responsible for determining whether or not those were true and had occurred as alleged.

1 (HT 108:20.) She would review relevant policies and identify and interview witnesses, including the
2 focus of the investigation. (HT 108:6-16.) She would review relevant documents (HT 108:18), write a
3 report (HT 108:21), submit that report to her supervisors (HT 108:23), interact with Human Resources
4 personnel (HT 109: 1) and if there was a criminal aspect involved, interact with law enforcement
5 personnel. (HT 109:4-8.) She would then make a recommendation on her findings as to any violations
6 of policy and appropriate discipline. (HT 107:24-108:2.) Mrs. Franco, a member of the unrepresented
7 unit, applied those same procedures when investigating C-25 complaints. (HT 110:10-16.) Yet, even
8 though Mrs. Franco employed the same techniques and procedures in her investigations, and even
9 worked with law enforcement at times, no one would reasonably claim that Mrs. Franco's classification
10 should be included in the LEU bargaining unit.

11 Community Services Officers have even less of a community of interest with Deputy Sheriffs.
12 First, RSA's petition does not distinguish between CSO I's and CSO II's. But as Charles Urquhart, a
13 Community Services Officer II testified, a CSO I is basically an office worker. (HT 53:1.) Thus, they
14 have no community of interest regarding job duties as related to law enforcement officers in the LEU.
15 Second, unlike the members of LEU, CSO's are not peace officers. (Cal. Pen. Code § 830 et. seq.)
16 They have no power to arrest (HT 61:25), carry a weapon (HT 61:25), or to engage in a pursuit (HT
17 62:6). And, even though RSA again implied that Deputy Sheriffs and Investigators work hand-in-hand
18 with CSO's, the evidence did not support that. Masson testified that although he had worked alongside
19 CSO's, it was only for transportation of prisoners or towing of vehicles. (HT 41:16, 19.) It was never in
20 conjunction with an investigation. Put simply, the CSO's job is to support the Deputy Sheriffs. Thus,
21 even when considering their duties, CSO's do not have either an interchangeability of job duties with
22 Deputy Sheriffs or a community of interest with those members of the LEU.

23 Finally, as set forth above, the Supervising Welfare Fraud Investigators do not share the
24 community of interest in job duties with their own subordinates, the Welfare Fraud Investigators, or
25 most of the other members of LEU. Therefore, the County's decision to prevent them from being in the
26 same bargaining unit as their subordinates and other non-supervisory employees, as proposed by RSA, is
27 reasonable.

1 2. **RSA Provided No Evidence of Any History of Problems Related to Collective**
2 **Bargaining With Respect to the Employees Sought to be Moved.**

3 Another of the criteria for establishing an appropriate employee representation unit is the
4 “history of employee relations in a unit and among other employees of the County.” (Exh. 1; *see also*
5 *Calif. State Employees’ Assoc.* (1990) PERB Decision No. 794-S (finding the negotiating history to be a
6 “proper part” of an inquiry as to the appropriateness of a unit).) Bargaining history and the relationship
7 between the group seeking severance and the majority are relevant and key factors to be considered
8 when considering the question of whether one unit is more or less appropriate than another. (*State of*
9 *California (Dept. of Personnel Admin.)* (1993) PERB Decision No. 1025S.) In *State of California*, in
10 determining the appropriateness of bargaining units, PERB analyzed “the practice, in terms of
11 organizational structure or otherwise,” of the union, “to accommodate the interests” of the employees
12 seeking severance. (*Id.*)

13 Here, RSA set forth absolutely no evidence of any problems that any of the affected employees
14 have had with either the County or their current unions in the history or past practice of collective
15 bargaining. In fact, other than some old consent cards, there was no testimony that the current
16 bargaining units in which the Supervising Welfare Fraud Investigators, Welfare Fraud Investigators and
17 Community Services Officers are placed, have adversely affected those employees. Thus, RSA has not
18 satisfied this factor and the County’s denial on this basis was reasonable.

19 To the contrary, the County did set forth evidence of the history or past practice of bargaining
20 with blended bargaining units, the blended nature of which would increase if the petitions were granted,
21 and problems that the County has had as a direct result of the blended nature of those units, including
22 litigation and having to defend a lawsuit RSA filed over the blended nature of the LEU.

23 3. **Granting RSA’s Petitions Would Be Contrary to the Efficient Operations of**
24 **the County Service and Labor Relations.**

25 Another factor to be evaluated is the “effect of the unit on efficient operations of County Service
26 and sound employee relations.” (Exh. 1.) Here, the County reasonably concluded that modification of
27 the LEU as petitioned by RSA, would be *contrary to the efficient operations of County service and labor*
28 *relations*. The Supervising Welfare Fraud Investigators and Welfare Fraud Investigators work under the

1 Department of Public Social Services. The LEU covers two departments: the District Attorneys Office
2 and the Sheriffs' Department. (HT 120:1.) When collectively bargaining with any unit, the County
3 must consider the interests and budgets of the departments for which the employees work. (HT 120:5)
4 The fewer departments in a bargaining unit, the more efficient collective bargaining can be. (HT 121:1.)
5 When the County costs proposals, it is required to look at the ability of each department to pay wages
6 and benefits. (120:16) Thus, adding Supervising Welfare Fraud Investigators and Welfare Fraud
7 Investigators to the LEU would necessarily involve the consideration of the interests and budget of yet
8 another department, the Department of Public Social Services, in collective bargaining. Considering
9 another department's budget makes it less efficient or effective and more difficult to bargain. (HT
10 121:1) For that reason, the County's denial of the petition by the Welfare Fraud Investigators was also
11 reasonable.

12 **VI. RSA HAS NOT SUBMITTED ANY RECENT CONSENT CARDS FROM EITHER**
13 **WELFARE FRAUD INVESTIGATORS OR COMMUNITY SERVICE S OFFICERS**

14 PERB Regulation 61020(c) generally provides that consent cards are valid for one year within
15 the date they are signed by the employee. RSA's petitions for modification were filed in 2006 and 2007
16 with, at that time, valid consent cards dated in 2006 and 2007 from the majority of Welfare Fraud
17 Investigators and Community Service Officers seeking to switch bargaining units. However, six and
18 seven years have now passed since those consent cards were submitted and thus, at most, under even
19 PERB Regulations, RSA has shown that one Supervising Welfare Fraud Investigator and one
20 Community Services Officer, who both testified at the hearing, consent to the proposed modifications.

21 The County cannot allow unions to raid other unions' units by simply submitting a petition
22 letter, without obtaining employees' consent. It is unfair to employees and de-stabilizing to labor
23 relations by allowing unpredictable shifts in bargaining power between unions and bargaining units.
24 Thus, the County's denial is also reasonable because RSA has not provided valid consent cards from the
25 employees sought to be moved into the LEU.

26 **VII. CONCLUSION**

27 RSA's petitions for modification to accrete Supervising Welfare Fraud Investigators, Welfare
28 Fraud Investigators and Community Services Officers into the LEU were reasonably denied by the

1 County. The County reasonably concluded that because of (1) the lack of community of interest as it
2 relates to collective bargaining; (2) the adverse effect the proposed modification would have on the
3 efficiency of the County's operations; and (3) the lack of any showing of any history of problems the
4 employees sought to be moved have had in previous collective bargaining or with their current unions,
5 the proposed modifications were inappropriate. RSA has not carried its burden in attacking the
6 County's denial and the decision of the County, which was reasonable, must be left undisturbed and
7 RSA's grievance must be denied.

8
9 Dated: October 7, 2013

THE ZAPPIA LAW FIRM
A Professional Corporation

10
11
12 By: 

Edward P. Zappia
Brett M. Ehman

13
14 Attorneys for Respondent,
15 COUNTY OF RIVERSIDE
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1 PROOF OF SERVICE

2 COUNTY OF RIVERSIDE, GRIEVANCE ARBITRATION

3 CASE NAME: RIVERSIDE SHERIFFS' ASSOCIATION V. COUNTY OF RIVERSIDE

4 GRIEVANCE NUMBER:

5 I am employed in the County of Los Angeles, State of California. I am over the age of 18 and
6 not a party to the within action. My business address is The Zappia Law Firm, 333 South Hope Street,
Suite 3600, Los Angeles, CA 90071.

7 On October 7, 2013, I served the foregoing document(s) described as:

8 **RESPONDENT COUNTY OF RIVERSIDE'S POST HEARING BRIEF**

9 on the interested parties in this action, by placing a true copy(ies) thereof enclosed in sealed envelopes
10 addressed as stated on the attached mailing list, or addressed as follows:

11 Michael Prihar
12 Dispute Resolution Services
13 P.O. Box 3242
14 Granada Hills, CA 91394
15 Ph: (818) 360-2091
E: mprihar@naarb.org


Raquel Ortega, Esq.
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16 **[XX] BY E-MAIL OR ELECTRONIC TRANSMISSION:** Based on a Court order or on an
17 agreement by the parties to accept service by e-mail or electronic transmission, I caused the
18 document(s) described above to be sent from e-mail address mwhite@zappialegal.com to the
persons at the e-mail addresses listed above. I did not receive, within a reasonable time after the
transmission, any electronic message or other indication that the transmission was unsuccessful.

19 **[XX] BY MAIL** I deposited such envelope in the mail at Los Angeles, California. The envelope was
20 mailed with postage thereon fully prepaid. As follows: I am "readily familiar" with the firm's
21 practice of collection and processing correspondence for mailing. Under that practice it would
22 be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los
23 Angeles, California in the ordinary course of business. I am aware that on motion of the party
served, service is presumed invalid if postal cancellation date or postage meter date is more than
one day after date of deposit for mailing in affidavit.

24 **[XX] STATE** I declare under penalty of perjury under the laws of the State of California that the
25 above is true and correct.

26 Executed on October 7, 2013, Los Angeles, California.

27 
28 Mia White

ATTACHMENT D

TRANSCRIPT OF PROCEEDINGS
SHERIFF'S ASSOCIATION vs. COUNTY OF RIVERSIDE

July 18, 2013
1-4

1 BEFORE THE IMPARTIAL HEARING OFFICER Page 1
2 MICHAEL PRIHAR
3
4 RIVERSIDE SHERIFF'S ASSOCIATION
5 and
6
7 COUNTY OF RIVERSIDE
8 RSA Unit Modification Petition re:
9 Welfare Fraud Investigators and
10 Community Service Officers
11 -----
12
13
14
15 TRANSCRIPT OF PROCEEDINGS
16
17
18 July 18, 2013
19 11:01 a.m.
20
21 1325 Spruce Street; Suite 310
22 Riverside, California
23
24
25 Margaret M. Bourgeois, CSR No. 11569

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Andi Bernard

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3 1 County of Riverside, Board of 8
4 Supervisors, Employee Relations
5 Resolution 99-379
6
7 2 RSA Unit Modification Petition 8
8 dated 8-29-06 and Employee
9 Authorization Cards
10
11 3 RSA Unit Modification Petition 8
12 dated 8-29-07 and Employee
13 Authorization Cards
14
15 4 2012-2016 MOU between the County 8
16 of Riverside and Riverside
17 Sheriffs Association Law
18 Enforcement Unit
19
20 5 2012-2016 MOU between the County 8
21 of Riverside and Laborers'
22 International Union of North
23 America, Local 777
24
25 6 2012-2016 MOU between County of 8
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7
8 7 County Human Resources job 8
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11 8 Selected provisions of DPSS Policy 8
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1 RIVERSIDE, CALIFORNIA;
2 THURSDAY, JULY 18, 2013; 11:01 A.M.
3
4 THE HEARING OFFICER: Let's go on the record.
5 We're here in the matter of the hearing
6 regarding request of modification of the Law
7 Enforcement Unit to now incorporate welfare fraud
8 investigators. This is a matter between the Riverside
9 Sheriffs Association and the County of Riverside.
10 Would counsel appearing on behalf of the
11 Association please identify yourself for the record,
12 please.
13 MS. ORTEGA: Raquel Ortega from Hayes &
14 Cunningham, LLP for RSA.
15 THE HEARING OFFICER: And appearing on behalf
16 of the County
17 MR. ZAPPIA: Ed Zappia on behalf of the
18 County of Riverside and I'm here with --
19 MS. BERNARD: Andi Bernard with County of
20 Riverside, human resources.
21 THE HEARING OFFICER: Thank you very much.
22 Before we opened the record we had extensive
23 discussions regarding the evidentiary record. And what
24 we have is a series of three binders, and the parties
25 have gone over the exhibits and we're now at the

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1 following point: We have marked what was initially the
2 Union's Exhibits 1 through 20 are now Joint Exhibits 1
3 through 20. We have left blank Exhibits 21 through 29
4 for possible additions.
5 And what was previously the Employer's
6 exhibits have been renumbered so that we now have
7 employer -- we now have Exhibits 30 through 37 as joint
8 exhibits. So we now have a total of potentially 37
9 exhibits. And like I said, 21 through 29 at this point
10 in time are just reserved. The trees are already dead
11 but we will try to save the other ones. Okay.
12 (Joint Exhibits 1-20 and 30-37 marked)
13 THE HEARING OFFICER: Is there any additional
14 threshold matter we need to take care of
15 MR. ZAPPIA: I think we proposed a
16 stipulation that we stipulate to authenticity that
17 exhibits are what they are.
18 THE HEARING OFFICER: As joint exhibits,
19 they're fine
20 MR. ZAPPIA: As joint. But we might reserve
21 if we had -- since there were so many just exchanged,
22 we would reserve objections or admissibility for
23 relying on post-hearing briefs.
24 THE HEARING OFFICER: That's fine.
25 MR. ZAPPIA: Otherwise, they'll all be in

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1 subject to objections as appropriate.
2 THE HEARING OFFICER: Let's do it this way.
3 Okay. They're received on a foundational basis as
4 joint exhibits. The parties reserve the right to argue
5 the probative value of any document that's been
6 received as joint exhibits and will act accordingly.
7 That's fine.
8 MS. ORTEGA: Also if I could add to that.
9 There was a subpoena duces tecum served by the
10 Association upon the County, and there's responsive
11 documents here but the parties have agreed that if
12 there are additional responsive documents that are
13 sought by the Association, that the record may be
14 supplemented after.
15 THE HEARING OFFICER: That's fine. We will
16 keep the evidence record open until the parties provide
17 me notice that there's no additional exhibits, and at
18 that time I will send out an E-mail indicating that the
19 evidence record is closed and we will proceed with the
20 briefing portion.
21 Any additional matter we need to deal with?
22 MR. ZAPPIA: I think at this point, both
23 parties -- we can't agree exactly on an issue; we both
24 have one we will submit to you.
25 THE HEARING OFFICER: That's fine. I'll

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1 prepare or select --
2 MR. ZAPPIA: Here's the County's.
3 THE HEARING OFFICER: Okay. The Employer's
4 proposed issue is was the County's denial of the
5 Riverside Sheriffs' Association's requested unit
6 modification reasonable under the terms of the
7 County Employer Relations Resolution Section 7.
8 MR. ZAPPIA: Then 1 and 2 are the actual
9 requested modifications.
10 THE HEARING OFFICER: The requested
11 modification is to take the welfare fraud investigators
12 who are currently within the LIUNA technical unit and
13 add them to Riverside Sheriff's Association Law
14 Enforcement Unit; and Service Employees International
15 Union supervisors section now includes the supervisory
16 welfare fraud investigators. And, again, the intent is
17 to add those through the Riverside Sheriff's
18 Association Law Enforcement Unit.
19 MR. ZAPPIA: That's the County's proposed
20 issue.
21 THE HEARING OFFICER: The Union's proposed
22 issue is as follows: Are Riverside Sheriffs'
23 Association's proposed unit modifications appropriate
24 in terms of the criteria set forth in Employee
25 Relations Resolution Section 7.1 through 8 entitled

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1 Criteria for establishing an appropriate
2 representation unit. Very good. Thank you very much.
3 Ms. Ortega, opening remarks?
4 MS. ORTEGA: Yes.
5
6 OPENING STATEMENT
7 MS. ORTEGA: As we all know, the Riverside
8 Sheriffs' Association and the County of Riverside
9 shared -- have shared a collective bargaining
10 relationship for many years. There's a series of
11 public sector labor agreements that they have entered
12 into and the current Law Enforcement Unit Memorandum of
13 Understanding is in full force and effect from 2012 to
14 2016, and that is marked as Joint Exhibit 4.
15 From Article 2 of that MOU and also Joint
16 Exhibit 13, the unit is comprised of classifications of
17 deputy sheriffs, sheriffs investigators, district
18 attorney investigators, all of whom are peace officers
19 within the meaning of Penal Code 830.1. The LEU also
20 includes deputy coroner classifications who are peace
21 officers within the meaning of Penal Code 830.35 and
22 correctional deputies pursuant to Penal Code 831. The
23 LEU currently represents approximately 2500 employees.
24 What brings us here today is a petition that
25 RSA filed on August 29th, 2006, to move supervising

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1 welfare fraud investigators along with welfare fraud
2 investigators from their current bargaining unit into
3 the Law Enforcement Unit. Supervising welfare fraud
4 investigators are currently represented by SEIU Local
5 1997 and are a part of the general supervisory unit
6 within the County.
7 The welfare fraud investigators are currently
8 members of the inspection and technicals unit
9 represented by LIUNA Local 777. RSA's petition was
10 accompanied by 20 employee authorization cards which
11 are included under Joint Exhibit Number 2, which
12 equated to 100 percent of the supervising welfare fraud
13 investigators at the time and 70 percent of welfare
14 fraud investigators. The petition was filed pursuant
15 to the employee resolutions -- relations resolution,
16 the ERR, which is included as Joint Exhibit Number 1.
17 The County refused to process the petition
18 pursuant to the ERR, arguing that RSA did not fulfill
19 all procedural requirements. That led to RSA filing a
20 PERB charge in February 2007, seeking for the County to
21 process its petition.
22 While that matter was pending, in August 2007
23 RSA filed another petition to move community service
24 officers, also known as CSOs into the LEU. Included
25 with that request was 116 employee authorization cards,

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1 and that's included in Joint Exhibit 3. The 116
2 employee authorization cards was approximately 93
3 percent of the CSOs employed at that time. The County
4 again refused to process that petition, making the same
5 procedural argument, which led RSA to file another PERB
6 charge in March 2008. Eventually the two PERB cases
7 were consolidated, the matters were heard, and PERB
8 ordered in March 2012 for the County to process the
9 petitions pursuant to the ERR. Thereafter, the parties
10 agreed to hold the hearing, which is provided in
11 Section 10, Paragraph 7 of the ERR here today.
12 It's important that we take a look at the ERR
13 to see what criteria is listed to determine the
14 appropriateness of the proposed bargaining unit. The
15 ERR again is found under Section -- Joint Exhibit 1 on
16 Page 4 and 5. Starting on Page 4. The first criteria
17 is common and it includes the community of interest
18 among employees. The second criteria is the history of
19 employee's relations in a unit among other employees of
20 the County. The third criteria is the effect of the
21 unit on efficient operations of County service and
22 sound employee relations. The fourth criteria isn't
23 really at issue here because there is no petition
24 sought to divide a classification. Criteria Number 5
25 is the existence of common skills and duties,

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1 comparable working conditions or similar educational
2 requirements, and that's what the majority of the
3 testimony will focus on today. And the final two
4 criteria, Number 6, is each unit should be the largest
5 feasible group of employees having an identifiable
6 common or related interest without reference to
7 geographic locations or supervision. And the final
8 criteria is no unit shall be established primarily on
9 the basis of the extent to which the employees in that
10 unit have organized.
11 The ERR specifically defines the Law
12 Enforcement Unit on Page 5, and that's under Section 8,
13 Subsection A-3. And it basically defines it into two
14 groups. The first group is peace officers who have a
15 safety retirement and the other group is other classes
16 of employees whose primary functions are directly
17 related to law enforcement.
18 RSA contends that the welfare fraud
19 investigators and CSOs fall into this latter category,
20 as their primary functions are directly related to law
21 enforcement. In this case the essential issue is
22 whether these classifications have a community of
23 interest with members of the LEU. With respect to the
24 welfare fraud investigators, their duties are extremely
25 similar to those of sheriff investigators who are also

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1 in the LEU. Welfare fraud investigators are peace
2 officers within the meaning of Penal Code 830.35,
3 Subsection A. Both classifications investigate crimes
4 by interviewing witnesses, collect evidence, write
5 reports that are eventually used to prosecute
6 defendants accused of criminal conduct.
7 The primary distinctions between the
8 classifications of sheriff deputy and welfare fraud
9 investigators are that welfare fraud investigators'
10 investigations are limited to violations of the Welfare
11 and Institutions Code, whereas sheriff's investigators
12 investigations are much more broad and include a
13 greater variety of crimes.
14 In any event, the primary functions of both
15 classifications are directly related to law
16 enforcement. They undergo similar training, they both
17 need to abide by rules regarding the use of force, they
18 need basic defense tactics, need arrest and control
19 training; Penal Code 832 training. In fact, the
20 welfare fraud investigators are sometimes trained by
21 Riverside Sheriff's Department employees on these
22 issues.
23 The use of force policies between the welfare
24 fraud investigators and the sheriff's department are
25 extremely similar, and that's evidenced in Joint

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1 Exhibits 8, 9 and 10. In fact, the Riverside Sheriff's
2 Department internal affairs bureau investigates
3 circumstances surrounding the use of any deadly force
4 by a welfare fraud investigator. The DPPS manual
5 specifically provides that the use of deadly force is
6 done in accordance with the established Riverside
7 sheriff's office procedures.
8 Sheriff's investigators and welfare fraud
9 investigators also dress similarly, in plain clothes;
10 they use the same cars; they carry the same equipment;
11 they're both peace officers under the Penal Code and
12 they're subject to physical agility tests just like
13 deputy sheriffs. Welfare fraud investigators also work
14 alongside D.A. investigators and deputy sheriffs at
15 times on certain task force and provide information to
16 assist in criminal investigations.
17 The duties performed by welfare fraud
18 investigators are not only similar to sheriff
19 investigators but also to D.A. investigators and
20 coroner -- deputy coroner or coroner investigators. In
21 the past when the County attempted to move the coroner
22 investigators out of the LEU, RSA was able to show a
23 community of interest between the deputy coroner and
24 sheriff investigator classifications, and that's
25 included in Joint Exhibits 15 and 16.

