Paul D. Roose
Arbitrator / Mediator
Golden Gate Dispute Resolution
510-466-6323
paul.roose@ggdr.net
www.ggdr.net
April 30, 2013

FINDINGS AND RECOMMENDATIONS
PURSUANT TO
CALIFORNIA GOVERNMENT CODE 3505.4

In the Matter of a Controversy Between	)	
County of Shasta	)	
Employer	)	
and	)	Collective Bargaining Impasse
United Public Employees of CA Local 792	)	Factfinding
Union	)	PERB Case No: SA-IM-119-M

APPEARANCES:

For the Employer:	Gene Bell, Consultant Becker + Bell C/o County of Shasta 1450 Court St. Room 348 Redding, CA 96001-1676
For the Union:	David G. Ritchie, Attorney United Public Employees of California Local 792 1800 Park Marina Dr. Redding, CA 96001

FACTFINDING PANEL:

Appointed by the Employer:	Leanne Link, Branch Director Business and Support Services Health and Human Services Agency County of Shasta
Appointed by the Union:	Steve Allen, Labor Representative United Public Employees of California Local 792
Neutral Chairperson:	Paul D. Roose, Arbitrator and Mediator Golden Gate Dispute Resolution

STATUTORY FRAMEWORK AND PROCEDURAL BACKGROUND

Under amendments to the Meyers-Milias-Brown Act that went into effect on January 1, 2012, 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 parties 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

United Public Employees of California Local 792, affiliated with Laborers International Union of North America, is the exclusive representative for the General Unit in the County of Shasta, California.

The County has eleven bargaining units. One other unit – the Professional Unit – is represented by Local 792. That unit had a contract that expired on April 30, 2012, and early in 2013 reached a settlement on a new agreement that extends through April 30, 2015. The County is in negotiations with several other bargaining units at the time of this factfinding process.

The parties have a collective bargaining agreement that expired on April 30, 2012. The parties conducted bargaining for a successor agreement beginning in February 2012 and on eight additional occasions in 2012. After the September 27, 2012 bargaining session, the parties mutually declared impasse and called in a state mediator. A package settlement proposal resulted from the mediation process in November 2012, but did not ultimately receive the support of the union's membership or that of the County's Board of Supervisors.

The Union made a timely request to PERB on November 14, 2012 for factfinding in both its General and Professional units, invoking the provisions of Government Code Section 3505.4. However, the parties agreed to hold the factfinding process in abeyance pending additional settlement discussions. In early December 2012, the parties notified PERB that they wished to proceed with factfinding for the General unit. The parties selected their factfinding panel members as noted above, and notified PERB on December 13, 2012 that they had mutually agreed to the undersigned as the neutral chairperson of the factfinding panel.

The parties requested a hearing date in early March 2013, since they hoped to utilize the intervening time to resolve the impasse without factfinding. Discussions between the parties continued, and the parties were successful in resolving the impasse over the Professional unit's contract. A proposal modeled after the Professional unit's agreement was put out for a vote to the General Unit's membership. That proposal was voted down on February 5, 2013. On February 7, the parties notified the factfinding panel that the parties wished to go forward with the factfinding process.

The panel convened on March 8, 2013 and took on-the-record evidence and argument from both sides concerning the issues 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 of the matter. Accordingly, mediation was also conducted on that date. At the end of the day on March 8, the parties agreed to continue the factfinding process on April 10, 2013. The panel reconvened on that date. Mediation efforts proved unsuccessful, and so the panel took additional evidence and testimony from the parties. The parties submitted their final proposals for the panel's consideration and made oral closing arguments on the record. The record was then closed at the end of the day on April 10, 2013 and submitted to the panel for its findings and recommendations.

BACKGROUND TO THE DISPUTE

The County of Shasta is located in the northern end of the Sacramento Valley in California. It has a population of approximately 177,000. The county seat, and largest of three incorporated cities in the County, is Redding. County government provides a full range of services to its residents and businesses.

