

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

215



FROM: Human Resources Dept. **SUBMITTAL DATE:** July 15, 2002

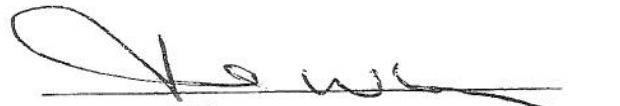
SUBJECT: County of Riverside Public Authority In Home Support Services (IHSS) Employer-Employee Relations Resolution

RECOMMENDED MOTION: That the Board of Supervisors approve the attached In Home Support Services (IHSS) Public Authority Employer-Employee Relations Resolution.

BACKGROUND: On May 21, 2002, your Board voted to create a Public Authority to act as the employer of record for In-Home Supportive Services Independent Providers. The Authority is now deemed to be the employer of record for In-Home Supportive Services personnel within the meaning of Government Code Sec. 3500 et. seq. (Meyers-Milias-Brown Act). Therefore, it is necessary to approve this Resolution that establishes procedures regulating the conduct of Authority labor relations activities affecting the wages, hours, and other terms and conditions of employment for employees or independent providers.

BY  JUL 16 2002

FORM APPROVED
COUNTY COUNSEL



Ronald W. Komers
Asst. County Executive Officer/
Human Resources Director

FINANCIAL DATA:
CURRENT YEAR COST:
NET COUNTY COST:
BUDGET ADJUSTMENT: NO
SOURCE OF FUNDS:

ANNUAL COST: 0
IN CURRENT YEAR BUDGET: YES NO
FOR FY:

C.E.O. RECOMMENDATION:

APPROVE



COUNTY EXECUTIVE OFFICER SIGNATURE

Policy
 Policy
 Consent
 Consent

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Mullen, seconded by Supervisor Tavaglione and duly carried by unanimous vote, IT WAS ORDERED that the Board acting as County of Riverside In-Home Support Services (IHSS) Public Authority approved the above resolution as recommended.

Ayes: Buster, Tavaglione, Venable, Wilson and Mullen
Noes: None
Absent: None
Date: July 23, 2002
xc: HR



Nancy Romero
Clerk to the Board
By  Deputy

Prev. Agn. Ref.
G:\EXEC\Form 11\IHSS Employer Employee Relations Resolution.doc

Dist.

AGENDA NO.

3.10

Department Recommendation:
Per Executive Office:

COUNTY OF RIVERSIDE
PUBLIC AUTHORITY
IN-HOME SUPPORT SERVICES (IHSS)
EMPLOYER-EMPLOYEE RELATIONS RESOLUTION

Article I
General Provisions

Section 1. Title.

This Resolution shall be known as the In Home Support Services (IHSS) Public Authority Employer - Employee Relations Resolution

Section 2. Statement of Purpose.

The Board of Supervisors of the County of Riverside has amended County Code Chapter 2.112 to establish a Public Authority for delivery of In-Home Supportive Services (hereinafter "Authority") pursuant to Welfare and Institutions Code Sec. 12301.6. Pursuant to Section 12301.6(c)(1), the Authority is deemed to be the employer of record of In-Home Supportive Services personnel within the meaning of Government Code Sec. 3500 et. seq. (Meyers-Milias-Brown Act, hereinafter, "MMBA").

It is the purpose of this Resolution, which is enacted pursuant to the MMBA, to provide procedures for meeting and conferring in good faith with exclusively recognized employee organizations regarding matters that directly and significantly affect, and primarily involve, the wages, hours and other terms and conditions of employment of In-Home Supportive Services employees or independent providers in appropriate units and that are not preempted by federal or state law.

Section 3. Administration.

The Manager of Labor Relations for the Public Authority shall implement and administer the provisions of this Resolution. The Manager of Labor Relations for the Public Authority shall also have authority to administratively interpret this Policy.

Section 4. Severability.

