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– *Labor & Employment Law* –
Defending Employers' Rights

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VIA EMAIL ONLY

CONFIDENTIAL

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Re: *County of Riverside and SEIU Local, 721, PERB MMBA Factfinding, Case No. LA-IM-252-M*
Factfinding Panel Member Zappia's Findings, Recommendations and Dissent

Dear Panel Members,

I. Recommendations and Dissent

After consideration of the facts and evidence presented by the parties over six days of factfinding, as applied to the mandatory factfinding factors set forth in Cal. Govt. Code sections 3535.4(d)(1)-(8), employer County of Riverside-appointed Factfinding Panel Member Ed Zappia hereby:

1. Recommends implementation of the County's Last Best and Final Offer ("LBFO") without change; and
2. Dissents from the Chairman's Recommendations for various increases and elimination of any reduction in the County's LBFO.

II. Findings of Fact:

Factfinding Panel Member Zappia makes the following findings of law and fact, each fact as supported by attached evidentiary exhibits:

A. Riverside County

1. Riverside County is an arm of the State of California responsible for providing its citizens and constituents with substantial and essential public services including, and in no way limited to: law enforcement, health care, emergency care, mental health care, social services, and economic aid. (California Constitution Article XI, Section 1.)
2. The County has the exclusive right to manage and control its budget and employee compensation without interference. (California Constitution, Article XI, Section 11)
3. The County of Riverside has approximately 22,532 public employees as of November 2016. (Tab A, County Exh. 21 at page 1) ¹
4. The County's total annual budget is about \$5.5 billion, with current revenues of only about \$5.3 billion. (Tab B, County Exh. 11; County CFO Don Kent testimony.) The County is thus currently operating at about a \$200,000,000.00 structural deficit, and its reserves are trending downwards. (Tab B; Tab C, County Exhs. 15, 16 at Att. A, and County Exh. 17 at pages 14 and 15; Don Kent testimony.)
5. Of the County's total \$5.5 billion budget, about \$4.5 billion is comprised of restricted or Special Funds outside of the County's discretion ("pass through funds"), while only about \$800 million (or about 20%) is within the County's discretion, referred to as "Net County Cost." ("NCC") (Tab B; Tab C, County Exhs. 15, 16 and 17 at pages 3-5.)
6. County Board Policy No. 30 requires it to maintain a minimum of 25% of NCC in reserves, consistent with Government Finance Officers Association's Best Practices Policy for "Fund Balance Guidelines for the General Fund." (Tab D, County Exhs. 29 and 45). As such, the County seeks to maintain reserves above \$200 million for best practices, including concerns for projected substantial increasing costs and, another economic downturn in the financial and/or housing markets. (Don Kent testimony.)
7. In addition to the County's \$200 million structural deficit and downward trending reserves, the County is facing hundreds of millions of dollars in increases in financial obligations, including, and not limited to:

¹ Attached exhibits are consecutively tabbed as "A" through "N." Each tab is also identified by the exhibit number in which it was presented during factfinding.

- a. Building and operating a new Detention Center.
- b. Building and operating a new Medical Office Building.
- c. Escalating CalPERS contributions.
- d. Increasing IHSS funds.
- e. Continuing costs of the Gray/prisoner conditions lawsuit settlement.
- f. Numerous other increasing financial obligations. (Tab C, County Exh. 17 at page 14 and 15; Don Kent testimony.)

