

## FACT FINDING DISCUSSION AND RECOMMENDATIONS

### In the Matter of the Impasse Between

SAN BERNARDINO COUNTY EMPLOYEES'  
RETIREMENT ASSOCIATION AND SERVICE  
Employer

-and-

SERVICE EMPLOYEES INTERNATIONAL  
UNION LOCAL 721  
Exclusive Representative

PERB CASE NO: LA-IM-325-M

Report Issued  
November 1, 2023

Hearing Held on October 16, 2023  
San Bernardino County Employees' Retirement  
Association and Service  
348 W Hospitality Ln Ste 100  
San Bernardino, CA 92408

### Members of the Fact Finding Panel

#### Impartial Chairperson:

Donald Raczka, Fact Finder

#### Employer Panel Member:

Peter Nguyen, Senior Labor Relations Consultant,  
Liebert Cassidy Whitmore

#### Union Panel Member:

Steve Koffroth, Chief Negotiator  
Service Employees International Union, Local 721

### Making Presentations to the Fact Finding Panel:

#### For the Union:

Maria Myers, Rothner, Segall and Greenstone  
Michael Blosser, Service Employees International Union, Local 721  
Steve Koffroth, Chief Negotiator, Service Employees International Union, Local 721

#### For the Employer:

Debby Cherney, CEO, San Bernardino County Employees Retirement Association  
Melanie L. Chaney, Liebert Cassidy Whitmore

## **EMPLOYER AND UNION DESCRIPTIONS**

The San Bernardino County Employees' Retirement Association (SBCERA) is an independent, defined benefit pension plan providing retirement, disability, and death benefits on behalf of approximately 45,000 members and beneficiaries. SBCERA serves 17 employers throughout California and invests more than \$14 billion in assets.

SBCERA was established on January 1, 1945 under the County Employees Retirement Law of 1937 following a vote by the people of the County on May 16, 1944. SBCERA is an independent government entity, separate from San Bernardino County.

As a defined benefit pension plan, SBCERA provides eligible members with a lifetime retirement benefit based on their years of service, age at retirement, final average compensation, and benefit formula. This pension is "The Foundation for a Secure Retirement" for SBCERA members and serves as a stable, reliable source of income—both for those already enjoying retirement and those who will retire in the years to come.

SBCERA became an independent Special District in 2008 by legislation. Employees were given a choice to shift from County employment to SBCERA employment. SBCERA is governed by a nine-member Board of Directors, elected, appointed, and ex-officio; two elected alternate Board members, one appointed alternate Board member. Board members are fiduciaries to the trust fund for the exclusive benefit of members and their beneficiaries

Service Employees International Union, Local 721(SEIU), is the exclusive representative of the unit of approximately 50 employees, first recognized in 2018. There are approximately 29 distinct classifications within the unit.

Over 95,000 workers comprise the membership of SEIU Local 721, making it the largest public sector union in Southern California. SEIU Local 721 represents people working in hospitals, foster care, mental health, courts, law enforcement, libraries, street services, beach maintenance, sanitation, water treatment, parks services and watershed management. including Los Angeles, Ventura, Riverside and Santa Barbara, as well as municipalities like Azusa, Beaumont, Palm Springs, Pasadena, San Fernando and Santa Ana, among others. SEIU Local 721 also represents workers at publicly funded non-profits, like health clinics, in addition to employees of special districts and private universities.

## **HISTORY OF NEGOTIATIONS**

The parties began negotiations on a new Agreement in August, 2021. They met approximately 19 times between August, 2021 and July 18, 2023. On November 10, 2022, employees filed a decertification petition, which SEIU 721 defeated in an election on February 10, 2023. SBCERA presented a one-year Last Best and Final Offer on June 29, 2023, which was rejected by SEIU.

SBCERA declared impasse on July 18, 2023. Donald Raczka (the Chair) was chosen by both parties as the neutral Chair and on August 24, 2023, and was appointed by the Public Employment Relations Board (PERB). The Parties selected Mr. Nguyen and Mr. Koffroth as their partisan panel members.

