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FINDINGS AND RECOMMENDATIONS
PURSUANT TO
CALIFORNIA GOVERNMENT CODE 3505.4

In the Matter of a Controversy Between)	
The County of San Luis Obispo)	
Employer)	
and)	Collective Bargaining Impasse
San Luis Obispo County Employees Association)	Factfinding
Union)	PERB Case No: LA-IM-259-M

APPEARANCES:

For the Employer: Jeffrey Sloan, Attorney
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Berkeley, CA 94710

For the Union: Dennis J. Hayes, Attorney
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FACTFINDING PANEL:

Appointed by the Employer: Michael J. McDougall, Consultant
Sloan, Sakai, Yeung & Wong

Appointed by the Union: Jeromy Caldera, Bargaining Team Member
San Luis Obispo County Employees Association

Neutral Chairperson: Paul D. Roose, Arbitrator and Mediator
Golden Gate Dispute Resolution

STATUTORY FRAMEWORK AND PROCEDURAL BACKGROUND

Under amendments to the Meyers-Miliias-Brown Act (MMBA) that went into effect on January 1, 2012, and as amended again on January 1, 2013, local government employers (cities, counties, and special districts) and unions in California have access to factfinding in the event they are unable to resolve contract negotiations. At the request of the exclusive representative, the parties are required to go through a factfinding process prior to the employer implementing a last, best and final offer. In accordance with regulations put in place by the California Public Employment Relations Board (PERB), the exclusive representative can request factfinding either after mediation has failed to produce agreement or following the passage of thirty days after impasse has been declared. Each party appoints a member of the factfinding panel. A neutral chairperson is selected by PERB unless the parties have mutually agreed on a neutral chairperson.

Under the statute, the factfinding panel is required to consider, weigh and be guided by the following criteria in formulating its findings and recommendations:

- 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

The San Luis Obispo County Employees Association (SLOCEA) is the exclusive representative for four bargaining units with San Luis Obispo County (SLO County). Three of the units – Public

Services, Supervisory, and Clerical – are collectively known as the “Big Unit.” These combined units have roughly 1,525 members. The fourth unit is the Trades, Crafts and Services unit, known as the “Trades Unit.” It has approximately 176 members. The Big Unit groups historically bargain together, with only minor differences between the three MOU’s. The Trades Unit is a separate table. Together, the four units represent 60% of the county workforce, making SLOCEA by far the largest county union.

The parties have collective bargaining agreements (CBAs) in place through June 30, 2018. Those agreements had two-year terms.

The parties conducted negotiating sessions in 2018 but did not secure agreements on successor contracts. The parties proceeded to factfinding under the auspices of PERB. The parties selected the undersigned to be the chair of the factfinding panel for the Trades Unit in this matter pursuant to Government Code 3505. A second individual, Douglas Collins, was selected to be the neutral chairperson for the Big Unit factfinding process.

From the outset of the process, the undersigned neutral chairperson explained to both parties that he is not inclined to recommend a middle ground between the parties’ proposals, but rather to select one or the other on each disputed issue. In a similar fashion to “last offer” interest arbitration, the neutral chair believes that the parties are best served by this understanding. Taking this approach encourages each side to move off their opening positions and make proposals that are more likely to win the support of the panel majority. This guideline tends to produce a majority report on each issue in dispute, which the undersigned reads as the intended outcome in the factfinding statute. In conjunction with this guideline, the chair also informed the parties that he welcomed modifications to the parties’ positions up until the close of the record.

Hearings were held on May 14 and 15, 2018 in San Luis Obispo, California. The panel took on-the-record evidence and argument from both sides concerning the matters in dispute. The parties also requested that the neutral factfinder act as a mediator in assisting the parties in off-the-record discussions to attempt resolution. Accordingly, confidential mediation was also conducted during the factfinding proceedings. Mediation proved unsuccessful.

The parties agreed to submit their final proposals, if modified from proposals presented at the hearing, in writing. The County submitted a slightly modified proposal on May 29, 2018. The Union chose to maintain its position as presented at hearing. The parties then submitted written closing briefs for the panel’s consideration, received by the panel on June 19, 2018.

BACKGROUND TO THE DISPUTE

San Luis Obispo County is located on the central coast of California, roughly midway between the metropolitan areas of Los Angeles and the San Francisco Bay Area. With a population of 280,000, it grew over 6% in the past ten years. The county is home to a thriving campus of the CA State University, enjoys spectacular coastline and scenery, and promotes a growing tourism sector. It is also the site of California's only nuclear power facility, owned and operated by Pacific Gas & Electric. The utility has decided to close that facility by 2025, a decision that will cost the county 1,500 direct jobs, roughly 1% of its workforce.

In the most recent audited fiscal year (2016-2017) the County had \$464 million in revenue and \$413 million in expenses. Reserves are at 71% of 2016-2017 general fund expenditures. 48% of the County's revenue derives from other governmental agencies (such as the state and federal governments). 39% of the County's revenue derives from taxes, and the remainder comes from various fees and assessments.

Entering the factfinding process, the parties were in dispute over salary, health benefits and the negotiations process. In its closing brief, the County withdrew its proposal on the negotiations process.