The unit, with 860 members, is the County's largest. It includes clerical, technical, and analytical positions throughout the County's departments. It does not include sworn public safety employees, managers, or professional employees.

The County, like nearly all governmental entities in the state, has suffered a significant decline in revenue due to the economic recession. In 2006-07, the year before the decline began, the County's general fund revenue was $65 million. It dropped to a low of $54 million in 2009-10, and has crept back up to a projected $61 million in the current year. The County relies heavily on property tax, which provides approximately 82% of its revenue. The precipitous decline of assessed property values has taken a toll.

In the face of this economic picture, the Union agreed to concessions in the last round of bargaining. The agreement between the parties that expired on April 30, 2012 was a 23-month agreement beginning June 1, 2010. That agreement included no wage adjustments and required employees to begin paying the employee share of PERS retirement, previously paid by the employer. Bargaining unit members began paying 3.5% of the 7% employee share on June 6, 2010 and the remaining 3.5% on July 1, 2011. This change resulted in an approximately 7% decline in unit members' take-home pay.[1] The unit members' last salary adjustment was a 3% increase in October 2009.

The County has some history of negotiating pattern settlements with its eleven bargaining units and trying to achieve some consistency with its unrepresented employees. However, an analysis of cost-of-living adjustments for the County's bargaining units since 2005 shows a varied pattern of increases implemented in different years.

Both sides presented well-researched and well-documented comparison compensation from other California counties. While there was some overlap between the jurisdictions selected by the parties for

[1] Because the deduction for the PERS contribution takes place on a pre-tax basis, the impact of the deduction on take home pay is somewhat less than 7% and varies depending on the tax bracket of the individual unit member.

comparison, there were significant differences. The County selected three contiguous counties, and four additional ones that were closest to Shasta in population. The Union selected strictly by population – the five just below Shasta, and the five just above. The result was that there were five counties in common – Butte, El Dorado, Kings, Madera and Yolo. The County then added Siskiyou and Tehama, and the Union added Humboldt, Imperial, Marin, Napa and Nevada.

The County calculated a total compensation cost per classification compared. The Union calculated a separate salary figure comparison, then compared Shasta County's benefit package separately to that of the comparison counties. Another difference was that the parties used different job classifications for comparison – understandable since they did their analysis separately, and the bargaining unit has hundreds of classifications. The Union surveyed twenty classes, the County examined twelve.

The County's results showed that the Shasta surveyed classes mostly fell below the comparator counties. In only one case (Eligibility Worker II) did the data show the Shasta classification above the average for the contiguous counties and the population-selected counties. In three of the selected classes (Accounting Technician, Administrative Secretary II, Community Mental Health Worker), Shasta's compensation was less than both comparison groups. In the remaining eight classes, Shasta compensated higher than the contiguous counties but lower than the population-selected counties.

The Union's survey results showed that Shasta salaries lagged behind the mean and median of its ten selected comparators in a range from slightly below to as much as 20% below. The Union's analysis of medical benefits showed Shasta's contribution to employee-only coverage to be better than average, but fell below in employee plus one and family coverage contribution.

The cost of a 1% increase for the bargaining unit for one year is about $550,000.

The consumer price index (CPI-W) rose a total of 7.8% over the three years (2010, 2011, and 2012) since the bargaining unit last received a cost-of-living allowance pay increase in 2009.

The parties currently have a complex agreement on the provision of medical benefits to unit members. The County contracts with California Public Employee Retirement System (PERS) Medical for active employee and retiree health benefits. The two major plans available under PERS Medical in the Shasta County geographic area are PERS Choice and PERS Select. The County currently pays a fixed dollar amount for employee-only coverage, an amount that covers both the less expensive PERS Select and also the more expensive PERS Choice. Both plans are preferred provider plans. The primary difference is that PERS Select has a more restricted list of favored providers.

Since the County was proposing to pay an amount less than the PERS Choice premium but sufficient to cover PERS Select, most employee-only bargaining unit members switched their coverage to PERS Select during the 2012 open enrollment in the fall of 2012. The collective bargaining agreement specified increases in the County portion only during the life of that agreement that expired April 30, 2012. However, since the contract was still up in the air, the County decided to continue the practice of paying 100% of the PERS Choice premium pending resolution of the bargaining issues.