## **FACTFINDING CRITERIA**

Factfinding falls under the Impasse Procedures governed by the Myer-Milias Brown Act (MMBA) (Section 3505.4). Unlike interest arbitration, where a third-party neutral sets the terms of a new contract, a third-party MMBA factfinding chair does not decide, but merely provides recommendations. In essence, this makes factfinding an extension of bargaining. Ultimately, the parties must persuade one another of their positions, and the neutral chairperson's goal is to provide an outside perspective to help the parties settle the dispute. Partisan members of the Panel may concur or dissent and attach their perspective to this report.

The MMBA Government Code section 3505.4(d) sets forth the criteria to be used in the factfinding process.

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.

**ISSUES BEFORE THE PANEL**

The Chair and the partisan Panel members agreed the issues before the panel would be Compensation (including retroactivity), Health and Welfare Benefits and the insertion of a Just Cause provision in the Collective Bargaining Agreement that would replace the “At will” employment adopted by the Board of SBCERA when it became a special district in 2008.

**FINDINGS AND RECOMMENDATIONS OF THE CHAIR**

On the date of the Hearing, the Chair’s understanding of the Parties’ positions is given in the following chart.

**COMPENSATION**

SBCERA POSITION	SEIU POSITION
<ul style="list-style-type: none"> <li>• <b>15.2% COLA effective the first full pay period following SBCERA Board approval</b></li> </ul>	<ul style="list-style-type: none"> <li>• <b>6.8% COLA increase retroactive to January 1, 2022</b></li> <li>• <b>8.4% cola increase retroactive to January 1, 2023</b></li> <li>• <b>Apply additional indexed COLA on January 1, 2024</b></li> </ul>

In discussions with the parties, the Chair believes the parties had consensus on the COLA percentages for each year, using the current method of the Riverside/San Bernardino/Ontario CPI-U for the 12 month period ending the prior September (note: this method would generate a 4.9% as the COLA percentage that would be effective January 1, 2024). The issue of retroactivity was clearly the biggest stumbling block for agreement on compensation. One can simply see, for example, that the 15.2% offered by the employer is generated by adding 6.8% and 8.4%. This seems rather simplistic.

The employer granted increases based on COLA of 6.8% on January 1, 2022 and 8.4% on January 1, 2023 to non-represented employees. SEIU and SBCERA have not yet agreed on compensation for those years and SBCERA is adamant that there will be no retroactivity of any agreed upon percentage raises.

However, the Chair notes that non represented employees have benefitted from not only receiving the COLA raises during the 2022 and 2023 years, but also by the compounding of the percentages applied to each of those years. This compounding effect has actually increased the salaries of the non-represented employees by 15.77% over the 2 years. Increasing salaries of employees covered by the SEIU agreement by a like percentage seems to the Chair to be fair, especially so considering the employers’ insistence of no retroactivity of the raises. If the parties had reached agreement back in 2022, that percentage would be the reality.

**Recommendation 1: A 15.77% COLA increase effective the first full pay period following ratification.**

The Chair believes the parties would benefit from a negotiations-free year or two and urges them to consider a settlement through 2025.

**Recommendation 2: A 4.9% COLA increase effective January 1, 2024 and, incorporating the same method using the Riverside/San Bernardino/Ontario CPI-U for the 12 month period ending September 2024, a COLA increase effective January 1, 2025.**

The Chair understands the interests of both parties regarding issue of retroactivity, but feels along with the compounded COLA percentage in Recommendation 1, some one time dollars would be appropriate.

**Recommendation 3: A \$1,500 one-time payment payable no later than December 31, 2023.**

**HEALTH BENEFITS**

SBCERA POSITION	SEIU POSITION
<ul style="list-style-type: none"> <li>• Drop from the San Bernardino County insurance Joint Powers Authority and join Public Agency Coalition Enterprise (PACE)</li> <li>• Fully pay 75% of the difference between employee-only premiums and those for employee +1 or family coverage</li> <li>• Fully pay Dental and Vision plans for all employees and dependents</li> </ul>	<p>Status Quo</p>

The change from the current JPA to PACE would bring a change in non-Kaiser insurance carriers, from Blue Shield to Anthem Blue Cross. In the Chairs experience, changing carriers always brings some anxiety from those affected by the change. It is, however, important to remember that the current JPA of San Bernardino could change carriers from Blue Shield any

year. Staying with the status quo does not guarantee against future change(s) in carriers, it just guarantees the status quo carriers for the current year. The amount of savings from this proposed shift is significant enough to warrant strong consideration, especially since the vast majority of those savings would be realized by the employees.

