

**Findings and Recommendations Pursuant to California Government Code
3505.4 and 3505.5
PERB Case # LA-IM-283-M**

In the Matter of an Impasse Between

County of Kern

And

Kern County Firefighters Union, Local 1301

For the County:

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Factfinding Panel:

Neutral Chair

David A. Weinberg
Arbitration Mediation and Conflict Resolution

Union Member

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County Member

Devin Brown
Chief HR Officer
County of Kern

PROCEDURAL BACKGROUND

On July 16, 2019, the Public Employment Relations Board (PERB) notified the undersigned that the County of Kern and the Kern County Fire Fighters Union Local 1301 selected me to serve as the Neutral Chair of the Factfinding Panel, pursuant to the Meyers-Milias-Brown Act. The Panel held hearings on September 18 and 19, 2019 in Bakersfield, CA. At this hearing the parties presented testimony and evidence to the panel.

RELEVANT STATUTORY PROVISIONS

This factfinding is governed by recent amendments to the Meyers-Milias-Brown Act¹. The sections of the amendments that are pertinent to this proceeding are as follows:

3505.4. Unable to effect settlement within 30 days of appointment; request for submission to factfinding panel; members; chairperson; powers; criteria for findings and recommendations

(a) The employee organization may request that the parties' differences be submitted to a factfinding panel not sooner than 30 days, but not more than 45 days, following the appointment or selection of a mediator pursuant to the parties' agreement to mediate or a mediation process required by a public agency's local rules. If the dispute was not submitted to mediation, an employee organization may request that the parties' differences be submitted to a factfinding panel not later than 30 days following the date that either party provided the other with a written notice of a declaration of impasse. Within five days after receipt of the written request, each party shall select a person to serve as its member of the factfinding panel. The Public Employment Relations Board shall, within five days after the selection of panel members by the parties, select a chairperson of the factfinding panel.

¹ AB646

(b) Within five days after the board selects a chairperson of the factfinding panel, the parties may mutually agree upon a person to serve as chairperson in lieu of the person selected by the board.

(c) The panel shall, within 10 days after its appointment, meet with the parties or their representatives, either jointly or separately, and may make inquiries and investigations, hold hearings, and take any other steps it deems appropriate. For the purpose of the hearings, investigations, and inquiries, the panel shall have the power to issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence. Any state agency, as defined in Section 11000, the California State University, or any political subdivision of the state, including any board of education, shall furnish the panel, upon its request, with all records, papers, and information in their possession relating to any matter under investigation by or in issue before the panel.

(d) In arriving at their findings and recommendations, the factfinders shall consider, weigh, and be guided by all the following criteria:

(1) State and federal laws that are applicable to the employer.

(2) Local rules, regulations, or ordinances.

(3) Stipulations of the parties.

(4) The interests and welfare of the public and the financial ability of the public agency.

(5) Comparison of the wages, hours, and conditions of employment of the employees involved in the factfinding proceeding with the wages, hours, and conditions of employment of other employees performing similar services in comparable public agencies.

(6) The consumer price index for goods and services, commonly known as the cost of living.

(7) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays, and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

(8) Any other facts, not confined to those specified in paragraphs (1) to (7), inclusive, which are normally or traditionally taken into consideration in making the findings and recommendations.

(e) The procedural right of an employee organization to request a factfinding panel cannot be expressly or voluntarily waived.

3505.5. Dispute not settled within 30 days after appointment of factfinding panel or upon agreement by parties; panel to make advisory findings of fact and recommended terms of settlement; costs; exemptions

(a) If the dispute is not settled within 30 days after the appointment of the factfinding panel, or, upon agreement by both parties within a longer period, the panel shall make findings of fact and recommend terms of settlement, which shall be advisory only. The factfinders shall submit, in writing, any findings of fact and recommended terms of settlement to the parties before they are made available to the public. The public agency shall make these findings and recommendations publicly available within 10 days after their receipt.

(b) The costs for the services of the panel chairperson selected by the board, including per diem fees, if any, and actual and necessary travel and subsistence expenses, shall be equally divided between the parties.

(c) The costs for the services of the panel chairperson agreed upon by the parties shall be equally divided between the parties, and shall include per diem fees, if any, and actual and necessary travel and subsistence expenses. The per diem fees shall not exceed the per diem fees stated on the chairperson's résumé on file with the board. The chairperson's bill showing the amount payable by the parties shall accompany his or her final report to the parties and the board. The chairperson may submit interim bills to the parties in the course of the proceedings, and copies of the interim bills shall also be sent to the board. The parties shall make payment directly to the chairperson.