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1 With respect to the community service
2 officers, you will see and hear evidence that they also
3 share a community of interest with members of the LEU,
4 specifically deputy sheriffs. They work alongside
5 deputy sheriffs; they attend their briefings in the
6 morning; they have their same supervision; they respond
7 to crimes; they take reports, gather evidence, testify
8 in court, transport suspects. While they're not sworn
9 officers, they do drive patrol black-and-white cars and
10 they have patrol functions. They are members of the
11 sheriff's department, subject to all rules, regulations
12 and policies that all members of the sheriff's
13 department are subject to. In addition, they receive
14 training in similar subjects as deputy sheriffs.
15 There's a strong community of interest
16 between these classifications and those in the LEU,
17 sufficient to establish an appropriate employee
18 representation unit pursuant to the ERR. But there are
19 other relevant factors as well, which include that
20 LIUNA and SEIU bargaining power will not be
21 substantially impacted if this move is approved. In
22 fact, both the unions have indicated that they do not
23 oppose the RSA petition. Removing less than 150
24 employees from bargaining units with thousands of
25 employees will not cause problems with employee

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1 relations moving forward. In addition, in 2008 the
2 County proposed that welfare fraud investigators and
3 supervising welfare fraud investigators be removed from
4 their current bargaining units and placed into an
5 unrepresented group. So at least at that time it did
6 not feel that removal from those groups was something
7 that would adversely impact employee relations.
8 Welfare fraud investigators are included
9 in -- and CSOs are included in bargaining units that do
10 not necessarily share a community of interest in a
11 majority of positions. For example, in LIUNA's
12 bargaining -- Inspection and Technical Bargaining Unit
13 there are agricultural inspectors, graphic arts
14 illustrators, paroling attendants and various nursing
15 personnel. And in the Supervising Welfare Fraud
16 Investigator Bargaining Unit there are airport
17 operations and maintenance supervisors, accounting
18 technicians, laundry managers and crossing guard
19 supervisors, just to name a few. They do not share a
20 community of interest and you will hear evidence that
21 they have not always received the representation that
22 law enforcement positions require.
23 Finally, this modification is sought by the
24 overwhelming majority of all the classifications at
25 issue. And that is shown by the employee authorization

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1 cards.
2 For these reasons and those which will follow
3 upon the record, RSA requests that the Arbitrator find
4 that its proposed bargaining unit modifications are
5 reasonable pursuant to the ERR.
6 Thank you.
7 THE HEARING OFFICER: Thank you.
8 Mr. Zappia.
9 MR. ZAPPIA: Thank you, Mr. Prihar.
10
11 OPENING STATEMENT
12 MR. ZAPPIA: Starting with our suggestion
13 earlier about painting a picture with words, I did --
14 actually did paint a picture that I use and I can show
15 it to you if you want to make a copy, but just to show
16 you, and sometimes visually it helps. But that just
17 describes what Ms. Ortega discussed is the proposed
18 modification to remove supervising welfare fraud
19 investigators from the SEIU's supervisor's unit into
20 the RSA LEU unit and to move non-supervising welfare
21 fraud investigators from LIUNA into -- also into RSA.
22 One significant issue that I think will be at
23 play is what's the burden of proof, which we will
24 address in the briefing. It's our contention that when
25 determining appropriate bargaining units the burden is

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1 that RSA has to establish the County's denial was
2 unreasonable, or from our perspective that the County's
3 denial was reasonable.
4 I'm going to start up with the two most
5 significant issues for the County that weren't even
6 addressed by RSA. And the reason that the County
7 denied the requested moves is because we're not just
8 talking about duties. We can certainly argue and the
9 County will argue there's distinctions in duties, but
10 we're talking about community of interest in the
11 context of collective bargaining and where units
12 appropriately belong. Most significantly the reason
13 for the County's denial of the proposed modifications
14 are that both the SEIU and LIUNA units are
15 miscellaneous for purposes of CalPERS retirement
16 benefits and calculation, whereas the LEU unit of the
17 2600 members, 2500 are safety. And the County's
18 determinations, primarily, the mixing of miscellaneous
19 and safety in the same unit is problematic because
20 they're both legal and significant bargaining
21 distinctions. It will be undisputed that the County
22 has two different safety -- has two different
23 retirement contracts with CalPERS. One for safety and
24 one for miscellaneous. And that's a significant
25 bargaining item. In fact, one of our primary exhibits

Page 21

1 is now County Exhibit 35. And that exhibit is, in
2 fact, where RSA sued the County over declaring impasse
3 on LEU, taking advantage of the fact that there was a
4 small amount of miscellaneous in there. And two years
5 ago when the County imposed a new retirement pension
6 reform on LEU, RSA actually sued the County saying you
7 can't do that because you didn't consider both safety
8 and miscellaneous.

9 So the mix of the two is something that the
10 County sees to straighten out, not complicate because
11 pensions is a huge bargaining issue; by law there's two
12 different pension formulas for each. So mixing the
13 safety and miscellaneous into the same unit is a
14 significant factor for collective bargaining and, in
15 fact, has been the basis of RSA actually suing the
16 County because of that distinction. So that's the
17 major distinction certainly for the County.

18 The second major distinction for purposes of
19 collective bargaining is not mixing supervisors and
20 subordinates into the same unit. In fact, if you look
21 at even the diagram that I have put in front of both of
22 you, and I'll make a copy; it's just for my
23 illustrative purposes, but the County's already set up
24 that supervising welfare fraud investigators and
25 welfare fraud investigators are not in the same unit.

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1 Specifically to avoid having supervisors and
2 non-supervisors in the same unit. And, in fact, on the
3 other side there is a Law Enforcement Unit and a Law
4 Enforcement Management Unit. Because, again, for
5 purposes of collective bargaining, it's certainly
6 generally accepted principle that supervisors and
7 subordinates can have different interests.

8 So those two distinctions, before we even get
9 to duty, from the County's perspective are far more
10 significant for purposes of collective bargaining and
11 not making the requested unit modifications. And the
12 County's decision, for those two reasons, we think is
13 reasonable and should be affirmed.

14 However, as we proceed, there are other
15 issues, as Ms. Ortega pointed out. One of the other
16 issues besides community of interest is efficiency in
17 bargaining. Right now the LEU unit consists of
18 employees who are in the sheriff's department and the
19 district attorney. If the welfare fraud investigators
20 are brought in, when collective bargaining and having
21 to cost proposals, it would bring an entire third
22 department's budget into the collective bargaining
23 process, which you'll hear testimony from the County is
24 a significant change; undermines efficiency of
25 bargaining and bodes for keeping them where they are.

Page 23

1 So finally we get to job duties, which in the
2 County's perspective is a factor, but probably the
3 least significant factor for purposes of collective
4 bargaining and what issues we consider. But there are
5 distinctions. And, by the way, legal distinctions.

6 As Ms. Ortega pointed out, by law, and we
7 have submitted the applicable Penal Code sections,
8 welfare fraud investigators are limited by law to
9 investigating welfare fraud. Whereas an LEU sheriff's
10 deputy, and there's other classifications and district
11 attorney investigators, they have no such limitation.
12 They can investigate wherever the sheriff decides.
13 Murder, robbery, to traffic citations. So, in fact,
14 the duties differ vastly. And, by the way, we don't
15 dispute there's certainly some overlap in duties;
16 there's always going to be that. But as far as whether
17 the County was reasonable in denying these proposed
18 modifications, we think it really can't be disputed
19 that the County's decision is reasonable and based on
20 significant bargaining issues of separate pension plans
21 to not be commingled over which we have been sued,
22 mixing supervisors and subordinates in the same unit,
23 and as well as even when we get down to duties, having
24 statutory distinctions.

25 The other issue, and just to run through

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1 exactly the ERR which we both stipulate is governing
2 doctrine, Number 1, community of interest, there was no
3 mention but that's a significant distinction in
4 retirement plans, significant distinctions in
5 supervisor's subordinates.

6 The next factor, bargaining history. Welfare
7 fraud investigators have been in LIUNA and SEIU for we
8 don't know how many years and we have not had any --
9 whatever testimony they can come to bring had any
10 issues with their representation. So they're
11 represented by significant units, by the way. SEIU and
12 LIUNA are the two largest unions in the County right
13 now. So there's been no issue with them where they are
14 as far as efficiency, which is the third factor as we
15 said, having to bring a third budget into bargaining
16 would undermine efficiency, one of the specific
17 factors.

18 And procedurally, Ms. Ortega pointed out, it
19 is the County's contention that given that this is a
20 small number of employees, that it is significant to
21 not be moving around such small numbers of employees
22 because one classification or two decide that they want
23 to move units. If there's a compelling reason, the
24 County's always open. But this would, we think, give
25 way to potential for bargaining instability if any time

Page 25

1 a very small number of employees decide we want to move
2 from here to there. The County has 18,000 employees
3 and thousands of classifications. And because three of
4 three in one classification want to move, if we have to
5 go through this process each and every time when
6 there's legitimate reasons to keep them where they are,
7 that does lead to bargaining instability and that was
8 the issue here.
9 So overall our point is when you look at the
10 context of collective bargaining and all of the factors
11 that go into collective bargaining, there are much more
12 compelling community of interest distinctions both
13 legally and which come into play in collective
14 bargaining which justify the County's denial. And
15 whether or not there's a legitimate disagreement of
16 where they want to be or should be, it is our position
17 it would be a very difficult hurdle to establish if the
18 County was unreasonable to deny the requested position
19 unit modifications.
20 THE HEARING OFFICER: Very good. Thank you
21 very much. Good openings.
22 MS. ORTEGA: Shall I go grab my witness?
23 THE HEARING OFFICER: Absolutely.
24 Let's take a couple minutes.
25 (Recess)

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1 THE HEARING OFFICER: Back on the record.
2 We have the Union's first witness on the
3 stand. Please raise your right hand.
4 (Whereupon Robert Masson was sworn in by the
5 Hearing Officer)
6 THE HEARING OFFICER: Would you please state
7 your name and spell it for the reporter.
8 THE WITNESS: R-o-b-e-r-t, M-a-s-s-o-n.
9 THE HEARING OFFICER: Thank you, Mr. Masson.
10 I'm going to instruct you to wait until the question is
11 completely asked before you begin giving your answer.
12 In turn, you'll be allowed to finish your answer before
13 the attorneys move on to the next question. We want to
14 make sure there's one person speaking at all times.
15 That's to protect the integrity of the record.
16 For that same reason I'm going to ask you if
17 a question calls in part or in whole for a yes-or-no
18 answer, to give a verbal yes-or-no response as opposed
19 to a nod or guttural uh-huh or huh-uh or something like
20 that so we have an accurate record. Thank you very,
21 very much.
22 Your witness, Counsel.
23
24 DIRECT EXAMINATION
25 BY MS. ORTEGA:

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1 Q. Good morning, Mr. Masson. Are you currently
2 serving as RSA president?
3 A. Yes.
4 Q. When did you take that office?
5 A. I was elected December 2011.
6 Q. So you're currently on release time from the
7 County?
8 A. Yes, ma'am.
9 Q. How long have you been employed by the
10 County?
11 A. Going on 25 years.
12 Q. What position do you currently hold?
13 A. I hold the rank of master investigator.
14 Q. How long have you been a master investigator?
15 A. Less than a year.
16 Q. What other positions have you held with the
17 County?
18 A. Deputy sheriff, senior deputy sheriff,
19 investigator, senior investigator, lead investigator,
20 and also now my current rank of master investigator.
21 Q. And how -- well, strike that.
22 If I can direct you to the binder in front of
23 you and to Joint Exhibit 11-A.
24 MR. ZAPPALÀ: I'm sorry.
25 MS. ORTEGA: 11-A, Volume 2.

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1 THE HEARING OFFICER: Side letter.
2 MS. ORTEGA: Yes.
3 BY MS. ORTEGA:
4 Q. Are you familiar with this agreement here?
5 A. Yes, ma'am.
6 Q. And what is it, just generally?
7 A. It's a side letter to the 2008-2011
8 Memorandum of Understanding between the Sheriff's
9 Association and Riverside County.
10 Q. If you take a look on that first page under
11 Subsection B, it lists some positions and that
12 continues on to Page 2. Are those the current sheriff
13 investigator classifications?
14 A. Yes, ma'am.
15 Q. And prior to the time the agreement was
16 adopted in September 2009, what were the
17 classifications in place at that time?
18 A. Classifications were investigator and senior
19 investigator.
20 Q. Do the new classifications -- and when I say
21 new, that mean the ones referred to in the side
22 letter -- do those -- do they perform different job
23 duties than the old classifications or are they the
24 same?
25 A. They're the same.

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1 Q. And if you take a look at Section B -- so
2 this is Exhibit 11-B. And just for the record, these
3 are job descriptions for the current sheriff
4 investigator classifications. Are you familiar with
5 these job descriptions?
6 A. Yes, ma'am.
7 Q. Do they accurately reflect the job duties and
8 responsibilities of these positions?
9 A. Yes, they do.
10 Q. Are there any additional duties you can think
11 of that aren't included in these descriptions?
12 A. No.
13 Q. Can you give an example of what a typical
14 investigation is like for a sheriff's investigator?
15 A. Depends on different forms of investigation.
16 You have property crimes, you have your crimes against
17 persons. You know, I specialize in crimes against
18 persons. As an investigator, I was assigned --
19 actually, I started as a deputy, I was assigned to
20 special investigation bureau which I handled in
21 narcotics, all levels of narcotics, all the way up to
22 major narcotics as performing investigator work. And
23 also as of -- as an investigator I worked in central
24 homicide units.
25 So I'll explain to you what a homicide

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1 investigation details. Pretty much you have a team of
2 five members; five investigators, one sergeant. You
3 get called out to, let's say, for example, a homicide.
4 The sergeant will assign an investigator as the lead
5 investigator, will assign him a partner, co-case agent,
6 is what we call them, and then you have an investigator
7 that will perform the scene investigation. And then
8 the other two will be pretty much extra investigators
9 to go out and canvas if they need to canvas or track
10 down leads.
11 As a lead investigator or case agent that we
12 call it, my duties were pretty much in charge of
13 investigation. I basically coordinated who would be
14 interviewed, who would interview them. In my case I
15 always liked to interview the main subjects in the
16 homicide investigation because it all pretty much -- I
17 was the lead investigator and I wanted to know what was
18 going on. I didn't want to rely on someone else's
19 interpretation.
20 So that's the form of the lead investigator.
21 Do the interviews, lead interviews, pretty much
22 coordinate the whole case together. Put it in a
23 binder, submit it to the D.A.'s office and do your
24 typical investigations during follow-ups or anything.
25 Regarding scene investigation, pretty much -- pretty

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1 simple. A scene investigator details what happens at
2 the scene. He documents and collects evidence along
3 with our forensic technicians. In that pretty much
4 they're in charge of photographing, making sure the
5 scene is photographed, documented, what needs to be
6 picked up, what not needs picked up. What I mean as
7 picked up is collected as evidence.
8 The other investigators would be the ones --
9 I don't want to call them gophers, but they're
10 assistants. I need you to canvas the area or we have a
11 witness here we need you to go talk to. Just depends
12 on what the main investigator wants him to do.
13 THE HEARING OFFICER: Peripheral witnesses
14 and the like.
15 THE WITNESS: Yes. That's only dealing with
16 a homicide.
17 THE HEARING OFFICER: Sure.
18 BY MS. ORTEGA:
19 Q. So for -- let's keep the homicide
20 investigation example going. If you conclude an
21 investigation and it looks like there's some wrongdoing
22 by the target, what do you do at that point?
23 A. Once you conclude your investigation, you
24 pretty much file the case with the D.A.'s office. We
25 call them not the target but the suspect.

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1 Q. When you say file the case, what do you
2 mean by that?
3 A. File a complaint with the D.A.'s office, they
4 review the case. With the homicide unit, you usually
5 have a staffing with the D.A.s themselves, the chiefs,
6 and you present your case to them and then they file
7 yes or no. Or they tell you we're returning it back to
8 you for further investigation.
9 Q. Okay.
10 A. Depends on other cases where they just pretty
11 much go through the system and take the paperwork over,
12 drop it off, and there's a filing district attorney
13 that reviews the case.
14 Q. If they decide to prosecute are you sometimes
15 required to testify?
16 A. Yes.
17 Q. When you first started as a sheriff's
18 investigator, what were the educational requirements?
19 Let me back up.
20 When did you first become a sheriff's
21 investigator, to the best of your recollection?
22 A. Although I did investigations as a deputy, I
23 was promoted in I believe 2001, 2002 when I was within
24 the central homicide units.
25 Q. At that time were there educational

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1 requirements to become a sheriff's investigator.
2 A. No, just pretty much you have time and grade.
3 There's different requirements. You have to have
4 patrol experience. There's different requirements to
5 actually test, but the testing process is pretty much a
6 written test, oral interview, a promotability, and from
7 there you're put on a list of ranking. And then as
8 time goes on and you're lucky enough, someone picks you
9 and you become an investigator.
10 THE HEARING OFFICER: I'm familiar with the
11 process.
12 BY MS. ORTEGA:
13 Q. How about any special certificates or was
14 there any requirement that you needed to have a
15 certificate?
16 A. Every investigator should go through a -- you
17 know, investigation, basic investigation, interviewing,
18 search warrants, that should be -- you should get that.
19 There's no requirements.
20 Q. Okay.
21 A. Before you just kind of go to the classes. I
22 was fortunate enough in that assignment where I was
23 sent to a lot of schools. I was specializing in
24 homicide.
25 THE HEARING OFFICER: Can I? Sorry.

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1 MS. ORTEGA: Yeah.
2 THE HEARING OFFICER: The special
3 investigation, the investigation classes and stuff that
4 you mentioned, are those generally taken as part of the
5 POST -- basic POST training program while you're a
6 deputy, or are you talking about this is something that
7 would follow as your designation of investigator?
8 THE WITNESS: Every law enforcement officer
9 could go down any of those classes throughout their
10 career. You don't have to wait until you're an
11 investigator.
12 THE HEARING OFFICER: That's what I wanted.
13 Thank you very much.
14 BY MS. ORTEGA:
15 Q. When you became a senior investigator prior
16 to the adoption of the side letter, were there any
17 particular educational or training certificate
18 requirements that you needed to have to become a senior
19 sheriff's investigator?
20 A. No, just pretty much -- pretty much
21 experience, then they would put out that there's a, you
22 know, opening for senior investigator, and then you put
23 in and do an oral interview and once again be ranked.
24 Q. Now, turning back to Exhibit 11-B, the job
25 descriptions. And within the description it lists

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1 experience and education and things of that nature.
2 Are those -- do those reflect the current education and
3 training requirements for the current classifications?
4 A. Yes, they do.
5 Q. And does the side letter, which is Exhibit
6 11-A, does that reflect the examinations and testings
7 that current sheriff's investigators need to have to
8 move up in classification?
9 A. I believe it does.
10 Q. Are you familiar with the law enforcement
11 Code of Ethics?
12 A. Yes, ma'am.
13 THE HEARING OFFICER: That was a trick
14 question. Right?
15 BY MS. ORTEGA:
16 Q. Are all sheriff's investigators subject to
17 that Code?
18 A. Yes. The Code of Ethics is learned during
19 the academy. I mean, you are pretty much -- you have
20 to memorize it, have to learn not just mental, but you
21 have to write it down and stuff like that. You're
22 tested. When I went through the academy you were
23 actually tested word for word; you had to write it
24 down. I'm very familiar. That goes with law
25 enforcement officers not just investigators.

