

Exclusive Representative.

HEARING HELD: June 21-22, 2017

RSA Panel Member: Douglas Olins, Esq.

FACT-FINDING REPORT

BACKGROUND

1. The County of Riverside ("County") is a municipality within the meaning of Government Code Section 3505.5(d)).
2. The Riverside Sheriffs Association ("RSA") is a recognized employee organization and has been duly recognized as the representative of the County's sheriffs bargaining unit.
3. The parties to this factfinding have complied with the public notice provisions of Government Code section 3505.4
4. The parties have complied with the selection of the Factfinding Panel and are timely and properly before the Panel by agreement to waive the timelines for holding the panel hearing.
5. The parties have complied with all the requirements for selection of the Factfinding panel and have met or waived the statutory time limitations applicable to this proceeding.

GUIDING CRITERIA

- (1) State and federal laws that are applicable to the employer.
- (2) Local rules, regulations, or ordinances.
- (3) Stipulations of the parties.
- (4) The interests and welfare of the public and the financial ability of the public agency.
- (5) Comparison of the wages, hours, and conditions of employment of the employees involved in the factfinding proceeding with the wages, hours, and conditions of employment of other employees performing similar services in comparable public agencies.
- (6) The consumer price index for goods and services, commonly known as the cost of living.
- (7) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays, and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- (8) Any other facts, not confined to those specified in paragraphs (1) to (7), inclusive, which are normally or traditionally taken into consideration in making the findings and recommendations.

NEGOTIATION PROCESS PRIOR TO FACT-FINDING

RSA and the County have had a long history of collective bargaining for the Law Enforcement Bargaining Unit. The most recent MOU between the parties expired on June 30, 2016. The parties had nineteen negotiating sessions, commencing on July 11, 2016 and concluding on February 16, 2017, when the County made its last, best and final offer (LBFO). On March 1, 2017, the County declared impasse. The parties met unsuccessfully in mediation on March 27 and April 11, 2017.

Factfinding sessions were held on June 21 and June 22, 2017, with the parties meeting on both evenings in an effort to reach a tentative agreement (TA). The parties believed that they had reached a TA on the evening of June 22, 2017, but after review of the final document provided by the County, there were issues that needed to be resolved.

A TA acceptable to both the County's negotiators and the RSA negotiators was reached and was submitted to RSA'S membership for a ratification vote. RSA members voted to not ratify the TA. Despite efforts by the parties to agree upon several procedural issues in order to conduct a second ratification vote, there was no agreement, and the parties requested that the panel should issue a factfinding report

THE ISSUES TO BE RESOLVED

The issues that were in dispute over more than a year of negotiations were somewhat unique in that the inability to reach an agreement was not only compensation and benefits issues, the County sought changes of a substantial number of long-standing MOU provisions. While there were large monetary cuts, other difficult issues were not based on compensation. Rather, these language policy proposals were demanded in order to improve management control of what it considered to be inefficient language, ranging from discipline, scheduling, management rights, and promotion and demotion procedures. For many of these issues MMBA criteria do not provide guidance in issuing this report.

Notwithstanding the very difficult and sensitive issues sought by the County, the parties' efforts to reach a compromise and an agreement were extraordinary. After long hours of negotiations of the two bargaining teams with all panel members seeking a pathway to an agreement, the parties were unable to reach a tentative agreement. Additional efforts between the parties ultimately enabled the parties to agree upon a TA. The RSA members did not ratify the TA. However, in my view the elements of the TA are consistent with the rationale of the mandate of Government Code 3305.4(d). Thus, it is my conclusion that a report based upon the TA represents a report that meets the rationale of the purpose of the factfinding procedure. In the few issues that I made a recommendation that were more detailed in my determination, I considered the MMBA criteria as best as they can apply to the proposal. In particular I took into consideration of the County's financial issues that will be impacted by pension contributions, and RSA's concerns that reduced compensation and benefits have adversely increased loss of personnel, and "The interests and welfare of the public...."¹

COUNTY ISSUES

1. Definitions in the MOU - The County proposed to remove the words "temporary" and "seasonal" from the definitions section of the MOU because the County contends RSA does not represent temporary or seasonal employees. The parties agreed to include it in the TA, and that is my recommendation.
2. Art. I, Term of agreement- July 1, 2016-June 30, 2019- The parties agreed to include this term in the TA, and that is my recommendation.

¹ Where I have stated that I am making a recommendation of the TA pursuant to the County's proposal, I specifically mean the TA that the parties ultimately agreed to dated August 1, 2017 even though the County's original proposal may have been modified during negotiations.

3. Art. III, Waiver of bargaining- The County proposed removal of the MOU's "Waiver of Bargaining" article whereby the parties mutually waive any obligation to meet and confer on negotiable subjects during the term of the MOU. The County sought the ability to make policy and procedure changes during the term of an MOU. It is my recommendation that the current language be retained.

4. Art. III, Management rights- The County proposed to have the RSA agree in a separate written document that the management rights provision of the County's Employer Employee Relations Resolution is applicable to the RSA. The RSA TA'd that proposal. The TA is my recommendation.

5. Art. IV, Work periods and overtime with sunset clause - The current normal work schedule is 10 days of 8 hours, except for certain classifications. The County's last, best and final offer proposed to change this work schedule to a 14-day Fair Labor Standards Act (FLSA) work schedule for employees engaged in law enforcement activities as defined by the FLSA. Under the FLSA, the overtime threshold for this work schedule is 86 hours in the 14-day work period. This would gain the County approximately \$12.2 million in savings annually. In the TA, the County agreed to modify what was in their last, best and final offer to an overtime threshold of 84 hours in the 14-day work period and that employees would receive overtime after 14 hours in a day. The parties TA is my recommendation.

