

FACT-FINDING REPORT

BACKGROUND

Pursuant to the stipulation of the parties, the facts set forth below are accepted as a matter of record.

1. That they have satisfied their respective obligations as the employer and designated bargaining unit representative to meet and confer in good faith concerning the terms of successor memorandum of understandings for both the Specialized Peace Officer [SPO] and Supervisory Specialized Peace Officer [SPOS] Units.
2. That while they have reached agreement on certain issues, they have not reached full agreement on all issues and are at impasse.
3. That they have complied with local rules regarding impasse.
4. SEBA, as the bargaining unit representative for both units, has invoked its right to request submission of the impasse to fact-finding pursuant to Government Code section 3505.4.
5. The parties further acknowledge and stipulate that they have selected Paul Crost as the third party neutral chairperson for the fact-finding panel.
6. The parties further stipulate that they have complied with procedural requirements identified in the California Government Code, Meyers-Milias-Brown Act, specifically Section 3505.4.
7. That these fact-finding proceedings shall be governed and controlled by Government Code Sections 3505.4, 3505.5 and 3505.7.

DISCUSSION

The proposals at impasse were substantial in number and substance. Both economic and noneconomic proposals were the subject of a three-day hearing at which both parties presented thorough and effective arguments in support of their respective positions.

In support of SEBA's economic proposals, it presented a very detailed and thorough analysis of the County's budget history, and argued that the County has maintained a very conservative budgeting policy. That policy or policies have resulted in substantial overstatements of future expenses, and understatements of revenues. It argued that the result of these policies, coupled with a strengthening economy, which will be generating more revenues in the next few years, distorts the true picture of the County's financial status.

The County acknowledged that it does maintain conservative budgeting policies, and it did not claim inability to pay more than what is offered in its proposals for salary and benefits. Rather, because of the many services it provides, the increasing costs of pension benefits, and investments it will need over the next few years in infrastructure and other matters, it has adopted policies, which preserve the sound financial position of the County.

SEBA's economic presentation would have been persuasive if the County had claimed that it was unable to meet SEBA's economic demands. Since the County did not claim inability to pay, I have focused on comparability and equity issues in recommending certain adjustments of the County's positions. While these recommendations will not fully satisfy the salary and benefit claims of the bargaining unit members, they do address specific issues that were the subjects of the hearing, and hopefully will set the foundation for future salary and benefit increases.

As to the non-economic issues, I have made recommendations based upon the parties' presentations. As the issues and differences of position are well known, other than one exception, I will not go into detail about the parties' proposals and responses.

RECOMMENDATIONS

TRANSPORTATION UNIT

The proposal is unnecessary given that the County's duty to meet and confer is a statutory obligation.

SENIORITY SCHEDULING

The parties agreed during the fact-finding process to change the 20-year service requirement in the Sheriff's Department for Deputy Coroner Investigators to 20 year with the Coroner Division. However, SEBA did not meet its burden of proof as it pertains to its proposed changes in the Probation department. I recommend the Status Quo.

LEAVE

The County was persuasive in arguing that the current sick leave accumulation is consistent with comparable counties and other employees of the County. I recommend the Status Quo.

As to the Perfect Attendance proposal, referral of this issue to a Labor-Management Committee would be a better forum to resolve and possibly improve the administration of this benefit and the vacation scheduling system.

RETIREMENT MEDICAL TRUST

Based upon review of the current schedule for other bargaining units in the County, I recommend the following schedule on sick leave conversion to RMT:

35% Cash Formula Value for 241-600 hours
40% Cash Formula Value for 601-720 hours
45% Cash Formula Value for 721-840 hours
60% Cash Formula Value for 841-1300 hours

I also recommend the County contribution rate be amended by adding a 20-year contribution rate tier at 1.25%.

It does not appear there are any objections to the clean-up language as proposed by the County.

DIFFERENTIALS

SEBA's proposal for Swing and Graveyard shift differentials, both as to the amount and eligibility, are not supported by the evidence. I recommend that there be a \$.15/hour increase in the shift differential rates, effective in the 2016/17 fiscal year. I also recommend that differentials be amended to state that the differential shall not be paid during any period the employee is on a leave of absence of more than 80 consecutive hours, excluding prescheduled vacations.

As to SEBA's Field Training Officer [FTO] proposal I recommend that, if a formal program is established by the Probation Department for FTO/Mentors, the parties should meet and confer regarding wage rates and other benefits for FTO's/Mentors.

SEBA's proposal for a physical fitness policy is not supported by the evidence.

