

**REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS
OF THE COUNTY OF SAN BERNARDINO
AND RECORD OF ACTION**

**REPORT/RECOMMENDATION OF THE BOARD OF DIRECTORS
OF THE SAN BERNARDINO COUNTY FIRE PROTECTION DISTRICT
AND RECORD OF ACTION**

January 5, 2021

FROM

LEONARD X. HERNANDEZ, Chief Executive Officer, County Administrative Office

SUBJECT

Agreements with Employee Organizations Regarding the Impact of the Alameda Decision

RECOMMENDATION(S)

Acting as the governing body of the County of San Bernardino and the San Bernardino County Fire Protection District, approve agreements with employee organizations for a one-time lump sum payment to employees impacted as a result of changes to compensation earnable as designated by the San Bernardino County Employees Retirement Association.

(Presenter: Bob Windle, County Labor Relations Chief, 387-3101)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

Create, Maintain and Grow Jobs and Economic Value in the County.

Improve County Government Operations.

Operate in a Fiscally-Responsible and Business-Like Manner.

Ensure Development of a Well-Planned, Balanced, and Sustainable County.

FINANCIAL IMPACT

Approval of these agreements will not result in the use of additional Discretionary General Funding (Net County Cost). The proposed agreements will provide a lump sum contribution on a one-time basis to eligible employees' Retirement Medical Trust plan or 401(a) account. The estimated total one-time cost is \$83,400. Impacted departments have sufficient budget authority to cover this one-time cost.

BACKGROUND INFORMATION

On January 1, 2013, the Public Employees' Pension Reform Act took effect. This Act changed the determination of compensation earnable and placed compensation limits on public employees. Certain employee groups in the state of California lodged challenges to this Act which resulted in civil litigation.

On July 30, 2020, the California Supreme Court decided the case of *Alameda County Deputy Sheriffs' Association et al. v. Alameda County Employees' Retirement Association and Board of Retirement of ACERA* (the "Alameda Decision"). As a result of this Decision, the San Bernardino County Employee's Retirement Association (SBCERA) adopted resolutions which

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resulted in an adjustment to certain employees' compensation earnable, which potentially impacts each employee's expected retirement benefit.

Current County employees who received pay that is no longer compensation earnable pursuant to the *Alameda* Decision (e.g., on-call, standby pay, etc.) from August 3, 2019, through July 31, 2020 experienced a reduction in compensation earnable. Between August 3, 2019, and July 31, 2020 (the 12 months prior to *Alameda* Decision) approximately 1,500 "Tier 1" employees, those employed prior to January 1, 2013, received some form of pay that is no longer compensation earnable. The settlement was established using a recent one-year period because this period would likely reflect the employee's last highest year of earnings used to determine the retirement benefit. This does not include employees who received the pay during that time period who are now separated from County employment.

Since the impacted employees may experience an unexpected change to their retirement benefit, the employee unions representing these employees reached out to the County to discuss the impact of the change in law.

Representatives of the County, under direction of the Board of Supervisors, met with representatives of the unions in an effort to resolve any disputes over the loss of retirement benefits to current employees. After several meetings with 10 employee organizations, the County reached agreements with California Nurses Association, International Brotherhood of Electrical Workers Local 47, San Bernardino County Professional Firefighters IAFF Local 935, and San Bernardino County Probation Officers Association. These proposed agreements were approved by the Board of Supervisors on December 15, 2020 (Item No. 82). Thereafter, the County continued meeting with remaining unions which resulted in three additional agreements with Service Employees International Union Local 721, International Union of Operating Engineers Local 12, and the Association of Fire Managers. The agreements will provide eligible employees a lump sum contribution to the employee's Retirement Medical Trust plan or 401(a) account. Eligible employees under the agreement are those who received return to work compensation and either retire during the term of their applicable MOU or received return to work pay in an amount greater than the amount of the across the board employees will receive during the term of their MOU. While other employees who received return to work compensation may be impacted by the *Alameda* Decision, these employees are impacted to a lesser extent and/or will be able to have that impact mitigated by other increases in compensation earnable. In exchange, each employee organization will agree to execute a full waiver of liability, agreeing to not pursue or endorse any legal action against the County related to the employees' reduction in retirement benefit.

If approved by the Board, these agreements will resolve any disputes stemming from the *Alameda* Decision as it relates to each of the employee organizations. The County shall continue to meet with the remaining employee organizations in order to resolve any disputes and return to the Board at a later date if any additional agreements are reached.

PROCUREMENT

N/A

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Cynthia O'Neill, Principal Assistant County Counsel, 387-5455) on December 18, 2020; Labor Relations (Bob Windle, County Labor Relations Chief, 387-3101) on December 17, 2020; Human Resources (Diane Rundles, Human

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Resources Director, 387-5570) on December 21, 2020; Finance (Jessica Trillo, Administrative Analyst, 387-4222) on December 18, 2020; Finance (Tom Forster, Administrative Analyst, 387-4635) on December 18, 2020; and County Finance and Administration (Matthew Erickson, County Chief Financial Officer, 387-5423) on December 18, 2020.

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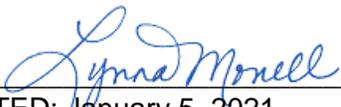
Record of Action of the Board of Supervisors
County of San Bernardino

Record of Action of the Board of Directors
San Bernardino County Fire Protection District

APPROVED (CONSENT CALENDAR)

Moved: Joe Baca, Jr. Seconded: Janice Rutherford
Ayes: Col. Paul Cook (Ret.), Janice Rutherford, Dawn Rowe, Curt Hagman, Joe Baca, Jr.

Lynna Monell, CLERK OF THE BOARD/SECRETARY

BY  _____
DATED: January 5, 2021



cc: File - Administrative Office w/attach
CCM 01/15/2021