6. Art. IV Work schedules- There are various work schedules in the MOU which are directly tied to an employee's classification. The County proposed to eliminate reference to the classification and simply apply the work schedules to all employees. The parties agreed to include it in the TA, and that is my recommendation.

7. Art. IV, Donning and doffing-. An existing Sheriff's Department policy allows employees, if they choose, 10 to 20 minutes at the start of their shift, and 10 minutes at the end of their shift, to don and doff equipment and uniform. Under the current state of the law, the Sheriff's Department is not required to pay employees for donning and doffing equipment and uniform. The parties agreed to include this provision in the TA, and that is my recommendation.

8. Art. IV, Lunch periods - The County proposes language that all employees will receive a 30-minute unpaid meal period, unless the employee is not entirely relieved of duty. RSA counter-proposed a 30-minute paid meal period for all employees. The parties made additional changes in their TA and the parties' TA is my recommendation.

9. Art. IV, Court call back- The County proposed to reduce court call back pay from a minimum of four hours to a minimum of one hour. If a RSA employee is called to court on County related business during off-duty hours, the employee currently receives a minimum of four hours of pay, even where the actual time spent is less than four hours. RSA argued that the current four hour policy is based on the frequent and long freeway drives both to and from court even if they have a short period of time in court or their appearance ultimately proves unnecessary. The TA compromised the parties' positions and agreed to two hours of court call back pay. The parties agreed to include a two hour call back pay in the TA, and that is my recommendation.

10. Art. IV, Evening and night shift differential- The County sought to eliminate an evening and night shift differential paid to Deputy Coroners and Correctional Counselors who work these shifts, which would save the cost of \$22,105 annually. RSA argued that the shift differential

should continue because unlike most other classifications in the RSA unit, Deputy Coroners and Correctional Counselors do not receive a safety retirement formula. The was County withdraw this proposal and this proposal was not included in the TA. It is my recommendation that there should be no change of this provision.

11. Art. IV, Corrections transportation premium- The County proposed to clarify existing language in the MOU that the corrections transportation premium should be paid only to the deputy operating the inmate transport vehicle. The County sought that MOU language be clarified to provide that the transportation premium is paid only to the deputy operating the inmate transport vehicle. RSA counter-proposed that the premium be extended to any employee in the vehicle who maintains a Class B license. RSA agreed to a TA on this subject because it did not want the LBFO to be implemented without an overall TA. The parties agreed to include the County's position in the TA, and that is my recommendation.

12. Art. IV. SWAT- The County proposed to eliminate the requirement for 16 deputies on standby at all times. Under an existing 2014 Side Letter Agreement, the County is required to have 16 SWAT deputies on standby at all times. Those on standby during non-working hours receive pay equal to one hour of straight time for every eight hours on standby. The County paid \$1,077,148 for deputies on SWAT standby the last fiscal year. The overall cost savings to the County is the most paramount factor and for this reason, the requirement for 16 SWAT officers on stand-by at all times should be eliminated.

According to RSA the County sought to eliminate a written agreement of the parties, which settled a grievance, to allocate a specific number of deputies to be on standby at all times for circumstances where the SWAT team was to be utilized. This enabled a high level of readiness in the event of a SWAT callout. Otherwise, SWAT team members would not know when they would be called on their off-duty time and might not be available for a variety of reasons. This in turn would interfere with the ability of the Department to meet its law enforcement needs in a timely fashion. While RSA agreed to the County's proposal as part of the TA in order not to have the LBFO imposed, it recommended that the Neutral Factfinder rule that the parties' 2014 Side Letter should be found as appropriate so that sixteen SWAT personnel, inclusive of Sergeants, be available at all times. It argued that it is clearly in the interests and welfare of the public as stated in Government Code Sec. 3505.4(d)(4) and the County has the ability to pay for its costs. While the RSA's position is understandable, the parties agreed to include the County's position in the TA, and that is my recommendation.

13. Art. V, Defining paid status- The County proposed that it exclude employees on workers' compensation temporary total disability. It affects non-safety employees in the bargaining unit or safety employees that exhaust his/her one year on leave pursuant to Labor Code Sec. 4850. The parties agreed to include this proposal in the TA, and that is my recommendation.

14. Art. V, Voluntary Demotion to Correctional Deputy or Deputy Coroner - The County proposed to add language to the MOU that when a deputy sheriff or deputy sheriff trainee voluntarily leaves his/her classification to accept a correctional deputy or deputy coroner position, he/she waives property rights to the former position. RSA's position was that proposal was unfair to deputy or trainee in that property rights are an important part of public employment and that making such a request should not automatically annul such rights to the Deputy Sheriff or Deputy Sheriff Trainee classifications. The County withdrew the proposal. The proposal was not included in the TA, and that is my recommendation.

15. Art. VI, Probationary period- The County proposed to increase the probationary period for Sheriff's Corporals and Sheriff's Investigators from 12-months to 18-months. The County has experienced situations where it failed an employee during probation that may have passed probation with a little more training. The parties agreed to include it in the TA, and that is my recommendation.

16. Art. VI, Probationary Period - After Transfer to New Position- The County proposed that all employees who promote, demote or transfer must serve the equivalent of the entire initial probationary period for the new class. Currently, an employee in probationary status, who promotes or transfers to another class, serves an initial probation of six months in the new class. If the new class has a probationary period of one year, the employee has either a six-month probationary period, or the difference between one year and the number of actual hours in a paid status, whichever is greater, following the change.