This Resolution is subject to all current and future federal and state laws and the regulations of the Authority. If any part or provision of this Resolution is held to be invalid or unenforceable by any tribunal of competent jurisdiction, such part or provision shall be suspended and superseded by the applicable provision or provisions of federal or state law or the regulations of the Authority and the remainder of this Resolution shall not be affected thereby.

Section 5. Employee Organization Activities - Use of Authority Resources.

Any access to Authority work locations and/or the use of Authority paid time, facilities, equipment and other resources by employee organizations or those representing them shall be limited to those set forth in the applicable Memorandum of Understanding.

Section 6. Definitions.

For the purposes of this Resolution, the following terms shall have the meanings indicated:

- (a) "Appropriate Unit" means a unit of employee or independent provider classes or positions, established pursuant to Article III hereof.
- (b) "Authority" or "Public Authority" means the County of Riverside In-Home Supportive Services Public Authority or any duly authorized representative of the Public Authority.
- (c) "Confidential Employee" means an employee who, in the course of his or her duties, has access to confidential information relating to the Authority's administration of employer-employee relations or personnel and employment transactions.
- (d) "Consult/Consultation in Good Faith" means to communicate orally or in writing with all effected employee organizations, whether exclusively recognized or not, for the purpose of presenting and obtaining views or advising of proposed actions in a good faith effort to reach a consensus; and, as distinguished from meeting and conferring in good faith regarding matters within the required scope of such meet and confer process, does not involve an exchange of proposals and counterproposals with a recognized or exclusively recognized employee organization in an endeavor to reach agreement in the form of a Memorandum of Understanding, nor is it subject to Article VII, Impasse Resolution Procedures, hereof.
- (e) "Consumer" means a person who receives In-Home Supportive Services.
- (f) "Day" means calendar day unless otherwise specified.
- (g) "Decertification" means withdrawal of recognition by the Authority of an employee organization as an "Exclusively Recognized Employee Organization" of an appropriate unit following a decertification election by the employees or independent providers of an appropriate unit.

(h) "Designated Representative of the Authority" means the person or persons who have been specified by the Authority as authorized to represent the Authority in labor relations matters.

(i) "Emergency" means an unforeseen circumstance requiring immediate attention.

(j) "Employee" means a person employed by the Public Authority in an authorized position. The term "employee" shall not include "independent providers".

(k) "Exclusively Recognized Employee Organization" means an employee organization which has been formally acknowledged by the Authority as the sole employee organization representing the employees or independent providers in an appropriate representation unit pursuant to Article III hereof, having the exclusive right to meet and confer in good faith concerning statutorily required subjects pertaining to unit employees or independent providers, and thereby assuming the corresponding obligation of fairly representing such employees or independent providers.

(l) "Employer-Employee Relations" means the relationship between the Authority and its employees or independent providers on matters of employment.

(m) "Fact-finding" means the investigation of an impasse by an impartial third party for the purpose of describing the issues in dispute, stating the positions of the parties, and making the findings of fact on issues in dispute. It is advisory in nature and shall not include recommendations as to settlement of the dispute unless so specified at the time.

(n) "Impasse" means that the representatives of the Authority and a Recognized Employee Organization have reached a point in their meeting and conferring in good faith where the differences on matters to be included in a Memorandum of Understanding, and concerning those which they are required to meet and confer, remain so substantial and prolonged that further meeting and conferring would be futile.

(o) "Independent Provider" means a person hired by Recipients of its Home Supportive Services to provide services to recipients.

(p) "Labor Relations" means the relationship between the Authority and its employees or independent providers on matters concerning employees' or independent providers' rights to choose to be or not be represented by employee organizations; and the relations between the Authority and employee organizations.

(q) "Management Employee" means an employee having responsibility for formulating, administering or managing the implementation of Authority policies and programs.

(r) "Mediate" or "Mediation" means the effort by an impartial third party to assist in reconciling a dispute regarding wages, hours, and other terms and conditions of employment between the Authority and recognized employee organization(s) through interpretation, suggestion, and advice.

