

## RESPONSE TO GRAND JURY REPORT

**Report Title:** The Need for Labor Negotiation Transparency

**Report Date:** June 1, 2015

**Response by:** Marin County Board of Supervisors

### FINDINGS

- We agree with the finding numbered: F3
- We disagree wholly or partially with the findings numbered: F1, F2

### RECOMMENDATIONS

- Recommendations numbered R1, R2 require further analysis.

Date: August 25, 2015

Signed: \_\_\_\_\_

Number of pages attached: 5

**Marin County Board of Supervisors**  
Response to Findings and Recommendations from Grand Jury Report

**“The Need for Labor Negotiation Transparency”**  
**June 1, 2015**

**FINDINGS**

- F1.** The residents of Marin County pay taxes to support decisions made by the Board of Supervisors and City and Town Councils; however these residents have minimal opportunity to provide input into labor negotiations.

Response: Partially Disagree.

We agree that our residents pay taxes to help support local government operations, but we don't agree that our residents don't have opportunities to provide input into labor negotiations. For example, the Citizens for Sustainable Pension Plans (CSPP) have provided input into the County's labor negotiation goals for the past several years. Creating new lower costs pension and retiree health tiers were encouraged and supported by CSPP. In addition, all labor agreements are noticed prior to consideration at a public meeting of the Board of Supervisors. Members of the public can testify any Tuesday during open time and for or against any labor contract that is being considered by the Board.

The County has 12 labor unions representing approximately 90% of the County's workforce. Pursuant to the Meyers Milias Brown Act (Cal. Gov. Code 3500) the County enters into good faith negotiations with its twelve labor unions months before the existing contract expires. An experienced labor negotiator serves as the County's chief spokesperson at each negotiation table. The chief spokesperson gets direct authority from the Board of Supervisors. The chief spokesperson reports to the Board of Supervisors during the negotiations process. Once a tentative agreement is reached, each and every negotiated agreement is placed on the policy agenda and considered by the Board of Supervisors in open session at a regularly scheduled Tuesday BOS session. At the time tentative agreements are considered there is always the opportunity for members of the public to comment on, question, criticize or support the tentative agreement prior to a vote being taken on the agreement. No tentative agreement is effective until the Board of Supervisors ratifies the agreement in a public meeting.

- F2.** The COIN process can be implemented without affecting the manner in which tentative agreements are negotiated but which nevertheless will ensure public awareness of the terms and cost of those agreements in advance of their being adopted.

Response: Partially Disagree.

We agree that some of the provisions could be implemented, but we disagree that all of the provisions of COIN can be implemented without affecting the manner in which tentative agreements are negotiated.

While the County sees value in implementing some of the COIN provisions to promote transparency, other provisions may work against our ultimate goal to negotiate the best deal for taxpayers.

- F3.** The COIN process mandates transparency in government decision-making, allowing residents to be informed and to participate in public discussions of how their tax dollars are spent.

Response: Agree.

We agree that the intent of COIN is to mandate transparency in government decision-making, allowing residents to be informed and to participate in public discussions of how their tax dollars are spent. As we discuss in our response to the recommendations, we do not agree that all of the COIN provisions would be effective in achieving the goal of negotiating the best deal for taxpayers.

## **RECOMMENDATIONS**

- R1.** Marin County Board of Supervisors and each City Council and Town Council in Marin County adopt and implement a COIN ordinance prior to June 1, 2016, or prior to the next round of negotiations, whichever comes earlier.

Response: This recommendation requires further analysis.

The Board of Supervisors is supportive of some but not all COIN provisions. Our overall goal is to negotiate contract provisions that are responsible to the taxpayers and fair to our employees. According to the Public Employment Relations Board, many of the COIN provisions being suggested would require negotiations with our labor unions prior to implementation.

The provisions of COIN, including the provision that mandates, "Make public each proposal, after it is accepted or rejected by either Party, and publically verify the costs of that accepted or rejected proposal by an independent auditor" attempt to modify the negotiating relationship between the parties and change the manner in which tentative agreements are negotiated. Such a modification would need to be negotiated with each labor union prior to implementation. On June 16, 2015, an Administrative Law Judge from the Public Employment Relations Board determined that implementing this provision of COIN was illegal without meeting and conferring in good faith. "While the ground rules used during negotiations do not, on their face, directly affect employees' wages, hours, or working conditions, the application of ground rules through the bargaining process would have a

significant and adverse effect on wages, hours and working conditions,” according to the ruling, written by Chief Administrative Law Judge Shawn B. Cloughesy. “If a public agency is able to exercise overall control over the ground rules of bargaining, it can short circuit and frustrate bargaining to the point it ceases to be a bilateral process.”