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1 Q. Okay. And when you were first hired -- well,
2 actually, let me strike that.
3 Was there required training when you were a
4 sheriff's investigator or senior sheriff's investigator
5 to maintain that position? So was there like some type
6 of perishable skills training that you had to go to?
7 A. Well, in the law enforcement group, POST
8 requires that you have to have a certain amount of
9 hours I believe every two years, and it's 24 hours of
10 we cover firearms, mat training, hand-to-hand, and then
11 driving. I forget the word.
12 THE HEARING OFFICER: We call it continuing
13 education at the bar.
14 MS. ORTEGA: Yeah, it's their version.
15 BY MS. ORTEGA:
16 Q. So you mentioned some of the subjects that
17 you cover, firearms training. Do you cover use of
18 force and things of that nature?
19 A. That's all covered, use of force, firearm,
20 those go hand-in-hand. Also you'll have physical
21 agility within, you know, handcuff techniques.
22 Q. How about like the preservation of evidence
23 and handling of evidence, that type of stuff?
24 A. No. No.
25 Q. What type of dress code or uniform do

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1 sheriff's investigators wear□
2 A. Business casual, unless they go to court then
3 a suit and tie.
4 Q. So plain clothes. There's no uniform li□e a
5 normal deputy sheriff would wear□
6 A. No, just plain clothes. Unless we're on the
7 homicide, we're required to wear suit and ties.
8 Q. What type of equipment do sheriff's
9 investigators carry while in the field□ Is there a
10 set --
11 A. It just depends on the person. Myself, I
12 would carry my side arm, extra magazine pouch and
13 handcuffs and my badge on a belt that I would put
14 everything on. Others will wrap it into their own
15 belts. I didn't want to ruin my belt so I have one go
16 over it. You can also carry a baton, pepper spray and
17 also a radio. I choose not to do that.
18 Q. Okay. Can you describe what your badge loo□s
19 li□e.
20 A. Six-point star badge with Riverside County
21 emblem on it, the bell.
22 Q. What □ind of vehicles do the sheriff
23 investigators drive when they're at wor□
24 A. Usually they have plain cars, detective
25 units. Once again, homicide unit, we each had a unit

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1 assigned to yourself because you too□it home. At the
2 stations -- just depends on the station the type of
3 cars they have. Some investigators share their cars
4 and they're not allowed to ta□e it home. If there's no
5 cars, if I had to go somewhere and I had to go to court
6 or something real quic□ I had to jump in a
7 black-and-white, patrol unit, use a patrol unit to go,
8 either one.
9 Q. During your time as a sheriff investigator
10 did you wor□with welfare fraud investigators at all□
11 A. When I wor□ed narcotics I did many years ago.
12 I would use them as a tool to get information on
13 certain people that were receiving SSI and were selling
14 narcotics. That was many years ago; it just depends on
15 the case and stuff li□e that.
16 Q. You mentioned that you started your career as
17 a sheriff deputy. Right□
18 A. Yes.
19 Q. Part of that process you need to ta□e a
20 physical agility test□
21 A. Yes, there's different requirements. You had
22 to ta□e a written test, you had to ta□e a physical
23 agility test, medical exam, I believe a polygraph,
24 bac□ground. I believe that was it.
25 Q. I thin□you got most of it. Then you had to

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1 go to the academy□
2 A. Yes.
3 Q. How long was the academy when you started□
4 A. When I started it was 720 hours, I thin□
5 But that's up a long -- I believe they've gone even
6 higher than that hours-wise.
7 Q. Currently the academy's at the Ben Clar□
8 Training Center. Is that right□
9 A. Yes, ma'am.
10 Q. How about field training. Did you need to do
11 any field training as a sheriff's deputy□
12 A. Once you graduated from the academy you went
13 to your duty station, which was the jail or patrol
14 station within those functions or court services within
15 those bureaus or stations. They had their own field
16 training program. So, yes, you had to go through a
17 field training program.
18 Q. If you can ta□e a loo□at Exhibit 7-G.
19 A. Starts with □Deputy sheriff trainee□
20 Q. Correct. For the record it's a culmination
21 of all the deputy sheriff classification job
22 descriptions.
23 A. Okay.
24 Q. And are you familiar with these descriptions□
25 A. Yes, ma'am.

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1 Q. Do they accurately reflect the job duties and
2 responsibilities of the sheriff deputy□
3 A. Yes, ma'am.
4 Q. Does the job description accurately reflect
5 the training that the deputies must ta□e□
6 A. Training in what way□ Would you explain
7 that.
8 Q. Sure. If you ta□e a loo□-- let's see. If
9 you ta□e a loo□at the second job description, deputy
10 sheriff, not the deputy sheriff trainee, and the second
11 page of that it lists -- it says □Certificate□and in
12 the middle it says □training, successful completion of
13 state of California peace officer standards and
14 training, basic academy.□ So that's the part of it I'm
15 referring to.
16 A. Yes, that is pretty much your academy class
17 that you go through.
18 Q. What you had just described to us□
19 A. Yes, ma'am.
20 Q. Do you also do POST training at a different
21 location than Ben Clar□or are some of those at the
22 station level□
23 A. Once again it just depends on the
24 assignments. A lot of times they'll send people to Ben
25 Clar□ I was fortunate where I went throughout the

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1 whole state of California to different training. I had
 2 several different classes in homicides, in interviewing
 3 techniques, profiling. So I went throughout the whole
 4 state of California. I even went out of state at
 5 times.
 6 Q. Does POST offer live video training at all or
 7 is that not done?
 8 A. I had taken some video training at the
 9 station level where they have the station videos and
 10 they'll sit down through briefing and watch POST
 11 training on the TV.
 12 Q. During your time as a deputy sheriff or a
 13 sheriff's investigator, and that includes your master
 14 distinction, did you work alongside community service
 15 officers?
 16 A. Yes, ma'am.
 17 Q. And what functions did they perform that
 18 you're aware of?
 19 A. Well, for example, when I worked as a deputy
 20 sheriff on patrol, we used them for transportation of
 21 prisoners, used them for towing vehicles. They were
 22 also used for non-suspect calls, burglaries that had no
 23 suspect information that they would send a CSO out
 24 there. When I worked homicide units we had a CSO on
 25 our -- let me step back

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1 Also used them to transport evidence. If I
 2 had evidence in the field and they were around and keep
 3 a deputy out in the field, I would say you don't mind
 4 booting this evidence at the station for me? They
 5 would go back to the station and boot it. As -- when I
 6 worked homicides we actually had a CSO assigned to our
 7 units which took care of putting our notebooks together
 8 so we can pretty much present them to the district
 9 attorney and also have a record of them. She would
 10 also transport evidence for us. Would not let her
 11 transport a homicide suspect but some do. We just
 12 handcuff them, put some leg chains on them and make
 13 sure and put them in back of a patrol unit and they
 14 would transport for us.
 15 They would do other duties. Transportation
 16 of evidence and stuff like that. If we needed to pick
 17 up evidence from one station and take it to another
 18 station, they would go do that and also write a report
 19 for us back then.
 20 Now they've changed. They put an SSO in that
 21 position instead of a CSO.
 22 MS. ORTEGA: I have no further questions.
 23 THE HEARING OFFICER: Cross-exam.
 24 MR. ZAPPIA: Thank you.
 25

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1 CROSS-EXAMINATION
 2 BY MR. ZAPPIA:
 3 Q. Mr. Masson, in your current position have you
 4 been involved in collective bargaining with RSA and the
 5 County?
 6 A. Yes, sir.
 7 Q. Is pension a significant benefit at issue for
 8 deputy sheriffs?
 9 THE HEARING OFFICER: This is also a trick
 10 question; isn't it?
 11 THE WITNESS: I think pension -- everyone is
 12 concerned about their pensions, not just law
 13 enforcement.
 14 MS. ORTEGA: I'd like to interpose an
 15 objection based on outside the scope of the direct.
 16 THE HEARING OFFICER: We're not limiting to
 17 scope in these proceedings.
 18 Go ahead.
 19 MS. ORTEGA: Okay.
 20 MR. ZAPPIA: I think making our point, by the
 21 way.
 22 BY MR. ZAPPIA:
 23 Q. In fact, in the last two years is one of the
 24 significant issues in collective bargaining in the
 25 County pension reform?

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1 A. Correct.
 2 Q. Was there two different pension reforms, one
 3 for safety retirement classifications and one for
 4 miscellaneous classifications?
 5 A. Correct.
 6 Q. And you have an understanding that's because
 7 there's two different retirement formulas in the
 8 County; one for safety and one for miscellaneous?
 9 A. Correct.
 10 Q. And are you also familiar with the different
 11 bargaining units encompassing sworn safety personnel?
 12 A. Yes.
 13 Q. What are the different bargaining units
 14 encompassing sworn safety?
 15 A. We have sworn, we have coroner's and then we
 16 have probation.
 17 Q. As far as -- what's the distinction, to your
 18 understanding, between the Law Enforcement Unit and the
 19 Law Enforcement Management Unit?
 20 A. Just management versus light staff.
 21 Q. They're separated?
 22 A. Yes, sir.
 23 Q. Now, as far as actually -- let me start from
 24 the beginning. In your law enforcement career before
 25 you were able to become an actual sworn deputy sheriff,

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1 were you required to complete police academy?

2 A. Yes, sir.

3 Q. Are welfare fraud investigators required to

4 do that?

5 A. I believe so, yes. They go through a police

6 academy.

7 Q. Same as the deputy sheriffs?

8 A. Yes, they're in the same academy.

9 Q. Were you required to go through Government

10 Code 1031, background investigation?

11 A. We did.

12 Q. Did welfare fraud investigators?

13 A. Well, if you're going to be classified as

14 POST, I'm sure they had to do some type of background

15 investigation on you. I don't know if they do or not.

16 Q. As far as the duties that you actually

17 described that you do, you talked about investigation

18 techniques in general. You referenced that there's two

19 different types, property -- crimes against property

20 and crimes against person. Could you give us an idea

21 of what are the different types of crimes against

22 property that you might investigate?

23 A. Well, you would investigate, you know, auto

24 theft, fraud, burglary; your simple theft. Jeez,

25 Louise. Let's see what else I can cover for you.

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1 Welfare fraud.

2 Q. How many welfare fraud cases have you

3 investigated as a deputy sheriff or investigator?

4 A. Myself, welfare fraud, no; but fraud, I have.

5 Q. How many welfare fraud?

6 A. Jeez, when I was reassigned back to the

7 station I had a couple.

8 Q. How long have you been employed by the

9 Riverside Sheriff's Department?

10 A. Almost 25 years.

11 Q. How many welfare fraud investigations would

12 you say you've conducted in the 25 years?

13 A. Do I remember? None that I remember.

14 Q. How many -- could you estimate for us how

15 many investigations you've actually conducted?

16 A. Wow. Based on the narcotics and homicides,

17 crimes against persons, thousands. I can't put a

18 number on it, Mr. Zappia.

19 Q. Okay. And you have an understanding welfare

20 fraud investigators are limited by statute to

21 investigating welfare fraud?

22 A. They're peace officers so I believe their

23 scope could be they can investigate anything. If

24 they're only limited to doing welfare, that's up to

25 their classification. I mean, you would probably have

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1 to ask them if they're able to -- I'm sure if they're a

2 peace officer in the state of California, if they see a

3 crime I'm sure they have to interact somehow.

4 Q. In your 25 years as a deputy sheriff and

5 investigator, how many instances are you aware of of a

6 welfare fraud investigator investigating an auto theft?

7 A. You would have to ask them.

8 Q. Do you have familiarity with any?

9 A. No.

10 Q. How about burglary?

11 A. No.

12 Q. Theft?

13 A. Once again, you would have to ask them. I'm

14 just going from my experience.

15 Q. But I'm asking your experience as an

16 investigator in the Riverside Sheriff's Department.

17 A. But I was limited to special investigations,

18 narcotics and homicides, and I worked the station very

19 small, as an investigator a very short time.

20 Q. I appreciate that, and with that

21 understanding in your experience did you ever work

22 side-by-side with the welfare fraud investigator on a

23 homicide case?

24 A. No.

25 Q. On a burglary case?

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1 A. No.

2 Q. On an auto theft case?

3 A. No.

4 Q. On a crime against person case?

5 A. No. The only time I worked side-by-side was

6 any type of narcotics. If I did a narcotics back then,

7 like I said earlier, that I would use them for, you

8 know, intel. Or if they had any updated information on

9 someone I heard was on SSI or some type of welfare that

10 maybe they can give me a location they're at.

11 Q. How long ago was that that you were in

12 narcotics?

13 A. Started narcotics back in '94 until 2001.

14 Q. When you actually become an investigator, say

15 in homicide, do you actually receive training specific

16 to investigating homicide crime scenes?

17 A. Yeah. You get some -- you get the basic, you

18 know, you get the basic processing scenes and

19 specialize in blood splatter, you know, tracks.

20 Q. Anything else unique to homicide

21 investigations that you would be trained on?

22 A. Well, let's just say, for example, on

23 interviewing, there's all kinds of training on

24 interviewing. You -- your basic interviewing, your

25 basic interviewing, advance interviewing. I've taken

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1 some classes by the FBI on interviewing. That's just
 2 on interviewing. It goes on to each classification
 3 each type of your processing of scenes.
 4 Q. When you were assigned to narcotics, did you
 5 receive investigative training specific to
 6 investigating narcotics cases?
 7 A. Yes.
 8 Q. For example, use of confidential informants?
 9 A. Informants, search warrants, processing the
 10 scene. I worked meth labs for three years. You know,
 11 any type of hazmat, chemical training, processing of
 12 labs. I was trained federally and statewide.
 13 Q. Are you familiar if a deputy sheriff or
 14 deputy investigator is assigned to burglary, would they
 15 receive training for investigating burglary scenes
 16 specifically?
 17 A. I'm sure there are schools out there for ---
 18 you know, if you want to advance, if that's all you
 19 want to do is burglaries as an investigator. Some
 20 people do.
 21 Q. How about if you're assigned to traffic;
 22 would you receive specific training on investigating
 23 traffic collisions and scenes?
 24 A. Yes, sir.
 25 Q. So for different types of crimes there's

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1 different types of investigations, techniques and
 2 training?
 3 A. Correct.
 4 Q. As a deputy sheriff you're not limited to
 5 investigating burglary, narcotics or homicide, you can
 6 be assigned to any of those divisions?
 7 A. Correct.
 8 MR. ZAPPIA: I don't have any further
 9 questions.
 10 MS. ORTEGA: I have no further questions.
 11 THE HEARING OFFICER: Thank you very much for
 12 taking the time to give your testimony today.
 13 THE WITNESS: Thank you, sir. Nice meeting
 14 you.
 15 THE HEARING OFFICER: My pleasure.
 16 (Recess)
 17 THE HEARING OFFICER: Back on the record.
 18 Continuing, we have the Union's next witness
 19 on the stand.
 20 Please raise your right hand.
 21 (Whereupon Charles Urquhart was sworn in by
 22 the Hearing Officer)
 23 THE HEARING OFFICER: Would you please state
 24 your name and spell it for the reporter.
 25 THE WITNESS: Charles Urquhart,

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1 U-r-q-u-h-a-r-t.
 2 THE HEARING OFFICER: And, Mr. Urquhart, I'm
 3 going to instruct you to please wait until the question
 4 is completely asked before you begin giving your
 5 answer. You, in turn, will be allowed to finish your
 6 answer before the attorneys move on to the next
 7 question. The focus is to make sure there's only one
 8 person speaking at a time. That's for the accuracy of
 9 the record.
 10 For that same reason I'm going to ask you
 11 also if a question calls, in part, for a yes-or-no
 12 answer, please try to give a verbal yes-or-no response
 13 instead of a nod or uh-huh. We all do it in small
 14 group settings; it's not unusual. I do it myself at
 15 times. And I instruct the reporters to remind me when
 16 I violate my own rules, so to speak. So please do
 17 that. Try to give a verbal yes-or-no answer instead of
 18 uh-huh or huh-uh or something like that so we have an
 19 accurate record.
 20 THE WITNESS: I understand.
 21 THE HEARING OFFICER: Thank you very, very
 22 much, sir.
 23 THE WITNESS: I'll try.
 24 THE HEARING OFFICER: Your witness, Counsel.
 25

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1 DIRECT EXAMINATION
 2 BY MS. ORTEGA:
 3 Q. Mr. Urquhart, how long have you been employed
 4 with the County?
 5 A. 27 years.
 6 Q. What position do you currently hold?
 7 A. I'm the community service officer.
 8 Q. How long have you been a community service
 9 officer?
 10 A. 27 years.
 11 Q. If you could turn to, in the binder before
 12 you, Exhibit 7-C, there's some job descriptions there.
 13 Are you there already? These job descriptions apply to
 14 Community Services Officer 1 and and have the
 15 corresponding benefits behind them. Are you familiar
 16 with these job descriptions?
 17 A. Yes, I am.
 18 Q. And does -- does it accurately reflect the
 19 job duties and responsibility of community service
 20 officers?
 21 A. Yes, it does.
 22 Q. Was there any more that you can add?
 23 A. Let me see here. Well, Community Service
 24 Officer 1, the job description is not really saying
 25 what a Community Service Officer 2 is because a

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1 Community Service Officer 1 is basically an office
2 worker. You work at a store front, for example, talking
3 walking in police reports and duties such as that. The
4 Community Service Officer 2 is primarily patrol
5 function.
6 MR. ZAPPIA: I'm sorry to interrupt. Is a
7 what function?
8 THE WITNESS: I'm sorry.
9 THE HEARING OFFICER: Patrol.
10 MR. ZAPPIA: Sorry.
11 THE HEARING OFFICER: You do know there is a
12 Community Service 2 description behind it?
13 THE WITNESS: There we go. Thank you, sir.
14 BY MS. ORTEGA:
15 Q. So you were describing -- that was going to
16 be one of my questions -- the difference -- the
17 day-to-day difference between a CSO 1 and 2.
18 A. Yes.
19 Q. You mentioned that CSO 2s typically do patrol
20 function?
21 A. Correct. That's primary. This job
22 description in the CSO 2 is basically correct.
23 Q. Do the job descriptions reflect the education
24 and experience required of the position accurately?
25 A. Yes, they do.

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1 Q. Between -- let me strike that.
2 What are -- how many CSO 1s are there in
3 comparison to CSO 2s?
4 A. There are much more CSO 2s than are CSO 1s
5 because -- like I said, the CSO 1 position is basically
6 a station position, and not every station will have a
7 CSO 1 to do the front office. A lot of them just can't
8 afford it. It's usually a contracted position with a
9 city, for example, like Jurupa Valley. They'll
10 contract for a certain amount of deputies, certain
11 amount of CSOs. And the CSO 2 is much more cost
12 efficient than a CSO 1. CSO 2 is on the street
13 handling crimes and reports, traffic accidents, whereas
14 a CSO 1, like I said, just basically works in the
15 station.
16 Q. Okay. As a CSO 2 when you say they're out
17 there on the street handling crimes, what do you do
18 specifically daily?
19 A. On a daily basis I do -- I handle everything
20 except in progress calls, where there's a chance that
21 the suspect is actually there at the moment committing
22 the crime. That's reserved for sworn peace officers.
23 I don't have powers of arrest, so -- except citizen's
24 arrest, and I'm not going to run into a bank and
25 stop --

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1 Q. So if a car had been stolen and it's reported
2 after the fact, hours after the fact, would a CSO 2
3 respond?
4 A. Correct. I'll take past crime reports. For
5 example, your stolen car. House has been burglarized.
6 Identity theft. Fraud. Somebody stole your checks and
7 was writing checks down there. I'll basically do
8 everything that a sworn officer does but doesn't have
9 to. That does not require being a sworn officer.
10 Q. Okay. In part of responding to a crime scene
11 do you gather evidence, interview witnesses at times?
12 A. Exactly. I take fingerprints, photographs,
13 crime scenes, traffic accidents. I'll do the whole
14 traffic accident investigation from start to finish.
15 The duties are just, you know, very numerous and a lot
16 of fun.
17 Q. Do you sometimes transport evidence for -- on
18 behalf of a deputy sheriff?
19 A. Certainly I'll do that, yes.
20 Q. When you were initially hired as a CSO, what
21 type of training did you need to have prior to being
22 hired?
23 A. There's a CSO academy that the sheriff's
24 department puts us through.
25 Q. Can you describe what that entails.

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1 A. You learn the Penal Code, laws of arrest.
2 There's a physical fitness part where you learn
3 take downs, how to restrain people, learn how to
4 handcuff, how to conduct and search prisoners for
5 transport, how to safely transport prisoners, how to
6 write the reports, what's expected in those reports.
7 Just everything to get the job done.
8 Q. And after that -- well, let me go back
9 Roundabout, how long is that academy?
10 A. When I went through it was -- at the time it
11 was two weeks. And to be honest with you I don't know
12 how long it is now. They have a tendency to get longer
13 and longer and longer.
14 Q. Are there current training requirements that
15 you need to maintain your position as a CSO?
16 A. Well, for example, traffic. We -- I was sent
17 to the basic traffic officers' investigation course and
18 that's through POST certified. There's advanced course
19 you're also sent through. Day to day we have to --
20 like for pepper spray, we had to have training for
21 that. But as you know, yearly reoccurring training,
22 not so much.
23 Q. You're in a nice suit here today but is this
24 how you respond when you're out there in the field or
25 are you wearing something different?

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1 A. I'm wearing something different.
 2 Q. What kind of uniform do you wear?
 3 A. I wear basically a standard sheriff's
 4 department uniform. The only difference between my
 5 uniform and the deputy sheriff's right now, for
 6 example, is I don't carry a firearm.
 7 Q. Is your badge similar to that of a deputy
 8 sheriff's?
 9 A. It's similar. The only difference is I have
 10 a little ring around my badge that says Riverside
 11 County Sheriff Community Service Officer, whereas a
 12 deputy sheriff has a straight deputy sheriff on his.
 13 Q. What type of equipment do you carry out in
 14 the field?
 15 A. I have my leather sand brown and on that sand
 16 brown I have two sets of handcuffs for taking prisoners
 17 to jail. I have a can of pepper spray, knife, keys,
 18 package for latex gloves. Because a lot of times
 19 people are bloody and we have to deal with that. We
 20 don't want to get bloody hands.
 21 Q. Are you issued a bulletproof vest?
 22 A. I certainly have my ballistic vest that's
 23 issued to us.
 24 Q. What kind of vehicles do you drive?
 25 A. I just drive a standard sheriff's

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1 black-and-white, Crown Victoria. It has the light bar
 2 and black-and-white on it.
 3 Q. As far as you know, is that what all CSOs out
 4 in the field drive?
 5 A. Yes, that's all we drive.
 6 Q. Can you describe how your work intersects
 7 with that of sheriff's deputies?
 8 A. Intersects. I mean --
 9 Q. Do you work alongside them or with them at
 10 all?
 11 A. Yeah, a typical day, we all have briefings
 12 together; we're all briefed on what's going on. What
 13 crime trends are happening. Go out and set up our
 14 units the same. When we go in-service or 10-8, we all
 15 have areas of the County we patrol that were assigned
 16 to us. Because I work mostly county, I'm in Highgrove
 17 a lot and the other county areas of the Jurupa Valley
 18 station. Certain crimes I'll -- for example, if
 19 there's a shooting I'll have to respond there and help,
 20 you know, set up security so we don't keep people in or
 21 out. We work basically hand-in-hand.
 22 Q. What about your supervisor, who is that?
 23 A. My supervisor is going to be my shift
 24 sergeant. So whoever is supervising the shift, it's
 25 going to be a sworn supervisor. He's also responsible

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1 for writing our evaluations and any disciplines or
 2 anything like that.
 3 Q. Does the shift sergeant also supervise deputy
 4 sheriffs working the same shift as you?
 5 A. Yes, he supervises everybody on the shift,
 6 sworn, non-sworn.
 7 Q. Are you under the jurisdiction of the
 8 Riverside County Sheriff's Department?
 9 A. Yes, I am.
 10 Q. You're subject to all rules, regulations,
 11 policies that other Riverside Sheriff's Department
 12 employees are?
 13 A. Yes, I am.
 14 Q. Do you work closely with other members --
 15 well, let me back up.
 16 So currently you're a member of the
 17 Inspections and Technical Bargaining Unit?
 18 A. Yes, I am.
 19 Q. Do you work closely with other members in
 20 that particular bargaining unit day to day?
 21 A. No, I don't.
 22 Q. Do you consider a CSO job function to be
 23 primarily related to law enforcement?
 24 A. Oh, certainly. That's the whole point of the
 25 job, to work with law enforcement to assist as much as

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1 possible.
 2 MS. ORTEGA: I have no further questions.
 3 THE HEARING OFFICER: Cross-examination.
 4
 5 CROSS-EXAMINATION
 6 BY MR. ZAPPIA:
 7 Q. Let me ask you, is it fair -- I thought I
 8 heard you say initially when describing your duties
 9 that you would even engage in duties up to where a
 10 sworn would have to take over?
 11 A. Correct.
 12 Q. What's the distinction between where you
 13 might perform duties and where sworn would take over?
 14 A. Well, a good example is what happened last
 15 week for example. I was patrolling down the street in
 16 Jurupa and I actually -- in front of me there was a
 17 stolen vehicle. I ran the license plate on my unit's
 18 MDC; came back stolen.
 19 Well, what I did is I kept the vehicle in
 20 sight, kept dispatch advised of its location, and as
 21 soon as a sworn peace officer showed up, they showed up
 22 pursuing the vehicle and catching the suspect. That's
 23 my limit. I'll watch, observe, report.
 24 Q. So you work with and support sworn personnel?
 25 A. Oh, certainly.