(s) "Meet and Confer" means the process whereby representatives of the Authority and exclusively recognized employee organizations in good faith exchange information, opinions and proposals to reach timely agreements on wages, hours, and other terms and conditions of employment as contemplated in Government Code Section 3505.

(t) "Professional Employee" means an employee engaged in work that requires specialized knowledge and skills attained through completion of a recognized course of instruction, usually of a prolonged nature in a post-secondary institution of higher learning or a hospital.

(u) "Proof of Employee Support" means (1) an authorization card recently signed and personally recently dated by an employee or independent provider, or (2) a verified authorization petition or petitions personally recently signed and personally dated by an employee or independent provider, or (3) employee or independent provider dues deductions authorization, using the payroll register for the period immediately prior to the date a petition is filed hereunder, except that dues deductions authorizations for more than one employee organization for the account of any one employee or independent providers shall not be considered as proof of support for any employee organization. The only authorization which shall be considered as proof of support hereunder shall be the authorization last signed by an employee or independent provider. The words "recently signed" shall mean within ninety (90) days prior to the filing of a petition.

(v) "Recipient" means a person who receives In-Home Supportive Services.

(w) "Recognized Employee Organization" means an employee organization that, as the result of an election conducted pursuant to the provisions of this Resolution, is certified as the Recognized Employee Organization for an appropriate unit of employees or independent providers.

(x) "Scope of Representation" means matters relating to wages, hours and other terms and conditions of employment relevant to the respective employee or independent provider group and subject to the limitations set forth in Welfare and Institutions Code Sec. 12301.6. The scope of representation shall not include consideration of the merits, necessity or organization of any service or activity provided by law or executive order, or those matters reserved to management.

(y) "Supervisory Employee" means an employee having authority in the interest of the Authority to: hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action if, in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

(z) "Unit" or "Representation Unit" means a group of Authority job titles where employees or independent providers employed under the job titles included in the group have been identified as having a community of interest appropriate for the purpose of being represented and are represented by a recognized employee organization on matters within the scope of representation provided, however, that independent providers shall not be included in, or represented by, the same bargaining unit as employees of the Authority.

Article II

Rights and Responsibilities of the Parties.

Section 1. Authority Rights

Nothing herein shall be construed to restrict any legal or inherent exclusive Authority rights with respect to matters of general legislative or managerial policy, which include among others: the exclusive right to determine the merits, necessity and organization of its function; the exclusive right to determine the Authority's mission; set standards of service; determine the procedures and standards of selection for employment; direct its employees or independent providers; take disciplinary action for proper cause; relieve its employees from duty because of lack of work, reduced levels of service, or for other lawful reasons; determine the content of job classifications; sub-contract work; maintain the efficiency of Authority operations; determine the methods, means and personnel by which all Authority operations are to be conducted; take all necessary care to carry out its mission in emergencies; and exercise complete control and discretion over its organization and the technology of performing work.

Section 2. Employee Rights.

Except as otherwise provided by law, Authority employees and independent providers shall have the right to form, join and participate in the activities of employee organizations of their own choosing for the purpose of representation on matters of employer-employee relations provided, however, that Authority employees and independent providers shall not be represented in the same bargaining unit(s). Authority employees and independent providers shall have the right to refuse to join or otherwise participate in the activities of employee organizations and shall have the right to represent themselves individually in their employment relations with the Authority. Neither the Authority nor employee organizations shall interfere with, intimidate, restrain, coerce, or discriminate

against employees or independent providers because of the exercise of their rights under this section.

Section 3. Recipient Rights.

The individual Recipient retains the right to hire, train and supervise the work of any employee or independent provider who performs services for him or her. The individual recipient also retains the right to terminate the services of the independent provider who performs services for him or her at any time either for cause or no cause as the independent provider serves at the will of the recipient and is not entitled to any administrative hearing on termination of services.

Section 4. Management Agent's Responsibilities.

Public Authority independent providers and all employees of the Public Authority shall comply with any and all confidentiality requirements concerning delivery of In-Home Supportive Services in accordance with requirements of all State and Federal laws, including but not limited to those contained in the California Welfare and Institutions Code, all other statutes, California Administrative Code Provisions, all other regulations, and practices of federal, state and local government.