Both parties are proposing a one-year term, with the contract to expire June 30, 2019. The key difference is that the Union is proposing a 3% across-the-board pay increase and the County is proposing to maintain salary schedules as they are currently configured. A secondary remaining issue is how to distribute County health benefit contributions. The following is background on these remaining two disputed issues.

External Comparability of Wages and Benefits: In the prior two-year agreement, the unit received a 3.5% wage increase on September 1, 2016 and a 3% increase on July 1, 2017. In addition, the parties bargained a sum equal to .5% of payroll to be applied to certain classifications deemed to be 7.5% or more "under market."

The parties have a section of their CBA titled "Market Wage Study." This long-time provision, modified in the last negotiations to reflect implementation dates, is a robust agreement focused on collecting compensation data from other employers to use in successor bargaining.

The process involves identifying "comparable" employers, classifications to be surveyed, and salary and benefit data. The CBA section anticipates that the parties may agree on all the survey elements, including the selection of comparable agencies. However, it also contemplates that the parties may not

agree. In that instance, the CBA requires the County to complete a market wage study and provide it to the Union. The contract section also allows the Union to conduct its own study and present its findings to the County.

The use of the study results in bargaining is described as follows in Section 12.5.4:

For purposes of opening proposals covering the time period commencing July 1, 2018, the content of the wage studies described above shall not limit the ability of either party to make such wage proposals and present such additional data as they see fit during the course of successor contract negotiations.

In the preparation for 2018 bargaining, the parties were not able to agree on the comparable employers but agreed on all other elements of the survey. The Employer’s group includes a list of California counties traditionally used by the parties – El Dorado, Kern, Monterey, Napa, Placer, Santa Barbara, Santa Cruz and Sonoma. It adds to that list educational employers – Cal Poly San Luis Obispo and San Luis Coastal Unified School District – and the City of San Luis Obispo. It also adds the State of California and two additional counties – Fresno and Ventura. Finally, it includes a private sector compensation study done by the consulting firm ERI. The private sector employers in that study are not identified.

The Union proposed the traditional list of counties plus the County of Marin. For the purposes of the factfinding, the Union agreed to use the County’s list. Therefore, the remainder of this analysis will focus primarily on the County’s list of comparable agencies.

The County’s human resources department conducted the survey of eleven benchmark classifications in the Trades Unit. The survey included salary and total compensation effective November 2017. (The County also agreed to survey Marin County as a courtesy to the Union.) The results are clearly summarized on a single page. The following table summarizes the County’s summary.

	All Agencies	SLOCEA Agencies	County Agencies
SLO County Trades Unit Benchmark Average Compared to Survey Average	-10.6%	- 18.44%	- 8.13%
# of Benchmarks at Market Median (+/- 5%)	2	0	3

# of Benchmarks below Market Median (+/- 5%)	9	11	8
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The only benchmarks within 5% of median in the County’s survey were Facility Maintenance Mechanic III at 4.97% below median, maintenance painter II at 1.46% below median, and water systems worker II at 4.26% above median. These three benchmarks encompass fifteen of the forty-one classifications, and 43 of the 189 trades unit positions.

The County consistently compared more favorably in salary than it did in benefits. Seven of the eleven SLO County benchmarks have maximum salaries higher than the maximum salaries in the comparable agencies. It is primarily the County’s relatively low health benefit contribution level that knocks it down in the rankings.

The County’s Prevailing Wage Ordinance: The County operates under a unique Prevailing Wage Ordinance (PWO), adopted by the county’s voters in 1973 and amended in 1984. The ordinance reads, in relevant part:

In fixing compensation to be paid to persons in the county’s employ, the board of supervisors...shall provide a percentage change in compensation at least equal to the percentage change in compensation for the same quality of service rendered to persons, governmental agencies, firms or corporations under similar employment.

Prevailing salaries or wages shall be determined by negotiations between the county’s employer representatives and the recognized employee organization(s).

The PWO contains a dispute resolution mechanism. In case such prevailing salaries or wages cannot be agreed to by parties, the matter may be submitted to a mutually selected arbitrator who shall make advisory recommendations to the negotiation parties.

Neither party has invoked the arbitration clause in the ordinance. Neither party has proposed to change the following section of the current CBA:

12.4 Compliance with Prevailing Wage Ordinance

12.4.1 The salaries specified herein were negotiated and agreed to in accordance with the provisions of California Government section 3503.4 and with the County Prevailing Wage Ordinance (County Code Section 2.48.180), which provides, “Prevailing salaries or

wages shall be determined by negotiations between the county’s employer representatives and the recognized employee organization(s).”

A Budget Forecast Error Set the Stage for Negotiations: On October 10, 2017, the County administrative team presented a 2018-2019 initial budget forecast to the Board of Supervisors. That forecast predicted an operating surplus of \$3–5M for the upcoming fiscal year beginning on July 1, 2018. For reasons not evident from the hearing record, County auditor/controller/tax collector Jim Hamilton then discovered a significant error in the projection after the Board presentation. He sent an email to recently retired county administrative officer (CAO) Dan Buckshi on October 13, 2017, as follows in relevant part:¹

Hi Dan, thanks for joining the fun. See original forecast (\$3.2M surplus) and revised forecast (\$11.5M deficit) which includes unbudgeted SLOCEA and Management increases. Including them increases the use of contingencies at the end of 2017/18 and increases the salary expectation for 2018/19.