(d) Any other mutually incurred costs shall be borne equally by the public agency and the employee organization. Any separately incurred costs for the panel member selected by each party shall be borne by that party.

(e) A charter city, charter county, or charter city and county with a charter that has a procedure that applies if an impasse has been reached between the public agency and a bargaining unit, and the procedure includes, at a minimum, a

process for binding arbitration, is exempt from the requirements of this section and Section 3505.4 with regard to its negotiations with a bargaining unit to which the impasse procedure applies.

BACKGROUND AND RELEVANT FACTS AND FINDINGS

The County of Kern is located in the southernmost section of the San Joaquin Valley, and occupies 8,170 square miles. Bakersfield, the County seat has 50% of the County's total population of 916,500 residents. The County provides a full range of services in the following areas: general government; public protection; public ways and facilities; health and sanitation; public assistance; education; culture and recreation. Kern County is the largest oil-producing County in the State of California. The drop in oil prices, which hit bottom in 2016 at approximately \$35 a barrel has increased to currently over \$60 a barrel. Due to the drop in oil prices and corresponding decrease in property valuations and increased pension costs, the County was facing a budget deficit starting in 2015. The County adopted a Four-Year Deficit Mitigation Plan, which has substantially mitigated the deficit. The County reserves, which were being used in previous years budgets, will not be needed in the current 2019-2020 budget. During the years when the deficit plan was implemented, oil and gas revenues made up 32% of the assessment roll, while currently this only accounts for 16% of the roll, which represents a much more stable environment. The current housing market is rising providing more revenue to the County. County revenues are fairly diversified with State, Federal and other Government Aid representing 23%, Operating Transfers 19%, Fees 18%, Taxes 17% of the revenue sources. The County currently has over \$180 million in reserves. Salaries and Benefits for County Employees and retirees are the most significant expenditures of the County budget accounting for \$940 million in the 2019-2020 budget, an increase of \$20 million from the previous year. The current Standard and Poor's and Moody's rating outlook is stable with an AA and A1 bond rating.

The Kern County Fire Department budget is referred to as the “Fire Fund”. The Fire Fund is technically independent of the General Fund. The Fire Fund has needed General Fund Transfers to deal with its continual budget deficits, and in the 2019-2020 budget will transfer \$9 million to the Fire Fund. The Fire Fund is primarily funded by property tax revenue (62%), and charges for service (24%). The County provides fire protection services via contract for nine incorporated cities: Arvin, Delano, Maricopa, McFarland, Ridgecrest, Shafter, Taft, Tehachapi, and Wasco, in addition to mutual aid agreements, and Cal Fire. The reimbursement contracts for these services do not nearly cover the real cost of service and contribute to the Fund deficit. Overtime costs represent a significant cost to the County with almost \$24 million in fiscal year 18/19, a portion of which is reimbursed by State and Federal funds. The Department has not reduced staff under past budgets and the proposed 19/20 budget does not contain any cost reductions. The County like other counties is facing increased costs primarily due to retirement and health contributions.

The Kern County Fire Fighters Union Local 1301 represents two units; Bargaining Unit F and the Supervisors Unit 7. There are approximately 521 employees in the bargaining unit, including 157 firefighters, 161 engineers, six fire heavy equipment operators, 164 captains, and 27 battalion chiefs. In 2018 the KCFD had a 6% turnover rate and 21 KCFD members left the Department to work for other fire departments.

The County did not submit any comparability studies, although at the conclusion of the factfinding hearing, they presented information related to the bargaining unit’s comparability with the City of Bakersfield’s Fire Department. The Union presented comparability studies from nine other City and County Fire Departments. According to the Union data the Kern County Firefighters Union classifications range from 15% to 40% below the mean in Top Step Salary, and 21% to 26% below the mean in total

compensation. According to this data they are the lowest paid personnel in the surveyed Fire Departments. The surveyed departments are: City of Bakersfield, City of Fresno, Los Angeles County, Sacramento Metro, San Luis Obispo, Santa Barbara County, City of Stockton, Ventura County, and Visalia. The County's data for the City of Bakersfield had the County's Firefighters .68% above the City, the Engineers 2.3% above the City, the Captains 3.1% below the City, and Battalion Chiefs 7.8% below the City. The Union disputed these figures as including pay not available to all Firefighters and other compensation not applicable in their total compensation analysis. The Union figures have the County unit employees between ten and eighteen percent behind the City depending on the classification.

The applicable cpi/cost of living data is expected to increase between 3% to 4% in the next fiscal years.

