

MINUTES OF THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA



9.16

9:30 a.m. being the time set for public hearing on the recommendation from Human Resources regarding Public Hearing on the County's Request for Appeal Related to the Grievance concerning the Revision of Board Policy C-10 Alcohol and Drug Abuse Policy and Take Home Vehicles in the Office of the District Attorney, the chairman called the matter for hearing.

The following people spoke on the matter.

Edward Zappia, Human Resources Representative

Adam Chaikin, District Attorney Representative

On motion of Supervisor Benoit, seconded by Supervisor Buster, and duly carried by unanimous vote, IT WAS ORDERED that the appeal of the Riverside County Human Resources Department to the Decision of Arbitrator Louis Zigman, Esq., in Grievance No. R0910-006 is granted. The Board of Supervisors rejects the Arbitrator's Decision and proposed award. The Board's decision is based on the attached Findings and Conclusions, the administrative record and oral arguments of the parties.

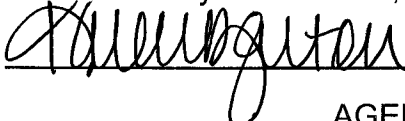
Roll Call:

Ayes: Buster, Tavaglione, Benoit, and Ashley
Noes: None
Absent: Stone

I hereby certify that the foregoing is a full true, and correct copy of an order made and entered on September 13, 2011 of Supervisors Minutes.

WITNESS my hand and the seal of the Board of Supervisors
Dated: September 13, 2011
Kecia Harper-Ihem, Clerk of the Board of Supervisors, in
and for the County of Riverside, State of California.

(seal)

By:  Deputy

AGENDA NO.
9.16

*REVISED

xc: Co Co., HR., DA., COB

Riverside County Board of Supervisors
Findings and Conclusions in Support of Decision to Reject the
Arbitrator's Award in Grievance No. R0910-006

The Riverside County Board of Supervisors: (1) having considered the complete administrative record submitted on August 3, 2011 by the Human Resources Department pursuant to Article XI, Section 12(J) of the Memorandum of Understanding ("MOU") between the County and the Riverside Sheriffs Association ("RSA") for the Law Enforcement Unit ("LEU"); including the appeal letter, attached pleadings, exhibits of both parties and hearing transcript; (2) having reviewed the opposition filed with the Board by Grievant RSA on August 11, 2011; and (3) having heard oral arguments by counsel for both parties at a public hearing before the Board on September 13, 2011, issues the following findings and conclusions.

I.

FINDINGS

1. The 2005-2008 Memorandum of Understanding between the County and the RSA for the LEU excludes from grievances any adoption, amendment, ordinance, rule, regulation, or policy established by the Board. (County Exhibit 5, MOU, Article XI, Section 2 (2).)

2. County Board Policy D-10 is not negotiated or agreed upon between the County and any County employee union or association. (County Exhibit 10.)

3. There is no provision in the negotiated 2008-2011 County/RSA-LEU MOU referencing overnight retention of County-owned vehicles. (County Exhibit 5.) It was undisputed that the negotiated MOU between the parties does not contain any reference to overnight retention of County vehicles. (County Exhibits 4, 5.)

a. Article III of the 2008-2011 County/RSA-LEU MOU states:

"WAIVER OF BARGAINING

The parties acknowledge that during the negotiations which preceded this Memorandum, each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law as a subject open to the meet and confer process and that the full and complete agreement and understanding arrived at by the parties after the exercise of that right and opportunity, is set forth in this Memorandum. Except as modified herein, or as otherwise required, by law, existing wages, hours and other terms and conditions of employment set forth in the County Salary Ordinance and related resolutions and regulations shall continue in effect. Terms used in this Memorandum shall have the same meaning as like terms used in the County Salary Ordinance and related resolutions and regulations. Both parties, for the life of this Memorandum, each voluntarily and unqualifiedly waive the right and each agree

the other shall not be obligated to meet and confer with respect to any subject or matter not specifically referred to or covered in this Memorandum, even though such subjects or matter may not have been within the knowledge or contemplation of either or both of the parties at the time they negotiated and signed this Memorandum." (County Exhibit 5, page 10;emphasis added.)