The next day, Mr. Buckshi responded to Mr. Hamilton and Jim Erb (Mr. Hamilton’s deputy), as follows (in relevant part):

I gave this a scan. It’s difficult for me to review in detail because I have been away from this information for a while and haven’t talked to Emily [Jackson, County Budget Director] in order to better understand the assumptions. That said, it appears to include about \$1.3M of salary increases for FY 18-19 for unions other than SLOCEA. Per your notes, the SLOCEA agreement was approved in June and was not included in the forecast? If this is the case, did you discuss why with Emily? What was the rationale?

My recommendation is that the two of you sit down with Emily and Guy² and review your concerns in detail in an attempt to see if you can arrive at a common understanding of the data and analyses. If you are able to do so, and it is agreed that the forecast is off, the four of you could create a communications plan.

The day after Mr. Buckshi sent this email, Sunday October 15, he followed up with a second email to Mr. Hamilton and Mr. Erb, as follows:

In thinking about this some more, it looks like you added the \$10.1m of SLOCEA costs twice. You netted it out of FBA and added it to expenses. I think it should only be accounted for in one or the other. If you only add it once and do not include the salary savings associated with the vacancy rate, the projected deficit is about \$1.4M, which is much closer to the original forecast of \$3.2m surplus. If you include the SLOCEA costs only once and build in the salary saving associated with vacancies, the budget surplus increases to \$6.6m as the vacancy savings is higher than the SLOCEA costs. With respect to the forecast, we usually would anticipate a \$3m - \$5m variance. In this case, the

¹ Neither Mr. Buckshi nor Mr. Hamilton, nor anyone from the County’s budget or finance departments, appeared at the factfinding hearing. The emails were obtained by the Union as a result of an information request. The current CAO was not identified for the record, nor did anyone appear at the hearing representing the CAO’s office.

² Guy’s last name and position were not identified in the hearing record.

surplus could be as big as \$8m or the deficit as big as \$2m. If this is the case, the forecast would be within the acceptable range even after correctly adjusting for the SLOCEA costs.

On October 24, 2017, Whitney Szentesi, Social Media and Communications Analyst sent out an email and news release, presumably to local media outlets. The email read as follows, in relevant part:

The County Administrative Office has revised the outlook for the coming fiscal year after discovering a miscalculation in the financial forecast reported on Oct. 10. We now estimate a \$2.8 million to \$4.8 million deficit in FY 2018-19, rather than the original estimate of a \$3 million to \$5 million surplus. However, our historical attention to fiscal responsibility has positioned the County to better address such budgetary gaps. The miscalculation does not impact the current year's budget.

Tami Douglas-Schatz is the County's human resources director. She stated at the hearing that the error made was to not include the ongoing pay increases negotiated with SLOCEA, that went into effect on July 1, 2017, in the 2018/19 budget forecast. "It wasn't a fine day for the County" when the error was discovered, she conceded.

Russ Branson is Director of PFM Consulting. He presented the financial overview for the County at the factfinding hearing. When asked whether he had helped prepare the County's budget, he stated that he had not. He was also asked whether he assumes salary savings from vacant positions in budgets that he prepares for other jurisdictions. He responded that sometimes he does, and sometimes he does not.

The County Is Not Asserting an Inability to Pay, but Proposes to "Tap the Brakes" on Salary Increases for One Year Due to Budget Factors: As noted above, the County projects a deficit for the upcoming fiscal year. Ms. Douglas-Schatz stated that the County has a list of short-term and long-term approaches to address this deficit. A status quo salary schedule is one such response to the deficit.

Ms. Douglas-Schatz noted that the only "approach" the County has implemented to date is a "hiring chill." She described it as not a full-blown hiring freeze but a case-by-case examination of the need to fill vacant positions. The 2018-19 budget itself was not in evidence at the hearing. However, it is evident from the hearing record that the County projected full staffing of all authorized positions for 2018-19.

No one who had any role in preparing the budget, or who could explain the County's assumptions of full staffing of all authorized positions, attended or spoke at the fact-finding hearing.

In the case of the Trades Unit, full staffing is 189 positions. At the time of hearing, 176 of those positions were filled. If the County were to maintain an average 13 unfilled positions (at an average savings per position of about \$87,000), the annual savings would be \$1,142,401. The one-year cost of a 3% increase for this unit is \$443,000.

The Union disputes the necessity for a wage freeze in light of the County’s economic position. Julian Metcalf, a principal analyst with Harvey Rose Associates, presented a report commissioned by the Union. That report finds that the County has higher than average reserves for comparable counties.

The report also concluded that the County had overestimated expenses and underestimated revenue in each of the past five years. On the average, revenues were 1.1% higher than projected, and expenditures were 15.2% lower than projected.

Other County Bargaining Units Have Scheduled Increases for July 2018: The following bargaining units have two-year agreements for 2017-18 and 2018-19 that include 3.5% increases on 7/1/18:

District Attorney Investigators Association
Probation Officers
SLO County Sheriffs Management Association

The Sworn Deputy Sheriffs Association has an agreement that expires on 12/31/18. They received a 3% salary increase on 1/1/18. Those four units are considered “below market” by the County.

The Deputy County Counsel Association is considered “above market” by the County and will receive a 1.5% increase 7/1/18.