The current MOU expired September 30, 2017 but the parties did not seek any further extension, and the parties commenced negotiations for a successor MOU in June of 2018. Between July of 2018 and April 2019 the parties exchanged 11 separate proposals, and the County delivered its Last Best and Final Offer on April 11, 2019. The Union on April 19, 2019 delivered a counter proposal and on May 21, 2019 the County declared impasse and directed the submission of the LBFO to mediation, which was not successful, and the Union requested factfinding on July 3, 2019.²

The parties submitted the following four issues to this factfinding panel: 1) FLSA Article IX; 2) Salaries Article X; 3) Overtime, Call Back Pay, Availability Pay, Article XVIII; 4) Term

² The last offers prior to factfinding are included as appendix A.

ISSUES PRESENTED TO THE PANEL

The parties agreed that the four above referenced issues are properly before this Factfinding Panel, for findings and recommendations according to the MMBA statute.

RECOMMENDATIONS

The Neutral Factfinder chosen by the parties believes that the statute under which this factfinding takes place is best viewed as an extension of the collective bargaining process. The best outcome of this factfinding process would be a negotiated agreement between the parties. The intent of these recommendations is to provide a framework for the parties to settle their dispute with an agreement. The statute lays out a set of criteria that is to guide the panel in making their findings. These criteria represent many of the basic factors that inform the parties when they are negotiating an agreement.

The Neutral Panel member is recommending the following proposal that should be viewed as a package proposal. These recommendations are being made after working with the parties to craft a contract settlement, and represents my attempt to help the parties fashion that agreement. The County had been for some extended period of time facing fiscal problems brought on by both the recession and declining oil prices, which impacted their tax revenue. As a result, employees in the bargaining unit have seen minimal to no pay increases since 2008. This has placed the bargaining unit employees at the bottom of any reasonable comparability analysis when compared with other firefighting personnel working for other jurisdictions who provide firefighting services. The evidence does show that this has not created a significant problem of recruitment and retention, partially because the firefighters have increased their take

home pay by large amounts of overtime work. In addition, the cost of living or CPI has taken a toll on the income of these employees as the recent CPI increases have not been matched by any wage adjustment. The County's financial situation has improved due the fiscal measures they took, and for the first time in several years the County budget is not expected to utilize their reserves. The prognosis for continued better times for the County is good with an expanding tax base that does not rely largely on oil prices. While it is true that the County does have increasing employee costs due largely to pension obligations and health care inflation, it does not have an inability to pay for reasonable increases. The "Fire Fund" does have a structural deficit problem, due at least partially to a failure to properly charge for delivered service to contracting entities. While I am recommending several County proposals which will reduce the take home pay of the unit, I am also recommending increases that should come close to making up for the reduction in overtime income. If the County were solely to implement their proposals without any increases the actual income of the unit members would fall far behind any other jurisdiction, and I believe would create a significant problem of recruitment and retention that may not currently exist. The following are my recommendations on each of the open issues:

1. **FLSA:** Adopt the County proposal on Article IX-FLSA. The County does have a problem with excessive overtime costs, which affect their budget. In addition, this will create consistency with the application of FLSA overtime with other County bargaining units, and will provide significant cost savings.

2. **SALARIES:** Remove "A" designation from Salary Chart, but maintain bonus. Implement a 3% COLA/Equity raise on 1/1/2020, and a 3% COLA/Equity raise on 1/1/2021. (no other changes to salary schedule) These proposed increases are more than offset by the FLSA savings.

3. **Overtime, Call Back Pay, Availability Pay.** Article XVIII: Adopt the County proposal except provide a 5% base pay increase to members who maintain EMT certification. The need for larger numbers of EMT has been made in the factfinding and would be an asset to the County.

4. **Term:** Adopt the County proposal of an expiration date of 6/30/21. The shorter term agreement than what the Union proposes is warranted as a long term agreement is not possible until the County begins to better fund the "Fire Fund" through tax measures and better costing of their contracted firefighting services.

The Neutral Member of this Panel agrees that these recommendations are in accord with California Government Code Sections 3505.4 and 3505.5, and endorses these recommendations.

Dated September 26, 2019



David A. Weinberg: Neutral Chair, Factfinding Panel

I concur with recommendations:

I dissent with recommendations:

County Panel Member: _____

I concur with recommendations:

I dissent with recommendations:

Union Panel Member: _____

FINAL OFFER BY THE PARTIES:

County of Kern Negotiations, 2018-2019 (KE040-053)

FACTFINDING September 18 and 19, 2019

Comparison of Final Offers

Note #1: Cost of one percent (1%) base pay increase to all unit employees is approximately \$1.2 million. (This amount includes increase to salary, Kern County Employees Retirement Association ("KCERA"), Medicare and Workers' Compensation annualized for the 2019-2020 fiscal year.)