RSA argued that an employee who voluntarily demotes to a position should not have a new probationary period in that classification in that the employee has already successfully completed a probationary period in a higher classification and it would serve no useful or legitimate purpose to have a new probationary period in a lower classification. RSA agreed as part of an overall TA so that the LBFO would not be imposed. The parties agreed to include this proposal in the TA, and that is my recommendation.

17. Art. VI, Retirement Contributions - The County proposed to eliminate classifications which receive a retirement off-set. Employees hired prior to June 5, 2012 received a salary increase as an off-set to the County's reduction in picking-up employee member contributions to CalPERS equal to a 4% increase for safety and 3% for miscellaneous. This resulted in new sub-classifications for the purposes of those with the off-set and those without. Based on these considerations, the County recommended that the OS classifications be eliminated with those in the OS classifications moved up to the nearest non-OS salary step and then Y-rated (frozen) until their current salary step is exceeded by the salary they would receive under the non-OS class. While RSA argued that the off-set should continue because employees pay their full member contributions, it agreed to this provision in order to achieve a TA. The parties agreed to include the proposal in the TA, and that is my recommendation.

18. Art. VI, Deputy Coroner Retirement- The MOU states that RSA may seek legislation, court action, or other means to extend the safety retirement formula to deputy coroners and that the County shall not "oppose" such efforts. The County proposed to eliminate this language. It basically places a "gag order" on elected officials, including the Sheriff who has no power to ratify the MOU. RSA agreed to withdraw current MOU, and that County proposal is my recommendation.

19. Art. VI, Vacation Change Notice- Currently, no change may be made to an employee's scheduled use of vacation unless the employee receives a 30-day notice, unless staffing levels are projected to be abnormally low for at least one work period. The County proposed to change this to one work shift. The County withdrew this proposal, and it is my recommendation that there should be no change.

20. Art. VI, Personnel Files- The MOU states that the County will comply with the Labor Code and Government Code with respect to personnel files. The County proposed to eliminate this language as it is already a statutory right. The County withdrew that proposal, and it is my recommendation to maintain the status quo.

21. Art.7, Sick Leave Cash Outs - Employees who retire, or who died, with 5 to 15 years of continuous service may cash out 50% of sick leave; employees with more than 15 years, 100%. This is subject to a 960 hour cap. The County proposed to clarify that a break in County employment of more than 90 days is not "continuous service." RSA agreed to the proposal, and that is my recommendation.

22. Art. VII, Pregnancy Disability Leave - The MOU contains a provision that mandates a note from an employee's physician after her sixth month of pregnancy and if the employee wishes to return less than one calendar month after delivery. The County proposed to eliminate this provision and provide benefits consistent with the law. This proposal was in the TA, and that is my recommendation.

23. Art. VII, Release Time for the RSA President - The County proposed to eliminate paying overtime to the RSA President for performing RSA business. RSA agreed to this proposal, and that is my recommendation.

24. Art. VII, RSA Release - The County proposed to clarify that in each fiscal year, authorized RSA representatives' cumulative release time with pay shall not exceed 80 hours. The parties agreed to include it in the TA, and that is my recommendation.

25. Art. IX Holidays - Currently, a member who works on a County holiday receives holiday pay that is equal to 8 hours plus one-half of the hours actually worked, in addition to the straight time for hours worked. The County proposed to eliminate this "one-half pay." The parties agreed to include this proposal in the TA, and that is my recommendation.

26. Art. XII Discipline- The County has an external discipline matrix setting forth many details of discipline process and penalties for categories of misconduct. The County proposed to eliminate the matrix entirely and follow the MOU on discipline and the law. RSA countered that the matrix should not be eliminated. The County withdrew its proposal. The parties agreed to retain the status quo, and that is my recommendation.

27. Art. XII; Causes for Discipline - There is a list of 16 items of misconduct in the MOU which are causes for discipline. The County proposed to add, as an additional cause, "any other employee misconduct which is not on the above list." The parties agreed to retain the status quo. The proposal was not included in the TA, and that is my recommendation.

28. Art. XII, Inability to Perform Essential Functions - Currently, the loss of the legal right to carry a firearm, or to operate a motor vehicle, of 30 days or less is not cause for discipline and the employee may be placed on modified duty at the Department's discretion. The County proposed that such loss in the ability to perform essential functions of the job be considered a cause for discipline and the employee shall be placed on unpaid leave for up to 30 to 40 days. In addition, the County proposed that a loss exceeding 30 days shall provide cause to separate the employee from employment. RSA asserted that the Sheriff's Department should be required to make a reasonable accommodation for employees who are temporarily unable to access their firearm or vehicle. There are many bargaining unit employees in the Department that currently have modified duty both under these circumstances or otherwise. RSA agreed to this proposal as part of an overall TA so that the LBFO would not be imposed. The parties agreed to include this proposal in the TA, and that is my recommendation.

29. Art. XII, Discipline, Standard of Review in Discipline Appeals - The MOU language permits arbitrators to exercise independent judgment in determining the appropriate level of discipline. The County proposes that if the hearing officer finds the charged misconduct occurred, he/she will defer to the penalty imposed by the Sheriff, unless he/she finds the imposed discipline was excessive. As best as I was able to determine, the status of this proposal, was not included in the TA. If the proposal were adopted, it would undermine the arbitration process. In any event my recommendation is to maintain the status quo.