The County is Offering a Pension Contribution “Holiday” to the Union for the Term of the Agreement: The current agreement contains the following language:

Unit employees and the County shall split future pension contribution increases adopted by the Board of Supervisors 50/50 unless modified.

The current estimate at the time of the factfinding report is that the County’s pension rate contribution for miscellaneous employees (including those in the Trades Unit) will increase by 2.17% in 2019. It was not clear at the time of this writing whether the increase would take effect on January 1 or at some later date. Whatever date it is implemented, the unit members are spared a 1.08% reduction in take-

home pay by the County's pension offer that they otherwise would have had to make, had the current language continued.

The average employee contribution in the thirteen public sector jurisdictions surveyed by the County is 7.99%. The current contribution by SLO County Trades employees is 7.63%.

Health Benefits: The CBA currently provides that the County contribute the same sum to each unit member's health benefits, regardless of family status. That amount is \$695 per month. The County recently switched from CalPERS Medical to another health provider. That system provides benefits at three levels: employee only, employee plus one, and employee plus family.

The parties negotiated an end to cash-in-lieu benefits for unit members who do not take County insurance. Those hired after February 14, 2015 will no longer be eligible for this benefit. The County has accrued savings from this change. The County has offered to pass along those savings, \$42,000 per year, in the form of additional County contributions to unit member health benefit premiums.

The dispute between the parties is in how exactly to distribute those savings. The County has proposed to add \$94 per month to family coverage contribution. Alternatively, the County has offered to add \$173 per month to family coverage, conditioned on reaching agreement with SLOCEA's Big Unit to blend the experience rating of the two units into a single pool.

The Union has proposed to distribute the savings over the entire bargaining unit, adding \$24 per month to the County contribution rate at each level.

In the most recent survey of agencies chosen by the County, the average employer health benefit contribution to employee-only coverage was \$814 per month. The average contribution to families was \$1493 per month.

Summary of the Parties' Proposals on Disputed Issues

The following is a summary of the parties' final offers on disputed issues. The sections that follow explain those proposals in more detail and give the parties' chief arguments for their adoption.

	County’s Proposals	Union’s Proposals
Wages	No adjustment to wage scales	3% Increase to Wage Scales 7/1/18
Health Benefit Contribution	Increase County contribution to family coverage by \$94 / month	Increase County contribution to family, employee plus one, and employee only by \$24 / month

POSITIONS AND ARGUMENTS OF THE UNION

The Union contends that the Prevailing Wage Ordinance weighs heavily in the Union’s favor in this dispute. The voters made it clear that they want the County to pay prevailing wages to its employees. This voter intent ties in with the “interests of the public” MMBA criterion.

The Union accepts the County’s survey for the purposes of this impasse. The County’s proposal fails to pay to the level of its own survey. The Union argues that the trades employees have fallen further behind their counterparts in other agencies since the last survey, despite the raises in the last contract.

The County did not dispute the fact that it has the ability to pay for the Union’s proposal. Moreover, the Union argues that the County’s reserves are excessive, far exceeding industry norms and the reserves of its comparator counties. “The fund balance cannot be considered one-time money, as the trend shows an ever-increasing amount of money in the general fund balance,” the Union asserts.

The Union argues that the County should agree to the 3% union proposal because of 1) unrestricted general fund balance in excess of industry standards, 2) increasing cash and investments, 3) increasing revenues, 4) ongoing annual operating surpluses, 5) relatively low retiree healthcare debt, and 6) relatively low level of overall indebtedness.

The Union contends that the national CPI has risen 2.8% over the last twelve months, with greater increases in California indexes.

The Union rejects the County’s comparison of the bargaining unit’s pension to private sector arrangements. All of the County’s public-sector competitors have defined benefit plans similar to that offered by SLO County.

On the issue of health benefits, the Union asserts that giving a little extra to families does not help “in a meaningful way.” The Union wants to spread the money over the entire unit, not allow it to benefit one small group. “SLOCEA’s choice on how the money should be distributed should be accepted as the desires of the membership.”

POSITIONS AND ARGUMENTS OF THE EMPLOYER

The County argues that its zero percent wage offer is fiscally responsible and in the interests of the public. Its offer to improve family medical coverage and pick up the employee pension increase portion protects the bargaining unit against decreases in their spending power. Many unit members will receive step increases this year.

The Employer asserts that the Union bears the burden to demonstrate why its 4%-value proposal (3% wage increase plus 1% in pension pickup) should be adopted.

The County asserts that its proposals are consistent with internal patterns and based on comprehensive surveys. They are more than adequate to keep up with the increases in the CPI over the past four years.

The County argues that the PWO requires it to examine private sector compensation, and thus justifies its inclusion of ERI in the survey.

The County points to four known major factors that support its wage proposal. 1) 2018/19 projected budget deficit. 2) Increases to pension costs and unfunded liabilities. 3) Closure of the Diablo Canyon Nuclear Power Plant. 4) Changes to state funding formulas. The County points to two additional potential factors that could impact the budget: 1) economic recession, and 2) impacts of man-made and natural disasters.

The County’s approach to bargaining is to eliminate formulaic wage increases and to share future pension cost increases. It is not claiming an inability to pay, but wants to maintain strong reserves. The County has an unfunded pension and retiree medical benefits liability. It has important capital projects that are a priority of the Board of Supervisors. The Union’s analysis of the County’s reserves is flawed, and does not account for the fact that reserves are one-time money, not the basis for ongoing expenditures.