For employee-plus-one and family coverage, the contract specified that the employer would pick up 50% of any premium increase. Again, the County decided to continue this practice into the current year, even though the contract specified only 2011 and 2012 increases. As a result, the County now pays 60% of the PERS Choice premium for employee-plus-one, and 42% for family. For employees who take PERS Select, however, the County portion rises to 80% for employee-plus-one coverage and 78% for family coverage.

The County currently does not pay employees a stipend for declining medical coverage.

Another issue in dispute under health benefits is the retiree / administrative fee. Under the County's contract with PERS, the employer pays a fee to PERS each year in order for PERS to administer the retiree benefit plan. This amount escalates year to year. As of 2010-2011, the amount of the fee paid to PERS was $88 per bi-weekly pay period per active employee. Under the collective bargaining agreement, the employee was to pay 30% of that fee, or $26.40.

It should be noted that, also under the County's contract with PERS, the County must make the same premium contribution for retirees as it does for active members. Were it not for this PERS contract, the collective bargaining agreement between the parties only requires that the County pay 10% of the active contribution for retired unit members. For management employees, personnel rules require a higher percentage contribution by the County for retirees – a provision that would become relevant if PERS Medical were ever discontinued.

Under County rules, there is no vesting period for eligibility for retiree medical benefits. In order to introduce a vesting period into the PERS medical plan for retiree benefits for future hires, state legislation is required. The parties have agreed to work together to seek to have such legislation introduced.

Finally under medical benefits, there is a dispute about dental benefits. Under the current agreement, the County must adjust its dental contribution up to $5 per month if necessary to cover increased premiums. The $5 is not cumulative from year to year.

One classification issue was in dispute at the hearing. The County operates an entity called the Opportunity Center. It employs employment services instructors (ESIs), who are members of the general bargaining unit. The purpose of the centers is to provide employment for disabled community members providing various services to public and private employers in the County. The County-employed ESIs supervise the persons with disabilities. Currently, ESIs are considered unclassified "at-will" employees. Therefore, they are not subject to the "for cause" provisions of Article 16 Disciplinary Action and hence do not have access to binding arbitration in the event they are discharged. They are entitled to a "name-clearing hearing" as an alternative to arbitration.

Evidence indicates that three ESIs were terminated for cause in the last five years, all three in 2010. There are approximately twenty ESIs in the bargaining unit.

The last issue in dispute involves use of vacation leave prior to retirement. A current contractual provision allows employees to choose to exhaust their vacation leave balances after they have set their retirement date but prior to retiring. Employees selecting this option do not accrue additional leave during this time period nor may they return to active duty during the leave period.

The parties also stipulated to the resolution of several disputed issues during the factfinding process. Those are 1) a term of agreement through April 30, 2015, 2) expansion of the definition of relatives covered under bereavement leave, 3) a modification to the rules for annual vacation cash out.

POSITIONS OF THE PARTIES

The Union

The Union put forward the following proposal for settlement of outstanding issues:

Salary: 3% increase July 1, 2014

Health and Welfare Benefits

A) Effective January 1, 2014: Set employer contribution at 85% for employee only, 65% of employee plus one, and 65% of family coverage of PERS Choice premium

B) Effective January 1, 2014: County to add a provision to pay $100 per month to employees who opt not to take medical insurance and who provide proof of alternate coverage under existing County rules

C) Effective January 1, 2014: County to pay 100% of retiree / administrative fee for PERS Medical plans

D) Effective upon the chaptering of legislation to amend the PERS Medical contract for the bargaining unit to create a vesting period for retirement medical benefits for future hires: Incorporate into the collective bargaining agreement current County personnel rule that currently applies to management employees that specifies County contribution levels for retiree medical benefits

E) Effective January 1, 2014: For dental benefits, County to carry over any unused portion of the $5 per month County contribution increase to the following year