30. Art. XII, Reinstatement After Termination - A terminated employee is immediately returned to duty if his/her termination is reversed after a disciplinary appeal. The County proposed that a terminated employee may not be reinstated to full duty until after successful completion of a pre-reinstatement background investigation and physical and mental examinations, but shall be on paid administrative leave during the pendency thereof. The parties agreed to include this proposal in the TA, and that is my recommendation.

31. Art. XV, Contribution to RSA Benefit Trust - The County proposed that the County increase the payment into the RSA medical benefit trust for retirees from \$25 per pay period to \$100 per pay period. The benefit helps retired deputies with their medical insurance payments until they reach Medicare age at 65. As many law enforcement members retire at age 55, there is a huge gap between retirement and Medicare eligibility. The cost of a \$25 contribution is approximately \$1.3 million dollars per year. Accordingly, the acceptance by RSA of the proposed contribution from the County should stand as justified and accepted by RSA. The parties agreed to include it in the TA, and that is my recommendation.

32. Art. XVI, Path to Sergeant- The MOU provides that when competing for promotion to sergeant, employees in the Sheriff's Investigators series of classifications will receive points credited to their total weighted promotional score. The County proposed to eliminate this language entirely. The proposal was, and my recommendation is to retain the status quo.

33. Art. XIX, Parking-The County proposed certain fees for parking in County lots. RSA has recently successfully argued in PERB litigation that the unilateral imposition of parking fees for the Indio jail were unlawfully unilaterally imposed and was awarded damages and an order not to continue to impose parking fees. RSA stated that it will not oppose this proposal. The parties agreed to include it in the TA, and my recommendation is to retain the status quo.

RSA ISSUES²

1. 2. Art. XI, Grievance Arbitrability-RSA provided evidence that bifurcating grievances on the issues of arbitrability and the merits was a waste of time and money. The parties agreed to have one arbitrator decide both issues, and the arbitrator is authorized to determine whether or not to proceed to the merits before deciding arbitrability. My recommendation is that this proposal should be included in the MOU.

3. Art. XII, Discipline-An RSA proposal would require an Arbitrator to rule whether a continuation of an arbitration hearing was justified. This replaces the procedure that allows the County to unilaterally cancel a hearing date without input from RSA. The parties agreed to include this proposal in the TA, and that is my recommendation.

² RSA proposals that were withdrawn will not be included in this report.

3. Art. XII, Discipline-An RSA proposal would require an Arbitrator to rule whether a continuation of an arbitration hearing was justified. This replaces the procedure that allows the County to unilaterally cancel a hearing date without input from RSA. The parties agreed to include this proposal in the TA, and that is my recommendation.



Paul Crost
Neutral Factfinder Panel Member

Concur: _____
Dissent: _____
Concur in part: X
Dissent in part: X



Peter Brown
County Factfinder Panel Member

Concur: _____
Dissent: _____
Concur in part: X
Dissent in part: X



Douglas Olins
RSA Factfinder Panel Member

LIEBERT CASSIDY WHITMORE

MEMORANDUM

DATE: October 3, 2017

TO: The Board of Supervisors of the County of Riverside and the Riverside Sheriffs' Association, Law Enforcement Unit.

Paul Crost, Fact Finding Chairperson and Doug Olins, RSA Chief Negotiator and Fact finding Panel Member for RSA

FROM: Peter J. Brown, Fact Finding Panel Member for the County of Riverside

RE: County of Riverside Attachment to the Fact Finding Report and Recommendations
PERB Case No LA-IM-240-M

Purpose of this Response

In accordance with Government Code section 3505.5, a fact finding panel consisting of Paul Crost, Doug Olins and me were selected to hear the evidence of the parties (the County of Riverside and the Riverside Sheriffs' Association) and to make findings of fact and recommended terms of settlement (which are advisory only) and submit them to the parties. The fact finding hearing occurred on June 21 and 22, 2017 and although many attempts at resolution of their Memorandum of Understanding were made between June 22, 2017 and the present, the parties have been unable to reach an agreement. I have been provided with a copy of the fact finding report and recommendations (the "Report") of Chairperson, Paul Crost. The purpose of this document is to be an attachment to the Report, acting as a concurrence, dissent and overall response to the Report.

Primary Reason for this Response

The primary reason I have prepared this response is to explain what might not be clear from reading the Report.

From the beginning of the negotiations, the County proposed a term of three years from July 1, 2016 – June 30, 2019. Until just before the County declared impasse in the negotiations, all proposals from the County were for a three-year term. However, just before the last, best and final offer was issued from the County, the County changed its proposal from a three-year term to a one-year term. The reason for that change was because it appeared that the parties were going to be unable to reach an agreement. Based on the County's understanding of the collective bargaining law that governs the negotiations process, if, following the impasse process, the County was going to impose its last, best and final offer, it could only do so for one year because the law allows the Association to request to re-negotiate prior to the adoption of the following year's budget.

In understanding what happened in these negotiations, this issue of the County negotiating with a three-year proposal and then issuing a one year proposal is significant. The County's proposal had savings built into it to address the financial issues being addressed by the County. The three-year proposal resulted in savings to the County in several ways, but primarily through a proposal to modify how overtime is paid. The County pays the members of the Association overtime which is significantly more generous and costly than the law (the Fair Labor Standards Act) requires. In the three-year proposal, the County agreed (as part of the give and take of labor negotiations) that the savings it would achieve by modifying the overtime language to pay overtime in a way which was less costly, would sunset at the end of the three year term. The County needed the savings, but was willing to start the negotiations process on that issue all over again in three years in exchange for three years of savings.