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1 Q. Would there be other job classifications that
2 do that, such as dispatchers? Do they work with sworn
3 personnel?
4 A. Depends what you mean by "work with." They
5 don't work, per se, you know, side-by-side; they, you
6 know, they're in the dispatch center and take care of
7 the whole county. I mean, they're not sitting next to
8 you.
9 Q. Could you describe a little bit more in
10 detail what the CSO 1 duties are. I don't remember
11 exactly what you said. I thought you described them as
12 either station or admin duties.
13 A. Yes. They'll work for life -- oh, the
14 volunteers, for example, they'll be in charge of the
15 volunteer program. They'll deal with the volunteers.
16 They do, oh, some logistics work for example, taking
17 care of equipment and such. But their primary function
18 is to work a station office and taking care of people
19 that come in that need things like accident reports.
20 They'll handle, you know, my purse was stolen; they'll
21 take a report for that. Things where you really don't
22 have to go out in the field and deal with the problem.
23 Q. Am I correct you do not have powers to
24 arrest?
25 A. Correct.

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1 Q. And you do not have authority to carry a
2 weapon?
3 A. Correct.
4 Q. And even though you drive in a car, do you
5 engage in pursuits or Code 3?
6 A. No, I'm not -- I'm not allowed to.
7 MR. ZAPPIA: I don't have any further
8 questions.
9 MS. ORTEGA: I have nothing further.
10 THE HEARING OFFICER: Mr. Urquhart, thank you
11 very much time for taking your time and making yourself
12 available.
13 THE WITNESS: It was my pleasure. Thank you
14 for having me.
15 THE HEARING OFFICER: Break for lunch.
16
17 (LUNCHEON RECESS)
18
19 THE HEARING OFFICER: Let's go back on the
20 record.
21 We have the Union's next witness on the
22 stand. Please raise your right hand.
23 (Whereupon Kristina Zaragoza was sworn in by
24 the Hearing Officer)
25 THE HEARING OFFICER: Please state your name

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1 and spell it for the reporter.
2 THE WITNESS: Kristina Zaragoza,
3 K-r-i-s-t-i-n-a, last name, Zaragoza, Z-a-r-a-g-o-z, as
4 in zebra, A.
5 THE HEARING OFFICER: Ms. Zaragoza, I'll
6 instruct you to please wait until the question is
7 completely asked before you begin giving your answer.
8 You, in turn, will be allowed to finish your answer
9 before the attorneys move on to the next question,
10 focusing and making sure one person is speaking at all
11 times.
12 To make sure that the record is accurate
13 also, would you please make sure when you ask a
14 yes-or-no question that you give a verbal yes-or-no
15 response as opposed to a nod or uh-huh or something
16 like that so that the record is accurate. Thank you
17 very, very much.
18 Your witness, Counsel.
19 MS. ORTEGA: Thank you.
20
21 DIRECT EXAMINATION
22 BY MS. ZARAGOZA:
23 Q. Ms. Zaragoza, what position do you currently
24 hold?
25 A. Supervising welfare fraud investigator.

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1 Q. How long have you been in that position?
2 A. Since '99. 14 years, maybe.
3 Q. How long have you been employed by the County
4 overall?
5 A. Gosh, about 23 years.
6 Q. What other positions have you held with the
7 County?
8 A. Eligibility services clerk supervising
9 office assistant, welfare fraud technician, which now
10 is called an investigative technician. Welfare fraud
11 investigator and then now supervising welfare fraud
12 investigator.
13 Q. How long were you a welfare fraud
14 investigator?
15 A. For about two years.
16 Q. And can you turn in the binder in front of
17 you to Exhibit 7A. It's the first tab.
18 A. Okay. Got it.
19 Q. Are you familiar with this job description?
20 A. Yes.
21 Q. Does this accurately reflect the job duties
22 and responsibility of a welfare fraud investigator?
23 A. Yes. There's a few things that I think we do
24 that are not articulated very well in here. Do you
25 want me to elaborate?

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1 Q. Please explain.

2 A. On here it tal[ks] about court-dependent

3 problems. So what happens is is when our social

4 services remove children from the home, they're

5 placed -- especially the teenagers -- they're placed in

6 group or foster homes and sometimes they run away. So

7 we are actively loo[ki]ng -- as investigators we're

8 actively loo[ki]ng for those children, teenagers who have

9 run away. It's our job to locate them and bring them

10 bac[ki] and make sure they get bac[ki] into protective

11 custody.

12 Q. What part were you referring to?

13 A. It states on here about conduct special

14 investigations of internal affair matters, applicant's

15 bac[ki]ground, alleged civil rights violations, DPSS

16 court-dependent problems. Those are our runaways.

17 Q. Okay. Just for the record, the second to

18 last bullet point down under the duty section?

19 A. Yes. Yes.

20 Q. Is there anything else that you might want to

21 elaborate on?

22 A. The internal affairs matters, anything that's

23 criminal that happens in our department we usually are

24 tas[ke]d with investigating that investigation. We

25 also -- and then we will follow up with any referrals

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1 to the district attorney for prosecution.

2 Additionally we do investigate

3 administrative-type things and oftentimes we're wor[ki]ng

4 hand-in-hand with HR on administrative matters.

5 Q. When you say anything criminal, what do you

6 mean specifically?

7 A. We have had people steal money from li[st] --

8 use the FedEx machine for their own personal use. We

9 have had people steal money, pay cash or, you know, you

10 collect money for Christmas-type things. We have had

11 internal fraud. The last case, internal fraud case we

12 wor[ke]d in my unit was about 80 or 90,000, but we have

13 done cases as big as a quarter million dollar internal

14 fraud where our own employees are stealing money.

15 Q. When you mention [a]dministrative things, is

16 that what you're referring to as well?

17 A. No, criminal would be something where an

18 actual law has been bro[ke]n where we're actually

19 prosecuting, we're referring the case to the district

20 attorney for prosecution. Administrative could be, for

21 example, breach of confidentiality. This is a crime.

22 We don't always refer that to the district attorney.

23 But it is a crime, so the Department usually handles

24 that administratively, but they use us to actually do

25 the investigation. Sometimes they do it on their own

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1 but it depends how complex it is. Oftentimes those

2 cases we're wor[ki]ng hand-in-hand with the HR person.

3 Q. What does a typical investigation loo[ki]ng li[ke]

4 for you? Can you give us a rundown of some of the

5 steps and duties that you do.

6 A. Sure. Welfare fraud; that's our main

7 function. We get allegations from We Tip, from family

8 members, from the public. We get them through phone

9 calls, hotlines, E-mails. We get them a variety of

10 ways. People wal[ki]n and give us the allegations.

11 It's our job to loo[ki]ng at the information and verify

12 that, Number 1, whoever the subject is is on welfare or

13 some sort of public assistance.

14 At that point once we identify the fact that

15 they're getting public assistance, what we do is loo[ki]ng

16 at the actual allegations. So if it's said that

17 perhaps they're wor[ki]ng and not reporting it, we will

18 loo[ki]ng into that. We have certain reports, certain

19 public agencies that we contact, are they wor[ki]ng.

20 We loo[ki]ng at the information we have in the

21 office to determine if they're reporting that because

22 there's a certain process that they have to use to

23 report that information. We're gathering all the

24 evidence that we'll need to support a referral to the

25 D.A.'s office.

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1 We also have to interview pretty much

2 everybody involved, any witnesses we can find.

3 Neighbors, it could be employers, it could be the lawn

4 service, whoever we thin[k] we can get information from

5 as well as other public agencies.

6 At that point we're also interviewing the

7 subject. So the [b]y part of our investigation is

8 establishing intent. It's a specific intent crime. So

9 as well as interviewing the subject to try to find out,

10 you know, mentally where they are, did they

11 intentionally intend to ta[ke] fraud -- or money that

12 they're not supposed to have, we have to support that

13 statement along with a bunch of documentary evidence.

14 Because should the client confess, yes, I did it on

15 purpose, they could change that story once they get to

16 court. We have to be able to provide the documentary

17 evidence to support whatever claim we're ma[ki]ng to

18 refer to the D.A.'s office.

19 Q. Okay. When you refer a case, is that -- how

20 is that done in practice?

21 A. Throughout the whole time we're investigating

22 a case, we have a file. We're [k]eeping tabs of all the

23 evidence that we collect. At the time we know that

24 there's enough to refer to the D.A.'s office, we write

25 a report. Called [a] Report of Investigation. We

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1 provide the Report of Investigation along with an
2 arrest declaration. So we're requesting an arrest
3 warrant at the same time we're submitting the criminal
4 report.
5 We send that to the D.A.'s office, the basic
6 report as well as the evidence packets. Not just for
7 the district attorney but also for the public defender
8 as a discovery packet. We send that to the district
9 attorney. They determine if they're going to
10 prosecute. We keep our original file with all the
11 evidence and we're sending them copies.
12 MS. ORTEGA: I'd like to mark -- if this
13 needs to be Union Exhibit 1, we can do that.
14 THE HEARING OFFICER: Is there any objection?
15 MS. ORTEGA: If we're going in order it would
16 be Joint Exhibit 21.
17 THE HEARING OFFICER: Right. Is there any
18 foundational objection?
19 MR. ZAPPIA: I'm just looking at it. Can we
20 do this? Why don't we review it, find out what it is
21 then I'll --
22 THE HEARING OFFICER: Okay. Sure.
23 BY MS. ORTEGA:
24 Q. Are you familiar with this document?
25 A. Yes.

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1 Q. What is it?
2 A. Basically this is a form we use, it's like an
3 occupational health form. We use this form more like
4 when someone is out on medical leave or they have a
5 medical issue, we use this form. Send it to the doctor
6 and the doctor fills it out. This is not the doctor
7 form. This is what we use to determine if we can take
8 somebody back on maybe light duty. Anybody working as
9 a welfare fraud investigator has to be able to do these
10 duties. So can they sit, either continuously or
11 intermittent. It kind of outlines everything that is
12 required as the job duties of a welfare fraud
13 investigator. They have to physically -- it's like a
14 physical requirement of the job.
15 Q. Okay.
16 A. That's basically what this is. This
17 particular form was used when this person was wanting
18 to do light duty and we were trying to figure out if we
19 can accommodate that person. So we do the same
20 physical that a sheriff's deputy would do. So a lot of
21 times we have to be -- it has to be similar. If the
22 Sheriff's Department doesn't allow certain things, then
23 we won't either because it's the same physical
24 requirements for the position, Class 1 physical, I
25 believe is what it's called.

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1 Q. Did you -- is this your writing on this form?
2 A. No, this is our previous chief, Lori Vivian.
3 This is her writing. She filled this out. I signed it
4 as the supervisor. The employee would have signed it,
5 that's what's blacked out, and Lori Vivian, her
6 signature is at the bottom. This is what we were
7 trying to use to determine if she could continue to
8 work.
9 Q. Is Prieto --
10 A. That's my maiden name.
11 MS. ORTEGA: Okay. I have nothing further
12 with that. Is that enough foundation or did you want
13 to ask?
14 MR. ZAPPIA: I mean, I'm just going to object
15 to it on -- although it appears to be -- well, on
16 relevance; foundation as to her qualifications to
17 establish the duties versus we have a job description.
18 It just appears to be 13 years old.
19 THE HEARING OFFICER: I have a feeling that
20 this is not intended as far as the job description,
21 it's intended to focus on the physical aspects of the
22 similarities and the physical aspects of the job as
23 it relates to the deputies, that which is required
24 for a sheriff's deputy, and it's just a part of,
25 obviously in this case, the Union's argument as to

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1 similarity and the job.
2 The specific -- I'm not sure if we need to
3 focus on the specific markings of the data. I think
4 it's the form itself that is at issue more than the
5 specific markings in this case because those specific
6 markings refer to that individual. And I don't think
7 that's all that relevant, I think or am I mistaken?
8 Because if we look at the back the last two pages,
9 it's the same form but it's the more generic form
10 without the specific markings. The employee's duties.
11 Correct?
12 MS. ORTEGA: Oh, I didn't have that. Is that
13 the -- no, I don't have that in this exhibit. My
14 mistake.
15 THE HEARING OFFICER: Okay. All right. So
16 we do have one for just -- that's it. Anyway, I
17 understand the basic role of that. I'm not looking at
18 the specific data but just the nature of the
19 components.
20 MS. ORTEGA: Right. That's what the
21 Association is offering it for.
22 THE HEARING OFFICER: Your argument is to
23 similarity --
24 MS. ORTEGA: Yeah, it has some overlap with
25 the job description but it also provides more detail;

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1 that's why we're introducing it.
2 THE HEARING OFFICER: I've seen comparable
3 forms in regards to matters involving denial of
4 retirement benefits in the capacity to perform key
5 elements of one's job. I do see the relevance. Do you
6 have any objection other than that okay. With that
7 understanding that the Employer has questions as to the
8 probative value of that, let's mark this as Joint
9 Exhibit 21 consistent with our process.
10 (Joint Exhibit 21 marked)
11 BY MS. ORTEGA:
12 Q. You mentioned that when you finish the
13 investigation you forward the findings on to the
14 district attorney. If they decide to prosecute are you
15 sometimes required to testify in court?
16 A. Yes.
17 Q. Do welfare fraud investigators work with
18 other Law Enforcement Unit members?
19 A. Yes. Quite often. A lot of times our
20 clientele overlaps with other criminals. We also work
21 hand-in-hand in terms of task force. Different task
22 forces.
23 Right now, as an example, we're working on a
24 task force with the Moreno Valley Police Department,
25 which it's a contract city, it's the Sheriff Department

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1 staff, and in Moreno Valley there's a big issue
2 regarding tenants, Section 8 housing, that type of
3 thing. Criminal elements coming into Section 8. So we
4 have a task force that the Moreno Valley P.D. created,
5 assigned us to be a part of. So the sheriff's deputies
6 and along with us we do search warrants together; we
7 actually are searching the residents to find
8 information or evidence that we can use to support
9 welfare fraud, Section 8 fraud, and any other crime
10 that happens to happen. Could be drugs, whatever.
11 Weapons.
12 In the past also just -- I would say maybe
13 two years ago we had a task force, it was called the
14 IHSS fraud task force. And what that included was DPSS
15 welfare fraud investigators worked in conjunction with
16 the D.A.'s investigators. And they actually -- the
17 D.A.'s investigators actually worked in our office for
18 about two and a half years while this task force was
19 continuing. And basically -- oh, we worked with the
20 state fraud investigators as well.
21 What this was, this was a special grant that
22 came at the state level and they assigned the different
23 counties to create a task force in order to combat
24 welfare in-home supportive services program.
25 So when the funding ended, that ended. So we

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1 worked hand-in-hand -- matter of fact, I was the
2 supervisor for the task force, I was actually
3 supervising the other district attorney investigators
4 while they were on that task force.
5 THE HEARING OFFICER: Can I ask one quick
6 question?
7 MS. ORTEGA: Sure.
8 THE HEARING OFFICER: When you're conducting
9 strictly welfare fraud investigation, are you capable
10 or empowered to go to court to see warrants? Search
11 warrants?
12 THE WITNESS: Yes.
13 THE HEARING OFFICER: You exercise search
14 warrants to see if there's any evidence of work or the
15 source of income, for example?
16 THE WITNESS: Correct. We write the search
17 warrant, we go to the D.A.'s office. They have to sign
18 off on it and approve it before the judge will sign
19 off, and then we go to the duty officer judge. They
20 review it and then we take it and serve the search
21 warrants ourselves.
22 THE HEARING OFFICER: Go ahead.
23 BY MS. ORTEGA:
24 Q. What kind of educational background is
25 required for a welfare fraud investigator?

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1 A. You basically have to have a high school
2 diploma or GED. If you have a higher level education
3 you can move up in terms of getting your pay increases
4 a little faster. Because we have POST certificates and
5 you can get a higher level POST certificate faster if
6 you have a higher level education. Otherwise, you have
7 to basically do years of service along with your
8 training -- POST training points.
9 Q. Are there work experience requirements for
10 welfare fraud investigators?
11 A. Yes, there are. I believe you can have two
12 years of experience as an Investigative Technician 2,
13 which they have those positions at our office, DPSS,
14 the D.A.'s office as well as the sheriff's department.
15 And you have to -- or you can be a court services
16 investigator for two years. Or you can have two years
17 of criminal investigative experience in the sworn
18 status as well as two years of sworn law enforcement
19 patrol experience. So that would qualify. You have to
20 have some experience to be a welfare fraud
21 investigator.
22 Q. When you're initially hired, are you required
23 to go through an academy training somewhere?
24 A. Yes, if you don't already have a basic POST
25 certificate, our department will send you through the

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1 basic peace officers academy. We use the one at Ben
2 Clar Training Center, which is the same one that the
3 sheriff's department and other local law enforcement
4 agencies use.
5 Q. Within those classes, then, are deputy
6 sheriff's among or deputy sheriff trainees, those
7 classifications, among the welfare fraud investigators
8 during that framing?
9 A. Yes. For example, when I was in the academy
10 I went with Riverside Sheriff, Corona P.D. I believe
11 there was also li Imperial County -- one of the
12 desert areas. So you can see -- you would see a
13 variety of different law enforcement agencies using
14 that as a basic peace officer's academy.
15 Q. Are there physical agility tests required for
16 welfare fraud investigators?
17 A. Yes. We use -- on the same one the sheriff's
18 department does you have to -- in order to even get an
19 interview with our department you have to pass the
20 physical, the POST physical agility test. And as well
21 when you go into the academy you have to pass the POST
22 physical agility test there to graduate from the
23 academy.
24 Q. And do you need a POST certificate at the
25 time that you're hired?

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1 A. No. If you don't have one you have to obtain
2 it within -- I think it's a year or so before -- after
3 you get hired.
4 Q. Is that the same -- when you're obtaining the
5 basic POST certificate, is that going through Ben Clar
6 to go get that within the year period as well?
7 A. Yes.
8 Q. Are you familiar with the Law Enforcement
9 Code of Ethics?
10 A. Yes.
11 Q. Are welfare fraud investigators subject to
12 that Code?
13 A. Yes. Actually, it's one of the very first
14 pages in our use of force manual.
15 Q. When you were hired as a welfare fraud
16 investigator, do you guys have field training?
17 A. Yes. After you get out of the academy,
18 you're assigned to a certain location. And then you're
19 usually paired up with one main training officer who's
20 another welfare fraud investigator. And then you find
21 of learn the ropes from that person. We usually li
22 to, you know, have that person go from at least maybe
23 two or three different investigators, just to see how
24 other people work, how to manage your cases, how to
25 organize, that type of thing. But field -- the actual

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1 field safety, field investigations, that's pretty much
2 the same across the board.
3 Q. Do welfare fraud investigators have the power
4 to make arrests?
5 A. Yes.
6 Q. Do you receive training in the use of force?
7 A. Yes.
8 Q. What other types of subjects are covered in
9 training that welfare fraud investigators get?
10 A. We're a POST certified agency so we're
11 required -- we have to follow the POST requirements for
12 peace officer training. So we're required to do all
13 the POST perishable skills training. So if I can
14 remember exactly, that would be li your firearms, you
15 have to qualify. I think the POST requirements are you
16 qualify once a year; we qualify quarterly.
17 You have to have tactical communications,
18 arrest and control, defensive tactics. We carry an
19 asp. So different agencies have different equipment so
20 they would do different training. We have an asp so we
21 do that; asp training as well. So everything that we
22 do, it's POST certified. We're either doing it
23 in-house, we have our own POST-certified trainers or
24 for things that are required less often, we would go to
25 Ben Clar Training Center.