The Employer posits that the compensation lag behind comparable jurisdictions results almost entirely from lower health benefit contributions by SLO County. The disparity would not be addressed by the Union’s wage proposal. The County’s health benefit proposal at least begins to close that market gap.

The County asserts that it has few recruitment and retention problems and has a quit rate within market norms.

The Employer posits that its wage offers to these bargaining units are internally consistent with ones made to other County units. In fact, the wage increases provided to SLOCEA far out-paced those offered to other units from 2006 – 2017.

On the issue of pension contributions, the County asserts that it is appropriate to compare County pensions with private sector comparators, based on the language in the PWO.

Pension cost-sharing is an important component of the County’s compensation philosophy and is applied to all County bargaining units. However, on a one-time basis the County is willing to pick up the employee share of the contribution increase in order to maintain unit members’ spending power.

PANEL DISCUSSION AND FINDINGS

The parties are both proposing a one-year term of agreement, July 1, 2018 through June 30, 2019. A one-year term would mean that preparations for successor bargaining would have to begin a few short months after the ratification of this agreement. Contract bargaining, particularly as it has been conducted over the past two cycles, puts great strain on the financial and human resources of both the County and the Union. These are resources that could be better employed for other important labor-management projects.

The undersigned neutral chairperson strongly encourages both sides to get creative and look for a path to a two or even a three-year term of agreement (or longer). Both sides need a moratorium from the intense grind of this process. This is not a formal panel recommendation, since the issue of term is not in dispute. This is a strong suggestion from the chairperson.

The Panel Majority Concludes that the Union’s Proposal on Wages Most Closely Conforms to the Statutory Criteria: The preponderance of the evidence, as analyzed in light of the relevant statutory factors, favors the Union’s proposal. The following are the relevant statutory factors, and how they apply to this wage dispute.

Local rules, regulations, or ordinances: The Prevailing Wage Ordinance does not directly impact this dispute, since it requires that the County give a compensation increase “at least equal to the

percentage change in compensation” given to similar employees in comparable jurisdictions. Neither side has surveyed comparable increases, only comparable levels of compensation.

However, the ordinance does have some relevance. The Employer is correct that the PWO incorporates private sector comparators. What undermines the Employer’s case in this regard is the way in which it introduces private sector comparators – through a blind survey. Were the parties to include actual private employers (PG&E might be one example, or a local hospital with published wage scales) that have transparent compensation data, it could help inform future negotiations.

Where the PWO has more relevance is in underscoring the importance that the area’s voters placed on the factor of comparability, in a general sense. This ordinance gives the panel direction to place extra emphasis on the comparability factor in reaching a recommendation.

Stipulations of the parties: The contract section that sets out the survey process, quoted above, also underscores the significance of external comparability as a bargaining factor for the parties. Neither side has proposed to alter this section. The section was implemented in the run-up to these negotiations, and ultimately resulted in a survey that both sides could live with. This was no small feat – many disputing parties are unable to agree on comparability and leave it to the neutral factfinder to break the tie.

The survey results derived from the contract clause are only intended to inform negotiations, not to dictate a formulaic solution to compensation adjustments. However, the existence of this long-standing provision, along with the PWO, moves the external comparability issue to the forefront of factors to be considered. Section 12.5 is, indeed, a “stipulation of the parties” that is relevant to the outcome of this dispute.

The interests and welfare of the public and the financial ability of the public agency: The Employer is not claiming an inability to pay for the Union’s wage proposal. By not making that claim, the County relieves the panel of the task of thoroughly scrutinizing the Employer’s financial condition.

However, under the broader category of “public interest,” the County is asserting that it should not pay the increase proposed by the Union. The Union argues the opposite. Indeed, the parties spent considerable time in the hearing and provided reams of documentation asserting their positions on the financial condition of the employer.

Hence, a few observations from the panel are in order regarding this issue.

The panel finds no fault in the County’s sustained and successful efforts to build up its reserves. That it has reserves that are higher than those of other counties and higher than minimum recommendations from accounting groups is no strike against it. The Union and the employees represented by the Union should take comfort from the high level of reserves and welcome the additional employment security this provides for the inevitable “rainy days” to come.

The County is correct in pointing out that it would not be prudent to pay for ongoing raises with one-time reserve funds.

Where the panel diverges from the Employer’s assertions is in its gloomy assessment of the 2018/19 projected budget. The County relied heavily on the projected deficit as justification for providing no across-the-board salary increase.

The County made claims about this budget without providing the actual budget for the factfinding panel’s consideration. It presented no witnesses who worked on developing the budget. Unfortunately for the County’s case, the chain of emails from the former CAO to current County officials was the only budget evidence presented. None of the senders or recipients of those emails testified, but their emails were in the record and are taken at face value by the panel.