The County did not get three years of savings. In fact, following the declaration of impasse in March 2017 (after eight months of negotiating) it has taken another seven months to go through the impasse process. During this time period, the County has not had any savings as it cannot impose the savings without first exhausting the impasse process. In addition, as mentioned above, after this fact finding process is completed, the Association can seek to re-negotiate again prior to the adoption of the next budget.

The reason that this is so significant is because when the Board of Supervisors considers the Report and its attachments at a public hearing, the proposal it must consider from the County is the one year proposal with one year of savings, not three years.

The Recommendations in the Report

Chairperson Crost worked very hard to get the parties to reach an agreement. He is to be commended for his tireless effort. Following the hearing on June 22, the parties stayed until 9:30 p.m. to try and resolve their differences. Even after those efforts, for the next five and a half weeks until July 31, 2017, the parties (with Chairperson Crost) continued to try and resolve their differences. On July 31, 2017, the parties agreed on what I will describe as a post fact finding tentative agreement on a three-year MOU. Not really three years. The agreement would still end on June 30, 2019. At that point it was a little less than two years. This agreement did not break the parties' impasse, but it was an encouraging sign because if the membership of the RSA ratified this agreement, the Board of Supervisors could accept it and the parties would have had an agreement. That did not happen. The agreement was overwhelmingly rejected by the membership of the RSA. As a result, the fact finding panel needed to reconvene so that the Report could be issued.

The recommendations contained in the Report do not take into consideration the large number of tentative agreements reached before the parties even went impasse. There were many compromises reached on issues before there was an impasse. The recommendations in the report focus primarily on the issues before the fact finding panel. That makes sense because the panel did not need to consider issues to which the parties had already agreed. However, the

recommendations in the report, for the most part, recommend what was in the post fact finding tentative agreement of three years which was rejected by the membership.

I must dissent (i.e., express my disagreement) with the report generally adopting the post fact-finding tentative agreement. The reason is that that agreement never became an agreement because it was rejected by the RSA membership. The Board of Supervisors has no way of getting three years of savings from imposing something which lasts through June 30, 2019. The County's last, best and final offer of one year made changes from what it would be willing to do for three years.

For example, the County proposed that it would increase the payment for into the RSA medical benefit trust for retirees from \$25 per pay period to \$100 per pay period for each employee in the unit. This proposal has a significant cost to the County but was made because the Association was willing to agree to County proposals such as its overtime proposal which would provide more significant savings for the entire three year period of the MOU. The Report recommends that this proposal be adopted although the County cannot get a three-year agreement from this process.

In addition, the Report also ignores the post fact finding agreement in favor of maintaining onerous language which prevents the County from addressing fiscal shortfalls which can occur in a volatile economy. The MOU contains a provision called "Waiver of Bargaining". This provision is more commonly referred to as a zipper clause as it "zips up" the contract preventing either party from requesting the other engage in labor negotiations during the term of the agreement. Both in the County's last, best and final offer and the parties' post fact-finding agreement, this provision was removed. However, the Report recommends that this provision stay in the MOU. I cannot agree as not only can the County not get a three-year MOU from this process, given the state of the fiscal health of the County, it cannot be legally precluded from ever addressing topics (even those not addressed in the MOU) within the scope of bargaining during the term of an MOU.

Although I dissent to some of the recommendations of the Report, I concur with 22 of the 33 recommendations related to the County's Issues. I concur with the findings on the following issues which are separately identified in numbered paragraphs in the report:

1. Elimination of the words "seasonal" and "temporary" employees"
4. Management rights
6. Work Schedules
7. Donning and Doffing Equipment
8. Lunch Periods

- 9. Court Call Back
- 11. Corrections Transportation Premium
- 12. SWAT
- 13. Defining Paid Status
- 15. Probationary Period
- 16. Probationary Period
- 17. Retirement Contributions
- 18. Deputy Coroner Retirement
- 21. Sick Leave Cash out
- 22. Pregnancy Disability Leave
- 23. Release Time for the RSA President
- 24. RSA Release Time
- 25. Holidays
- 28. Inability to Perform Essential Functions
- 29. Discipline
- 30. Reinstatement After Termination
- 33. Parking

I dissent to the recommendations on the issues not identified above (11 County issues and the 2 issues from the Association). In particular, I want to point out that while the County would have preferred a three-year term MOU (County Issue # 2), the Chairperson's recommendation cannot be adopted by the Board of Supervisors as a three-year term MOU must be agreed upon by the parties.

I appreciate being given the opportunity to participate on this panel and present this response to the Report issued by Fact Finding Chairperson Paul Crost.

RSA PANEL MEMBER DOUGLAS F. OLINS:

I concur in part and dissent in part.

I. INTRODUCTION

The Impartial Chairperson, Paul Crost (Chairperson) issued his Factfinding Report and Recommendations. In so doing, it appears that he ruled that of the 33 County issues before him, that 31 of them should be identical to the Tentative Agreement (TA) that the parties had reached.¹ For County Issue No. 3, Art. III, Waiver of Bargaining, the Chairperson recommended that the current MOU language be retained and not eliminated as proposed by the County. The Factfinder also recommended that the two remaining RSA issues, Art. XI, Grievance Arbitrability and Article XII, Discipline, should be included in the MOU as agreed to by the parties in the TA.

The Factfinder listed the Factfinding Criteria as stated in the MMBA, at Government Code Section 3505.4(d) but for the most part did not analyze those factors in coming to his Recommendations. Moreover, the County also sought many non-economic concessions from RSA to the MOU that were not related to the financial condition of the County but which will result in harm to the interests and welfare of the public.