Article III

Recognized Employee Organizations

An employee organization that is recognized by the Authority as the representative organization for an appropriate unit of employees or independent providers shall be the sole and exclusive employee organization which shall represent such employees or independent providers on matters within the scope of representation within the Authority. Recognized employee organizations shall have the right to meet and confer with the Authority, or at the Authority's discretion, with a designated representative of the Authority. A recognized employee organization shall have the rights set forth herein only with respect to employees or independent providers in a unit for which the organization is recognized as the exclusive representative. A recognized employee organization shall remain recognized until such date that recognition is withdrawn from the organization or another employee organization is recognized for the representation unit of employees or independent providers.

(a) Notice. Except in case of emergency as provided herein, the Authority shall give reasonable written notice to each recognized employee organization directly affected by any ordinance, rule, resolution or regulation directly relating to matters within the scope of representation proposed to be adopted by the Authority and shall give such recognized employee organization an opportunity to meet with the Authority.

(b) Emergency. In case of emergency when the Authority determines that an ordinance, rule, resolution or regulation must be adopted immediately without prior notice or meeting with a recognized employee organization, the Authority

shall provide such notice and opportunity to meet at the earliest practicable time following the adoption of such ordinance, rule, resolution or regulation.

Recognition Procedures:

Section 1. Purpose of Petition.

The investigation of a question of representation of employees or independent providers shall be initiated by the filing of a petition with the Manager of Labor Relations for the Public Authority. A petition for certification may be filed by an employee organization claiming to represent a majority of the employees or independent providers in an appropriate or alleged appropriate unit in accordance with the provisions of this Article for the following purposes:

- a. To become the exclusively recognized employee organization for an existing appropriate representation unit which is currently represented by a different employee organization; or,
- b. To become the exclusively recognized employee organization for employees or independent providers in classifications not currently represented; or,
- c. To become the exclusively recognized employee organization for an alleged appropriate representation unit composed of a classification or a group of classifications currently included in one or more existing representation units.

Section 2. Form of Petition.

An employee organization which seeks to be formally acknowledged as an Exclusively Recognized Employee Organization representing the employees or independent providers in an appropriate unit shall file a petition with the Manager of Labor Relations for the Public Authority containing the following information and documentation:

- a. Name, title or classification, address and signature of the person filing the petition.
- b. Name and address of the employee organization.
- c. Names and titles of its officers.
- d. Names, title, or classification of employee organization representatives who are authorized to speak on behalf of the organization.
- e. A statement that the employee organization has, as one of its primary purposes, the responsibility of representing IHSS employees or independent providers in their employment relations with the Public Authority.

- f. A statement whether the employee organization is a chapter of, or affiliated directly or indirectly in any manner, with a local, regional, state, national or international organization, and, if so, the name and address of each such other organization.
- g. Certified copies of the employee organization's constitution and bylaws.
- h. A designation of those persons, not exceeding two in number, and their addresses, to whom notices sent by regular United States mail will be deemed sufficient notice on the employee organization for any purpose.
- i. A statement that the employee organization has no restriction on membership based on race, color, religion, creed, sex, national origin, age, sexual orientation, mental or physical disability or medical condition.
- j. The job classifications or position titles and number of employees in the unit claimed to be appropriate.
- k. A statement that the employee organization agrees to comply with the provisions of this Resolution.
- l. The name(s) of any other recognized employee organization(s) that represent any employees or independent providers in the unit of the petition.
- m. A statement that the employee organization has in its possession proof of employee or independent provider support as herein defined to establish that a majority of the employees or independent providers in a unit claimed to be appropriate have designated the employee organization to represent them in their employee relations with the Authority. Such written proof shall be submitted for confirmation to the Manager of Labor Relations for the Public Authority or a mutually agreed-upon disinterested third party.