Current Employee Out-of-Pocket Contribution (in dollars per 26 pay periods)				Proposed Out-of-Pocket Contribution (in dollars per 26 pay periods)			
	ee	ee+1	family				
Kaiser HMO	102.57	272.65	384.96	Kaiser HMO	0	86.48	189.91
Kaiser Choice HMO	51.21	169.93	239.65	Kaiser HMO 25	0	73.64	161.72
Blue Shield Sign. HMO	89.03	245.58	346.68	Anthem HMO	0	120.74	263.43
Blue Shield Acc. HMO	45.10	157.74	222.40	Anthem HMO 35	0	113.14	246.85
Blue Shield PPO	376.01	843.06	1365.22	Anthem PPO	0	111.60	281.23

This proposed change would yield significant annual savings in out of pocket contributions, just for medical coverage premiums.

Proposed Savings per year from Current to Proposed (in dollars)				
	ee	ee+1	family	Proposed Carriers
Kaiser HMO	2,666.82	4840.40	5071.38	Kaiser HMO
Kaiser Choice HMO	1331.46	2503.52	2026.21	Kaiser HMO 25
Blue Shield Sign. HMO	2314.78	3245.91	2164.54	Anthem HMO
Blue Shield Acc. HMO	1172.60	1159.62	(635.68)	Anthem HMO 35
Blue Shield PPO	9776.26	19017.99	28183.80	Anthem PPO

Note: To understand this chart, use the current provider and level of coverage to find the savings. For example, if the employee is currently opting for ee+1 coverage under Blue Shield Signature HMO, the annual savings would be \$3,245.91 in out-of-pocket contributions (if the employee chose the closest option, Anthem HMO). These savings are significant.

Additionally, dental coverage for the employee and dependents would be fully paid. Again, significant savings in out-of-pocket contributions would be generated and passed on to the employees.

The Union presented three current unit members with testimony regarding the perceived effects in their particular circumstances that a change in insurance carriers might bring. The Chair does not have the means to investigate each of their claims nor determine the effects, positive or negative, on each of the unit members. Overall, the Chair does recognize the significance of the savings for individual unit members.

**Recommendation 4: The Employer proposal of changing to PACE and the dental and vision proposals be accepted with the corresponding savings in out-of-pocket savings for health and welfare contributions as presented.**

**Recommendation 5: For those employees who might have significant negative effects by this change either by deductibles or by drugs on the formulary of Anthem, an additional \$500 per year be available to them for use in their Flexible Savings Account (FSA).**

## **“AT WILL” Employment**

<b>SBCERA POSITION</b>	<b>SEIU POSITION</b>
<b>Status Quo</b>	<b>Delete At-will provisions, replacing it with just cause and binding arbitration provisions</b>

The Chair does recognize that any labor union would have an interest in bargaining against the “At Will” provisions of employment with SBCERA. Employment “At Will” means that an employer cannot be sued for breach of an implied contract requiring a showing of good cause for termination. It does not mean that an employer is indemnified from litigation for other alleged employment wrongs, such as discrimination, retaliation, violations of specific statutes (including those protecting whistle-blowers or employees who take family or medical leave or union activities protected under California law) or for terminations that violate public policies set forth in statutes or regulations.

SBCERA has been an at will employer since 2010. During the term of the past Collective Bargaining Agreement, only 3 members of the bargaining unit have been terminated with no dispute from the Exclusive Representative. In discussions with the parties, the Chair understood that this was the “Big Rock” in the way of settlement. Clearly, the Union has foregone settlement earlier for just this provision, thus bringing the whole issue of retroactivity into question. There is not an established case of employer abuse of this issue and the Chair does not see the means for settlement without some data regarding blatant abuse by management.