Those emails left the panel with two distinct impressions. First, the County’s budget projections for 2018/2019 were, and may continue to be, unreliable. The County’s omission of millions of dollars of costs associated with approved salary increases, *an ongoing expense that had already been incurred in the 2017/2018 fiscal year*, is difficult to comprehend. **No evidence was presented that the necessary oversight was put into place to assure the Union, and the public, that an error of that magnitude would not be repeated in the new projection.**

Second, the panel believes that the County should have projected a surplus, not a deficit, by using ordinary budgeting practices. The former CAO’s advice was sought after by the current County controller, who is presumably the top financial officer for the County. That former CAO’s advice was to balance the budget by assuming salary savings from vacant positions. Apparently, that advice was rejected, as evidenced by the fact that the communications office announced the “error” and the new projection of a deficit.

This decision by the County to project full staffing, and hence a deficit, is contradicted by the County’s presentation to the Union and then to the panel. In that presentation, the County said that the only “approach” to addressing the looming “deficit” the County had implemented so far was a “hiring

chill.” A hiring chill was described as a directive to fill vacant positions only when absolutely necessary. It defies logic that the County would have a “hiring chill” yet budget for no vacant positions.

The panel notes that, in the Trades unit, by assuming the current rate of vacancy throughout the upcoming fiscal year the County would save well over twice the amount that a 3% raise would cost.

Finally, reinforcing the panel’s skeptical view of the County’s projected deficit is its five-year history of underestimating revenues and overestimating expenses, the latter by over 15% per year.

External comparability: As noted above, this factor looms large because of the ordinance and the parties’ own contract. Neither the County’s nor the Union’s proposal adequately addresses comparability, but the Union’s proposal comes closest.

The Union’s proposal falls short because it only provides for an across-the-board increase. The survey shows wide disparity between benchmarks. It shows a few benchmarks that are within an acceptable range (+/- 5%) and one even above market. It shows other benchmarks lagging well behind the competition. To truly address the survey deficiencies, a combination of across-the-board increases and equity/market adjustments would be in order.

The other way in which the Union’s proposal falls short is in not addressing the key area of market lag – health benefits. The Union proposes no “new dollars” to be directed toward an area where this unit is far behind, particularly for family coverage.

The Employer’s proposal, on the other hand, does even less to address the survey disparities. Despite the parties’ stipulations and the ordinance, the Employer asks the Union to accept no wage increase. While the trades survey from the prior round of bargaining was not in evidence, the Union asserted without rejoinder that the Trades unit, despite raises in the last contract, has fallen further behind.

The Employer accurately points out that its proposed “pension contribution holiday” alleviates what would have been, in effect, a 1% pay cut. However, the survey shows that, had the 50/50 split continued and had the 1% additional amount been charged to employees, the unit would exceed the average of the public-sector comparators’ employee pension contributions. While the lag would have been small, it nonetheless would have placed trades employees even further behind the market.

The panel views the Employer’s generic presentation on public sector versus private sector pensions to be irrelevant to this panel’s determination. The ordinance does allow for the introduction of private sector comparators. PG&E employees and local hospital employees, for example, may have

pensions that are inferior to County employees' pensions. When that information is introduced into the bargaining process in a transparent and verifiable way the comparison might become relevant. Until then, the relevant comparisons are other public sector defined-benefit pensions.

On balance, the Union's wage proposal more closely conforms to the critical factor of external comparability.

Consumer Price Index: The parties drew different conclusions about CPI from available data. This is primarily due to the time period examined. The Employer went back more years to compile data. The Union looked at the last year of CPI changes. Both methods are valid. The panel draws no conclusion on which proposal conforms most closely to the CPI statutory factor.

Any other facts: Under this catch-all factor, the most relevant one in the instant dispute is internal comparability. In other words, is the County compensating this unit as well as other County bargaining units?

The Union looks at the scheduled increases for several units in 2018/19 and argues that its unit should be treated at least as well. The Employer takes a longer view and contends that SLOCEA received increases during years when other units did not.

The balance on this issue tips slightly in favor the Union. Staggered bargaining schedules and expiration dates within a single employer are relatively common. The Employer should endeavor, however, to set up the resulting labor agreements in such a way that employees aren't asked to make sacrifices or concessions at the same time that others are enjoying substantial increases.

On balance, and primarily based on external comparability, the panel recommends the Union's wage proposal for the Trades Unit.

The Panel Majority Concludes that the Employer's Proposal on Health Benefits Most Closely Conforms to the Statutory Criteria: The dispute over health benefits is not about the cost of the proposals. The costs are identical. The difference is in how the additional employer contributions are allocated to the three tiers of coverage.

The Union makes a valid point that, given the absence of a cost dispute, the employer should defer to the Union on how to distribute the offered dollars. What this approach ignores, however, is external comparability. This unit lags far behind the competitors in health benefit contributions –

particularly in the area of family coverage. The Employer’s proposal, while only a modest improvement in this regard, is at least a step forward.

The Employer’s alternative proposal involves a coordination with the Big Unit bargaining process. That is outside the scope of this panel’s deliberations, so will not be addressed here.

External comparability looms large in the panel’s consideration of the wage proposals. Likewise, external comparability is the dominant consideration for the health benefits dispute. For that reason, the panel recommends the Employer’s proposal on health benefits.

SUMMARY PANEL RECOMMENDATIONS

- 1) The factfinding panel majority recommends that the parties adopt the Union’s wage proposal of a 3% increase on 7/1/18.
- 2) The factfinding panel majority recommends that the parties adopt the Employer’s health benefit contributions proposal of a \$94 per month increase to the County’s contribution to family health coverage, effective 7/1/18.