II. Summary of RSA's Panel Member Position

I concur with the Recommendations of the Chairperson to keep the TA as agreed to by the parties as to County Issues 1-2, 4-8, 10,11, 13-27, and 29-32. I also concur with the Chairperson not to keep the TA as agreed by the parties as to County Issues 3 and 33 and to keep the status quo as contained in the MOU. I also concur with the Recommendations of the Chairperson to keep the TA as agreed to by the parties as to Union Issues 1 (sic 2) and 2. I dissent from the Recommendations of the Chairperson as to County Issues 9, 12, and 28.

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¹ In County Issue 33, Art. XIX, Parking, the Chairperson noted that the County proposed certain fees for parking in the County lots but that the County had recently been found by PERB to have unlawfully imposed parking fees at the Indio Jail. He also noted that RSA stated that it would not oppose the County's proposal and agreed to include it in the TA. However, the Chairperson recommended that the parties "retain the status quo." Throughout the Chairperson's Recommendations, whenever he has recommended that the parties "retain the status quo" this has meant that they retain the current MOU language.

III. Analysis and Application of the Factfinding Criteria

According to the testimony and related documented analysis by RSA expert Jeffrey Segol, Senior Manager of Harvey M. Rose Associates, LLC, the following relevant factors to the factfinding criteria exist (RSA Exhibit J):

1. Approximately 73% of the County's budget fits into the discretionary category and is available for spending (Exh. J at P.4). The County's budget is an unaudited document and as such is not final. It is subject to change by the Board of Supervisors. It contains \$217 million dollars in unassigned categories. It is merely a projection of revenue and expenses;

2. The County has the second lowest percentage of overall indebtedness to the eleven counties surveyed with only San Diego lower by approximately 2.5% (Exh. J at P.4);

3. The County's retirement system is approximately 75% funded which is average for the Counties surveyed (Exh. J at P.5);

4. The County's post-retirement health insurance program has only a .2% unfunded liability vs. expenditures making it by far the lowest unfunded liability County in the comparison Counties- the average was 20.1% and 9.6% when excluding Los Angeles which had over 100% unfunded liability- this is responsible for the County's TA with the increase in the RAP. (Exh. J at P.5).

5. The County has budgeted for \$4.5 million dollars for its Transportation Fund from its General Fund. At the same time, the Transportation Fund has \$15.4 million dollars in non-legally restricted assets and \$134.6 million dollars in assets in the form of cash and liquid assets. Accordingly, the Board of Supervisors could require the Transportation Fund to refund the \$4.5 million-dollar General Fund contribution to the General Fund (Exh. J at P.7);

6. The General Fund provided the Riverside General Hospital with \$10 million dollars in This budget year while the Hospital has approximately \$95.7 million dollars in liquid cash and investments. The Hospital's total cash position has nearly doubled since its cash shortage of 2013-14 to about \$132 million dollars. Accordingly, "... the prior \$10 million General Fund contribution could be repaid at this time." (Exh. J at P.8) In addition, during the pendency of negotiations, the

County approved huge wage increases for Hospital executives with yearly salaries ranging from \$362,000 to \$550,000 (See Exh. N).

7. The County's cost of living as measured by the CPI for Riverside-Los Angeles-Orange County area had increased by 2.66% on a year-over-year basis (Exh. J at page immediately following P.8).

Accordingly, the County has an abundance of available liquid assets that it could allocate for the Law Enforcement Unit if it chose to internally reclaim excess liquid assets from its Transportation Fund and its General Hospital. Choosing not to do so is a discretionary choice to underfund law enforcement based on political will rather than need. Paradoxically, the County budgeted some \$20 million dollars for KPMG to look for cost savings while seeking to recoup that money on the backs of its law enforcement unit employees. As of the time of the hearing, the County had spent over \$10 million of that budgeted amount. So instead of properly allocating its assets, the County seeks to justify this expenditure by reducing the in-pocket dollars of its employees.

The Sheriff's Department ranked next to last in overall compensation with adjacent sheriff departments, only exceeding San Bernardino County. It placed in the middle of the field when compared to neighboring cities, many of which were much smaller (Exh. I). The most appropriate basis for comparison are the adjacent Counties which are more similar in size and types and classifications of employees.

The above cited economic data does not take into account the TA reached by the parties which would have resulted in approximately an additional net decrease in expenditures to the County and losses to bargaining unit employees of approximately \$17-20 million dollars per year.

Moreover, the evidence showed that RSA proposed, in negotiations, to deputize Correctional Deputies (conversion to PC Sec. 830.1 while working in the jail); this would save the Department approximately \$2 million dollars, after transition, annually. The County rejected that offer without explanation. Other sheriff departments have successfully used this method to reduce costs.

Additional uncontroverted testimony established that the Department was running a \$60 million annual deficit in providing law enforcement services to unincorporated cities. There is no valid reason for the Department to contract its services at a deficit while asking existing Department law enforcement members to suffer huge losses in their take home pay.

Uncontroverted evidence established that many Deputy Sheriffs were applying to other law enforcement agencies and leaving the Department. Applications for employment were diminishing to the Department while at the same time background checks from other law enforcement agencies were up from applicants seeking to leave the Department. A correctional department member testified that he was aware of the loss of seven (7) Department employees leaving for other agencies during the prior three weeks. Uncontroverted evidence revealed that the Department is no longer competitive in its recruitment efforts.

Testimony from RSA President Robert Masson was uncontroverted that 75 positions had recently become vacant and there were 177 losses of law enforcement bargaining unit members with many of them going to neighboring law enforcement agencies such as Corona, Palm Springs and Riverside Police Departments. The Sheriff acknowledged in his own publication to the Department, the RSO Reader of March 2017, that the Department is suffering "current massive loss in staffing across the department..." (RSA Exhibit K). Recruitment and its attendant costs are very high. The cost to recruit and train deputy sheriffs could cost as much \$80,000-\$100,000 per deputy. (See also, Exh's. G and H).

