

MAY 27 2016

Report
of the
2015-2016
Sutter County Grand Jury

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SUTTER
CLERK OF THE COURT
By JACKIE LASWELL Deputy

Steven Meyer-Foreperson, Addam Heltsley, Andrew Sampeck, Annette Roach,
Carrie Mitchell, Christy Cook-Pratt, Gail Stillwell, Gerald Marta, Jacqueline McLaughlin,
John Forberg, Kristen Hart, Marianne Ethington, Pablo Fischetti, Perry Pasquale,
Richard Libby, Richard Snyder, Teresa Smith, William Carter

Final Report [pursuant to Penal Code 933(a) on subject:
A Need for Greater Public Transparency: COIN



Steven Meyer
2015-2016 Foreperson

May 18, 2016
Date

Pursuant to Penal Code Section 933(a), the Presiding Judge makes the finding that the
foregoing report is in compliance with the Title 4, Chapter 3 of the Penal Code
("Powers and Duties of the Grand Jury").



Honorable Brian R. Aronson, Presiding Judge
Superior Court of California, County of Sutter County

May 20, 2016
Date

A NEED FOR GREATER PUBLIC TRANSPARENCY: CIVIC OPENNESS IN NEGOTIATIONS (COIN)

SUMMARY

Civic Openness in Negotiations (COIN) is an ordinance that brings greater transparency to the public regarding labor negotiations between the local legislative body and its employees involving wages, conditions of employment, and benefits.

The Board of Supervisors (BOS) negotiates expensive contracts with many entities without adequate public input. There has been little or no input from the public due to a lack of knowledge regarding contracts and negotiations because of minimal transparency in Sutter County. These contracts are approved, many times, without an independent economic analysis. It is necessary to conduct an economic analysis because their purpose is to describe the actual fiscal costs of these contracts.

The SCGJ recommends the BOS should adopt a (COIN) ordinance. The SCGJ recommends it is in the best interest of the County to employ an internal auditor to ensure compliance with the requirements of (COIN).

BACKGROUND

The SCGJ was given information regarding an ordinance approved by the city of Costa Mesa that was titled "Civic Openness in Negotiations (COIN)."

Traditionally, labor negotiations have been done behind closed doors, with virtually no oversight or input from the public. In 2012, the city of Costa Mesa approved an ordinance that would require negotiations between the City Council and its employees to be made public. The objectives of (COIN) are as follows:

- Bring maximum sunshine [exposure] to the negotiations of the most expensive contracts in which the city enters.
- Bring in a professional negotiator to represent the taxpayers' interest.
- Give the public easy access to the cost of each benefit under consideration.
- Show the public each offer and counteroffer.
- Allow for ample time for the public and media to examine the contract before it is approved by the legislative body.

Similarly to Costa Mesa (before its adoption of COIN), Sutter County BOS also conducts its labor negotiations behind closed doors. The SCGJ received documents regarding COIN and reviewed Sutter County policy and past practices in labor negotiations. The SCGJ initiated an investigation to consider whether COIN would be beneficial to the citizens of Sutter County and the BOS.

RESOURCES

The SCGJ:

- Interviewed:
 - Sutter County Auditor-Controller
 - Sutter County County Counsel
 - Sutter County Taxpayers' Association
- Reviewed Documents:
 - Costa Mesa COIN informational PowerPoint (Attachment A)
 - BOS' Meeting Agendas and Minutes
 - Sections of the California Government Code

DISCUSSION

In Sutter County, labor negotiations are generally held behind closed doors where a professional negotiator is hired to bring the various entities together. Once an agreement is resolved, the proposal is brought forward for a vote by the BOS. The public is not involved in negotiations or made aware of the agreement until the agenda is published, which is generally the Friday prior to the board meeting on Tuesday evening. As a result, little time is given for the public to process and analyze how the agreement will affect the budget or County resources. Generally, there is no independent economic analysis provided.