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1 For example, I'm thinking of racial profiling
2 and elder abuse. Those are required by POST but not as
3 frequently as some of the other classes. So we opt to
4 send our staff to Ben Clar
5 Q. If you'll take a look at Exhibit 12 in the
6 binder in front of you. It's towards the end. Are you
7 familiar with these documents?
8 A. Yes, it appears to be our -- the curriculum
9 that we use for the weaponless defense module one, asp
10 baton, personal weapons, first aid and CPR, I forgot to
11 mention. The weaponless defense module two, arrest and
12 control. This is the tactical firearms and tactical
13 communications.
14 Q. Are these trainings in-house, then, or are
15 these the ones at Ben Clar training?
16 A. These are what we call our in-house training.
17 Several years ago we developed our own training program
18 in our department because our chief back then, Lori
19 Vivian, she wanted us to do a lot of training. And
20 budget-wise we couldn't afford to keep sending people
21 to Ben Clar. She sent us to different POST train the
22 trainer courses and we developed our own small training
23 unit.
24 So all the exhibits here, they illustrate the
25 different training programs that we developed within

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1 the department and are recognized and approved by POST.
 2 These are all POST-certified courses.
 3 Q. Do you ever receive training from Riverside
 4 Sheriff's Department personnel?
 5 A. Well, Ben Clark Training Center, like, for
 6 example, we just went to racial profiling and elder
 7 abuse training. Half the class was DPSS, the other
 8 class was the sheriff's department. So the trainers
 9 that were actually teaching the course, they were from
 10 outside agencies. So it wasn't Ben Clark personnel but
 11 it was -- were instructors that they were bringing in.
 12 I believe one was from Hemet P.D. It depends. I don't
 13 know that you can say they're personnel, but they're
 14 people that Ben Clark hired to come in and teach the
 15 courses.
 16 Q. Okay. Do you ever have any Riverside
 17 Sheriff's Department employees like go to DPSS and give
 18 training seminars or lessons? Anything like that?
 19 A. Absolutely. We had them come and give
 20 classes, like gang awareness, you know, drug
 21 recognition, that type of thing. It depends on --
 22 like, we have had the district attorney do that for us
 23 as well. If we're looking for a specific class and we
 24 know that we have contact with the sheriff's
 25 department, we know they can do it, we make a phone

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1 call and ask for a specific training and they bring,
 2 you know, all sorts of, you know, regular course over.
 3 We have actually had them bring the actual
 4 drugs to our department. We have a little training
 5 facility at our main office and give the course to
 6 everybody that's in our department, in our SIU,
 7 Specific Investigations Unit.
 8 Q. What type of dress code is applicable for
 9 welfare fraud investigators?
 10 A. Most of us wear suits but we are required to
 11 wear something that covers our equipment so -- because
 12 we're, you know, plain clothes. So we -- most of the
 13 time we wear suits or something, a blazer or something
 14 that covers everything. We're not allowed to wear
 15 jeans. We're still required to dress as mandated by
 16 our current MOUs.
 17 Q. What type of equipment do welfare fraud
 18 investigators -- or what type of equipment are they
 19 authorized to carry when they're out in the field?
 20 A. We carry -- I'm looking to make sure I don't
 21 forget. Pepper spray, extra magazine, asp, handcuffs,
 22 and then of course our weapon and badge as well as our
 23 flat badge.
 24 Q. How about bullet-proof vests or body armor?
 25 Are welfare fraud investigators issued that equipment?

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1 A. Yes.
 2 Q. What kind of vehicles are driven while
 3 on-duty?
 4 A. We have County-issued vehicles. Each
 5 investigator has their own County-issued vehicle. We
 6 carry our equipment in there. We have what we call a
 7 trauma shooting kit. So should we get into a shooting
 8 or our partner does or whatever, we have that device
 9 readily available so we can attend to that person. So
 10 we each have our own vehicle so that we have that
 11 availability should something happen in the field.
 12 Q. The County vehicles, are those marked
 13 black-and-white cars or unmarked?
 14 A. They're unmarked cars. They're not
 15 black-and-whites, they're just unmarked. Usually plain
 16 County vehicles.
 17 Q. So you mentioned you've been -- you're now a
 18 supervising welfare fraud investigator for
 19 approximately 14 years. If you'd take a look at
 20 Exhibit 7B. This is the job description applicable for
 21 supervising welfare fraud investigators. Are you
 22 familiar with these job descriptions?
 23 A. Yes.
 24 Q. Do they accurately reflect the job duties of
 25 supervising welfare fraud investigators?

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1 A. Yes.
 2 Q. How many supervising welfare fraud officers
 3 are there employed with the County right now?
 4 A. Four.
 5 Q. Generally do supervising welfare fraud
 6 investigators perform the same duties as welfare fraud
 7 investigators?
 8 A. I would say yes, we do at times. We may not
 9 maybe work as many cases as they do but we do work
 10 cases. And we would hold maybe a smaller caseload than
 11 our investigators.
 12 Q. Do these job descriptions accurately reflect
 13 the experience and education needed for a supervising
 14 welfare fraud investigator?
 15 A. Yes.
 16 Q. Are you familiar with the procedures
 17 supervising welfare fraud investigators must follow
 18 when an investigator-involved shooting occurs?
 19 A. Yes. We were given a class by the sheriff's
 20 department. I think the last one was maybe, gosh, a
 21 couple years ago, and we were given a little card. And
 22 if something like that were to happen, we're to follow
 23 the card and contact the sheriff's department because
 24 they're the ones that are required to investigate and
 25 handle that entire situation. So we're given specific

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1 directions as supervisors what we need to do, but
2 basically it's handled by the sheriff's department.
3 Q. If you can flip to Exhibit 8. Page 0007 of
4 that exhibit. Sorry. Page 13 of that exhibit and it
5 continues on. Is this the applicable policy for when
6 an investigator-involved shooting occurs?
7 A. Yes.
8 Q. So the sheriff's department actually
9 investigates the circumstances surrounding the use of
10 deadly force?
11 A. Yes.
12 Q. Do supervising welfare fraud investigators
13 need to pass another performance agility test if
14 they're promoting from an investigator to a supervising
15 investigator?
16 A. At this time, no. Prior, the last chief we
17 had, yes. This chief, no.
18 Q. Okay.
19 A. But if you were coming in from the outside
20 you would have to pass it.
21 Q. When was that change in chiefs, just to give
22 us --
23 A. I'm guessing maybe 2008. It might have been
24 a little before because our chief was an interim chief
25 before he got promoted, so he might have changed it as

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1 an interim. Maybe 2007, 2008.
2 Q. At the time you promoted you needed to pass
3 another agility test?
4 A. You know what, I want to say no. I don't
5 recall. I was just out for two years and I think the
6 tests are for like a year. So it could have been that
7 I was within that time frame. You know, typically
8 those rules change with the different chiefs that we
9 have and along the way something happens and they
10 change. Like I said, coming in from the outside you
11 would have to take it because it's in the job
12 description.
13 Q. Do supervising welfare fraud investigators
14 need to have particular level of POST certificates?
15 A. You have to have a supervisory POST
16 certificate like after a year after you're hired, but I
17 believe you can be promoted with just a basic. So you
18 can -- you would be expected to continue with the POST
19 certificates to intermediate then advanced, if you're
20 around that long.
21 Q. Is there a probationary period for welfare
22 fraud investigators?
23 A. Yes, 18 months.
24 Q. How about supervising welfare fraud
25 investigators?

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1 A. I believe it's a year.
2 Q. If you'll take a look at Exhibit 13. Are you
3 familiar with these training schedules?
4 A. Yes.
5 Q. Can you describe what they are.
6 A. Well, as I was explaining earlier, we
7 developed our own training program. And so what we
8 did -- and this is actually going back to 2004, but the
9 training program started earlier in maybe 2000. And
10 what these are, this is just a schedule of what -- how
11 we trained. So in January, looking at the 2004
12 schedule, we did range and scenarios. In February we
13 did low light firearms, which means we would have went
14 out at night to shoot. We did racial profiling,
15 weaponless defense. These are all the things we were
16 required to do by POST. Back then we were shooting
17 once every month, so you could see how we were doing
18 range the majority of the year.
19 Q. So is this like ongoing training or training
20 that you receive when you're initially hired?
21 A. No, this is ongoing training. We continue to
22 do like -- let me see. Okay. So, for example, the
23 schedule for 2011, for the most part we're doing
24 quarterly training, but you can see here everybody
25 that's a welfare fraud investigator or supervising

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1 fraud investigator is required to do all these
2 trainings. So training is mandatory. We do this --
3 back then it was monthly, now it's quarterly.
4 Sometimes the dates get changed because we use the
5 range at Ben Clark and if they have a class where they
6 need the range, we might get rescheduled. So this
7 might change datewise, but the actual training will get
8 done as required by POST.
9 Q. If you'll flip to the next exhibit, Exhibit
10 14. Without going through each one of these
11 certificates individually, are these certificates that
12 evidence the trainings you've attended, whether POST or
13 department-issued trainings?
14 A. Yes. And I think one thing that I probably
15 didn't provide were the actual certificates like this
16 that are very similar to this. When we do our
17 POST-certified training in-house, we also get
18 certificates like this. So when we keep a training
19 manual for -- it's not a manual, it's like a training
20 binder for each investigator. So should something
21 happen -- and I recall a shooting that occurred in the
22 County of Riverside in the early 2000's, and it was
23 something that happened with the district attorney
24 investigator, and the board of supervisors required all
25 the training records for every single peace officer in

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1 the County of Riverside. Our binders that had all of
2 this stuff, all the training records in there were --
3 we were required to take it down to the board of
4 supervisors for their review. So that's why we keep
5 very detailed records of our training as well as
6 certificates to show we were there and we did complete
7 the training.

8 Q. So do supervising welfare fraud investigators
9 have the same dress code as welfare fraud
10 investigators?

11 A. Yes.

12 Q. Do they carry the same equipment?

13 A. Yes.

14 Q. Do they drive the same type of unmarked cars
15 while out in the field?

16 A. While we're in the field, yes. If we're
17 going to a meeting we might not get an unmarked car, it
18 might be marked. There is a limitation on the cars.
19 If we're doing fieldwork, absolutely.

20 Q. As a welfare fraud investigator you're a
21 member of the Inspections and Technical Bargaining
22 Unit. Right?

23 A. Yes.

24 Q. So you're represented by LIUNA at that time?

25 A. Yes.

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1 Q. Are you aware of attempts that welfare fraud
2 investigators made to be represented by RSA back when
3 you were an investigator?

4 A. Yes.

5 Q. When was that issue first raised, to your
6 knowledge?

7 MR. ZAPPIA: Relevance and foundation.

8 THE HEARING OFFICER: Well, we will go to
9 foundation. Let's deal with the relevance.

10 MS. ORTEGA: Relevance is going to show -- I
11 have a few questions in this line, not many, but that
12 this is what these members want in these units is they
13 want to come to RSA; they've been trying for years.
14 That's probative of the employee relations, and also
15 that's a fact within the community of interest analysis
16 factor.

17 THE HEARING OFFICER: Is that a dispute area?
18 We can stipulate that there have been other showings of
19 interest by the investigators to become members of RSA
20 unit?

21 MR. ZAPPIA: Well, I'm not going to dispute
22 what's in the documentation.

23 THE HEARING OFFICER: Okay. Do we have
24 documentation of that in evidence?

25 MS. ORTEGA: We have the cards that were

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1 issued but it doesn't quite put together how long this
2 issue's been going on since those were -- I mean, this
3 goes back to the late '90s. I don't know to the extent
4 that that really matters, how long they've been trying
5 to get into RSA.

6 THE HEARING OFFICER: The bottom line is that
7 the investigators have been attempting to get into the
8 RSA unit, law enforcement unit, for some time. Maybe
9 we can get a stipulation for that, that that showing of
10 interest by the members of the classification has
11 existed for awhile.

12 MR. ZAPPIA: Well, I don't want to be
13 difficult. I can't stipulate to that. I'll stipulate
14 to prior efforts that have been documented. I don't
15 know what they all want at this point in time or not.

16 THE HEARING OFFICER: Okay.

17 BY MS. ORTEGA:

18 Q. So when was the first time that issue was
19 raised, to your knowledge?

20 A. 1997.

21 Q. Why?

22 A. Because we were doing a lot of training; we
23 were doing a lot of arrest warrants, search warrants.
24 The type of investigations we were doing took us into
25 really bad areas. We were working hand-in-hand with

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1 local law enforcement agencies on a variety of things,
2 including welfare fraud and other crimes. And we were
3 working with them on such a regular basis that we felt,
4 you know, we should be better protected and have better
5 representation than what we were getting.

6 It was very clear by LIUNA and SEIU that they
7 could not represent us in case of a use of force issue.
8 And several of us, many of us, pay into RSA for the
9 legal defense fund. So at this point we're actually
10 paying two different unions because what we want is the
11 legal defense. We have to be represented in case of a
12 use of force issue. And the two unions that we're in
13 right now cannot provide that to us.

14 Q. Were there any -- well, strike that.

15 Do you consider a welfare fraud investigator
16 and a supervising welfare fraud investigator's job
17 functions to be primarily related to law enforcement?

18 A. Yes.

19 MR. ZAPPIA: That calls for legal conclusion.

20 THE HEARING OFFICER: As an opinion, I'll
21 allow it to go in.

22 BY MS. ORTEGA:

23 Q. As a fraud investigator are you protected by
24 the rights afforded under the peace officers procedural
25 bill of rights, POBR?

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1 A. Yes.
2 Q. Do you routinely work with other supervisory
3 unit members currently?
4 A. Meaning the supervisors that are in the
5 supervisory unit that I am?
6 Q. Correct.
7 A. No.
8 Q. You don't share supervision with any of those
9 individuals, to your knowledge?
10 A. Other than the supervising fraud
11 investigators. I mean, we do, you know, help each
12 other, but other supervisors, like a supervising social
13 worker or something like that, no, we don't share
14 duties.
15 Q. I'd like to mark RSA Exhibit 22.
16 THE HEARING OFFICER: Let's see.
17 (Joint Exhibit 22 marked)
18 BY MS. ORTEGA:
19 Q. Are you familiar with this document?
20 A. Yes, I am.
21 Q. Can you describe to us what it is.
22 A. I want to say it was 2008, our director,
23 Susan Lowe, director of Department of Social Services,
24 met with the welfare fraud investigators and
25 supervising fraud investigators and told us that County

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1 HR was proposing that we move into an unrepresented
2 unit. And so they presented this information to us at
3 the meeting and told us that HR wanted us to be
4 unrepresented and this was the proposal. And we were
5 given a month to review the documents and do our
6 research, and then we were to come back and, I guess,
7 decide what we wanted to do. That never happened. It
8 didn't go through.
9 Q. You mentioned there was four current
10 supervising welfare fraud investigators. How many
11 welfare fraud investigators, to your knowledge?
12 A. 22.
13 Q. As a supervising welfare fraud investigator
14 do you have the power to hire anyone?
15 A. No. I may be part of the interview panel,
16 but our chief is the one that has the authority to
17 hire. And fire, for that matter.
18 Q. What about issuing discipline? Do you have
19 the power to do that as a supervising welfare fraud
20 investigator?
21 A. Well, the way it works is let's say I want to
22 write a corrective counseling memo. That has to be
23 approved through HR. So I may write it with their
24 assistance and ultimately they have to approve that,
25 whatever the situation warrants, a corrective

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1 counseling memorandum. They may decide oh, no, it's
2 not at that level, give them a directive memorandum.
3 Ultimately it's HR's decision.
4 MS. ORTEGA: Are you familiar with -- let me
5 strike that. I have nothing further right now.
6 THE HEARING OFFICER: As to Exhibit 22, is
7 there any objection to that?
8 MR. ZAPPIA: Well, I'll object on relevance,
9 hearsay and foundation. I mean, I'm not familiar with
10 this exhibit and certainly as to time period.
11 THE HEARING OFFICER: The documents were
12 prepared by the County, it appears to be, and the
13 witness has testified as to they were apparently
14 documents prepared in attempt to persuade the fraud
15 investigator supervisor to disassociate themselves from
16 the then current bargaining units. I mean, I see the
17 relevance of it also. The probative value maybe --
18 again, may be an issue, but certainly there's the
19 relevance of it. If you don't want to mark it as one
20 of the missing joint exhibits, we can go ahead and it
21 will come in as a Union exhibit, that's for certain.
22 MR. ZAPPIA: I guess the other thing, just
23 having received this, I don't necessarily see this as
24 being applicable or inapplicable to welfare fraud
25 investigators, just as I look at it.

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1 THE HEARING OFFICER: Well -- hold on a
2 second.
3 MR. ZAPPIA: I can't stipulate that this has
4 any relevance to any job position that's not even
5 referenced in it.
6 THE HEARING OFFICER: I stand corrected.
7 It's not relative to the investigators, it's just a
8 general representation of the benefits of being
9 represented as opposed to being disassociated with the
10 unit and being independent. It was not addressed
11 specifically to the welfare fraud investigators, it was
12 apparently addressed to all members of LIUNA and the
13 supervisory unit under SEIU.
14 MS. ORTEGA: That's just the information that
15 they're comparing because those are the different
16 bargaining units. They have supervising information,
17 normal investigators, then the unrepresented. That was
18 presented to the supervising welfare fraud
19 investigators and the welfare fraud investigators in
20 particular to the County's proposal.
21 THE HEARING OFFICER: Was this presented only
22 to the supervisors and welfare fraud investigators?
23 THE WITNESS: Yes. We were the only ones in
24 the room that day.
25 THE HEARING OFFICER: That received this?

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1 THE WITNESS: Yes. Matter of fact, it was
2 presented to us at our gym at our Fran[redacted]in office. The
3 only people that have access to that are the
4 investigations unit. We were the only ones in the
5 room.
6 THE HEARING OFFICER: Adequate foundation,
7 Counsel.
8 MR. ZAPPIA: Okay. I still assert my
9 objections.
10 THE HEARING OFFICER: I understand. We're
11 going to mar[redacted]this as Exhibit 22.
12 (Joint Exhibit 22 mar[redacted]ed)
13 THE HEARING OFFICER: Let's ta[redacted]e two minutes
14 and begin cross-examination.
15 MR. ZAPPIA: Okay.
16 (Recess)
17 THE HEARING OFFICER: On the record. Begin
18 cross-examination.
19 MR. ZAPPIA: Than[redacted]you.
20
21 CROSS-EXAMINATION
22 BY MR. ZAPPIA:
23 Q. Ms. Zaragoza, what designation is your
24 retirement classification[redacted]
25 A. You mean li[redacted]e PERS retirement[redacted]

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1 Q. Yes.
2 A. We're part of PERS.
3 Q. Do you [redacted]now what your classification is[redacted]
4 A. Is it in this[redacted]
5 Q. Let me as[redacted]are you miscellaneous or safety[redacted]
6 A. I guess miscellaneous; I don't believe we're
7 safety.
8 Q. Do you -- when you became a supervisor,
9 supervising welfare fraud investigator, did that change
10 your bargaining unit that you were represented by[redacted]
11 A. Yes.
12 Q. Okay. And you went from LIUNA when you were
13 a welfare fraud investigator to SEIU, supervising unit[redacted]
14 A. Correct.
15 Q. When you became a supervisor did you ta[redacted]e on
16 additional supervisory duties[redacted]
17 A. Well, as a welfare fraud investigator I
18 didn't have any supervisory duties, but as a
19 supervising investigator then, yes, we do have
20 supervisory duties as part of that job description.
21 Q. And supervising welfare fraud investigators[redacted]
22 A. Yes.
23 Q. Do you participate in their performance
24 evaluations[redacted]
25 A. Yes.

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1 Q. And you can initiate discipline even though
2 you run it through HR[redacted]
3 A. Yes.
4 Q. As far as your duties -- first of all, to
5 what department are you assigned[redacted]
6 A. Department of public services.
7 Q. Would that be fair to say that's consistent
8 with investigating welfare fraud because the people you
9 investigate are usually recipients of public services[redacted]
10 A. I thin[redacted]you can say that for the County of
11 Riverside, but if you loo[redacted]at all welfare fraud
12 investigators across the state, you would see half of
13 the state their welfare fraud investigators are part of
14 the D.A.'s office and then others are with social
15 services. There's a few that are with the sheriff's
16 department but I thin[redacted]those are more up north.
17 Q. That's actually a good point. Historically
18 County of Riverside welfare fraud investigators have
19 been assigned to DPSS[redacted]
20 A. Yes, there has been several times it's been
21 discussed that we move into the D.A.'s office but I
22 don't thin[redacted]that ever happened. If it did it would be
23 before my time.
24 Q. Is it fair to say typically when you're
25 conducting a welfare fraud investigation it would

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1 involve someone who's a recipient of some type of
2 public social service or money such as welfare[redacted]
3 A. Yes.
4 Q. That would be the clients and individuals
5 that DPSS services[redacted]
6 A. I would say yes, unless it's li[redacted]e I'm tal[redacted]ing
7 about the internal investigations.
8 Q. Okay.
9 A. So we do that type of thing -- I mean, they
10 could be on welfare and be a County employee at the
11 same time, but it also too, there are times where we're
12 dealing with li[redacted]e a lobby incident so we're responding
13 to maybe an irate client in the lobby but it could be
14 part of CPS. So they may not be getting public
15 assistance but they're a client of DPSS. It's more
16 than just welfare that we do. We could be dealing with
17 an irate customer on the CPS side or it could be a
18 domestic violence thing in one of the other lobbies
19 where they're not getting welfare. So it depends on
20 what part of my job I'm doing at that particular time.
21 Q. Would domestic violence, for example,
22 individuals involved in domestic violence, frequently
23 be type of clients that DPSS would be involved with[redacted]
24 A. I don't [redacted]now that I could answer that. I
25 mean, there are a -- there's a lot of domestic violence

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1 everywhere, so I don't know how many of them are
2 getting public service. But we do respond to lobbies
3 and it's -- a lot of them are domestic violence-type
4 issues.
5 Q. Okay. As far as other duties, am I correct
6 as part of your duties as a welfare fraud investigator
7 you did not investigate, for example, homicides?
8 A. We do not investigate homicides but we do
9 investigate things other than welfare fraud. For
10 example, you know, typical charges that we file are
11 welfare fraud, perjury, forgery, embezzlement,
12 falsifying documents. Identity theft. Whatever crime
13 we trip over, that will get included in our
14 investigation.
15 Q. In the context of your welfare fraud
16 investigation?
17 A. Correct.
18 Q. You don't investigate homicides?
19 A. No homicides.
20 Q. Don't investigate typical -- like you're not
21 assigned to a robbery unit?
22 A. No. However, burglary is one that we would
23 charge. We do investigate burglaries because it's --
24 the elements of that crime could be done within our
25 department if they're coming in to commit fraud.