B. SEIU, Local 721 in Riverside County

8. SEIU members' collective annual compensation costs the County about \$517 million per year. (Tab A, County Exh. 21 at page 1)
9. SEIU, Local 721 represents approximately 6,965 of Riverside County's 22,532 public employees in four bargaining units: Professionals, Para-Professionals, Nurses and Supervisors. (Tab A, County Exh. 21 at page 1)
10. SEIU member/Riverside County public employees received, on average, a staggering 43% to 49% increases in compensation under the prior Collective Bargaining Agreement/Memorandum of Understanding ("MOU") for the period covering 2012–2016 (or, approximately 10% per year, each year.) (Tab E, County Exh. 19 at page 4; County Exh. 37 at page 1)
11. SEIU member/Riverside County public employees' total current compensation is comprised of over 60 forms of compensation, benefits and perks, and is, on average, over \$106,000.00 per year. (Tab F, County Exh. 23 at pp. 5-6; Tab I, Compensation and MOU/LBFO Comparison Chart) This is almost double the average Riverside County household income. (Tab G, County Exh. 20)
12. SEIU member/Riverside County public employees' comparable compensation at top step is, on average, over 18.32% higher than the 5 surrounding counties of Los Angeles, Orange, San Bernardino, San Diego and Ventura. (Tab A, County Exh. 21 at page 3.)

C. Riverside County/SEIU 2016-2017 Negotiations for a Successor to the 2012-2016 MOU

13. Considering SEIU member employees' substantial increases in compensation over the past 5 years, combined with the County's current structural deficit, decreasing reserves, and increasing financial obligations, the County's goal heading into negotiations for a successor to the 2012-2016 County-SEIU MOU was to achieve cost savings by slowing down the rate of escalating increases in compensation. (Cacho testimony; Tab H, County Exhs. 14 and 42)
14. The County's key economic terms addressed in the MOU to achieve cost savings were:

- a. Allowing annual 2% COLAs to expire, per the terms of the prior MOU (and not be renewed).
 - b. Eliminating employees' ability to recoup ("cash back") unused amounts of their \$823 per month flexible benefit.
 - c. Eliminating County subsidies for certain employee medical benefits.
 - d. Reducing annual 2.71% merit increases from 2 or 3 steps at a time (5.42% or 8.13%), to 1 step at a time. (Tab I; Cacho testimony.)
15. The County had a secondary goal to clean up or modify numerous non-economic terms in the successor MOU to either: (1) address prior disputes over specific terms; and/or (2) to achieve consistency with other County MOUs/bargaining units. (Cacho testimony)
 16. Negotiations for a successor to the 2012-2016 MOU lasted about 10 months and 40 bargaining sessions, between September 2016 and July 2017. (Tab J, County Exh. 4)
 17. During 2016-2017 negotiations, the County acquiesced on several of its significant initially proposed financial reductions (elimination of cash back on flex benefits, reductions in medical subsidies). (Tab I; Tab J; Tab K, County Exh. 5)
 18. In June 2017, in a final effort to reach voluntary agreement, the County acquiesced its Proposal to eliminate cash back on unused portions of employees' flex benefit. This had been one of the County's key economic terms on which to achieve cost savings. (Tab J, Cacho testimony; see also, County's June 14, 2017 Proposal at Exh. 7 in its Electronic Production.) This still did not result in agreement on a new/successor MOU.
 19. The County's LBFO ultimately only sought to reduce the rate of escalating compensation increases by reducing employees' annual merit increases from 2 or 3 steps at a time to 1 step at a time. (Tabs I; J; K.)
 20. The County issued its LBFO on July 19, 2017 and declared impasse on August 30, 2018. (Tab K; Tab L, County Exh. 1 at page 2.)
 21. During factfinding, SEIU argued for consideration of the County's many (about 1773) various Enterprise, Restricted or Special Funds as a new/alternative source of revenue to allocate towards across-the-board increases in employee compensation in the context of collective bargaining. (Tab M, SEIU Exh. 2)
 - a. This Factfinder wholly rejects this novel position as unlawful, unethical, and improperly relying on availability of non-County-controlled restricted Special

Funds to set compensation, rather than market and comparable value of each or any Job Classification. This Panel Member also draws a negative inference against SEIU for this presentation, as an admission that the County is unable to pay increases considering the customary and relevant funds within the County's discretion and control.

22. During factfinding, SEIU sought to compare Riverside County compensation with Sacramento and Santa Clara counties, rather than the 5 surrounding counties. (Tab N, SEIU Exh. 22) There was no evidence presented by SEIU that Riverside County had ever previously been compared to these far away counties.
 - a. This Factfinding thus finds this presentation irrelevant as not pertaining to the historically accepted comparable surrounding counties. Also again, this Panel Member further draws a negative evidentiary inference against SEIU for this presentation as an admission that Riverside County employed SEIU members are well compensated, and well in excess of the historically accepted surrounding comparable counties.