The petition, including the proof of employee or independent provider support and all accompanying documentation, shall be declared to be true, correct and complete, under penalty of perjury, by the duly authorized officer(s) of the employee organization executing it.

All changes to the documentation required above under Section 2., (a.) through (m.) shall be updated in writing to the Manager of Employee Relations for the Public Authority within fourteen (14) calendar days of such change(s). All changes to the documentation required under Section 2., (a.) through (l.) of the above information filed with the Authority by an organization that becomes an Exclusively Recognized Employee Organization, shall also be updated in writing to the Manager of Employee Relations for the Public Authority within fourteen (14) calendar days of such change.

Section 3. Time for Filing Petition.

Representation petitions may be filed with the Manager of Labor Relations for the Public Authority on any Authority business day, excepting:

- (a) A petition that includes employees or independent providers in a unit that participated in a valid representation election shall not be filed for a period of twelve (12) full months subsequent to the date the election results were certified; and,
- (b) A petition that includes any employees or independent providers in a unit for which the Authority recognized an employee organization shall not be filed for a period of twelve (12) full months subsequent to the date upon which such recognition was granted; and,
- (c) A petition that includes employees or independent providers covered by a Memorandum of Agreement which has been ratified by the unit and approved by the Authority shall be filed no sooner than one hundred and twenty (120) and no later than ninety (90) days prior to the expiration of the Agreement. This bar shall only apply during the first two years of a multi-year agreement.
- (d) A representation petition appealing the identification, assignment or non-assignment of a new classification to a unit which was made by the Manager of Labor Relations for the Public Authority shall be filed no later than thirty (30) calendar days after the date of the written notice of the identification, assignment or non-assignment.

Section 4. Proof of Employee Support Required.

No question concerning representation shall be deemed to exist unless the petitioner raising such question by petition makes a showing of proof of employee or independent provider support for the unit of the petition, as follows:

- (a) A certification petition seeking to become the recognized employee organization for: (1) an existing appropriate unit currently represented by a different employee organization; or (2) an alleged appropriate representation unit; or (3) employees or independent providers not currently represented, shall require thirty (30%) proof of employee or independent provider support.
- (b) A petition appealing the assignment or non-assignment of a new classification shall require thirty percent (50%) proof of employee support of the employees or independent providers in the classification, except that if the petitioner contends the new classification represents an accretion to an existing unit, or if there are no employees or independent providers in the new classification at the time the petition is filed, no proof of support shall be required.

(c) A decertification petition filed by employees or independent providers seeking to be unrepresented shall require thirty (30%) proof of employee or independent provider support.

(d) A certification petition filed as a motion seeking to intervene in an election proceeding shall require proof of employee or independent provider support of ten percent (10%); except that if the employee organization desiring to intervene seeks a unit different from that claimed to be appropriate by the petitioner, the required proof of support shall be thirty percent (30%) of the different alleged appropriate unit.

Section 5. Acceptable Proof of Support.

Proof of support documents shall accompany the petition and shall be kept confidential. All proof of support documents shall be signed and dated no later than ninety (90) days prior to the time the petition is filed. The following shall constitute acceptable proof of support:

- (a) An authorization card signed and personally dated by the independent provider or employee; or
- (b) A verified authorization petition or petitions signed and personally dated by the independent provider or employee; or
- (c) An independent provider's or employee's membership dues deduction, as verified by a payroll register for the State of California for the two most recently available months immediately prior to the date the petition is filed but no later than ninety (90) days prior to the date the petition is filed.

Article IV Representation Units

Section 1. Criteria for Establishing Appropriate Units.

Bargaining units shall be the broadest feasible grouping of positions that share an identifiable community of interests provided, however, that independent providers shall not be included in, or represented by, the same bargaining unit as employees of the Authority.

In order to minimize the fragmentation of units, the minimum number of units consistent with effective labor relations shall be established. Factors to be considered shall be:

- (a) Similarity of the general kind of work performed, types of qualifications required, and the general working condition.
- (b) History of representation and similar employment provided, however, that no unit shall be deemed to be an appropriate unit solely on the basis of the

extent to which employees or independent providers in the proposed unit have been organized.