Paul D. Roose, Neutral Chairperson

Date: July 18, 2018

Jeromy Caldera, Union-appointed Panel Member

Date: July 18, 2018

I concur in full with the Recommendations

Michael McDougall, Employer-appointed Panel Member

Date: July 18, 2018

I dissent from the Recommendations (see attached explanation)

COUNTY'S DISSENT TO 2018 SLOCEA "TRADES UNIT" FACTFINDING RECOMMENDATIONS

COUNTY'S DISSENT TO 2018 SLOCEA "TRADES UNIT" FACTFINDING RECOMMENDATIONS:

In my view, as is discussed more fully below, the Majority's Decision is premised on a number of fundamental analytic errors.

Most importantly, the Decision ignores the fact that the County's final proposal was a *package* intended to implement the Board of Supervisors determination that fiscal uncertainties require that the County "tap the brakes" and refrain from conferring a salary increase for one year, in a manner designed to avoid impacting unit members' spending power. By analyzing the three elements of the package (no wage increase, but one year of pension cost increase relief and a cafeteria plan increase) independently, the Decision fundamentally misrepresents the parties' positions and understates the value of both proposals by approximately 1.0%. Moreover, it fails to give appropriate weight to the Board of Supervisors' determinations of fiscal policies and priorities, misassesses the relevance and importance of the projected FY2018-19 structural deficit, and relies on a flawed and superficial "comparability" analysis.

For all these reasons, the Majority Decision is simply wrong. I therefore dissent.

1. The Decision's Failure to Recognize the Total Value of the County's Proposals Is a Fundamental Error

The County's final offer to SLOCEA is for a three-part package with an overall value of 1.01% over one year. It does not include any across-the-board salary increase, but does incorporate two benefits specifically designed to prevent any negative impact on unit members' take-home pay or buying power: a one-time suspension of pension cost increases for January 2019, and a significant increase to the County cafeteria plan contribution for unit members enrolled in Family (Employee + 2) health benefits.

The Union's final offers, in contrast, have an overall value of 4.01% over the same year. Again, this is because SLOCEA has proposed a 3.0% wage increase on top of "accepting" the County's proposed "pension holiday" (while ignoring its contingent nature) and proposing an increase to overall health contributions with the same value as the County's proposal.

A core premise of the Decision's analysis is that the County is *only* offering a 0% salary offer, and that the value of the other two elements of the County's package proposal need not be recognized because those elements are not in dispute (other than how the health contribution increase is to be distributed). As indicated above, this premise is simply incorrect. The "super-proposal" ultimately recommended in the Decision essentially incorporates all the benefits proposed in the County's packet, without giving the County any credit for their value. Taking that base as an undisputed given, it then acts as if the County has offered nothing and uses that fact to justify also recommending the 3.0% salary increase proposed by SLOCEA.

Because of these basic analytic errors, the Decision understates the value of both the County's and SLOCEA's proposals by 1.01%, and downplays the unjustifiable 4.01% cost of its recommendations. The fact that the Chair indicated at hearing that a "package" approach was going to be applied in this case makes these flaws all the more astonishing.

COUNTY'S DISSENT TO 2018 SLOCEA "TRADES UNIT" FACTFINDING RECOMMENDATIONS

2. The Decision Fails to Give Appropriate Weight to the Board of Supervisors' Determinations of Fiscal Policies and Priorities

The Decision claims that the County's decision not to assert "inability to pay"¹ "relieves the panel of the task of thoroughly scrutinizing the Employer's financial condition." That is simply untrue, and it ignores the arguments and evidence the County presented in this case. The "interests and welfare of the public" are an important factfinding criteria that the panel is expressly required to consider. (See Government Code section 3505.4(d)(4).) Addressing those interests requires careful consideration of the County's fiscal condition, including the FY 2018-19 structural deficit and all other fiscal uncertainties facing the County.

At hearing, the County demonstrated why and how the Board of Supervisors determined "tapping the brakes" on across-the-board salary increases is appropriate and necessary. The Union, which bears the burden of showing that its proposed 3.0% salary increase is justified, failed to effectively rebut *any* of the fiscal uncertainties discussed by the County's experts. Instead, it focused on the County's allegedly "excessive" level of reserves, arguing that those reserves can and should be used to fund an ongoing wage increase. The Decision expressly finds that the County's reserves are appropriate and contribute to the stability of the workforce, and that one-time reserve funds should not be used to pay ongoing salary increases. Nonetheless, it also somehow concludes that SLOCEA's proposed across-the-board salary increase is appropriate. In my view, that decision is unsupported by the evidence submitted at hearing and fails to give proper weight to the Board of Supervisors' determinations.

3. Misleading Discussion of the FY2018-19 Structural Deficit and its Relevance

The Decision includes a lengthy discussion of how and when the County discovered a projected \$2.8 to \$4.8 million deficit in the FY2018-19 budget. It also repeatedly chastises the County for failing to submit the actual budget forecast into evidence, or provide testimony from a witness directly involved in budget development. There is much emphasis on the purported "unreliability" of County budget projections. On those bases, it "rejects" the County's "gloomy assessment of the 2018/19 projected budget" and finds that the projected structural deficit does not justify the County's proposal to "tap the brakes" on salary increases.

This analysis has two major flaws.