Leave

Accept County's proposal to delete provision allowing retiring employees to exhaust vacation balance prior to retirement, provided that this change is implemented for all County employees

Classifications

Change the status of Opportunity Center classifications from "at will" to "regular"

The Union argues that the employer can afford the Union's economic proposals. The Union cited a March 2013 analysis of the County's financial health prepared by certified public accountant Timothy F. Reilly of Bachecki, Crom & Co. LLP. That report's key findings were that 1) the County's revenue trend line has flattened out and shows signs of ascending, 2) the County has a documented history of excessively cautious budgeting, underestimating revenue and over-estimating expenses and 3) the County has a robust asset / liability ratio that reinforces its overall financial health.

The Union specifically advocates for its 3% proposal, based on a comparison of raises provided from 2005 through 2012 to the General Unit and the UPEC-represented Professional Unit. According to the Union's analysis, the Professional Unit has received 14% in raises over that time period, while the General Unit received only 13%. Since the Professional Unit has just signed an agreement with the County for a 2% increase, the General Unit should receive a 3% increase in order to draw even, the Union contends.

The Union compares its medical benefits to other bargaining units. Specifically, it seeks the same premium agreement for employee only and family coverage as that enjoyed by the County's correctional officers. The Union also proposes the elimination of the retiree / administration fee due to the fact that several other bargaining units and unrepresented employees do not pay it.

The Union seeks the inclusion of personnel rules about retirement medical contributions into the agreement in order to provide security in the event that PERS Medical is no longer the medical plan for unit employees.

The County

The Employer put forward the following proposal for settlement of outstanding issues:

Salary: 2% increase July 1, 2014

Health and Welfare Benefits:

A) Effective January 1, 2014 and January 1, 2015: Set employer contribution at 85% of PERS Choice premium. The County will add to its contribution for employee-plus-one and family coverage 50% of any premium increases for PERS Choice at those coverage categories

B) Opt out of medical coverage: no change

C) Effective July 1, 2013: Employee to increase contribution from $26.40 to $30.00 per pay period toward the retiree / administrative fee for PERS Medical plans

D) Minimum County contributions for retiree medical benefit: no change

E) Dental benefit: continue current benefit and practice

Leave

Delete provision allowing retiring employees to exhaust vacation balance prior to retirement

Classifications

Maintain "at will" status of Opportunity Center classifications

The Employer does not, for the most part, dispute the Union's financial analysis of the County. The County prides itself on its well-managed finances. It recently obtained an "A" rating on a capital improvement bond. It also places a priority on retaining jobs and avoiding furloughs for its employees. The County has still not fully recovered from the dramatic revenue drop that began in 2006-07.

As for the Union's medical benefits proposals, the County contends that different bargaining units have reached different agreements based on bargaining trade-offs. It would not be feasible to grant an improvement to the general unit solely based on the fact that another unit has a better contract in that particular area. The Union initiated the push to get into the PERS medical plan, and benefits greatly from the generous retiree medical benefits that it provides. The Employer must continue to insist that employees share the escalating costs with the County.

The County rejects the medical opt-out proposal. The purpose of the benefit is to provide health protection, not cash to employees, argues the County.

The County puts forward the deletion of the vacation cash-out at retirement provision because management believes that employees should either be working or not – not in a quasi-retired status not subject to recall in the event they are needed.

Finally, the County defends the current arrangement for Opportunity Center employees. This program that places County services in many private enterprises is more akin to a private enterprise itself. The County needs the flexibility of being able to remove these employees at will based on operational needs.

FINDINGS AND RECOMMENDATIONS

Taking into account all of the statutory criteria referenced above, the following are the panel's findings and recommendations in regard to the specific issues in dispute.