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1 Q. You don't investigate use of force; do you?
2 A. Not -- well, if one of my employees there was
3 a use of force issue, we would look at that at some
4 level but then, you know, the sheriff's department
5 would be investigating that.
6 Q. Have you ever --
7 A. I've looked into like a complaint of maybe a
8 use of force thing, but when I actually started asking
9 questions the person withdrew the complaint. But we do
10 get peace officer complaints; that could be from a use
11 of force thing or something else.
12 Q. How many use of force incidents have you
13 investigated in your --
14 A. Personally?
15 Q. Yes.
16 A. Well, depends on what level. I would say a
17 handful. But whatever point I think it's going to go
18 somewhere I would turn it over to the other agency, the
19 sheriff's department.
20 Q. Okay. How many shootings have you been
21 involved in?
22 A. None.
23 Q. Do you know of any welfare fraud
24 investigators being involved in a shooting in the last
25 10 years?

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1 A. Where they were personally involved, no, but
2 we have responded to shootings at our offices.
3 Q. Let me have you start with my question. Are
4 you aware of a single incident in the last 10 years
5 where a welfare fraud investigator was the shooter?
6 A. No.
7 Q. Not one?
8 A. No.
9 Q. Now, you said you regularly work with law
10 enforcement personnel. Do you also work with personnel
11 in DPSS?
12 A. Yes, they're in our office.
13 Q. Of course you work with social workers?
14 A. In regard to our missing child cases, we do.
15 We're looking for their kids so we would be working
16 with them in order to find that child.
17 Q. And you work with HR personnel in conducting
18 HR investigations?
19 A. Correct.
20 Q. Do you have administrative staff in your
21 office that you work with that assist you in filing
22 documents? Preparing documents?
23 A. No.
24 Q. Do you know the last time any consent poll
25 has been taken among welfare fraud investigators as to

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1 who they want to be represented by?
2 A. No.
3 Q. Do you know if one has been taken in the last
4 five years?
5 A. No, I don't know that.
6 MR. ZAPPIA: I don't have any further
7 questions.
8 THE HEARING OFFICER: Redirect?
9 MS. ORTEGA: I have no redirect.
10 THE HEARING OFFICER: Thank you very, very
11 much, Ms. Zaragoza. Thank you for taking your time and
12 making yourself available.
13 THE WITNESS: You're welcome.
14 THE HEARING OFFICER: Union rests or do you
15 have additional questions?
16 MS. ORTEGA: I'm waiting on one exhibit but
17 no more witnesses.
18 THE HEARING OFFICER: Okay. We will deal
19 with that when it's ready.
20 MS. ORTEGA: If we can take a break
21 (Recess)
22 THE HEARING OFFICER: Back on the record.
23 Have the Employer's first witness on the stand.
24 MR. ZAPPIA: Just for the record, I'm not
25 sure it was on, the Union?

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1 THE HEARING OFFICER: Has rested, other than
 2 we're waiting for one additional exhibit.
 3 MS. ORTEGA: Correct.
 4 THE HEARING OFFICER: But other than that,
 5 the Union is resting.
 6 MR. ZAPPIA: Okay. Then the County calls
 7 Sarah Franco.
 8 THE HEARING OFFICER: Okay. Please raise
 9 your right hand.
 10 (Whereupon Sarah Franco was sworn in by the
 11 Hearing Officer)
 12 THE HEARING OFFICER: Please state your name
 13 and spell it for the reporter.
 14 THE WITNESS: Sarah Franco, S-a-r-a-h,
 15 Franco, F-r-a-n-c-o.
 16 THE HEARING OFFICER: Ms. Franco, you've
 17 testified before on a number of occasions; the
 18 instructions given before shall apply at this time as
 19 far as waiting for the question to be fully ascertained
 20 before you answer and also giving of a yes-or-no
 21 response. And speaking slowly.
 22 THE WITNESS: Understood.
 23 THE HEARING OFFICER: Thank you. Counsel
 24 MR. ZAPPIA: Thank you.
 25

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1 services to County departments on misconduct
 2 investigations, that sort of thing. I review their
 3 investigative product and make recommendations as to
 4 level of discipline.
 5 And C25 investigations, which are sexual
 6 harassment and discrimination. I investigate some of
 7 those and review the work product of the investigators
 8 of some of those. Then on the labor relation sides of
 9 the house I'm involved in collective bargaining and
 10 have been for several years and several tables with all
 11 of the bargaining units and the unions representing
 12 those bargaining units.
 13 Q. Let me just narrow to in the context of the
 14 different harassment investigations you do, in the
 15 entire time you've been employed by the County, can you
 16 tell us your experience in conducting investigations.
 17 A. When I was an investigator I worked on the
 18 DPSS services team at the Department of Public Social
 19 Services. I actually conducted the misconduct
 20 investigations. That included receiving from the
 21 supervisor or from the Department, executive
 22 allegations of misconduct and I was responsible for
 23 determining whether or not those were true and had
 24 occurred as alleged by interviewing the witnesses and
 25 interviewing the focus, and then through fact-finding

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1 DIRECT EXAMINATION
 2 BY MR. ZAPPIA:
 3 Q. Ms. Franco, where are you currently employed?
 4 A. County of Riverside, human resource
 5 department.
 6 Q. How long have you been employed by the
 7 County?
 8 A. Since September of 2001.
 9 Q. Could you give us an overview of the
 10 different job titles you've held in duties in the last
 11 12 or 13 years of your employment?
 12 A. Sure. I started with the County of Riverside
 13 as a Human Resources Technician 2. I then promoted to
 14 Human Resources Analyst Trainee, then Human Resources
 15 Analyst 1, Human Resources Analyst 2, Senior Human
 16 Resource Analyst, and I am currently a Principal Human
 17 Resource Analyst, and I've held that title for two
 18 years within the human resources department.
 19 Q. What do your current duties consist of as the
 20 Principal HR Analyst?
 21 A. I work in the employee relations division,
 22 and within the division we take care of both the
 23 employee relations side of the house as well as labor
 24 relations side of the house. From the employee
 25 relations side I mentor services teams who provide

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1 making a recommendation as to any violations of policy
 2 and appropriate discipline.
 3 Q. At that time when you were in DPSS, could you
 4 give us an overview of what your investigative steps or
 5 procedure might include.
 6 A. I would start with the allegation. I would
 7 then review any policies or procedures within the
 8 Department to make sure I understood what the policy
 9 required of the employee. I would then check to verify
 10 the employee knew of the policy, had been made aware of
 11 the policy, any training they had received on the
 12 policy. I would then identify and interview any
 13 witnesses to the allegations and then I would turn my
 14 attention to the focus of the investigation and
 15 question them as to whether or not -- to determine
 16 whether or not they violated policy.
 17 Q. Would you review relevant documents?
 18 A. If they were relevant documents, policies,
 19 any evidence to review.
 20 Q. Would you write a report?
 21 A. Yes.
 22 Q. Would you submit that to your supervisor?
 23 A. Yes.
 24 Q. Would you interact with HR personnel when you
 25 were employed there?

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1 A. Yes. Other HR personnel, yes.
2 Q. Would you interact at all with law
3 enforcement personnel?
4 A. If the allegations had some sort of criminal
5 aspect to them. If there was a concurrent criminal
6 investigation I would be working with law enforcement
7 towards the conclusion of my administrative
8 investigation.
9 Q. At the time when you were assigned to DPSS,
10 what bargaining unit were you a member of?
11 A. I've always been a member of the
12 unrepresented management group in Riverside County.
13 Q. And when you -- since you've been in HR and
14 conduct various types of C-25 harassment
15 investigations, how many of those investigations would
16 you say you've actually conducted?
17 A. I've done a lot of C-25 investigations in my
18 past.
19 Q. At the County?
20 A. At the County. When I moved back from DPSS
21 to employee relations, central employee relations, one
22 of my main responsibilities was C-25 investigations
23 when I wasn't at the bargaining table. So I conducted
24 a lot of those. I don't have a fair estimate, to be
25 honest, but I would at least have, I don't know, at

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1 least six to ten cases on my plate at any given time.
2 Right now in my current role I'm conducting C-25
3 investigations that are high profile in nature where
4 the accused are higher up in County management, for
5 example.
6 Q. So then distinct from when you were at DPSS
7 then in employee relations conducting C-25s, would
8 you -- save us time -- would you follow similar
9 investigative process and procedures?
10 A. Similar, except that I talk to the person
11 complaining of the discrimination or harassment first.
12 So where the focus is my last person I talk to, I'm
13 talking to my complainant first and then talking to any
14 witnesses, then talking to the subject. So order of
15 witnesses, but absent that, the investigative report is
16 similar; my process of investigation is similar.
17 Q. And since you were assigned to the employee
18 relations of human resources, would you interact with
19 law enforcement at any time in the context of
20 conducting personnel investigations?
21 A. Now more so than in DPSS, I work directly
22 with sheriff's department, district attorney, because
23 of my roles and mentor to the teams, whenever there's a
24 criminal aspect to any case I liaison with the
25 sheriff's departments or D.A.s in order to determine

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1 whether they're going to press -- or investigate
2 criminally and press charges from the prosecutor's
3 standpoint.
4 Q. In your role, what's your participation in
5 collective bargaining now, say for the last three
6 years?
7 A. During the last three years my role generally
8 has been second chair to the chief negotiator and also
9 chief negotiator. Within the last few years I
10 participated in both those roles at different tables.
11 Q. As a representative on behalf of the County?
12 A. On the management team, yes.
13 Q. Which unions have you been involved in
14 negotiations with over the last three years?
15 A. I was involved with -- the one I wasn't
16 involved in, is easier to do that, is LIUNA. The
17 balance of the County unions I was involved with, which
18 would include SEIU, RSA Law Enforcement Unit, RSA
19 Public Safety Unit, DDAA, Deputy District Attorneys
20 Association, Law Enforcement Management Unit, which is
21 LEMU. Those are the ones I was involved in.
22 Q. And I think you may have covered this but as
23 you sit here, to the best of your recollection what are
24 the different bargaining units in the County right now?
25 A. Bargaining units in -- SEIU represents our

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1 professionals, our paraprofessionals, our
2 supervisors -- and I'm forgetting one. Nurses. LIUNA
3 is trades, crafts and laborers. LEMU is the Law
4 Enforcement Management, so that would be sergeants and
5 above in the Riverside County Sheriff's Department.
6 Law Enforcement Unit, you've got correctional deputies
7 and deputy sheriffs and some other coroners, those sort
8 of things. Public safety, you have your probation and
9 correction officers and then probation officers
10 themselves. DDAA, Deputy District Attorneys
11 Association, the D.A.s, you've got county council and
12 the public defender's office. I think I hit them or
13 maybe not.
14 Q. Do you know as we sit here does -- in
15 reviewing the different bargaining units -- by the way,
16 I'm looking at a binder entitled Volume 1, Exhibit 1,
17 and I'm at page, at the bottom right, 005.
18 THE HEARING OFFICER: What's the page number?
19 MR. ZAPPIA: 0005 of Exhibit 1.
20 BY MR. ZAPPIA:
21 Q. Do you recognize this exhibit?
22 A. Yes.
23 Q. What is this?
24 A. County's employee relations resolution.
25 Q. What is Section 8?

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1 A. These are the established representation
2 units within the County of Riverside.
3 Q. Let me start with exhibit -- or looking at
4 8A-1. It references the supervisory unit. What in
5 your evaluation is the significant factors that make up
6 the supervisory unit?
7 A. The classification within the supervisory
8 units are those that are supervisory throughout the
9 County of Riverside. So regardless of department,
10 these are supervisory classes. So they generally
11 are -- before the actual name of the class, it has the
12 word "supervisor" in front of it. Generally what
13 you're going to find in this unit.
14 Q. Do you have any familiarity with MMBA
15 requirements of supervisors?
16 A. Yes, supervisors are entitled to their own
17 unit.
18 Q. By law?
19 A. By law.
20 Q. In your experience in evaluating units and
21 unit composition with the County, does the County have
22 any preferred policy on having supervisors or
23 subordinates in the same unit or not?
24 A. Generally when we're looking at it because,
25 one, by law, they have a right to their own unit, but

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1 for other considerations we generally want to keep the
2 supervisors on a separate unit from their subordinate
3 employees.
4 Q. Would that be reflected, for example, in the
5 different law enforcement units?
6 A. For example, if you take RSA Law Enforcement
7 Unit, you've got the deputy sheriff's and CDs. And
8 then you have Law Enforcement Management Unit, which is
9 sergeants and above, their supervisors.
10 Q. Do you notice the County -- well, in
11 collective bargaining does the issue of retirement
12 classification have any involvement in collective
13 bargaining?
14 A. More recently, retirement -- it is a factor
15 at the bargaining table and it's a big issue now more
16 than ever in terms of retirement classification just
17 because of pension reform. So it's a salary benefit,
18 and one of the benefits is retirement. When you go to
19 the collective bargaining, generally you're talking
20 sometimes about pensions, and one of those things is
21 whether they have safety or miscellaneous pension.
22 Q. In the County does -- are there different
23 retirement plans for the two different classifications?
24 A. Yes, there's the miscellaneous retirement
25 plan and there's the safety retirement plan, and those

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1 are separate contracts with CalPERS.
2 Q. Let me ask you more generally. When you
3 go -- well, when you've been involved in collective
4 bargaining over the last years, what, generally, are
5 the significant issues that are subjects of collective
6 bargaining when you're in negotiations?
7 A. The big ones at every bargaining table are
8 generally salary and benefits, what everybody is most
9 interested in. Then benefits, more recently with
10 pension reforms being one of them, there's been a lot
11 of talk about pensions. And EPMS, employer paid member
12 contributions and shifting the burden of paying for
13 pensions back to the employee, off of the employer.
14 Q. Are you familiar with an issue with RSA
15 several years ago where they actually filed a PERB
16 charge against the County about pension reform and
17 position?
18 A. Yes.
19 Q. What's your recollection of the charge that
20 was filed by RSA over imposition of pension reform?
21 A. My understanding of that particular PERB
22 charge was that we had gone to the bargaining table
23 with RSA to negotiate pension reform, and during that
24 process we had negotiated a pension change, proposed
25 changes to EPMS, employer paid member contributions,

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1 and shifting that back to employees. RSA then filed a
2 PERB charge indicating that the County hadn't
3 negotiated separately the safety changes and the
4 miscellaneous changes because the LEU unit is a blended
5 unit. It has miscellaneous member of CalPERS and
6 safety members of CalPERS. The PERB charge was
7 essentially the County hadn't negotiated the
8 miscellaneous EPMS; that we had focused on the safety
9 changes but didn't focus on miscellaneous. So that's
10 my understanding of the litigation.
11 Q. Were you involved in that bargaining table?
12 A. Yes.
13 Q. And is it correct that after approximately
14 five months of bargaining no one had even addressed
15 miscellaneous retirement?
16 A. That's correct.
17 Q. Let me have you look at -- in your -- this
18 binder here, it doesn't say Volume 1 or 2, some
19 exhibits have been moved around, but if you look at --
20 I think it's your tab, Exhibit 11, which is now Exhibit
21 31. Do you recognize Exhibit 31 or 11 in your binder?
22 A. I recognize it as a query that's been run
23 from our payroll system.
24 Q. Yes.
25 A. Yes.

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1 Q. Do you understand this to be, as titled, a
2 list of SEIU job classifications?
3 A. Yes.
4 Q. Most significantly, every one of the
5 classifications is miscellaneous?
6 A. Yes.
7 Q. If I can refer you over to the next exhibit,
8 which is now 32, but I believe it's 12 in yours.
9 Similarly do you recognize this is a list of LIUNA job
10 classifications?
11 A. I do.
12 Q. Every one of them being also miscellaneous
13 for purposes of retirement classification?
14 A. I do.
15 Q. Are you familiar with the PSU unit?
16 A. Yes.
17 Q. Do you know the retirement classification --
18 the retirement classification for all of the
19 classifications in PSU?
20 A. They're safety.
21 Q. Every single one of them?
22 A. Yes.
23 Q. And now if I can have you turn over to the
24 next exhibit, which is 13 in your book but now 33 for
25 ours. Do you recognize this to be a list of RSA LEU

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1 job descriptions?
2 A. The list of classifications, yes.
3 Q. Now, let me ask you, this unit does seem to
4 have some -- it's a two-sided exhibit, by the way. The
5 first one has some miscellaneous classifications. But
6 are you familiar with the total number of employees in
7 that bargaining unit? Approximately how many are
8 safety versus miscellaneous?
9 A. The -- it's around -- it's like 100 of -- in
10 this particular list it's about 100 of these are
11 miscellaneous out of like 2400 in the unit, I think.
12 There's about a hundred in the miscellaneous unit.
13 Q. Has the dis -- has the mix of the 100
14 miscellaneous caused issues for the County in the past?
15 A. It's a blended bargaining unit so the end
16 game of collective bargaining is problematic in a mixed
17 unit. For example, one unit can go to PERB and the
18 other has to go to Superior Court. At the end of
19 negotiations it's problematic for the County because at
20 the end of bargaining you have this -- you can have
21 split ways of going about handling an impasse or a
22 disagreement between the parties, and then you can have
23 PERB rendering an opinion different than the Superior
24 Court. So we have had challenges in that regard. So
25 the blending of the bargaining units and now with

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1 AB646, there's other concerns with the blending
2 bargaining unit.
3 Q. I'm including the PERB charge that RSA filed
4 against the County over the different retirement
5 issues.
6 A. Correct.
7 Q. And I'm not going to ask you for any
8 privileged conversations, but in the County's
9 evaluation of the split unit has there been
10 discussions, generally, of fixing this issue versus
11 complicating it with more blending?
12 A. We have recognized that the blending of the
13 units has caused litigation, and there has been
14 dialogue within the County about moving
15 towards unblending units and have cleaner bargaining
16 units to make collective bargaining easier and a lot
17 less cumbersome and a lot less litigation is hopefully
18 the result.
19 Q. In your opinion as you sit here, in your
20 experience being in the employee relations for three
21 years, would placing supervisors, supervising welfare
22 fraud investigators specifically, into the LEU unit
23 cause any issues or be beneficial for purposes of
24 collective bargaining?
25 A. From collective bargaining it further

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1 complicates it. Further blends the unit. Collective
2 bargaining also right now in LEU, for example, you've
3 got the sheriff's department and D.A. You have two
4 County departments represented at the bargaining table.
5 You have their interest and their budget in mind. If
6 you were to add supervising welfare fraud
7 investigators, they work under the DPSS, Department of
8 Public Social Services budget, so you'd have a
9 different departmental concern and different budget to
10 consider, which would complicate bargaining.
11 Q. For example, say you receive a proposal from
12 the Union and collective bargaining. Would you cost
13 that proposal?
14 A. Yes.
15 Q. What is costing?
16 A. Costing is determining the impact of any
17 proposals. So any increases you make or decreases you
18 make to salary, benefits, that sort of thing, you have
19 to cost the proposal to determine how much is it going
20 to cost the County to grant that particular proposal,
21 and then you have to look at the ability to pay from
22 the department's perspective.
23 Q. If you put another department's budget into
24 the mix in collective bargaining, would that increase
25 or decrease efficiency or effectiveness?

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1 A. It would make it less effective. It would be
2 more difficult to bargain because you're adding another
3 party into the mix; their concerns, their budget
4 issues.
5 Q. Historically in the County which bargaining
6 unit have supervising welfare fraud investigators been
7 included?
8 A. SEIU bargaining.
9 Q. Historically in the County which bargaining
10 unit have welfare fraud investigators been included?
11 A. LIUNA bargaining.
12 Q. Historically, which unit or units would
13 supervisors or managers be included in?
14 A. Supervisors are going to be in the SEIU
15 bargaining unit.
16 Q. Historically has the County undertaken
17 efforts to have units that are of a single retirement
18 classification, to the best of its ability?
19 A. We have worked towards that. It's a
20 consideration when we have been asked to modify units, we
21 look at that factor to try not to further blend
22 bargaining units.
23 Q. In collective bargaining in the three years
24 that you've been substantially involved, has it ever
25 come up in negotiations the specific duties of any

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1 specific classifications contained within the
2 bargaining unit?
3 A. Not at collective bargaining. Bargaining is
4 more general to the unit, wages, benefits, that sort of
5 thing. To the best of my knowledge we've not gone down
6 to the details of what people actually do and make any
7 changes or proposals about the detail of what I
8 actually do on the job every day.
9 MR. ZAPPIA: I don't have any further
10 questions.
11 THE HEARING OFFICER: Cross-examination
12
13 CROSS-EXAMINATION
14 BY MS. ORTEGA:
15 Q. In looking at Exhibit 13 -- well, 33, it's
16 under Tab 13 in the binder before you, you've pointed
17 out that I believe the miscellaneous retirement you
18 said are approximately 100 employees. Is that correct?
19 A. I think it's about 100.
20 Q. Are you familiar with how those miscellaneous
21 retirement classifications came into the Law
22 Enforcement Unit?
23 A. I want to say they were in -- to the best of
24 my knowledge most of them were already miscellaneous
25 prior to me coming to the County, I believe. There has

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1 been some dispute between the parties about
2 miscellaneous versus safety, but I wasn't involved in
3 the dispute, I just know about it. Just kind of
4 secondhand.
5 Q. But are you aware of when those
6 classifications came into the LEU to begin with?
7 A. No, I'm not aware of that.
8 Q. And you said that there's been some dispute
9 over the classifications. What specifically are you
10 referring to?
11 A. Just about miscellaneous versus safety in
12 this particular unit. There's been some dispute in the
13 Law Enforcement Unit in the past. I'm not real
14 familiar with the litigation.
15 Q. Then you mentioned that it's problematic to
16 have a blended bargaining unit -- and I'm just
17 paraphrasing, so correct me if I'm wrong -- that one
18 group has to go to court, the other group has to go to
19 PERB and there could be conflicted decisions. When has
20 that happened within RSA's LEU?
21 A. Well, if you have an impasse, I mean, that's
22 the question. It's a concern. So when you're thinking
23 about bargaining, you have to be -- you have to
24 strategize about your end game. So when strategizing
25 you would be concerned about where the parties would go

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1 if you had a dispute, who you go to. Who has
2 jurisdiction. If there's different people who have
3 different jurisdictions, you could potentially have
4 different outcomes, and then how do you implement that
5 in a blended bargaining unit if they're in conflict
6 with one another.
7 Q. From your knowledge and background in
8 collective bargaining with RSA, has that ever happened
9 that an impasse was reached and there was conflicting
10 decisions, one going to court, one going to PERB?
11 A. With RSA we had Senate Bill 402, which was --
12 it was in the PSU unit but, yes, we had a problem a
13 long time ago with blended bargaining units and it
14 became a concern. Since that litigation on SB 402, the
15 County has tried to avoid blended bargaining units and
16 to clean it up and separate those and not further
17 complicate the issue.
18 Q. When, approximately, was that litigation for
19 SB 402?
20 A. 402 was towards the -- more towards the
21 beginning of my career with the County. I would guess
22 that it's somewhere around 2003 to 2005, I want to say,
23 but I'm not certain of it.
24 Q. Within the LEU you're unaware of that
25 particular issue presenting itself with respect to

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1 reaching impasse.