Note #2: The figures below reflect only the known and quantifiable costs associated with the proposals, and do not reflect the costs associated with increases to the regular rate of pay and overtime that may result from the proposals.

Note #3: Unless otherwise stated, cost figures assume July 1, 2019 effective date, and KCFFU proposals are shown for two-year term to provide comparative basis.

	County LBFO April 11, 2019	KCFFU LBFO Counter April 19, 2019
Term	June 30, 2021	January 1, 2025
FLSA (Art. IX)	Replace 28-day work period with 18-day work period; and Add Subsection C providing that "hours worked" shall <i>not</i> include non-productive paid time off, including (1) paid vacation days; (2) paid sick leave; (3) paid compensatory time off; and (4) paid on duty holiday days. 2 Year Total: \$6,275,090 savings (Year 1: \$3,137,545 savings; Year 2: \$3,137,545 savings) *Includes cost savings associated with work cycle, shifts, and schedules under Art. XVII, and overtime, call back pay, and availability pay under Art. XVIII.	Replace 28-day work period with 18-day work period with 6/30/2019 effective date; and "Time worked" (hours worked) shall include all paid leaves for scheduled overtime, for all other overtime (which presumably includes paid compensatory time off), and other enumerated leaves, including (1) sick leave; (2) "mandatory" (presumably this refers to "mandatory duty" overtime as provided in Art. XVIII, Sec. 3.B.); (3) emergency call backs; and (4) all deployments under state and federal mutual aid. 2 Year Total: \$1,054,108 savings (Year 1: \$527,054 savings; Year 2: \$527,054 savings) * Does not include costs associated with revised "time worked" definition.
Salaries (Art. X)	No salary increase; Remove "A" Designation from Salary Chart, but maintain bonus; Eliminate longevity pay provided to KCFFU members with 30 or more years of service; and Eliminate 6th Step ("F Step")*	Remove "A" Designation from Job Classifications with agreement to provide the following increases to compensation: 5% equity pay increase effective 1/1/2021; 10% equity pay increase effective 6/30/2021; 5% equity pay increase effective 1/1/2022; 3% COLA effective 1/1/2023; and

	County LBFO April 11, 2019	KCFFU LBFO Counter April 19, 2019
	2 Year Total: \$480,000 savings (Year 1: \$240,000; Year 2: \$240,000) * County's LBFO inadvertently proposed elimination of 6th Step.	3% COLA effective 1/1/2024 Cost First 2 Years Total: \$21,000,000 (Year 1: \$3,000,000; Year 2: \$18,000,000) *Does not compound costs or include costs associated with third equity pay increase or either COLA.
Work Cycle, Shifts, and Schedules (Art. XVII)	Replace 28-day work period with 18-day work period; and Remove reference to number of "On Duty Days" per work period Cost savings incorporated into Art. IX above.	Replace 28-day work period with 18-day work period Cost savings incorporated into Art. IX above.
Overtime, Call Back Pay, and Availability Pay (Art. XVIII)	Provide overtime only for "hours worked" as defined in Article IX (See above), eliminating (1) "56 Hour Safety Section Emergency Overtime"; (2) "40 Hour Safety Section Overtime; (3) "Mandatory Duty" Overtime; (4) "Fourth of July Taskforce Overtime"; and (5) Out of County Assignment Overtime; Compensate call back pay at basic hourly rate, not overtime rate; Cost savings incorporated into Art. IX above.	Overtime pay for all hours worked as defined in Article IX (See above); Provide 5% base pay increase to members who maintain EMT certification; Provide 2.5% base pay increase for each specialty certification (5% cap) for each of the following specialty certifications: Haz Mat; ARFF; HELO; USAR; Crew Boss; Heavy Equipment Operators; and Arson Investigator Cost 2 Year Total: \$12,000,000 (Year 1: \$6,000,000; Year 2: \$6,000,000) * Includes only cost associated with 5% pay increase for possession of EMT Certification.
Total Cost	2 Year Total Savings: \$6,755,090.	2 Year Total Cost: \$31,945,892 *Actual costs significantly higher.