### **Recommendation 6: Status Quo on the issue of “At Will” employment**

In summary, the Chair makes the following recommendations:

**Recommendation 1: A 15.77% COLA increase effective the first full pay period following ratification.**

**Recommendation 2: A 4.9% COLA increase effective January 1, 2024 and, incorporating the same method using the Riverside/San Bernardino/Ontario CPI-U for the 12 month period ending September 2024, a COLA increase effective January 1, 2025.**

**Recommendation 3: A \$1,500 one-time payment payable no later than December 31, 2023.**

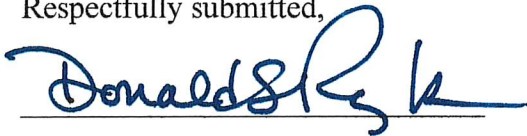
**Recommendation 4: The Employer proposal of changing to PACE and the dental and vision proposals be accepted with the corresponding savings in out-of-pocket savings for health and welfare contributions as presented.**

**Recommendation 5: For those employees who might be significantly affected by this change either by deductibles or by drugs on the formulary of Anthem, an additional \$500 per year be available to them for use in their Flexible Savings Account (FSA).**

**Recommendation 6: Status Quo on the issue of "At Will" employment**

The Chair hopes these recommendations will help the parties resolve this impasse.

Respectfully submitted,



Donald S. Raczka, Chair

**For the Employer:**

- Concur
- Concur in part
- Dissent
- Dissent in part



Peter Nguyen, Employer Panel Member

**For the Union:**

- Concur
- Concur in part
- Dissent
- Dissent in part



Steve Koffroth, Union Panel Member



## SEIU Local 721: Response to Fact-finding Report

We appreciate the efforts of our Fact-finding Chair to assist in resolving the impasse. We understand this recommendation is an attempt to find “middle ground”. Nevertheless, the primary reason why our members have consistently rejected SBCERA’s offers and why “middle ground” is unacceptable is because the majority of our members regard SBCERA’s position as unfair, unreasonable, and unsupported by the facts.

### Concur in Part:

The Chair highlighted the fact that the employer attempted to discount the raises given to other non-union staff. In the Union’s opinion, the acknowledgement that compounding was excluded from SBCERA’s proposed salary adjustments evidences the regressive nature of their latest Last, Best and Final (LBFO) offer. Furthermore, the proposed Cost-of-Living Adjustments (COLA) are equal to the Consumer Price Index (CPI)<sup>1</sup>.

The Chair also highlights the fact that concerns regarding changing health care administration are valid and need addressing. The Chair’s recommendation helps address those concerns, even though SBCERA has the financial ability to address them entirely.

### Dissent in Part:

One fact was undisputed: SBCERA has the financial ability to agree to the Union’s proposals<sup>2</sup>. In fact, SBCERA budgeted for those costs over the last two fiscal years and currently retains those unspent resources.

In fact, the Union asked for COLAs that equal in comparison what SBCERA granted its non-union workers who have enjoyed the value of those increases over the last two years, where Union workers did not<sup>3</sup>. SBCERA argued, but failed to prove, that their denial of retroactive application of the COLA was constrained by their fiduciary responsibility. SBCERA argued that the average value of their offer was \$22,000/employee, but the recommended one-time payment represents under 7% of that value.

The Union acknowledges the lack of data regarding “blatant abuse” of At-Will status by SBCERA management. Respectfully, this evidence is difficult to produce in an environment where an employer can dodge a small subset of lawful protections (i.e. discrimination, retaliation, etc.). Nevertheless, evidence was provided regarding the effect on employee willingness to speak out – which degrades the welfare of the public and SBCERA’s constituents<sup>4</sup>. Evidence was also provided about the multiple Unfair Labor Practice (ULP) Charges filed against SBCERA. Furthermore, evidence was provided which shows that other similar retirement administration agencies (i.e. CalPERS, LACERS, LACERA, OCERS, SDCERA) have the just cause standard<sup>5</sup>.

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<sup>1</sup> The sixth enumerated statutory criteria. Each of the annual COLA figures coincide with corresponding CPI for that period (i.e. 6.8% January 1, 2022, 8.4% January 1, 2023, & 4.9% January 1, 2024)

<sup>2</sup> The fourth enumerated statutory criteria

<sup>3</sup> The fifth enumerated statutory criteria

<sup>4</sup> The fourth enumerated statutory criteria

<sup>5</sup> The fifth enumerated statutory criteria