2 A. We have certainly been concerned about it.

3 Whether we ended up with two conflicting decisions like

4 I suggested could have happened, that hasn't happened

5 to my knowledge. But we have certainly gotten close

6 enough to conflict where we've had to contemplate that

7 eventuality and strategize with how to deal with it for

8 sure.

9 Q. You also mentioned that -- well, let me ask

10 it this way. It's not necessarily true that a

11 classification that begins with "supervising" or

12 "supervisor" is within the general supervising SEIU

13 unit. Right?

14 A. It's generally how we identify them. I'm not

15 saying there couldn't be an anomaly, but in general I

16 think when you look at the class and salary listing,

17 for example, if you look at the word "supervisor,"

18 you'll see that they're in the SES unit, which is the

19 supervisor unit. There could be an anomaly that I'm

20 not aware of, but to the best of my knowledge those in

21 the supervisory unit are usually indicated by a

22 supervisor in their title somehow where they have those

23 duties.

24 Q. Are you familiar with the supervising

25 correctional counselor classification that's within the

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1 RSA LEU.

2 A. I think I've seen the title but I'm not

3 familiar with the class. I don't do class work for the

4 County.

5 Q. I'd like to mark Exhibit 23.

6 THE HEARING OFFICER: This will be Exhibit

7 23.

8 (Joint Exhibit 23 marked)

9 BY MS. ORTEGA:

10 Q. Are you familiar with this document?

11 A. Yes, it's a class and salary listing that was

12 produced July 11, 2013.

13 Q. It's extremely difficult to see but on the

14 right-hand corner there's page numbers. It says page

15 what out of the 32. If you can turn to Page 30 of 32.

16 Three from the back. Actually, it starts on Page 29.

17 And this is the list of the classifications beginning

18 with supervisor -- "supervisory," and it continues to

19 Page 31. The next column that says "Union," do you

20 know what those stand for? So if we look at the first

21 supervisor, it says "supervising account," and it says

22 "SES," and "supervising account," see below, says

23 "UNM."

24 A. Yes.

25 Q. Is it true -- let me try to do this quickly.

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1 Is it true that in every supervising classification

2 that doesn't have "SES" next to it it's not within the

3 SEIU supervising unit?

4 A. Is it -- can you clarify? I want to make

5 sure I don't answer it wrong. I think I know what

6 you're asking.

7 Q. Are only the ones that have "SES" next to

8 them those that are within SEIU supervising unit?

9 A. "SES" is the Union code for the supervisory

10 unit in SEIU. If it has "SES," that is a supervisor in

11 the supervisory unit of SEIU.

12 Q. And every other one is not within that unit.

13 Right?

14 A. Correct.

15 Q. You mentioned just generally that having

16 supervisors within a certain bargaining unit with the

17 line staff that they supervisor can complicate it and

18 kind of muddy the waters, and I'm paraphrasing. Have

19 you had any instances when negotiating with RSA

20 particular to the LEU regarding the supervising

21 correctional counselor being within that unit and

22 everyone else?

23 A. Not an issue that I'm aware of, no.

24 Q. Are there other bargaining units within the

25 County that comprise more than two County departments,

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1 so the employees within the bargaining unit come from

2 more than two different County departments?

3 A. Yes.

4 Q. Would you say that it's typical to have more

5 than two departments represented within a unit?

6 A. It depends on the unit. I mean, you've got

7 LEMU, for example, Law Enforcement Management. That's

8 sheriff's department only. You're contemplating one

9 department. They've now got the D.A. commanders. The

10 D.A.'s been added. For most of my career there was

11 only one department. Then you have LIUNA. That's the

12 biggest bargaining unit in the County, and because they

13 have trades, craft and labor, the largest pool of

14 employees, you've got a lot of County departments

15 there. It ranges. There's not a -- it just depends on

16 the bargaining unit and union that they're represented

17 by.

18 Q. Is there a way for you to estimate how many

19 County departments are represented within LIUNA? Is it

20 over five? Over ten?

21 A. I would be guessing, but I believe we have 60

22 departments, I think estimated. So I would guess that

23 a lot of those departments are represented in LIUNA,

24 yes.

25 Q. How about if you take a look at Exhibit 11.

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1 This is the SEIU job classifications. It's actually
2 Exhibit 31 but under Tab 11. Are you familiar with the
3 departments that each one of these classifications is a
4 part of?

5 A. Because County job classifications are used
6 by different County departments for the services they
7 may need, this job title could be used by multiple
8 County departments. I don't specifically know -- for
9 example, take the first one as an example. I really
10 don't know what this person does. A satellite facility
11 supervisor. Just by looking at it, that could be used
12 by one department and have one employee incumbent or it
13 could be used by three County departments with three
14 employees or six employees.

15 Q. In looking at the classifications here, can
16 you say with certainty that there are more than two
17 County departments represented?

18 A. No.

19 Q. You mentioned in the beginning of your direct
20 testimony that you had done some investigations with
21 respect to harassment and -- strike that.

22 You mentioned -- was it AB 836?

23 A. Assembly Bill 646.

24 Q. 646. You said there's some issues with
25 having a blended bargaining unit. Can you elaborate on

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1 that.

2 A. Well, what I was eluding to is Assembly Bill
3 646 now requires the parties to go to mandatory fact
4 finding at the end of collective bargaining. So -- and
5 one of the issues for the panel, on AB 646 there's a
6 panel that ultimately makes recommendations. The panel
7 considered ability to pay. I was eluding to the fact
8 that if you create a blended bargaining unit and bring
9 in another -- a third County department -- so Ed was
10 suggesting that supervising welfare fraud investigators
11 who are DPSS instead of Department, would join LEU.
12 Now you have the sheriff's department, the D.A. and now
13 DPSS. And in terms of an ability to pay, all three of
14 those departments have totally different budget
15 circumstances, so ability to pay would be a factor that
16 the panel would have to consider that would complicate
17 fact finding.

18 Q. So that same concern will apply to any
19 bargaining unit that has more than one County
20 department?

21 A. It would -- the ability to pay factor would
22 have to be considered for each department because
23 they're separate budget units within the County and
24 have separate budget circumstances.

25 MS. ORTEGA: I have no further questions.

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1 MR. ZAPPIA: Just a few quick ones to
2 address.

3

4 REDIRECT EXAMINATION

5 BY MR. ZAPPIA:

6 Q. In this case, for example, we know that LEU
7 has at least a small percentage of it for purposes of
8 retirement that is miscellaneous versus the vast
9 majority which is safety. But that being the case,
10 would the County still prefer to avoid blending of
11 units or further blending for retirement
12 classifications?

13 A. Yes. It's not our goal to further complicate
14 the units.

15 Q. Similarly -- by the way, how many employees
16 are in the County?

17 A. Last count was over 17,000.

18 Q. Do you know approximately how many
19 classifications?

20 A. I've never counted.

21 Q. Thousands?

22 A. I would guess, yes.

23 Q. So, similarly, while there may be situations
24 where a supervisor or subordinate are in the same
25 bargaining unit, would the County's preference be to

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1 avoid that for purposes of collective bargaining?

2 A. Yes, it's our goal to avoid further
3 complicating it as well.

4 Q. Similarly, while there may be bargaining
5 units that have one or two or five budgets involved,
6 would it be the County's goal to avoid complicating
7 that and adding more budgets to the collective
8 bargaining mix?

9 A. Yes, it's our goal to do that as well.

10 Q. So in this case if the County denied
11 supervising welfare fraud investigators' request to go
12 from SEIU supervisors to RSA LEU, would it be
13 consistent with the County's goals and practice to deny
14 that to avoid mixing supervisors into a non-supervisor
15 unit?

16 A. Yes, that would have been a factor.

17 Q. Would it also be consistent with the County's
18 desire to avoid blending retirement classifications?

19 A. Yes.

20 Q. Similarly, if the County did not want to move
21 welfare fraud investigators and/or CSOs from LIUNA into
22 LEU, would that be consistent with the County's
23 practice of not wanting to blend retirement
24 classifications in the same manner?

25 A. It's a consistent approach, yes.

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1 MR. ZAPPIA: I don't have any further
2 questions.
3 THE HEARING OFFICER: Anything bac□ on
4 redirect -- recross□
5 MS. ORTEGA: Just a few.
6
7 RECCROSS-EXAMINATION
8 BY MS. ORTEGA:
9 Q. The issue's -- when you say complicated by
10 including supervisors and non-supervisory unit
11 specifically, what other issues specifically would
12 complicate -- cause problems with that from the
13 County's perspective□
14 A. Well, by law they're entitled to their own,
15 so the MMBA concern is the first, so that's a
16 consideration. And then when you're just further
17 complicating if -- for example, if there's discipline
18 and the subordinate and the supervisor are both
19 involved, the same union represents their interest. So
20 that's a problem in terms of investigation because the
21 supervisor might be the accused or the employee's the
22 accused. By blending them in the same representation
23 unit you can have issues in an investigation, I'm
24 guessing.
25 Q. Wouldn't that be a consideration for RSA, not

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1 the County□
2 A. From an investigator standpoint, I have
3 concerns about the integrity of the investigation. If
4 supervisors and subordinates are involved in the
5 investigation, the credibility of the investigation,
6 the integrity of it -- I haven't run into it but I'm
7 guessing it's a concern.
8 Q. Are there any other concerns you can thin□ of
9 that the County has expressed or you're aware of
10 concerning including supervisors along with the people
11 that they supervisor in one unit□
12 A. Not that I □now of off the top of my head
13 that I haven't already expressed.
14 MS. ORTEGA: I have nothing further.
15 MR. ZAPPIA: Nothing further.
16 THE HEARING OFFICER: Than□ you very, very
17 much, Ms. Franco.
18 THE WITNESS: Than□ you.
19 THE HEARING OFFICER: Does the County have
20 any additional testimony□
21 MR. ZAPPIA: The County has no further
22 testimony.
23 THE HEARING OFFICER: Does the Union have any
24 testimony in rebuttal□
25 MS. ORTEGA: No testimony.

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1 THE HEARING OFFICER: We're waiting for
2 another document.
3 MS. ORTEGA: It should be ready to go.
4 THE HEARING OFFICER: Let's ta□e five
5 minutes.
6 (Recess)
7 THE HEARING OFFICER: Bac□ on the record.
8 So that the court reporter can prepare an
9 adequate representation of the exhibits in the
10 evidentiary record, she has copies of the exhibit lists
11 that the parties have provided, and those at this point
12 should provide the descriptions of 1 through 20 and
13 then also from 30 through 37.
14 In addition, during the course of this
15 proceeding so far we have also mar□ed Exhibits 21, 22,
16 and 23 so far. And 21, again, for the record, is the
17 description of employees duties.
18 22 are documents that were presented by the
19 County to the welfare fraud investigators, supervising
20 welfare fraud investigators, and as testified to by
21 Ms. Zaragoza.
22 Then 23 is a listing of the County
23 classifications and salary listing as of July 11, 2013.
24 We also now have as Exhibit 24 a copy of a
25 Memorandum of Understanding between the County and

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1 Riverside Sheriffs' Association, and this is the
2 addition of classifications of -- three classifications
3 to the Law Enforcement Unit. And this is a document as
4 of 2008.
5 And 25, Exhibit 25, this appears to be -- one
6 second. This is CalPERS' decision, and this cover
7 letter date is 2009. CalPERS' decision regarding
8 classification. And that's referred to as Joint
9 Exhibit 25.
10 We'll also have the following: Joint Exhibit
11 26 is an April 2012 denial of petition by the County.
12 Joint Exhibit 27 will be a copy of the public service
13 unit classification listing and then population of each
14 of the classifications. That will be 27A.
15 In addition, we're going to supplement the
16 current Exhibits 11 and 12 by providing Exhibits 11A
17 and 12A in each instance -- 11A, for example, will be a
18 population of the classifications that are listed in
19 the Exhibit 11. 12A will be a population of
20 exhibits -- of classifications in Exhibit 12. And that
21 will be the totality, then, of our evidentiary record.
22 We will have 1 through 27 and then 30 through 37.
23 (Joint Exhibits 24-27 mar□ed)
24 So we will be missing, in effect, two numbers
25 that will be void; two exhibit numbers will be void.

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1 All right. All of these are received into evidence.
 2 Certainly we have had some positions as to the
 3 probative value of those on the record, but they are
 4 received into the record. Or in evidence.
 5 Let's go off the record.
 6 (Discussion off the record)
 7 THE HEARING OFFICER: Bac on the record.
 8 The parties will file post-hearing briefs
 9 directly with the Hearing Officer. Briefs are
 10 currently calendared for 45 days following the date of
 11 transmittal as conveyed in a cover letter from the
 12 reporting agency to the parties.
 13 As far as the transcripts, the Hearing
 14 Officer shall receive an original plus one electronic
 15 version. Each of the parties will receive a copy.
 16 Do you want anything besides one hard copy?
 17 MS. ORTEGA: No.
 18 MR. ZAPPIA: That's sufficient for me.
 19 THE HEARING OFFICER: And the cost of the
 20 transcript will be born equally by both parties.
 21 And as far as the briefing themselves, in the
 22 event either party finds themselves in the position
 23 that the demands of life and reality creep in and need
 24 an extension, they're invited to discuss among
 25 themselves a reasonable extension and notify my office

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1 of any reasonable extension. I will grant any
 2 reasonable extension, obviously. Oay
 3 MR. ZAPPIA: Are we going to -- do you want
 4 to do reply briefs?
 5 THE HEARING OFFICER: Off the record.
 6 (Discussion off the record)
 7 THE HEARING OFFICER: At this point in time
 8 the parties have an opportunity to submit only one
 9 brief. But I represented to the parties that if after
 10 I exchange briefs either party finds itself, in
 11 reviewing the other party's briefs being confronted
 12 with an issue that they feel they did not have a chance
 13 to properly respond to, I will consider a request for
 14 reply briefs to allow for argument only as to any such
 15 issues. In that case, then we'll discuss any
 16 scheduling for that reply brief.
 17 All right. Anything else we need to address?
 18 MS. ORTEGA: Nothing on my end.
 19 MR. ZAPPIA: That's it.
 20 THE HEARING OFFICER: Then with that, we
 21 stand adjourned. I than you all very, very much.
 22 MS. ORTEGA: Than you.
 23 MR. ZAPPIA: Than you.
 24 (The proceedings concluded at 3:50 p.m.)
 25 □□□

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1 REPORTER'S CERTIFICATION
 2
 3 I, Margaret M. Bourgeois, Certified Shorthand
 4 Reporter, in and for the State of California, do hereby
 5 certify:
 6
 7 That the foregoing proceedings were reported by me
 8 stenographically and later transcribed into typewriting
 9 under my direction; that the foregoing is a true record
 10 of the proceedings taken at that time.
 11
 12 IN WITNESS WHEREOF, I have subscribed my name this
 13 30th day of July, 2013.
 14
 15
 16
 17 *Margaret M. Bourgeois*
 18 _____
 19 Margaret M. Bourgeois, CSR No. 11569
 20
 21
 22
 23
 24
 25

ATTACHMENT E

RESOLUTION No. 99-379

EMPLOYEE RELATIONS RESOLUTION

BE IT RESOLVED by the Board of Supervisors of the County of Riverside, State of California, in regular session assembled on September 7, 1999, pursuant to the Meyers-Milius-Brown Act (Government Code, Section 3500 et seq.) that the following policies, rules and regulations are adopted:

Section 1. TITLE. This Resolution shall be known as the Employee Relations Resolution of the County of Riverside.

Section 2. PURPOSE. The purpose of this Resolution is to promote the improvement of employee relations between the County of Riverside and its employees by the establishment of formal procedures not otherwise established by or pursuant to law or ordinance, to provide for the orderly and systematic presentation, consideration and resolution of employee relations matters concerning wages, hours, and other terms and conditions of employment, and to assure at all times the orderly and uninterrupted operations and services of County government.

Section 3. DEFINITIONS. As used in this resolution:

- a. BOARD means the Board of Supervisors of the county of Riverside.
- b. CONFIDENTIAL EMPLOYEE means any employee who may be privy to the decision-making process of County management affecting employee relations.
- c. CONSULT OR CONSULTATION means verbal or written communications or both for the purpose of presenting and obtaining views or advising of intended actions, as between County and a registered employee organization.
- d. COUNTY means the County of Riverside, the Riverside County Flood Control District, Riverside County Air Pollution Control District, and other special districts and agencies governed by the Board of Supervisors.
- e. DAY means calendar day unless otherwise stated.
- f. DEPARTMENT HEAD means a person who is elected to office or appointed or employed by the Board, or otherwise chosen as the principal employee of a department or district for the discharge of duties provided by law or the performance of functions pursuant to law.
- g. EMPLOYEE means any person employed by the County except elected

The foregoing is certified to be a true copy of a resolution duly adopted by Riverside County Board of Supervisors on the date therein set forth
GERALD A. MALONEY, Clerk of the Board

BY Margie [Signature] Deputy

9/21/99

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officers.

h. **EMPLOYEE ORGANIZATION** means an organization which includes employees of the County and which has as one of its primary purposes representing such employees in their relations with the County.

i. **EXCLUSIVE EMPLOYEE ORGANIZATION** means a registered employee organization which has the exclusive right to represent the employees in a representation unit pursuant to a vote of the employees in that Unit.

j. **FACT FINDING** means the investigation of an impasse by an impartial third party for the purpose of describing the issues in dispute, stating the positions of the parties, and making the findings of fact on issues in dispute. It is advisory in nature and shall not include recommendations as to settlement of the dispute unless so specified at the time it is agreed to be used.

k. **IMPASSE** means a deadlock in the meet and confer process between a recognized employee organization and the County over any matters subject to that process.

l. **MAJORITY EMPLOYEE ORGANIZATION** means a registered employee organization whose represented members comprise a majority of the employees in a unit and which has been certified within the unit as the only organization to represent the employees of that unit in meeting and conferring.

m. **MANAGEMENT** means the Board of Supervisors and department heads, and may include a limited number of other employees designated by the Board, who have primary responsibility for the formulation and administration of County policies and programs.

n. **MEDIATION** means the effort of an impartial third party, functioning as an intermediary, to assist the parties in reaching a voluntary resolution of an impasse through interpretation, suggestion, or advice.

o. **MEET AND CONFER** means the process whereby representatives of the County and of qualified employee organizations in good faith exchange information, opinions and proposals to reach timely agreement on wages, hours and other terms and conditions of employment, as contemplated by Government Code Section 3505.

p. **PROFESSIONAL EMPLOYEES** means employees engaged in work requiring specialized knowledge and skills attained through completion of a recognized course of instruction; including, but not limited to, attorneys, physicians, registered nurses, engineers, architects, teachers, and the various types of physical, chemical and biological scientists.

q. **REGISTERED EMPLOYEE ORGANIZATION** means an employee

organization which has been acknowledged by the County as an employee organization that represents employees of the County.

r. REPRESENTATION UNIT OR UNIT means a unit appropriate for employee representation as established in accordance with this Resolution.

s. REPRESENTED MEMBER means an employee who is a member of a recognized employee organization who has currently authorized that organization to represent him in employee relations with the County. Such status shall be subject to proof.

t. REPRESENTATIVE, depending on context, may mean a person who is authorized and designated in writing by a registered employee organization to represent the organization in dealing with the County; it may also mean such organization as representing its member employees in a representation unit; or it may mean or include the County representation.

u. SUPERVISORY EMPLOYEE means an employee, having authority to exercise independent judgment in the interest of the County to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or having the responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

Section 4. COUNTY REPRESENTATIVE. As designated by the Human Resources Director, the Employee Relations Manager shall be the principal representative of the County in employee relations matters and the official representative of the Board of Supervisors to meet and confer and to consult with recognized employee organizations. The Employee Relations Manager may temporarily delegate portions of these functions to qualified County personnel selected to assist him.

Section 5. EMPLOYEE RIGHTS. Subject to the limitations set forth in this Resolution, employees shall have the right to form, join and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employee relations.

