## County of Orange and Orange County Attorneys Association (Case No. LA-IM-115-M)

Association Representative to Factfinding Panel Bernadette Cemore

Partial Dissent to the Findings of Fact and Recommended Terms of Settlement:

While as the representative of the Orange County Attorneys Association (OCAA) to the Factfinding Panel, I agree with some portions of the Findings of Fact and the Recommended Terms of Settlement (the Report) drafted by the Impartial Chairperson, there are several very significant points with which I disagree and for that reason I am providing this partial dissent.

The Report does not appear to recognize that OCAA agreed, at the County's request, to the County's paying a portion of employee retirement in lieu of a salary increase offered and paid to other bargaining units. The decision on the part of the County in the 2000 negotiations between the parties to offer to begin paying the remaining portion of the employee retirement contributions effective June of 2002, was a County proposal no doubt because beginning to do so was a benefit to the County. While there was also some benefit to the attorneys in the bargaining unit, that financial benefit to the bargaining unit was offset for the attorneys by the County's not paying the attorneys a 3 ½% across the board raise which was paid at that time to other bargaining units of County employees. In actuality the County's proposal was a wash for the members of the bargaining unit—they did not get a raise of 3 ½% in their wages, but the County began making the remaining portion of the employee retirement contributions thereby resulting in more money in their paychecks.

Thus, the County has had the benefit it derived from proposing that it would assume responsibility for making the employee contributions at the very least because all attorneys in the bargaining unit have a salary which--since the time that the change was made--is roughly 3 ½% lower than it would otherwise have been. This is a benefit which the County will continue to "enjoy" going forward as it will continue to pay the members of this bargaining unit less in comparison to other bargaining units. The benefit the County derives from the attorneys' lower salaries will now be compounded in its effect by the County's "change of philosophy" reflected in the County's making the demand that OCAA's bargaining unit members begin making the employee contributions. In essence, the County has derived "the benefit" of making the employee contributions while OCAA members receive 3 ½% less across the board in their salaries and now due to a "change in philosophy", the County wants OCAA members to begin making the employee contributions, but certainly is not offering to increase the pay of all the members by 3 ½% in light of the employees assuming the responsibility for the

contributions (which was the bargained for exchange at the time that the County proposed making the retirement contributions on behalf of the attorneys).

In the initial go round of bargaining the County had taken the position that the obligation on the part of the attorneys to begin paying the retirement contributions would be phased in over a two year period. As the Report recognizes the financial impact on the members of the bargaining unit is extremely significant. After the hiatus in bargaining, the County's new bargaining spokesperson took the position that perhaps not all of the contributions would have to be paid immediately, however at the time of the County's last, best, and final offer on August 24, 2012, the County's final proposal was that the attorneys begin immediately making all contributions upon ratification of the agreement. The Report recognizes that this demand is unrealistic and inconsistent with the County's position with other bargaining units. However, the Report does not recognize that merely postponing the second pick-up until July, 2013 is still problematic when the attorneys—who have forgone raises and agreed to furloughs—are receiving no real or even token offsetting increase in their salaries.

The position of the County coming into the factfinding process that OCAA's members should not receive any basebuilding increases to their salaries and the County's insistence that attorneys should be artificially limited henceforth in the amount of a raise (or the steps) a newer attorney was entitled to receive is not recognized in the Report as the serious problem that these proposals represent. Despite the fact that nontopped out attorneys only receive a steps/raise based upon their particular departments' assessment of their performance, the County nonetheless is desirous of putting a limit on the steps/raise an attorney receives based on the quality of their job performance. This County proposal—particularly when combined with the County's position of no base building raise for this bargaining unit--demonstrates that the only desire of the Board is to unnecessarily and unjustifiably cut or limit the compensation of the attorneys. Given that steps/raises are only given to attorneys based upon a supervisor's assessment of their performance, it is clear that the Board does not support the basic concept of rewarding exemplary performance. This is evident since the Board is unwilling to permit the managers of the attorneys to determine the amount of the attorneys' step increases/raises even in circumstances where the attorneys' supervisors have complete control over the amount of an increase the attorney receives and that increase is explicitly tied to the quality of the attorneys' job performance. This change will be extremely significant to the attorneys in the bargaining unit and I must dissent from the Report's recommendation that the step increases be limited to 2 steps and that new hires will only be eligible for a step increase after 2050 hours.

To help offset the financial hit the County wished the attorneys to take and in keeping with OCAA's willingness to be a responsible partner with the County in addressing its financial concerns, OCAA proposed to the County to condition any across-the-board increases in salaries upon the County's financial condition as part of the bargaining prior to the hiatus and proposed the concept again after the hiatus. In the summer of 2012, OCAA put forward a more specific formula for calculating whether or not there was an improvement in financial conditions which would trigger an obligation to share the

increased revenue with the employees of the County, and this concept was summarily rejected by the Board of Supervisors without any attempt to explore the potential for establishing a formula the parties could agree upon. Rather, the County rejected the concept without any discussion and announced the parties were at impasse in August of 2012. This conduct again reflects a total lack of desire to reach an agreement and instead a desire on the part of the County to cut the compensation of attorneys.

OCAA has repeatedly demonstrated that it wishes to be a partner with the County in addressing the County's financial concerns, however, it is extremely problematic that the Board of Supervisors first delays negotiations, then repeatedly changes its positions and refuses to honor prior commitments and engages in regressive bargaining. OCAA has sought, and I believe, that its members should receive 100% basebuilding raises to offset the financial hit the attorneys would be taking upon having to pay the retirement contributions, and that raise should be greater than 2 ½ % assuming the County's financial picture has in fact improved, which all data indicates that it has and that it is in fact continuing to improve.

The combined actions of the Board in substituting the County's obligation to pay the employee contributions to retirement for a

3 ½% raise and now deciding there has been a change in philosophy has resulted in the salaries of all the attorneys being depressed by 3 1/2%, which is further exacerbated by the requirement the attorneys now begin making the employee contribution to retirement. This loss in income on the part of the attorneys is further compounded by the other change in philosophy of the Board whereby attorneys' pay increases are from the Board's perspective no longer going to be base building. All of these shifts in positions on the part of the Board make for a very unsettling environment for the attorneys and for OCAA. It is not sound labor relations to fail to honor prior agreements, to constantly change "philosophies" particularly when OCAA has repeatedly taken steps to assist the County in addressing its fiscal concerns. Such conduct on the part of the Board creates unnecessary uncertainty going forward and breeds skepticism and distrust. For all of these reasons I believe that the Report's recommendation that only half of a 2 ½% increase to attorneys should be base building should at the very minimum be altered to reflect that 100% of the increase should be base building. Otherwise, attorneys for the most part will experience a loss in salary that amounts to between 4% and 10% based upon the precise amount of the retirement contributions they will have to begin making. Even making the 2 1/2% increase all base building still greatly harms the pocketbooks of the attorneys. Such a decrease in salaries coming on top of rounds of furloughs and prior postponements of raises is not supported by the County's fiscal picture and will wreck havoc on the family and personal finances of the members of this bargaining unit. Imposing such a financial hit when in fact the fiscal picture of the County is looking up. is simply not wise in the long term if the County desires to recruit and retain the kind of attorneys who are capable of doing the extremely important work performed by the several departments and offices employing the attorneys who work for the County.