- (c) Consistency within the organizational pattern of the Authority.
- (d) Employees or independent providers in a single classification shall all be included in the same unit.
- (e) Independent providers in a single classification shall all be included in the same unit
- (f) Effect on the classification structure and impact on the stability of the employer-employee relationship of dividing a single related classification among two or more units.

In addition, the following criteria shall be applied in determining an appropriate unit:

- (a) The effect of the unit on the efficiency of Authority operations.
- (b) Confidential employees shall not be included in the same unit with non-confidential employees.
- (c) Supervisory employees shall not be included in the same unit with non-supervisory employees.
- (d) Management employees shall not be included in the same unit with non-management employees.
- (e) Professional employees shall not be included in the same unit with non-professional employees.

The Authority reserves the right, at any time, to establish or permit the establishment of one or more executive, management, or confidential units and to allocate positions and/or classes thereto from other units.

Article V Representation Elections

Whenever the Manager of Labor Relations for the Public Authority orders a representation election pursuant to the provisions of this Resolution, the State Mediation and Conciliation Service shall be requested to conduct a secret ballot election in accordance with its own procedures and regulations and in conformance to the requirements of this Article. In the event the State Mediation and Conciliation Service declines to conduct the election, the parties shall mutually select a neutral third party to conduct the election.

Section 1. Eligible Voters.

Employees or independent providers eligible to vote in a representation election are those in the unit who have been verified as being on the payroll records for one of the two payroll periods immediately preceding the date upon which the election was ordered.

Section 2. Ballot Proposal.

Every ballot in a representation election for employees or independent providers currently unrepresented, or for employees or independent providers in a new unit which has been found to be appropriate, shall contain a choice of "No Organization" in addition to the names of the employee organization(s) which qualified for placement on the ballot. The ballot in a representation election shall state: "Do you wish to be represented by:

No Organization
(Name of employee organization(s))

Section 3. Determination by a Majority of Voters.

The results of the election shall be determined by a majority (fifty percent plus one) of the valid votes cast. If none of the choices on the ballot receives a majority of the votes cast, a run-off election shall be held between the choices receiving the two highest number of votes.

Section 4. Certification of Election Results.

If no objections are filed regarding the election and the number of challenged ballots is insufficient to affect the results of the election, the State mediation and Conciliation Service shall issue a Certification of the Results of the Election to the parties. The election procedures shall thereupon be closed. Upon receipt of the Certification described herein, the Authority's Manager of Labor Relations for the Public Authority shall certify as the recognized employee organization for the representation unit, the choice receiving the most votes in a valid election, or shall certify that no recognized employee organization represents the employees or independent providers in the representation unit.

Section 5. Modification of Appropriate Unit.

When a representation unit is determined to be appropriate, those job classifications that have been assigned to this unit shall define the unit except that the unit may be modified as follows:

- (a) New job classifications established by the Authority may be added.
- (b) Obsolete job classifications which do not apply to any Authority employees or independent providers may be deleted by the Authority.

(c) Existing job classifications may be added or deleted pursuant to a proceeding arising from a representation petition providing that the unit, as modified by the addition or deletion, is determined by the Manager of Labor Relations for the Public Authority to be appropriate.

(d) The Manager of Labor Relations for the Public Authority may, when he determines it to be both necessary and appropriate, assign a classification to a new or different bargaining unit.

(e) Requests by organizations for modifications of established appropriate units may be considered by the Manager of Labor Relations for the Public Authority only during the month of March of any year following the first full year of recognition or during the thirty (30) day period commencing one hundred twenty (120) days prior to the termination date of a Memorandum of Understanding then having been in effect less than three years, whichever occurs later. Such requests shall be submitted in the form of a Recognition Petition and, in addition to the requirements set forth in Article III, Section 2., shall contain a complete statement of all relevant facts and citations in support of the proposed modified unit in terms of the policies and standards set forth in Article IV, Section 1

Article VI Memorandum of Agreement

If, after meeting and conferring in good faith, the designated representative of the Authority and the representatives of a recognized employee organization reach agreement on wages, hours, and other terms and conditions of employment, such representatives shall jointly prepare a written memorandum of agreement, which shall not be binding, and present it to the governing body of the Authority for determination. The written memorandum of agreement shall become binding on the Authority, on the recognized employee organization and the employees or independent providers in the unit covered by the agreement, by approval of the Authority's governing body.