Salary

The parties are not far apart on this important issue. Over the term of what is essentially a three-year agreement, the parties are each proposing a single pay increase back-loaded into the last year of the contract. Given that the increase would be in effect for ten months of this contract (July 1, 2014 through April 30, 2015), the cost during the life of the agreement of the employer's proposal will be 1.66%, or roughly $916,000. The cost of the union's proposal would be 2.5%, or roughly $1,375,000. In either case, this is an ongoing cost for the employer, so the County would have to calculate the ongoing cost into its

2015-16 budget and beyond. However, the parties will be back at the bargaining table in the early months of 2015, so the employer will have an opportunity to seek negotiated adjustments if needed.

The comparison data provided by the County was the more helpful of the two sets presented.[2] The County makes a valid argument that contiguous counties should be included because that is the geographical scope of the labor market for these classifications. And the inclusion of additional California counties with similar population also makes sense. Even utilizing strictly the County's comparison data, the Shasta County compensation falls a little short. Given the fact that neither party is proposing a pay increase until after the next complete fiscal year, the issue of comparison data is less relevant in this particular dispute. A compensation survey is a snapshot in time. The compensation for the comparison jurisdictions will inevitably evolve between now and July 1, 2014.

A final point needs to be made about compensation comparability for large diverse general units such as the one involved in this dispute. Because of the great number of classifications involved, and their varying standing relative to a comparison market, it is difficult to apply this particular statutory criterion when assessing an across-the-board pay increase proposal.

In sum, the panel believes that either a 2% pay increase or a 3% pay increase would likely keep the County in step with comparison jurisdictions.

Another statutory factor to examine is the cost-of-living. On this score, the Union's proposal of a 3% increase does more to keep the unit members closer to the increased cost-of-living than does the 2% proposed by the Employer.

The County is right to be concerned about the uncertainty of the current economic recovery and the related recovery of its property tax revenues. However, given the County's history of conservative budgeting and its excellent credit rating, the panel believes that a 3% increase in the last year of this three-year agreement would be consistent with prudent expenditure of public funds.

Health and Welfare Benefits

The Union has put forward several proposals to enhance health and welfare benefits in areas where the County is seeking to extend the status quo. First is the Union's proposal to add a provision to pay employees to opt out of medical insurance. The panel rejects this proposal. Many contracts do have

[2] While this is not a formal recommendation of the panel, the panel suggests that the parties meet and confer between now and the next contract negotiations in an effort to arrive at a mutually acceptable method of measuring comparability with other jurisdictions.

such provisions, when allowed by the health plan. PERS Medical does allow for opt out provisions. However, the Union has promoted this arrangement as a way for the County to save money. Yet there was no built-in guarantee in the Union's proposal that the County would indeed save. This is the kind of provision that is best developed jointly through a collaborative process that addresses the interests of both sides.

Next, the Union has proposed the elimination of the employee share of the retiree / administrative fee beginning in January 2014. One of the major themes of this round of bargaining for the Union was the desire to hold on to the PERS Medical plan and protect its ample retiree medical coverage. The payment of a share of the retiree /administrative fee is a key mechanism to do just that. The County's proposal to raise the employee share by an incremental amount is reasonable. It is a small price to pay for active employees to support a system that pays full medical benefits for retirees. The panel adopts the County's proposal on this issue.

The Union would also like to introduce into the contract a portion of the personnel rules for managers that would guarantee a certain level of retiree medical benefits. The fact is that the parties are currently participating in PERS Medical, a plan that requires the County to make the same contribution for retired employees as it does for active employees. Neither side is seeking to end this contract with PERS. The Union has not made a sufficient case why it is necessary to add this particular protection at this time. The panel does not recommend the adoption of the Union's proposal.

Finally, the Union proposes to enhance the dental benefits by requiring the $5 per month annual increase be rolled over from year to year if not utilized. The Union has presented no evidence that this has been a problem in the past. The panel does not recommend the adoption of the Union's proposal.