4. There was no provision in the negotiated 2005-2007 County/RSA-LEU MOU referencing overnight retention of County-owned vehicles. (County Exhibit 4.)

a. Article III of the 2005-2007 MOU states:

WAIVER OF BARGAINING

"The parties acknowledge that during the negotiations which preceded this Memorandum, each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law as a subject open to the meet and confer process and that the full and complete agreement and understanding arrived at by the parties after the exercise of that right and opportunity, is set forth in this Memorandum. Except as modified herein, or as otherwise required, by law, existing wages, hours and other terms and conditions of employment set forth in the County Salary Ordinance and related resolutions and regulations shall continue in effect. Terms used in this Memorandum shall have the same meaning as like terms used in the County Salary Ordinance and related resolutions and regulations. Both parties, for the life of this Memorandum, each voluntarily and unqualifiedly waive the right and each agree the other shall not be obligated to meet and confer with respect to any subject or matter not specifically referred to or covered in this Memorandum, even though such subjects or matter may not have been within the knowledge or contemplation of either or both of the parties at the time they negotiated and signed this Memorandum."

5. The County Employee Relations Resolution, in pertinent part, states:

"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.

6. To determine the methods, means and personnel by which its operations are to be conducted.

b. The establishment, modification or exercise of County rights shall not be subject to the meet and confer process.” (County Exhibit 21.)

6. Pursuant to Board Policy D-10, each year various County Departments submit annual requests to the County Executive Office for authorization for various employee classifications to retain County-owned vehicles overnight at home. Each such Departmental request includes the number of vehicles requested for overnight retention, and the reasons for the request(s). Each year the requests are evaluated and granted or denied by the Executive Office in accordance with Board Policy D-10. (County Exhibits 10, 12, 15.)

7. In 2009 the County suffered substantially decreasing revenues and increasing deficits. (County Exhibits 12, 13, 14, 18.)

8. In 2009 this Board directed staff to evaluate and implement numerous cost savings measures, including a study of the cost of overnight retention of County-owned vehicles, as well as potential cost savings for reducing authorized overnight retention of County-owned vehicles. Prior to revising Policy D-10, the County prepared a report analyzing numerous cost savings suggestions, arising from the “Safeguard County of Riverside Against Preventable Expenses” program (“The SCRAPE report”). (County Exhibit 12.) Among many findings, the SCRAPE report found that Riverside County had one of the highest numbers of take home vehicles in the State of California. (County Exhibit 12, page 1.) A County Internal Audit Report concluded that County take home vehicles often were not improving County services at all; that take home vehicles were being authorized for employees who never responded to emergencies; and that reducing take home vehicles in 2009-2011 resulted in cost savings of \$11.2 million. (County Exhibit 12, page 2.)

9. In 2009 the County revised Board Policy D-10 “Overnight Retention of Vehicles” to impose greater restrictions on authorized overnight retention of County vehicles. (County Exhibits 10, 15.)

10. Both the 2003 and revised 2009 versions of Board Policy D-10 expressly reserved the County’s right to establish the limited circumstances for authorizing overnight retention of County vehicles: “when in the best interest of the County through improved services and/or reduced costs.” (County Exhibit 10, page 9.2; County Exhibit 15, page 12.3.)

11. The 2009 revisions to Policy D-10 imposed tighter restrictions for authorizing take home vehicles to save costs in times of decreasing revenues and increasing deficits, particularly since the SCRAPE report and Internal Audit concluded that authorization for take home vehicles had escalated over the years to include many employees in classifications who were neither on-call nor emergency or first responders. (County Exhibits 12, 13, 15.)