DISABILITY BENEFITS FOR DEPUTY CORONER INVESTIGATORS [DCI's]

While I have not detailed my reasons for my recommendations, on the issue of providing benefits that mirror Section 4850 to DCI's, I am describing in detail the reason for my recommendation that they should receive that benefit. [Undesignated statutory references are to the Government Code.]

DCI Bob Hunter presented the case for 4850 benefits, including a PowerPoint description of his work and the commonalities between deputy sheriffs and deputy coroners. I strongly urge the County's decision makers to view DCI Hunter's presentation in making their decision on this issue.

Statutory duties:

Upon being informed of a violent, sudden, or unusual death, a DCI must proceed to the location of the body, examine it, make identification, inquire into the circumstances and manner of death, and order removal of the body for further investigation, disposition, or release. (§ 27491.2.) If the decedent was driving or riding in a motor vehicle, the DCI must take blood and urine samples to determine the alcohol contents of the body, if any. (§ 27491.25) He or she must take charge of the decedent's personal effects at the death scene and safeguard the property until its lawful disposition. If the DCI's examination reveals that a police or criminal investigation may ensue, the body and related evidence must be preserved until law enforcement responds to the scene. (§ 27491.3.)

DCI applicants must be of good moral character and meet the physical, mental, and emotional standards for peace officers. (§ 1031.) To be appointed, an applicant must have completed a 64-hour arrest and firearms training course, as well as an 80-hour death investigation course. In contrast, county deputy sheriffs must undergo a 664-hour training course prescribed by the Commission on Peace Officer Standards and Training. A DCI carries a badge and wears a uniform that is indistinguishable from those of deputy sheriffs. While on duty, he or she is armed with a handgun, baton, pepper spray, and safety vest. However, deputy coroners have only limited peace officer powers. (Pen. Code, § 830.35.) Unlike deputy sheriffs, their power to make arrests does not extend to any public offense committed within the state.

Essential duties: DCIs conduct investigations into the causes of death, as opposed to investigating crimes. While most death scenes do not involve criminal conduct, some do, and in such cases, the DCI's investigation supports and parallels that of the appropriate law enforcement agency. A DCI's duties include: receiving reports of death from physicians, law enforcement and hospital personnel; initiating investigations at death scenes to determine if death is due to homicide, suicide, accident or nontraumatic causes; securing scientific and pathological evidence such as clothing, weapons, drugs, body fluids; fingerprinting and attempting to identify the decedent; locating and notifying relatives of the decedent; speaking with physicians about the decedent's medical history and checking other medical records to determine the cause of death; ordering autopsies or other services from skilled technicians to aid in arriving at an exact cause of death; testifying in court; and preparing and signing death certificates. A DCI's determination about the cause of death may initiate a criminal investigation.

Exposure to hazardous activity. Despite their dry job description and infrequent need to investigate crimes and make arrests, DCIs are occasionally exposed to hazardous and emotionally charged situations. Death scenes may be located inside a meth lab, in the desert, down a ravine, behind an active fire line, or in a crashed vehicle on the highway. At some point in their careers, DCIs will probably enter the scene of a wrecked vehicle, exposing themselves to dangers from crushed metal and flying glass. Traffic fatality scenes often require close contact with blood, urine, feces and other bodily fluids and substances. They need to wear protective clothing when coming into contact with a decedent who is HIV-positive or carrying another infectious disease. Moving a very heavy corpse requires considerable strength and agility.

The evidence included a report of an incident that involved biker gang members attacking a DCI and a deputy sheriff when they were denied access to a gang member's corpse. A DCI was shot at. Perhaps their greatest risk of injury arises from their attempts to remove a corpse from a home. They are often met with hostility and refusal to remove the corpse. In these emotionally charged and dangerous situations, DCIs have had to draw a weapon and threaten arrest in order to perform their duties. There are certain "implied expectations" placed on DCIs. They are

expected to back up deputy sheriffs and other sworn peace officers when requested, help clear residences and other structures, engage in crowd control, search suspects if another same-gender officer is unavailable, and make arrests while on duty whenever there is danger to property or persons. Although these expectations do not appear in any written document, meeting them is part of the job. The very fact that they wear uniforms that almost identical to deputy sheriffs' uniforms make them a potential target for those who target peace officers.

Assistant Sheriff David Williams explained the Department's opposition to 4850 benefits for DCIs. The primary reasons for opposition were they are not first responders, there is a big difference in hazards compared to deputy sheriffs, they don't respond to calls, they rarely make arrests, and their risk of injury is significantly less than that of deputy sheriffs.