Moreover, with such turnover the Department, if it can recruit deputies and correctional deputies, is then dependent on a less experienced work force. The Board of Supervisors has publicly expressed concern with the millions of taxpayer dollars expended in lawsuits by the County involving actions by the Sheriff's Department (Exh. L). This can also lead to additional potential liability issues for the Department and County such as has happened in San Diego (Exh. M) and Los Angeles.

Uncontroverted testimony also established that citizens' calls for assistance to the Department were "staking up" with long wait times for law enforcement responses to criminal

activity. This in turn has resulted in negative reactions from the public to deputies who eventually arrive at the scene of the crime. This also impacts the ability of law enforcement officers to solve crimes and apprehend perpetrators of the crimes. The inability of law enforcement to effectively do its job in an optimum fashion and the negative reaction from the citizens of the community has also resulted in a lower morale on the part of the members of the law enforcement bargaining unit. Despite the County's contention to the contrary, the County's budget, absent an inability to pay argument, carries very little weight and is merely self-serving. "Any good budget city budget manager can manipulate the budget to look like the city can't afford anything" Elkouri & Elkouri, *How Arbitration Works*, BNA (7th Ed.) pp.22-64.

The evidence clearly shows that the money is available in liquid assets begging to be repaid from the Transportation and Hospital accounts. Much of the County's budget is contained in liquid unallocated accounts which can easily be diverted to the Sheriff's Department to meet its pressing needs. The County clearly has the ability to pay for its law enforcement needs by proper allocation without causing law enforcement personnel to incur out of pocket losses and potentially injuring the welfare of the public. With the cost of living rising by some 2.6 percent and medical costs constantly increasing, it makes no sense for the County to expect law enforcement personnel to lose in pocket dollars in matters such as their work week, overtime earned, freezing salaries, court call back, SWAT operations and a bevy of similar cuts amounting to millions and millions of dollars. By proper allocation, this money is available for the law enforcement unit which could be accomplished by rolling over the existing MOU. Nevertheless, the RSA showed its willingness to accept, for the most part, the TA that was reached following factfinding and as contained in the Factfinders Recommendations.

IV. Summary of the Process that led to the TA

The parties entered negotiations with the County stating it had budget deficits. RSA responded by not asking for wage or health care benefit increases. RSA took the position that it would be content with rolling over the MOU for three (3) more years. The County, not content

with a standstill agreement, sought huge economic concessions unwarranted by its economic condition.

Moreover, the County sought to "gut" a great number of non-economic items from the MOU that were unrelated to its deficit. In addition, the County was unreceptive to cost containment proposals by RSA and declined to consider ways to save money that were proposed by RSA. The parties were able to reach a TA only after the conclusion of factfinding. The TA was reached, not because of the needs of the County but only because the County announced that it would impose its LBFO if an agreement was not reached. With the above in mind, some of the proposals that will be discussed do not fit the neat criteria contained in MMBA Sec. 3505.4(d). Many of them were proposals from the County that should never have been proposed at a time when then County was seeking major economic concessions from RSA. In addition, some actually have negative economic consequences for the County.

V. DISCUSSION OF THE CONTESTED ISSUES

There were thirty-three (33) open issues from the County and nine (9) open issues from RSA at the inception of factfinding. Issues that warrant consideration are discussed herein because they are either at variance with the Chairperson's Recommendations or with the TA. The County issues and their recommended resolution are discussed below:

3. Art. III Waiver of bargaining- I concur with the Recommendation of the Chairperson that the current language in the MOU be retained.

The County proposed to delete the zipper clause. RSA felt that this was unjustified and is a significant cost item to the County. (See RSA Exh. F which explains the significance of the zipper clause). Evidence at the hearing showed that the County consistently violated this clause by unilaterally imposing proposals without bargaining in good faith with RSA. Over the last two (2) years this has caused RSA to file approximately 6-7 PERB charges against the County. In every such case PERB has issued a complaint against the County. In every case, RSA has settled the matter with an agreement for the County to bargain with RSA or, after hearing, PERB has ruled in favor of RSA.

Contrary to the arguments of the County, while RSA has no obligation to bargain with RSA during the term of the MOU, it did bargain in each case. In each case, the County prematurely unilaterally adopted its proposal without bargaining in good faith. In none of the cases did RSA ever end negotiations but remained ready, willing and able to reach a reasonable accommodation with the County. In each of these cases the County hired outside counsel at considerable cost. In each of these cases PERB found that the County's position was untenable and issued complaints against the County. In each of these cases the County ultimately agreed, in settlement, to bargain with RSA or lost the case after a hearing. Without the zipper clause, RSA has no reasonable protection from the continued violations of its MOU and the MMBA. There is no economic or other justification for the removal of the waiver of bargaining or zipper clause particularly when there is no cost savings to the County, and RSA has consistently agreed to work with the County to reach agreement. The zipper clause should remain in the MOU. The Chairperson specifically recognized the merits of RSA's position and despite a TA on this issue, recommended that "the current language be retained."

9. Art. IV Court call back- I dissent from the Recommendation of the Chairperson that the TA be confirmed and that court call back be reduced from four (4) hours to two (2) hours. The current MOU contains a provision to pay employees who are summoned to court to testify on their time off with a guarantee of four (4) hours even if they are in court for less than four (4) hours. This is to compensate the employees for the frequent and long freeway drives both to and from court even if they have a short period of time in court or their appearance ultimately proves unnecessary. Long freeway drives are all too common and the TA of two (2) hours barely covers their driving time.