12. By 2009, authorized overnight retention of County vehicles in the former District Attorney’s office had escalated to 160 take home vehicles for 160 employees at a cost of nearly

\$2.4 million. (County Exhibit 16, page 8.) After re-evaluating the circumstances warranting overnight retention of County vehicles for DA Investigators, considering the County's best interests and cost, the number of take home vehicles authorized in the DA's office was substantially reduced to 3 County vehicles shared among 30 DA employees (mostly assigned to Homicide), at a savings of about \$850,000.00. (County Exhibit 16, page 8.) This change did not impact DA Investigators' access to use of County cars during business hours for business purposes. *It simply restricted DA Investigators' personal use of County vehicles to commute to and from work, and the accompanying County maintenance and fuel expenses.*

13. On March 30, 2005, RSA executed a settlement agreement pertaining to overnight retention of County-owned vehicles for Bomb Squad Unit Officers and K-9 Officers. The agreement stated that the County would not make any changes to any vehicle or transportation policies within the scope of bargaining prior to meeting and conferring with RSA. (County Exhibit 9.)

14. Sometime between 2007 and 2010 the former District Attorney posted a flyer for the position of Senior District Attorney Investigator which identified take-home vehicles as a perk of the position. (County Exhibit 25.) There was no evidence that any Senior District Attorney was hired pursuant to this posting.

15. On August 24, 2009 RSA filed Grievance No. R0910-006 re RSA/District Attorney Investigators Overnight Retention of County Vehicles argued that the County could not revise its own Board Policy regarding permissible usage of the County's own vehicles without meeting and conferring with RSA. (County Exhibit 1.) RSA argued that: (1) because the County had granted many DA Investigators the privilege of overnight retention of County vehicles for an extended period of time, it had become an implied term and condition of employment in the governing MOU subject to mandatory negotiations (i.e., a "past practice"). (County Exhibit 1.) Otherwise, RSA argued that many DA investigators may now be required to buy or lease their own personal vehicles for personal use, and to pay their own vehicle fuel and maintenance expenses for commuting. (Exhibit F, Hearing Transcript, page 10, lines 12-17); (2) the "waiver clause" of the MOU, which expressly limits the MOU to the terms expressly set forth within the MOU, should act to incorporate Board Policy D-10 into the MOU; (3) a 2005 settlement between the parties involving only K-9 and bomb squad officers provided that the County would negotiate provisions pertaining to overnight retention of vehicles (County Exhibit 9); and (4) one job posting created by former DA identified take home vehicle as a job perk. (County Exhibit 25.)

16. After exhausting the internal grievance process in 2008-2011 County-RSA-LEU MOU, on July 19, 2011 an arbitrator sustained the grievance, finding that the County was required to meet and confer with RSA before revising Board Policy D-10 in 2009. The Arbitration Decision and Award: (1) affirmed that the matter was the proper subject of a grievance (Exhibit 1, Arbitration Decision and Award, page 7); and (2) concluded that the County's having provided take-home vehicles to DA Investigators for a long period of time made it an implied and binding condition of their work subject to negotiation. (Exhibit 1, Arbitration Decision and Award, page 30.)

II.

CONCLUSIONS

1. This matter is not grievable pursuant to the plain language of the MOU excluding Board Policies from the grievance procedure.

2. The County's unilateral revisions to Board Policy D-10 did not breach any provision in the 2008-2011 County-RSA-LEU MOU.

3. County Board Policy D-10 is not negotiated and thus is not within the scope of bargaining. Thus, there was no requirement that the County negotiate changes to the policy with any County employee union or employee association. The County's governing Employee Relations Resolution ("ERR) expressly reserves management's right to exercise control over its own operations, including the methods and means by which its personnel are to carry out operations.