Article VII Impasse Resolution Procedures.

a. Impasse: The parties are at a bona-fide impasse when, after good faith negotiations, they have reached a point in their meeting and conferring in good faith where the differences on matters to be included in a Memorandum of Understanding, and concerning those which they are required to meet and confer, remain so substantial and prolonged that further meeting and conferring would be futile.

b. Mediation: If during the meet and confer process the parties reach impasse, either party may request advisory mediation. The parties shall commence mediation within (10) business days following the request for mediation by either party or at the earliest date thereafter that the mediator is available. The costs of mediation, if any, shall be shared equally by the parties.

c. Advisory Fact Finding: If the parties fail to agree to submit the dispute to mediation, or fail to agree on the selection of a mediator, or fail to resolve the dispute through mediation within fifteen (15) days after the mediator commenced meeting with the parties, the impasse shall be submitted to advisory fact-finding.

(1) The fact finder (1) shall consider and be guided by applicable federal and state laws.

(2) Subject to the stipulations of the parties, the fact finder shall determine and apply the following measures and criteria in arriving at his/her findings and recommendations:

a. First, as relevant to the issues in dispute, the fact-finder shall compare the total compensation, hours and conditions of employment of the employees or independent providers involved in the fact-finding proceeding with the total compensation, hours and conditions of employment of other employees or independent providers performing similar services in public and private employment in the same and comparable communities. "Total compensation" shall mean all wage compensation, including but not limited to premium, incentive, minimum, standby, out-of-class and deferred pay; all paid leave time; all allowances, including but not limited to educational and uniform benefits, and employers payment for all health, welfare and pension benefits.

b. The fact-finder shall then adjust the results of the above comparisons based on the following factors:

1. The compensation necessary to recruit and retain qualified personnel.

2. Maintaining compensation relationships between job classifications and positions within the Authority.

3. The pattern of change that has occurred in the total compensation of the employees or independent providers in the unit at impasse as compared to the pattern of change in the average "consumer price index" for goods and services, and the pattern of change in wages and compensation of other wage earners.

c. The fact-finder shall then determine preliminary recommendations based on the comparisons as adjusted above which, however, shall be reduced as appropriate based on the financial resources of the Authority to implement them. In assessing the Authority's financial resources, the fact finder shall be bound by the following:

1. Constitutional, statutory, or other limitations on the level and use of revenues; and
2. Other legislatively determined and projected demands on Authority resources, i.e., budgetary priorities as established by the governing body; and
3. Allowance for equitable compensation increases for other employees and employee groups for the corresponding fiscal period(s); and
4. Revenue projections not to exceed currently authorized tax and fee rates for the relevant fiscal year(s); and
5. Assurance of sufficient and sound budgetary reserves.

d. Exhaustion of Impasse Procedures: If mediation or advisory fact-finding result in an agreement, the parties shall prepare a Memorandum of Understanding and submit it to the Authority's governing Board as provided under sub-section (2) of the Section. If mediation or fact-finding do not result in an agreement, such circumstances shall constitute exhaustion of the impasse procedures. At that time the Authority's representatives may submit its final proposals to the Authority's governing body for final determination.

e. No Strike/No Lockout: The Authority shall not lockout employees or independent providers. The employee organization(s) shall not engage in, authorize, sanction or support any strike, slowdown or stoppage of work, or refusal to perform customary duties. The no strike/no lockout provision of this Section shall continue in full force and effect at least one (1) year beyond the other provisions of any and all collective bargaining agreements.