First, how or when the deficit was discovered is irrelevant. What *is* relevant is the fact that an unanticipated structural deficit was discovered and has increased uncertainties about the County's fiscal condition and future. In response, the County's Board of Supervisors reasonably resolved not to grant any across-the-board salary increases for SLOCEA until the County can fully evaluate the causes and impacts of the structural deficit, and ensure it has an accurate picture of its overall financial health going forward. The Panel's finger-pointing approach on this point is, at bottom, merely second-guessing the decision of the Board that was elected to decide financial priorities and protect the public's fiscal interests.

Second, the Decision's conclusion that the County would have projected a surplus if it had applied "ordinary budget practices" fundamentally misrepresents the evidence, testimony and

¹ In the factfinding context, "inability to pay" has generally been interpreted as meaning that the employer would go bankrupt if it implemented the Union's proposals.

COUNTY’S DISSENT TO 2018 SLOCEA “TRADES UNIT” FACTFINDING RECOMMENDATIONS

facts relating to County budget practices. At issue is the fact that the County budgets “as if” all vacant positions are filled (although not at top step). The Decision claims that when County expert Russ Branson was asked whether he assumes salary savings from vacant positions when he prepares budgets for other agencies he stated “sometimes he does, and sometimes he does not.” This is an oversimplification of his testimony; what Mr. Branson actually said was that struggling agencies sometimes assume salary savings from unfilled vacancies to balance their budgets, but fiscally healthy agencies like the County do not typically rely on such salary savings to fund ongoing benefits.

Moreover, while budget practices vary from jurisdiction to jurisdiction they should always be consistently applied once they are adopted. That is exactly what the County did here, by using its established, normal and customary budgeting practices to develop projections, on that basis identified a deficit. The Union, in contrast, has asked the panel to disregard the County’s established practice and adopt a new practice to fit its desired outcome. This is fundamentally inappropriate.

Similarly, the Decision claims that the County’s former CAO advised it to balance the budget by assuming salary savings from vacancies, but “[a]pparently, that advice was rejected.” This is again misleading and taken out of context. Using savings from vacancies to balance the budget is an appropriate budget tool as part of the year-end budget balancing process (e.g., looking backwards), but not for projecting a budget in the future (e.g., looking forward). To put that another way, salary savings from unfilled vacancies are a tool that can appropriately be used to address a structural deficit, but not to avoid such a deficit in the first place.

It is undeniably true that a short-term budget deficit can be addressed, in part, by looking to salary savings from known vacancies. Doing this to balance the budget, as is required by law, is appropriate. Relying on such savings to pay for an ongoing salary increase, however, is fundamentally unsound. Positions are included in the budget because they are required to perform needed services and over time, they are filled. If ongoing costs are paid for with the money set aside for those positions that happen to vacant at some point in a fiscal year, some required position will never be filled. Any salary savings from vacancies must therefore be treated, at most, as one-time money.

4. Flawed and Superficial “Comparability” Analysis

Finally, even though the Decision purports to place “extra emphasis” on comparability it essentially ignores detailed analysis on that issue that was presented by the County’s expert, Doug Johnson. Mr. Johnson acknowledged the parties’ historical “total compensation” comparison, but also presented an alternative, more detailed analysis of the same data showing that (1) Trades Unit members are already nearly at market median on a wages-only basis, and (2) their poorer showing on a total compensation basis is almost entirely due to relatively low County contributions towards health benefits, especially for families. This is, notably, an issue that is directly addressed by the County’s proposals but not by SLOCEA’s proposals.

Despite spending significant time noting flaws in SLOCEA’s salary proposal, the majority still somehow ultimately concludes that SLOCEA’s proposal “comes closest” to “adequately” addressing external comparability. That conclusion is simply not supported by the data, and appears to be largely driven by the misleading comparison of SLOCEA’s proposal to the

COUNTY'S DISSENT TO 2018 SLOCEA "TRADES UNIT" FACTFINDING RECOMMENDATIONS

County's proposed 0% salary increase in isolation, ignoring the value (and impact on total compensation comparability) of the other elements of the County's package proposal.

The Decision's *internal* comparability analysis is equally flawed. It concludes that SLOCEA's proposed salary increase is supported by previously negotiated upcoming wage increases for other County bargaining units, but it ignores three key facts. First, the increases were negotiated *before* the County projected a FY2018-19 structural deficit or was fully aware of all the fiscal uncertainties it is currently facing. Second, SLOCEA negotiates first with the County in each round of MOU bargaining, and as a result salary increases for SLOCEA units are implemented earlier than equivalent increases for other units. Thus, employees in the Trades Unit *already received* increases that correspond to those on which the majority hangs its analysis; SLOCEA's proposed 3.0% salary increase would not bring the Trades Unit into line with other units, but instead only set a precedent for successor MOU negotiations with those units. Third, the cumulative increases negotiated for Trades Unit members over the past decade have far outpaced those for other units, even including known upcoming increases. An additional 3.0% increase would only increase this long-term disparity.

Conclusion

The parties went into the present factfinding with a fundamental disagreement over whether *any* across-the-board salary increase is appropriate, given the fiscal uncertainties facing the County. The Decision does not provide any basis for bridging that disagreement, or for helping the parties find any common ground. Given the serious flaws discussed above, I dissent.