4. There was no "past practice" of authorizing requests for overnight retention of County-owned vehicles making it an implied term and condition of the County/RSA-LEU MOU.

a. There was no vague or ambiguous term in the MOU requiring an analysis of "past practice" to determine if overnight or personal usage of County vehicles was intended by any term of the MOU.

b. The waiver clause of the MOUs precludes assertion of any prior understanding or past practice.

c. Board Policy D-10 policy applies County-wide and not just to RSA and/or DA Investigators.

d. The County has the exclusive right under the California Constitution to manage and direct its own funds, including those expended towards employees' wages, hours and other terms and conditions of employment. (*County of Riverside v. Superior Court (Riverside Sheriffs Association)* (2003) 30 Cal.4th 278, 285-286); *Dimon v. County of Los Angeles* (2008) 166 Cal.App.4th 1276; [holding that even the State Legislature lacks the authority to provide for compensation of County employees over the County].)

5. The County was not bound in 2009 to negotiate overnight retention of County vehicles with all RSA members by the settlement agreement in 2004 involving bomb squad and canine officers. The settlement agreement pertained to bomb squad and canine officers, and was superseded by the 2008-2011 MOU under any circumstances.

6. The County was not bound in any way by an unauthorized job flyer by the prior District Attorney offering a take home vehicle as a perk of the position of Senior District Attorney Investigator. The County and not the District Attorney retain control over County budgetary and personnel matters. There was no evidence submitted that the County ever

delegated this to the former District Attorney. There was no evidence that any affected District Attorney Investigator was hired pursuant to that flyer. (*Hicks v. Board of Supervisors* (1977) 69 Cal.App.3d 228, 234.)

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



FROM: Human Resources Department

SUBMITTAL DATE:
August 3, 2011

SUBJECT: County's Request for Appeal related to the grievance concerning the revision of Board Policy C-10 and take home vehicles in the Office of the District Attorney.

RECOMMENDED MOTION:

- (1) That the Clerk of the Board set a public hearing within 45 days and notify both the Human Resources Department and the Riverside Sheriffs' Association of the date the matter will be heard by the Board.
- (2) That the Board of Supervisors receive and consider the recommendation of the Human Resources Department to reject the decision by Arbitrator Louis M. Zigman, Esq., and deny the grievance.

BACKGROUND: On or about July 19, 2011, an advisory arbitration opinion was issued by Mr. Louis Zigman, Esq. Pursuant to grievance procedure between the parties set out below and contained in the 2008-2011 MOU, the County may appeal the decision of the arbitrator to the Board of Supervisors within fifteen (15) calendar days of the date of the arbitrator's award.

Barbara A. Olivier

Barbara A. Olivier
Asst. County Executive Officer/Human Resources Dir.

FINANCIAL DATA	Current F.Y. Total Cost:	\$ N/A	In Current Year Budget:	N/A
	Current F.Y. Net County Cost:	\$ N/A	Budget Adjustment:	N/A
	Annual Net County Cost:	\$ N/A	For Fiscal Year:	2011/2012

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

C.E.O. RECOMMENDATION:

APPROVE

BY: *Bill Luna*

Bill Luna

County Executive Office Signature

3)

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Stone, seconded by Supervisor Buster and duly carried, IT WAS ORDERED that the above matter is approved as recommended, and is set for public hearing on Tuesday, September 13, 2011, at 9:30 a.m.

Ayes: Buster, Stone, Benoit and Ashley
Nays: None
Absent: Tavaglione
Date: August 16, 2011
xc: HR, COB

Kecia Harper-Ihem
Clerk of the Board
By: *Kecia Harper-Ihem*

Deputy

ATTACHMENTS FILED WITH THE CLERK OF THE BOARD District: _____ Agenda Number: _____

9.16

Departmental Concurrence

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

BACKGROUND continued:

The Memorandum of Understanding for the Law Enforcement Unit, specifically Article XI, Section 12, provides the following:

- J. Either the Human Resources Department or RSA may appeal the decision of the arbitrator to the Board of Supervisors within fifteen (15) calendar days of the date of the arbitrator's award. All appeals must include a copy of the award. A copy of the appeal, and all documents submitted to the Board of Supervisors in support thereof, shall be served on the respondent by the appellant at the time the appeal is filed. The respondent shall have ten (10) calendar days from date of the receipt of the appeal in which to file and serve its written opposition, if any. The Board of Supervisors shall hear and decide the appeal within forty-five (45) calendar days of the date of the appeal. The Clerk of the Board of Supervisors shall give reasonable notice to both parties of the date the matter will be heard by the Board. Both parties shall be given a minimum of fifteen minutes to present oral argument in favor of their respective positions; however, no additional testimony will be taken.