**R2.** Marin County Board of Supervisors and each City Council and Town Council in Marin County adopt and implement a COIN ordinance which includes, but is not limited to the following:

1. Hire an independent, experienced Lead Negotiator to negotiate all labor agreements.
2. Hire an independent auditor to determine the fiscal impact of each provision in the current contract, and make this analysis available for public review.
3. Make public each proposal, after it is accepted or rejected by either Party, and publically verify the costs of that accepted or rejected proposal by an independent auditor.
4. Make public seven days prior to a Board or Council meeting the negotiated tentative agreement and the fiscal analysis thereof, which are to be independently verified.
5. After seven days, place the final tentative agreement on the following two consecutive Employer’s public meeting agenda: the first meeting is for discussion of the tentative agreement; the second meeting is for a vote by the Employer to approve or disapprove the tentative agreement.

Response: This recommendation requires further analysis.

The Board of Supervisors is supportive of some but not all COIN provisions. Our overall goal is to negotiate contract provisions that are responsible to the taxpayers and fair to our employees.

According to the Public Employment Relations Board, implementation of COIN would require that we meet and confer with our unions in good faith. As indicated above, many of the COIN provisions being suggested would require negotiations with our labor unions prior to implementation. What follows is a discussion of the major provisions of COIN.

- (1) Hire an independent, experienced Lead Negotiator to negotiate all labor agreements

We do hire an independent, experienced lead negotiator for some but not all of our negotiations. The County has 12 labor unions representing approximately 90% of our workforce. The size of our labor unions varies considerably based upon the union. One labor union only represents one regular hire employee while our largest union represents approximately 1,168 employees. The County already utilizes the assistance of an outside negotiator, but it isn't necessary or efficient to use an outside negotiator for every contract negotiation. The County hires employees in its Labor Relations unit that are experts in the field and who work to achieve fair agreements for the County, the employees, and Marin residents. Our current employees in the labor relations team have 40+ years of collective experience negotiating labor contracts. Even when an independent negotiator is hired, he/she is directed by the Board of Supervisors on appropriate bargaining positions. An independent negotiator has no authority apart from the Board of Supervisors. Cal. Gov. Code Section 3505 articulates it clearly when it states:

“The governing body of a public agency, or such boards, commissions, administrative officers or other representatives as may be properly designated by law or by such governing body, shall meet and confer in good faith regarding wages, hours, and other terms and conditions of employment with representatives of such recognized employee organizations, as defined in subdivision (b) of Section 3501, and shall consider fully such presentations as are made by the employee organization on behalf of its members prior to arriving at a determination of policy or course of action.”

- (2) Hire an independent auditor to determine the fiscal impact of each provision in the current contract, and make this analysis available for public review.

The County has already implemented changes to post more detailed costing of each proposed contract for public review. The Department of Human Resources is responsible for labor negotiations on behalf of the County. To ensure accurate costing of all labor contract provisions, costings are conducted by either the County Administrator's Office budget team or the Department of Finance. While full costing has always been conducted by the County, during the most recent round of bargaining, we provided a more detailed costing analysis with each contract brought before the Board of Supervisors for approval. This analysis identifies current costs for the bargaining unit, details of each negotiated increase, specifically identifying where there are pension impacts associated with the increase, and a cumulative full cost of the negotiated increases over the whole term of the agreement. We intend to continue to use this costing methodology going forward and will include it with proposed tentative agreements considered by the Board of Supervisors.

- (3) Make public each proposal, after it is accepted or rejected by either Party, and publically verify the costs of that accepted or rejected proposal by an independent auditor.

The bargaining process, which is governed by the Meyers Milius Brown Act, is complex as it involves many topics, proposals, and counter proposals made by each party. Costing every single proposal, with no distinction for whether or not the proposal was agreed to, is not fiscally prudent particularly since many of the proposals never get close to being included in the final tentative agreement reached. If there is a change which will impact the County's pension liability, an independent actuary is hired. The bargaining process is an opportunity for both sides' positions to be heard and is not a forum to embarrass one of the parties in the public eye. The County fully supports complete transparency around the content of the tentative agreement.

- (4) Make public seven days prior to a Board or Council meeting the negotiated tentative agreement and the fiscal analysis thereof, which are to be independently verified.

This recommendation will be implemented, in part, after the County engages in good faith bargaining with its labor unions. The County strives for transparency and the recommendation to publish the tentative agreement seven days in advance of the Board meeting is a helpful recommendation from the Grand Jury. In fact, in order to promote ample opportunity for public comments, in advance of the Board of Supervisors meeting to formally approve the agreement, the County will provide notice, on the consent agenda, of a tentative agreement with each labor union and the fiscal analysis of the tentative agreement. Then, on a subsequent Board agenda (on the "policy" agenda), the tentative agreement will be scheduled for Board action. While we are unable to implement this recommendation in the current round of bargaining, since the ground rules are already established, the County will work to implement this in the next full round of contract bargaining.

- (5) After seven days, place the final tentative agreement on the following two consecutive Employer's public meeting agenda: the first meeting is for discussion of the tentative agreement; the second meeting is for a vote by the Employer to approve or disapprove the tentative agreement.

We believe that noticing the agreement on the consent agenda prior to formal adoption of the agreement would address the goal of this provision. Posting the tentative agreement and its fiscal impact prior to formal approval will promote an engaged conversation once the item is brought to the Board of Supervisors for consideration and approval.