The last issue to be dealt with in health benefits is the important one of the County's contribution to medical benefits. Both parties are proposing that the County pay 85% of the employee-only premium of the PERS Choice plan. By doing so, the County will continue to pay the entire premium for the less expensive PERS Select plan for employee-only subscribers at current rates. The difference in the proposals is in the area of employee-plus-one and family coverage. Here, the County proposes to continue the current arrangement of paying half of any premium increases, with the employee paying the other half. The Union proposes that the County begin paying 65% of the PERS Choice premium for both of these coverage levels. The current County contribution is equivalent to 60% and 42% of PERS Choice, respectively. As a portion of the PERS Select premium, this translates into 80% for employee-plus-one and 78% for family coverage. Under the County's proposal that the County continue to pay half of any increases, these percentages would continue approximately where they are for the life of the proposed agreement.

While the cost to the County of the Union's premium-sharing proposal was not made evident at the factfinding hearing, it would constitute a substantial shift in the cost of dependent coverage to the Employer. The Union has not justified why this is necessary or consistent with the statutory criteria to be examined by the panel. Therefore, the panel recommends that the County's proposal be adopted on this issue.

Leave

The County proposes to delete the provision that allows employees to exhaust their vacation balance prior to retiring. The Union opposes this change, or accepts it only if it is implemented for other County employees. "Me-too" clauses such as proposed by the Union are hard to interpret, difficult to administer, and do not take into account the variety of trade-offs that bargaining parties make to achieve agreements. Therefore, the panel does not recommend the adoption of the Union's proposal. On the other hand, the Employer has not made an adequate case that this contract provision has been an administrative or fiscal problem. Therefore, the panel does not recommend the adoption of the County's proposal, and recommends that the contract remain status quo in this area.

Classifications

The Union seeks to convert the employment services instructors (ESIs) from the status of at-will to classified or regular status. The Employer wishes to maintain the status quo. The Union, seeking change in this area, bears the responsibility to show that the current system has resulted in problems. In this case, the Union has made its case. Out of only twenty employees in this classification, three were terminated for cause during the life of the prior agreement. None of those three had access to the rights that the remainder of this 860-member bargaining unit enjoyed. The rest of the unit enjoys the right, if supported by the Union, to take its case in front of a neutral arbitrator in the event that the County terminates that unit member's employment. The County has made the case that the ESIs, since they often operate in a private enterprise environment, should be treated differently than other bargaining unit employees. However, many other unit members interact on a daily basis with the public and with private enterprise. The panel does not see sufficient distinction between this classification and the rest of the unit to require a lesser level of job protection. Therefore, the panel recommends that the Union's proposal be adopted.

SUMMARY OF RECOMMENDATIONS

1) Salary: The panel recommends the adoption of the Union's proposal of a 3% salary increase July 1, 2014.

2) Medical Benefit Employer Contribution: The panel recommends the adoption of the Employer's proposal of the County paying 85% of PERS Choice employee only premium and 50% of any increase to PERS Choice premiums for employee plus one and family coverage, effective January 1, 2014 and January 1, 2015.

3) Payment to Opt Out of Medical Coverage: The panel recommends that this provision not be added to the contract.

4) Retiree / Administrative Fee: The panel recommends the adoption of the County's proposal to increase the employee share to $30 per pay period, effective July 1, 2013.

5) Incorporate Personnel Rules on Minimum County Contributions for Retiree Medical Benefits: The panel recommends that this provision not be added to the contract.

6) Carry over $5 increase in Employer contribution to dental benefit from year to year: The panel recommends that this provision not be added to the contract.

7) Delete provision allowing retiring employees to exhaust vacation balance prior to retirement: The panel recommends that this provision not be deleted from the contract.

8) Employment Services Instructors: The panel recommends the adoption of the Union's proposal to change these employees' status from at-will to classified.

Paul D Roose

____

Paul D. Roose, Neutral Chairperson

Date: April 30, 2013

/s/ *Steve Allen*

____

Steve Allen, Union-appointed Panel Member

Date: April 30, 2013

__x___I concur in part with the Recommendations

__x___I dissent in part from the Recommendations (see attached explanation)

/s/ *Leanne Link*

____

Leanne Link, Employer-appointed Panel Member

Date:

___x__I concur in part with the Recommendations

___x__I dissent in part from the Recommendations (see attached explanation)