Uncontroverted testimony from one RSA witness established that she was called out for court call back on her days off 4-6 times per month which always involved long driving distances. The only reason that there was a TA on this subject was to reach an overall agreement and not have the LBFO imposed which would have resulted in one (1) hour of compensation.

While the Chairperson recommended the TA of two (2) hours of compensation, a more reasonable and equitable resolution would be three (3) hours of compensation for being called back to court on an employee's day off. This is a one (1) hour reduction for the current MOU provision and will more adequately cover driving and appearance time for this off-duty work.

12. Art. IV SWAT-I dissent from the Recommendation of the Chairperson that the TA be confirmed which will leave SWAT officers without a schedule and is contrary to a specific settlement between RSA and the Board of Supervisors.

The County sought to eliminate a written agreement of the parties, which settled a grievance, to allocate a specific number of deputies to be on standby at all times for circumstances where the SWAT team was to be utilized. This enabled a high level of readiness in the event of a SWAT callout. Otherwise, SWAT team members would not know when they would be called on their off-duty time and might not be available for a variety of reasons. This in turn would interfere with the ability of the Department to meet its law enforcement needs in a timely fashion. The County proposed to have no fixed number of deputies' available for on call status and could determine at a moment's notice who and how many deputies would be available. This is not in the public's interest and is detrimental to the health and safety of the community and the welfare of the public as stated in MMBA Government Code Sec. 3503.4(d).

RSA agreed to the County's proposal as part of the TA in order not to have the LBFO imposed. I recommend that the parties side letter of May 2014 should be found as appropriate and which provides that sixteen (16) sworn SWAT personnel, inclusive of Sergeants, be available at all times (County Exh. No. 16). This is clearly in the interests and welfare of the public as stated in Government Code Sec. 3505.4(d)(4) and the County has the ability to pay for its costs.

28. Art. XII Performance of Essential Duties- I dissent from the Recommendation of the Chairperson that the TA be confirmed. The County proposed that employees that temporarily lost their ability to carry a firearm or use of their driver's license will be deemed to have applied for an unpaid leave of absence. Currently those employees have the right to be considered for modified duty. The circumstances where those conditions occur are where there is an allegation of a dui or

domestic violence. The Sheriff's Department has historically attempted to find those employees a modified duty assignment until those conditions are removed. RSA agreed to a TA on the County's proposal in order to avoid the imposition of the LBFO. RSA asserts that the Sheriff's Department should be required to make a reasonable accommodation for employees who are temporarily unable to access their firearm or vehicle.

There are many bargaining unit employees in the Department that currently have modified duty both under these circumstances or otherwise. The County is not prohibited presently from offering modified duty and can pick and choose those employees who it likes without objective standards. This can lead to discriminatory selection. The County has presented no evidence that the current modified duty policy does not work. I recommend that the Department make a reasonable accommodation to find modified duty for employees who have temporarily lost their ability to carry a firearm or drive a department vehicle for up to six (6) months.

31. Art. XV RSA Benefit Trust- I concur with the Recommendation of the Chairperson that this TA is justified. The County proposed that the County increase the payment into the RSA medical benefit trust for retirees (RAP) from \$25 per pay period to \$100 per pay period. The RAP helps retired deputies with their medical insurance payments until they reach Medicare age at 65. As many law enforcement members retire at age 55, there is a huge gap between retirement and Medicare eligibility. This proposal was made in an attempt to secure an agreement by the County as there were so many economic takeaways.

Moreover, the County's LBFO proposed to eliminate even the skimpy \$25 per pay period contribution. The effect of this elimination would have caused the RAP benefit to collapse in a short period of time and only provide retired law enforcement members a small stipend to pay for health insurance coverage. Testimony from Harvey Rose expert Jeff Segol, as well as comparative data introduced into evidence (RSA Exh J at P.5) showed that even with the \$100 contribution, the Riverside Sheriff's Department had the lowest contribution rate of all comparable law enforcement agencies into retirement health and by far the lowest unfunded liability of any agency by a very wide margin. The cost of a \$25 contribution is approximately \$1.3 million dollars per year.

Accordingly, the acceptance by RSA of the proposed RAP contribution from the County should stand as justified. I concur with the Recommendation of the Chairperson to accept the TA.

33. Art. XIX Parking- I concur with the Recommendation of the Chairperson that the status quo of no charge for parking be continued and the TA not stand.

The County proposed certain fees for parking in County lots. RSA has recently successfully argued in PERB litigation that the unilateral imposition of parking fees for the Indio jail were unlawfully unilaterally imposed and was awarded damages and an order not to continue to impose parking fees. However, because the parties agreed that the PERB recognition of the illegality of the parking fees would not become part of the TA and the parking provision will only apply prospectively, RSA did not oppose the County's proposal. However, because the Chairperson undoubtedly saw the injustice of the TA and he recommended that the parties "retain the status quo". I concur.

VI. CONCLUSION

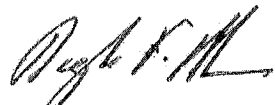
I concur with the Chairperson's Recommendations as to County Issues 1-8, 10-11, 13-27 and 29-33.

I concur with the Chairperson's Recommendations as to Union Issues 1 and 2.

I dissent from the Chairperson's Recommendations as to County Issues 9, 12 and 28.

Respectfully Submitted,

October 3, 2017



Douglas F. Olins
RSA Factfinder Panel Member