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CONCURRENCE OF KERN COUNTY FIREFIGHTERS UNION

The Kern County Firefighters Union, Local 1301 concurs with the Findings and Recommendations of Neutral Chair David Weinberg. The modest compensation increases recommended will give our members a much (delayed and) needed raise. Weinberg recognized that our members have "seen minimal to no pay increases since 2008" while "the cost of living or CPA has taken a toll on the income of these employees". Mr. Weinberg took note of the much improved financial condition of the County. He astutely noted "If the county were solely to implement their proposals without any increase the actual income of unit members would fall far behind any other jurisdiction, and I believe would create a significant problem of recruitment and retention that may not currently exist."

Our members have committed their professional lives to protecting the health, safety, and property of the citizens of Kern County. Implementation of the County's proposal will force a large number of our members to have to look elsewhere for employment just to earn a wage comparable to other firefighters. Adoption of the Factfinder's recommendations will give the county the overtime reform it has sought while giving our members a much needed compensation increase to base pay which will be offset to a great extent by the overtime savings predicted by the County.

MASTAGNI HOLSTEDT, A.P.C.

Dated: _____ 2019

10/6,

By: Howard A. Liberman

HOWARD A. LIBERMAN
Attorney at Law

Kern County and Kern County Fire Fighters' Union
PERB Case No. LA-IM-283-M

Kern County's Representative to Factfinding Panel: Devin Brown

Concurring and Dissenting Opinion to the Factfinding Report and
Recommendations:

As the Kern County's ("County") appointed representative to the Factfinding Panel, I concur with some portions of the Factfinding Report and Recommendations ("Report"). However, I also disagree with other portions of the Report. Therefore, I am providing this concurring and dissenting opinion.

1. Concurrence

I concur on the following two (2) recommendations:

1. I concur with the panel chair's recommendation regarding Article IX, "FLSA," of the Memorandum of Understanding ("MOU"). The County does have a problem with excessive overtime costs at the Kern County Fire Department ("Department") which negatively affects the Fire Fund. The proposed change to the "hours worked" definition and work period will create consistency with the Kern County Fire Fighters' Union ("KCFFU") members' work schedules and will provide much needed cost savings to the Department.
2. I concur with the panel chair's recommendation regarding the term of the agreement. Here, a shorter term is warranted given the Fire Fund's structural deficit and the Department's budget issues.

II. Dissent

I dissent to the following:

1. I dissent to the panel chair's recommendation regarding Article X, "Salaries", and that the County should implement a 3% COLA/Equity raise on 1/1/2020, and a 3% COLA/Equity raise on 1/1/2021 (no other changes to salary schedule). I also dissent to his conclusion that these proposed increases are more than offset by the FLSA savings.

The County cannot agree with the panel chair's recommendation to the extent that it recommends that the County remove the "A" designation and provide COLA/Equity raises as part of one indivisible recommendation. The County proposed, and would agree

with a recommendation that was limited to the removal of the "A" designation from the Salary Chart but which allowed KCFFU members assigned to administrative positions to retain the bonus associated with such assignment. However, the County cannot accept the panel chair's recommendation that the County provide two (2) three percent (3%) COLA/Equity raises given the Fire Fund's structural deficit. The fact that the FLSA savings may, to a certain extent, offset

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such costs does not address the fact that the Fire Fund operates at a deficit, and that the Department needs to reduce costs. The recommendation to provide a six percent (6%) increase to KCFFU members will increase costs and worsen the Fire Fund deficit.

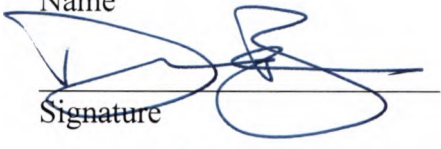
2. I dissent to the panel chair's recommendation regarding Article XVIII, "Overtime, Call Back Pay, and Availability Pay," and that the County provide a five percent 5% base pay increase to members who maintain EMT certification.

Again, the County cannot agree with the panel chair's recommendation to the extent that it recommends that the County provide overtime only for "hours worked" as defined in Article IX and provide all KCFFU members who maintain an EMT certification a five percent (5%) salary increase. Given that all KCFFU members must possess an EMT certification, the recommendation amounts to a five percent (5%) salary increase for all KCFFU members. The Department is committed to acting in a fiscally responsible manner in order to reduce the Fire Fund's structural deficit. This recommendation, coupled with the prior recommendation, will provide KCFFU members a salary increase of more than eleven percent (11%), which will worsen, not improve, the Fire Fund's deficit.

Accordingly, based on all the above, I cannot agree with, and hereby dissent from the panel chair's Factfinding Report and Recommendations in part and concur in part.

Devin Brown

Name


Signature

10/9/19

Date

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