Employees shall have the right to refuse to join or participate in the activities of employee organizations, and shall have the right to represent themselves individually in their employee relations with the County if they are not represented members at a registered employee organization.

The County and employee organizations shall not interfere with, intimidate, restrain, coerce, or discriminate against employees because of the exercise of their rights under this section.

Section 6. COUNTY RIGHTS

- a. The following rights and functions are vested exclusively in the County:
1. To determine the mission of each of its departments, institutions, boards and commissions, pursuant to law.
 2. To set standards of service to be offered to the public.
 3. To exercise control and discretion over its own organization and operations.
 4. To direct, discipline and discharge its employees, in accordance with law, ordinances and regulations.
 5. To relieve its employees from duty because of lack of work or for other legitimate reasons.
 6. To determine the methods, means and personnel by which its operations are to be conducted, including the performance thereof by contract, and to determine work loads and staffing patterns.
 7. To prescribe the qualifications for employment and determine whether they are met.
 8. To take all other action except as clearly and expressly otherwise provided for by or pursuant to this Resolution.
- b. The establishment, modification or exercise of County rights shall not be subject to the meet and confer process, but shall not preclude consultation as to the practical consequences that decisions on such matters may have on wages, hours or other terms and conditions of employment.

Section 7. CRITERIA FOR ESTABLISHING AN APPROPRIATE EMPLOYEE REPRESENTATION UNIT. In the determination of appropriate employee representation units, the following factors, among others, are to be considered:

1. Community of interest among the employees.
2. The history of employee relations in a unit and among other employees of the County.
3. The effect of the unit on efficient operations of County Service and sound employee relations.

4. Dividing any classification among two or more units is to be avoided wherever possible.

5. The existence of common skills and duties, comparable working conditions or similar educational requirements.

6. Each unit should be the largest feasible group of employees having an identifiable common or related interest without reference to geographical locations or the same supervisors.

7. No unit shall be established primarily on the basis of the extent to which employees in the proposed unit have organized.

Section 8. REPRESENTATION UNITS.

a. The following units are hereby established:

1. SUPERVISORY UNIT. Includes supervisory employees and employees having substantial managerial functions, major administrative control, or primary responsibility for the performance of an essential specific function. It does not include department heads.

2. PROFESSIONAL UNIT. Includes professional employees who perform work that is predominantly intellectual, varied and specialized in character (as opposed to routine mental, manual, mechanical, or physical work), which involves significant exercise of discretion and judgment in its performance, which may be of such a character that the output produced or the results accomplished may not be standardized in relation to a given period of time, and which requires knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher or specialized learning as distinguished from a general education and from vocational or other training in the performance of routine mental, manual or physical processes; includes employees who have completed the courses of specialized intellectual instruction and are performing related work under the supervision of a professional person and are awaiting required licensing or performing limited work experience in order to achieve full professional status.

3. LAW ENFORCEMENT UNIT. Peace officer employees who are safety members of the Public Employees Retirement System, and other classes of employees whose primary functions are directly related to law enforcement.

4. INSPECTION AND TECHNICAL UNIT. Includes work requiring use of specific skills, involving substantial academic preparation, involving or derived from extensive experience in related work in the inspection of facilities or conditions as to compliance with rules and regulations. Relates to techniques as opposed to a general or theoretical field of knowledge; employs practical knowledge related to the performance of

specific techniques.

5. TRADES, CRAFTS AND LABOR UNIT. Includes work which may include manual or equipment operation requiring thorough knowledge and skill in a project, process or operation or work; competence in one or more trades or crafts; production on single purpose jobs on machines or tools or other special equipment, which may include responsibility for a product or maintenance of equipment; tasks aimed at providing the physical or dexterous effort necessary to complete a specific work objective, which requires minimal exercise or repetition; includes jobs that are apprenticeable.

6. SUPPORTING SERVICES UNIT. Includes classes of positions performing a variety of ministerial functions in aid of the operations of the County government and its departments. The work may be done in an office or elsewhere and is normally performed under supervision or the guidance of specific regulations, standards, manuals, procedures or controlled by customary or usual practices; it includes making, keeping and using various kinds of written or machine records, giving, receiving and classifying information, and oral contact with the public on routine or informational matters, and may involve the exercise of limited discretion as to specific subject matter or limited supervision over others performing like work. The services are distinguished as being primarily basic processing activities, rather than supervisory, administrative, professional or technical services or those typical of crafts or trades or physical labor.

7. PROSECUTION UNIT. Attorneys engaged primarily in the prosecution of criminal litigation.

8. REGISTERED NURSES UNIT. Nurses with California Board of Nursing Education and Nurse Registration Certificate who perform professional nursing services.

9. PARA-PROFESSIONAL UNIT. Includes classes possessing some of the characteristics of professional employees, including substantial general education or extensive experience and training in professionally-oriented or sub-professional fields. It may include those who have demonstrated ability to assume significant responsibilities in a general way, as well as those who have had substantial but incomplete professional training.

10. PUBLIC SAFETY UNIT. Peace Officer employees of the Probation Department who are safety members of the Public Employees Retirement System.

11. LAW ENFORCEMENT MANAGEMENT UNIT. Supervisory and middle-management employees of the Sheriff's Department who are safety members of the Public Employees Retirement System.

b. Upon adoption of this Resolution, the Human Resources Director shall, in consultation with employee organizations, allocate all position classes (other than

department heads) among the established units, and report the result to the Board of Supervisors for confirmation, after which the composition of the units shall be final. The Human Resources Director shall allocate new classifications to units.

c The County reserves the right at any time to establish or permit the establishment of one or more executive, management or confidential units and to allocate positions or classes thereto from other units.

Section 9. REGISTRATION AND RECOGNITION OF EMPLOYEE ORGANIZATIONS.

a. REGISTRATION. An organization that desires to become a registered employee organization shall file with the Human Resources Director a written application signed by its president and secretary which shall include the following:

1. The names and mailing address of the organization.
2. The names and titles of all the officers of the organization, including directors or other governing board members, designating those who are employees of the County and their respective departments and work locations, and those who are employed by another employer.
3. A statement that the organization includes as its members employees of the County, or an agency governed by the Board, who have designated the organization to represent them, and a list of the current members who are such employees, the position title, and the County department or agency where each is employed.
4. A current copy of its constitution and/or by-laws which shall contain a statement that the organization has as one of its purposes representing its members in their employment relations.
5. A statement that the organization has no restriction on membership based on race, color, creed, national origin, political affiliation, sex, or age.
6. A statement setting forth whether or not the organization is a chapter or local affiliate of a regional, state, national, or international organization; and, if so, the name and address of each such related organization.
7. A statement that a copy of the Employee Relations Resolution has been received by the organization.
8. A designation of one name and address to which notice delivered or sent by United States mail will be deemed sufficient notice to the organization for any purpose.

9. A designation, signed by the president and secretary, of those persons who are authorized representatives of the organization in any communication to the County government.

10. A designation of the unit or units in which it represents its members.

When an employee organization has fulfilled the foregoing requirements as determined by the Human Resources Director, he shall notify the Board and acknowledge to the organization that it is a registered employee organization.

A recognized employee organization under the preceding employee relations resolution shall be a registered employee organization under this Resolution for each unit in which it has represented members, provided that within 15 days after the composition of the units is final it shall designate the units.

b. MAJORITY RECOGNITION. Any registered employee organization may in writing request recognition as the majority representative of a unit. Upon proof that its represented members comprise a majority of the employees in the unit, the Human Resources Director shall certify recognition of the organization as the majority representative of the unit. Thereafter, the Human Resources Director shall be required to meet and confer only with such majority organization.

c. EXCLUSIVE RECOGNITION. Any registered employee organization, including a majority representative, may in writing request recognition as the exclusive representative of a unit, upon proof to the Human Resources Director that its represented members comprise 30 percent or more of the employees in the unit.

The Human Resources Director shall call an election of the employees in the unit, to be held in not less than 30 days, and shall give written notice thereof to all affected employee organizations and by posting notice in departments and by other means likely to come to the attention of all employees in the unit. In case of necessity, he may postpone the election date.

Any other registered employee organization, not less than 20 days before the date first fixed for the election, upon written request and proof that its represented members comprise 15 percent of the employees in the unit, shall have its name placed on the ballot. The ballot shall also include a choice of "no organization".

The Human Resources Director shall arrange for the election to be conducted by the State Conciliation Service, the County Clerk, or other qualified agency at such times and places as shall afford all employees in the unit a reasonable opportunity to cast a secret ballot in person or by mail. Regular employees within the unit who were employed during the pay period last ending before the election was called and are still employed or on authorized leave of absence on the date of the election shall be entitled to vote.

The Human Resources Director, on his own initiative, may call an election to determine exclusive representation.

The Human Resources Director shall arrange for the election to be conducted by the State Conciliation Service, the County Clerk, or other qualified agency at such times and places as shall afford all employees in the unit a reasonable opportunity to cast a secret ballot in person or by mail. Regular employees within the unit who were employed during the pay period last ending before the election was called and are still employed or on authorized leave of absence on the date of the election shall be entitled to vote.

An organization receiving a majority of the votes cast shall be certified by the Human Resources Director as the exclusive representative of the employees in the unit for all purposes of this resolution and shall be so recognized.

If there is no majority among three or more choices, a run-off election shall be held as between the two choices receiving the highest votes.

d, MAINTENANCE OF REGISTERED STATUS. A registered employee organization shall furnish to the Human Resources Director the following:

1. Not later than February 1 of each year, a complete list as of the preceding January 1 of the names of its represented members, with the unit and department where employed, for each.

2. Not later than May 1, August 1, and November 1 of each year, a like supplemental list of members added during the preceding quarter, and a list of members terminated during the preceding calendar quarter, or a statement that no change has occurred.

3. Upon request, written proof of membership, and of authorization to represent the member in employee relations matters, for any or all members claimed, and the date the membership commenced and the authorization to represent was given. Authorization to represent is not presumed from the fact of membership, but may be established by a writing authorizing representation, signed and dated by the member, or other proof acceptable to the Human Resources Director. Membership may be confirmed by payroll dues deduction authorization on file with the County, or by proof of direct payment of dues.

4. Within 10 days after it has occurred, any change in the organization's constitution or by-laws as previously filed, or any change of name and address for mailing notice to the organization.

5. From time to time, a reasonably prompt response to requests for information or comment sent by the Human Resources Director on matters within the subject matter of this Resolution.

e. TERMINATION OF REGISTRATION. An employee organization shall cease to be registered upon order of the Board made after reasonable notice and opportunity to be heard, for:

1. Repeated or long continued failure or refusal to comply with any of the provisions of subsection d. of this section.
2. Intentional furnishing of false information to the County in any report required by this Resolution, or intentionally misrepresenting membership of an employee or that he has authorized representation by the organization.
3. Participating in, encouraging or condoning any strike, slowdown or work stoppage by employees.
4. Ceasing to represent employees of the County, which may be presumed from failure to respond to inquiries after request to do so.

Termination of registration terminates recognition as a majority employee organization or an exclusive employee organization.

Registration of an organization may be suspended by the Human Resources Director, after reasonable notice of default and failure to cure the same, for non-compliance with sub-section d. of this section, the suspension to continue until the default is cured or registration is terminated.

Section 10. MODIFICATIONS OF UNITS.

1. A registered employee organization may propose the modification of an established unit by filing a request with the Human Resources Director, accompanied by proof that its represented members comprise 15 percent of the employees in the unit. The Human Resources Director may also propose a modification.
2. No such proposal shall be submitted except between July 1 and September 1, for immediate determination.
3. The Human Resources Director shall give notice of the proposed modification in writing to the affected organizations of the unit or units and shall post notice in a place or places to which affected employees will have access.
4. If no challenge as provided below is filed and the Human Resources Director determines that the requested modified unit or units are not appropriate, he shall notify the employee organization which requested the unit of his determination and the reason therefor in writing. The organization may within seven days, modify its request or request the Human Resources Director to arrange a hearing by the Board on its original

request.

5. Within 15 days after the notice to employees is posted, any other registered employee organization may challenge the appropriateness of the proposed unit or units and request a different unit or units. The challenge shall be filed with the Human Resources Director and must be accompanied by proof that the represented members of the organization comprise 15 percent of the employees, within any unit proposed by the challenging organization.

6. If a challenge is filed, the Human Resources Director shall notify the organization which submitted the original request for modification of the unit. If an amended request for modification is not filed within seven days of such notice, the original request for modification and the challenge shall be submitted to the Board as provided below. Upon the filing of an amended request, the original request shall be deemed revoked and the amended request shall be considered on its own merits as if originally filed.

7. If a challenging request has been filed and the challenge has not been resolved by amendment or withdrawal, the Human Resources Director shall submit the request and the challenge to the Board. The Board shall hold a hearing on the request and challenge, at which time the organization which filed the modification request, and the challenging organization shall be heard and the Human Resources Director shall submit his recommendations. The Board shall make final determination on the appropriateness of the representation unit or units.

Section 11. PROCEDURE FOR DECERTIFICATION OF EXCLUSIVE EMPLOYEE ORGANIZATION. A Decertification Petition alleging that the incumbent Exclusive Employee Organization no longer represents a majority of employees in an established appropriate unit may be filed with the Human Resources Director only during the thirty (30) day period commencing one hundred eighty (180) days and ending one hundred fifty (150) days prior to the termination date of a Memorandum of Understanding then in effect. A Decertification Petition may be filed by two or more employees or their representative, or an employee organization, and shall contain the following information and documentation declared by the duly authorized signatory under penalty of perjury to be true, correct and complete:

a. The name, address and telephone number of the petitioner and a designated representative authorized to receive notices or requests for further information.

b. The name of the established appropriate unit and of the incumbent Exclusive Employee Organization sought to be decertified as the representative of that unit.

c. An allegation that the incumbent Exclusive Employee Organization no longer represents a majority of the employees in the appropriate unit, and any other relevant and material facts relating thereof.

d. Proof of employee support that at least forty (40) percent of the employees in the established appropriate unit no longer desire to be represented by the incumbent Exclusive Employee Organization. Such proof shall be submitted for a confirmation to the Human Resources Director within the time limits specified in the first paragraph of this Section and all signatures on a Decertification Petition shall indicate the date when signed by the employees. All signatures on the Petition shall be obtained within a thirty (30) day period prior to filing the Decertification Petition with the Human Resources Director.

An employee organization must include in its petition the information required under Section 9 for Recognition Petitions.

The Human Resources Director shall initially determine whether the Petition has been filed in compliance with the applicable provisions of this Section 11. The Human Resources Director's determination that the procedural and/or time line prerequisites have not been met shall be conclusive and not subject to appeal.

Section 12. RESCISSION OF AGENCY SHOP. Pursuant to the provisions of Government Code section 3502.5, one Agency Shop decision election may be conducted during the term of the labor contract or memorandum of understanding between the labor organization and the County that establishes an Agency Shop or modified Agency Shop. The Agency Shop or Modified Agency provision in the labor contract or memorandum of understanding which is in effect may be rescinded by majority vote of all employees in the bargaining unit covered by such memorandum of understanding or labor contract provided that:

1. A request for such vote is supported by a petition containing the signatures of at least 30% of the employees in the bargaining unit affected. All signatures on the petition shall be obtained within a thirty (30) day period prior to the filing of the rescission petition with the Human Resources Director. The Human Resources Director shall determine whether the petition has been filed in compliance with the applicable provisions herein. The Human Resources Director's determination that the procedural and/or time line prerequisites have or have not been met shall be conclusive and not subject to further review or appeal.

2. The vote shall be conducted by secret ballot within sixty (60) days of the filing of the petition with the Human Resources Director. The vote shall be conducted by a State mediator, who shall establish all rules and procedures for the conducting of the election.

3. Such a rescission vote may be taken any time during the term of such labor contract or memorandum of understanding, but in no event shall there be more than one

vote taking during such term.

Section 13. TIMETABLE FOR REQUESTS. Requests and proposals from qualified employee organizations for changes in wages, hours, and other terms and conditions of employment for employees generally shall be submitted to the Human Resources Director on or before February 15 of each year or by mutual agreement a later date (unless there exists a memorandum of understanding to include the next year), so that proposals can be properly considered and acted upon by May 15, before the proposed County budget is submitted to the Board and in sufficient time for salary changes to take effect in early July.

Section 14. MEETING AND CONFERRING.

a. Employee organizations which have been certified as the majority or exclusive employee organization in an established representation unit shall be exclusively entitled to meet and confer on wages, hours and other terms and conditions of employment for the unit. Recognized employee organizations or individual employees may consult with the Employee Relations Manager on wages, hours and other terms and conditions of employment, and may meet and confer if there is no other majority or exclusive employee organization certified for the unit.

b. Meeting and conferring shall not be required on any subject preempted by Federal or State law nor on employee or County rights as defined herein. Proposed amendments to this Resolution are excluded from the scope of meeting and conferring but are subject to consulting.

Section 15 IMPASSE PROCEDURE.

a. Impasse procedures shall not be requested by either party until all attempts at reaching an agreement through meeting and conferring have been unsuccessful.

1. The parties may mutually agree to request the assistance of a mediator from the California State Conciliation Service or any other mutually agree upon mediator.

2. The parties may mutually agree to request the assistance of a fact-finder.

3. The parties may mutually agree to any other impasse-resolving procedure.

4. The Board may determine on the action to be taken with or without a hearing thereon.

b. A single fact-finder may be selected by the mutual agreement of the parties.

If the parties cannot agree upon a fact-finder, a list of seven fact-finders may be obtained from the California State Conciliation Service, the American Arbitration Association, or some other agreed upon source, and each party shall alternatively strike one name from the list until only one name remains. The parties shall jointly instruct the fact-finder in writing on the facts they want ascertained and the issues on which they want his recommendations, if any.

c. The report of the fact-finder shall be confidential and submitted directly to the parties concerned. The parties shall attempt to reach an agreement by negotiation on the basis of the fact-finder's report. If the parties have not reached an agreement within seven days after receiving the fact-finder's report, they shall, within the next seven days, submit in writing their positions on the unresolved issues to the Board. The Human Resources Director shall submit a copy of the fact-finder's report to the Board along with his own recommendations. The employee organization may also submit a report. The Board then shall make the final decision.

d. Nothing shall preclude the fact-finder from attempting to resolve the impasse by mediation at any stage of the proceedings prior to the issuance of the fact-finding report.

e. The cost of the mediation and fact-finding proceedings shall be divided equally between the parties.

Section 16. EMPLOYEE RELEASE TO MEET AND CONFER. Qualified employee organizations may have up to three employees released from work at any one time to meet and confer with County representatives by arrangements through the Human Resources Director with department heads concerned made at least two working days in advance. The limitations of three employees and two days advance notice may be waived by the Human Resources Director with approval of the department head. The use of official time for this purpose shall be reasonable in amount and shall not substantially interfere with the performance of County services as determined by the County.

Section 17. DUES DEDUCTION FOR EMPLOYEE GROUPS.

a. A registered employee organization having and proving represented members equal to 15% of a unit may have the regular dues of its members in the unit deducted from the employees' paychecks. Membership dues deductions shall be made only upon the written authorization of the individual employee. Dues and other deductions previously authorized for an employee organization may continue to be deducted for 6 months without proof of percentage upon becoming registered in a unit. Nothing herein shall affect previously authorized dues or other deductions for organizations which are not employee organizations as defined in this Resolution, or for members of employee organizations who are not represented members.

b. An employee organization shall refund to the County any amounts paid to it in error upon presentation of supporting evidence.

c. The County reserves the right to assess a service charge not exceeding County's costs for processing dues deductions.

d. Nothing herein shall be construed as restricting the right of an employee to revoke his authorization for dues deductions.

e. Employee organizations which engage in, encourage or condone a strike or other concerted stoppage or slowdown of work against the County may have their membership dues deductions privileges suspended or revoked by the Board on recommendation of the Human Resources Director.

Section 18. USE OF BULLETIN BOARDS. Space may be made available to registered employee organizations on departmental bulletin boards within the representation unit provided such use is reasonable and does not interfere with the needs of the department. Notices shall be dated and signed by the employee organization or its representative responsible for their issuance. The privilege does not extend to individual members of an organization.

The posting and removal of bulletin board material must be maintained in a timely fashion. The County, through Human Resources Director, reserves the right to suspend or cancel bulletin board privileges for abuse.

Section 19. USE OF MEETING PLACES. Employee organizations shall be granted the use of County facilities for meetings composed of County employees, provided such meetings are held outside regularly scheduled working hours for the group which is meeting and provided space can be made available without interfering with County needs. Employee organizations desiring to use County facilities for such meetings shall obtain the permission of the appropriate County officials before using such facilities. Meeting places shall be left in an orderly manner upon completion of the meeting.

Section 20. ACCESS TO WORK AREA. Representatives of qualified employee organizations may be allowed access to work locations when necessary to represent an employee on a grievance or to communicate briefly with an employee on matters within the scope of representation, provided that advance arrangement including disclosure of the purpose is made with the department head or supervisor in charge of the work area, and that the visit does not unreasonably interfere with County business nor use an excessive amount of time.

Section 21. ADMINISTRATION.

a. The Human Resources Director shall have the primary authority for the administrative interpretation of this Resolution. The Human Resources Director is authorized to establish procedures to carry out the intent of this Resolution.

provisions of Section 923 of the California Labor Code applicable to employees of the County.

Section 22. SEVERABILITY. If any provision of this Resolution or the application of such provision to any person or circumstance shall be held invalid, the remainder of this Resolution or the application of such provision to persons and circumstances other than those to which it is held invalid shall not be affected thereby.

Section 23. SUPPRESSION. The Employee Relations Resolution No. 89-350 is hereby superseded.

Roll Call:

Ayes: Buster, Tavaglione, Venable, Wilson and Mullen

Noes: None

Absent: None