The problem for that position is there are many deputy sheriffs who have little or no hazards, risks, or responsibility for making arrests. Similarly, lifeguards are covered. While it may be the case that these incidents are relatively infrequent for DCIs, the evidence supports a conclusion that they experience events, which are both hazardous, and that they do engage in law enforcement activity from time to time. They received training and arming that recognize the risks of their duties. Just as a commercial pilot may never face a potentially catastrophic situation, and a plane may be able to fly on autopilot, pilots are highly paid because they must have knowledge and skills that would be necessary if and when it was needed to save lives and property. I view the hazards the DCI's face as analogous to the pilot.

Finally, the morale and esprit de corps of the DCIs would be greatly improved by recognizing the role they play working for the Sheriff and with the deputy sheriffs. While the cost of 4850 benefits can be substantial in long-term sick leaves, the positive impact on DCIs that would result from granting this benefit warrants my recommendation that DCIs be granted benefits which mirror 4850 benefits.

SEBA BENEFIT PLAN

I recommend that the following language be adopted:

“If any time during the MOU SEBA requests to withdraw the bargaining units from the County-sponsored benefit plan, and that if, as a result of a meet and confer process, the County and SEBA mutually agree that the bargaining units can withdraw participation from the County-sponsored plan, the County and SEBA shall develop a plan to address the timing and implementation of such agreement. The parties acknowledge and agree that should the parties agree to SEBA withdrawing participation from the County-sponsored medical plans, that the County will continue to contribute medical premiums in the same amounts and on the same terms identified in the current Memorandum of Understanding”

OVERTIME

The evidence does not support SEBA's proposals. I recommend the Status Quo. As to the proposal for Welfare Fraud Investigators' [WFI's] scheduling, I recommend that SEBA should meet and confer with the HS Deputy Executive Officer regarding WFI's ability to have a 4/10 or 9/80 schedule.

On the proposal for the Probation Department scheduling, I recommend that the parties create a Labor-Management Committee to discuss the feasibility of placing employees working in the institutions on alternative work schedules such as a 12-hourwork schedule.

I recommend that the sick leave that is used by employees on leave restriction shall not be considered as time actually worked for the purpose of calculating overtime.

TRANSITION PAY

The evidence does not support SEBA's proposal and with one exception, I recommend the status quo. The exception is that the schedule of payments should be amended such that an employee with 62,400 completed service hours (30 years) shall receive 10% transitional pay.

It does not appear there are any objections to the clean-up language as proposed by the County.

SALARY SAVINGS PLAN

The evidence does not support a change in the Salary Savings Plan provisions. I recommend the Status Quo. However, it does not appear there are any objections to the clean-up language as proposed by the County.

MEDICAL BENEFIT PLAN

The evidence does not support an increase in the amount of medical premium subsidies in the 2015-16 plan year. I recommend that, for the plan year 2016-17, the biweekly subsidy for an "employee only" be increased by \$5 and that the other two categories ("employee + 1" and "employee + 2 or more") be increased by \$10.

It does not appear there are any objections to the clean-up language as proposed by the County.

SALARY ADJUSTMENTS

I recommend the following salary adjustments:

Probation Corrections Officer and Supervising Probation Officer classifications shall receive a 2% equity increase effective fiscal year 2015/16.

A new top step shall be added to all salary ranges, except for the salary range of Probation Corrections Officer Trainee, effective fiscal year 2015/16. The new top step rate shall be 2.5% above the current top step rate.

All employees (except Probation Corrections Officer Trainees, Probation Correction Officers, and Supervising Probation Officers) who are not at the top step on the effective date of the new top step shall advance one-step on the salary schedule, effective fiscal year 2015/16.

A 0.5% salary range restructure shall be implemented for steps 2 through 9 of the range assigned to Probation Corrections Officer classification, effective fiscal year 2015/16

Two sub-steps should be added to the salary structure for all salary range of both bargaining units, effective fiscal year 2015/16.

SEBA has not met its burden of proof to support a recommendation in favor of its proposal regarding compaction for Probation Correction Officers and their Supervisors. However, there was sufficient evidence to warrant further review of the issue. Therefore, I recommend that the parties create a Labor-Management Committee to determine whether or not changes in the pay structure should be made.

AGREEMENT INCENTIVE

I recommend that the \$1,750 agreement incentive be paid in one payment in the first year to eligible employees in the bargaining units as proposed by the County and consistent with other MOUs.

TERM

I recommend the term to expire in June of 2017 with an economic reopener during the month of May 2016. I also recommend the language as proposed by the County and consistent with other County MOUs and the County Employee Relations Ordinance.


Paul Crost

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

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

Robert Windle

Michael Eagleson