III. Dissent from Chairperson's Recommendations:

The Panel Chair recommends various increases in compensation and elimination of takeaways in the LBFO. The Chair does not make sufficient findings on the mandatory factors to warrant the recommendations.

1. The Chair's recommendations for increases in employee compensation are contradicted by substantial evidence presented on the mandatory factor of the County's "financial [in]ability to pay" due to its structural deficit, downward trending reserves and substantial projected increasing financial obligations. (Cal. Govt. Code 3505.4(d)(4).) (See, Findings 4, 5, 6 and 7 above and supporting evidence cited.)
2. The Chair's recommendations for increases in employee compensation are contradicted by substantial evidence on the mandatory factor of Riverside County SEIU members' very high "overall compensation presently received," of over \$106,000. (Cal. Govt. Code 3505.4(d)(7)) This is nearly double the income of the average Riverside County resident. (See, Findings 8, 9, 10, 11, 12 and supporting evidence cited.)
3. The Chair's recommendations for increases in employee compensation are contradicted by substantial evidence that Riverside County SEIU members received, on average, enormous increases in compensation on average at top step between about 43% to 49% between 2012 and 2016/2017. (Cal. Govt. Code 3505.4(d)(7).) (See, Findings 10, 11 and 12 above, and supporting evidence cited.)
4. The Chair's recommendations for increases in employee compensation are contradicted by substantial evidence on the mandatory factor that "comparison of [Riverside County

SEIU members’] wages” with employees in “comparable public agencies, show that Riverside County SEIU members are compensated much higher on average than the 5 surrounding and comparable counties. (Cal. Govt. Code 3505.4(d)(5) (See, Findings 10, 11 and 12 above and supporting evidence cited.)

5. The Chair’s Findings did not make findings on the fact that SEIU’s presentation on “ability to pay” relied primarily on a novel (if not illegal, unethical and logistically impossible) theory of applying the County’s restricted and/or Special Funds to across-the-board increases in employee compensation, rather than the much smaller amount of funds lawfully within the County’s discretion.
6. The Chair’s Findings did make findings on the fact that SEIU’s presentation on “current and comparable compensation” compared, for the first time ever, Riverside County employee compensation to Sacramento and Santa Clara county compensation, rather than the historically accepted surrounding and comparable counties of Los Angeles, Orange, San Diego, San Bernardino and Ventura.
7. Considering all of the above, the “welfare of the public” is best served by allocating any available discretionary funds towards cost savings or public services, rather than to further increases in escalating SEIU member employee compensation at continuing high rates. (Cal. Govt. Code 3505.4(d)(4).)

IV. Conclusion, Recommendations and Dissent

Putting this all together, this Panel Member therefore: (1) dissents from the Chair’s Recommendations; and (2) Recommends implementing the County’s LBFO as written and without change, for the following reasons:

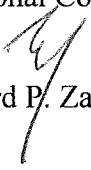
1. The County has an inability to pay continuing escalating increases in SEIU member high compensation due to its structural deficit, declining reserves, and projected substantially increasing financial obligations.
2. Riverside County SEIU members’ average total compensation is very high at over \$106,000.00 annually, on the heels of substantial 43% to 49% increases over the past 5 years.
3. SEIU’s presentation was substantially irrelevant or improper in seeking to: (1) allocate restricted or Special County Funds towards across-the-board increases in employee compensation in the context of collective bargaining (rather than to the Funds’ restricted purpose); and (2) comparing Riverside County SEIU members’ compensation, for the first time ever, to Sacramento and Santa Clara counties, rather than to the historically accepted comparable surrounding counties of Los Angeles, San Bernardino, Orange, San Diego and Riverside.

4. The public interest is thus best served by applying any available discretionary funds to cost savings or public services, rather than to continued escalating increases to already highly compensated employees.

Please contact me if you have any questions regarding this request.

Sincerely,

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Edward P. Zappia