The Board of Supervisors may either accept or reject the arbitrator's decision, or accept part of the decision and reject the rest. If the Board of Supervisors rejects all or part of the arbitrator's decision, the Board shall state its reasons for rejection in a written decision. The decision of the Board of Supervisors shall be the final step in these administrative procedures. If RSA is dissatisfied with the Board's decision it may bring an action in Superior Court to enforce the MOU.

In the event that neither party appeals within fifteen (15) calendar days of the date of the arbitrator's award, the Arbitrator's Award shall be final and binding on the parties. In the event that Human Resources appeals but the Board of Supervisors does not rule on the appeal within forty-five (45) calendar days of the appeal, the arbitrator's ruling shall be final and binding. In the event that RSA appeals but the Board of Supervisors does not rule on the appeal within forty-five (45) calendar days, RSA will have exhausted its administrative remedies and may bring an action in Superior Court to enforce the MOU.

For the reasons set forth in Attachment A, the County urges the Board of Supervisors to reject the advisory opinion of the arbitrator. A copy of the advisory arbitration opinion issued by Mr. Zigman is included as Attachment B. The positions of both parties are set forth in their post-hearing briefs filed with the arbitrator and are included as Attachment C (County of Riverside) and Attachment D (Riverside Sheriffs' Association) hereto.

Riverside County Board of Supervisors
Request to Speak

15 minutes!

Submit request to Clerk of Board (right of podium),
Speakers are entitled to three (3) minutes, subject
Board Rules listed on the reverse side of this form.

SPEAKER'S NAME: Adam Chaitin

Address: 3258 4th Ave San Diego, CA
(only if follow-up mail response requested)

City: San Diego Zip: 92103

Phone #: 6192976900

Date: 9/13/11 Agenda # 9.16

PLEASE STATE YOUR POSITION BELOW:

Position on "Regular" (non-appealed) Agenda Item:

Support Oppose Neutral
RSA opposes Human Resource's appeal

Note: If you are here for an agenda item that is filed
for "Appeal", please state separately your position on
the appeal below:

Support Oppose Neutral
15 RSA opposes Human Resource's
I give my 15 minutes to: Riverside Sheriff's Association appeal
(RSA)

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
 Mr. Ed Zappia
 The Zappia Law Firm
 333 S. Hope St. 35th Floor
 Los Angeles, CA 90071

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent
E. P. Floney Addressee

B. Received by (Printed Name)
E. P. Floney

C. Date of Delivery
8-28-11

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below No

RECEIVED RIVERSIDE COUNTY
 CLERK / BOARD OF SUPERVISORS
 AUG 3 2011

3. Service Type
 Certified Mail
 Registered Mail
 Insured Mail
 Express Mail
 Return Receipt for Merchandise
 Signature Required

4. Restricted Delivery? (Extra Fee) Yes

2. Article Number (Transfer from service label)
 7010 2780 0001 1472 3412

PS Form 3811, February 2004

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
 Adam E. Clarkin, ATTY.
 Hayes & Cunningham
 3258 Fourth Ave.
 San Diego, CA 92103

COMPLETE THIS SECTION ON DELIVERY

A. Signature X
 Agent
 Addressee

B. Received by (Printed Name) Date of Delivery

D. Is delivery address different from return address? Yes No
 If YES, enter delivery address below

3. Service Type
 Certified Mail Registered Insured Mail
 Registered Mail Registered Mail for Merchandise
 Restricted Delivery? (Extra Fee) Yes No

2. Article Number 7010 2780 0001 1472 3429
 (Transfer from service label)

PS Form 3811, February 2004
 Domestic Return Receipt