Two examples of the County's adoption of contracts that imposed a significant financial obligation on the part of its citizens with a minimum of public review follow:

- On August 31, 2004, an enhanced retirement package for the Sutter County employees was approved by the BOS on the consent calendar, even though the Sutter County Auditor/Controller requested that it be pulled and placed as an action item. As a result, the public was precluded from participating in the decision making process. There was no independent analysis provided. The supporting material was written in an unclear manner; and by placing it on the consent calendar, public discussion was blocked. (See Pension Enhancement Report)
- On February 25, 2014, a \$10,500,000 agreement with Chevron Energy Solutions was approved by the BOS. The purpose of the agreement was to build a series of solar arrays, upgrade HVAC systems, and provide other energy saving improvements which were designed to reduce the County's energy costs. The system was designed and rushed through for approval without an independent financial analysis and with only minimal public input. **The BOS even denied the request by the Sutter County Auditor-Controller to delay the vote until further study on the financial impact of the project could be studied.** (See SCGJ Chevron Solar Report)

Recognizing the need for more open government, the Governor of California approved Senate Bill No. 331. This bill encourages counties, cities and special districts to establish specific

procedures for the negotiation and approval of significant contracts that would allow the public to be better informed.

SB 331 Section 22176 refers to negotiations with employees and states, in part, that any: *city, county or special district that adopts a "civic openness in negotiation" (COIN) ordinance is required to use any of the following as a part of any collective bargaining process undertaken pursuant to the Meyers-Milias-Brown Act:*

- a. Preparation of an independent economic analysis describing the fiscal costs of benefit and pay components currently provided to members of a recognized employee organization, as defined in Section 3501 of the Government Code.*
- b. The completion of the independent economic analysis prior to the presentation of an opening proposal by the public employer.*
- c. Availability for review by the public of the independent economic analysis before presentation of an opening proposal by the public employer.*
- d. Updating of the independent economic analysis to reflect the annual or cumulative costs of each proposal made by the public employer or recognized employee organization.*
- e. Updating of the independent economic analysis to reflect any absolute amount or change from the current actuarially computed unfunded liability associated with the pension or postretirement health benefits.*
- f. The report from a closed session of a meeting of the public employer's governing body of offers, counteroffers, or supposals made by the public employer or the recognized employee organization and communicated during that closed session.*
- g. The report from a closed session of a meeting of the public employer's governing body of any list of names of persons in attendance during any negotiations session, the date of the session, the length of the session, the location of the session, or pertinent facts regarding the negotiations that occurred during a session.*

SB 331 Section 22178 refers to contractual agreements and to contracts with a value of at least two hundred fifty thousand dollars (\$250,000) within the fiscal year approved by the city, county or special district shall designate an unbiased independent auditor to review the cost of any proposed contract.

In part, that: *(b) The independent auditor shall prepare a report on the cost of the contract and provide the report to all parties and make it available to the public before the governing body takes any action to approve or disapprove the contract. The report shall comply with the following:*

- 1. The report shall include a recommendation regarding the viability of the contract, including any supplemental data upon which the report is based, and shall determine the fiscal impacts attributable to each term and condition of the contract.*

2. *The report shall be made available to the public at least 30 days before the issue can be heard before the governing body and at least 60 days before any action to approve or disapprove the contract by the governing body.*
3. *Any proposed changes to the contract after it has been approved by the governing body shall adhere to the same approval requirements as the original contract. The changes shall not go into effect until all of the requirements of this subdivision are met.*

FINDINGS

- F1. The Sutter County Board of Supervisors has negotiated expensive contracts with various entities, including the employees' union representatives, with little or no public input or knowledge.
- F2. Often, these contracts were approved without an independent economic analysis describing their fiscal costs.

RECOMMENDATIONS

- R1. The BOS adopt, by the next fiscal year, a Civic Openness in Negotiations (COIN) ordinance.
- R2. The BOS employ an internal auditor, by the next fiscal year, to ensure compliance with the requirements of (COIN).

REQUEST FOR RESPONSES

Pursuant to Penal Code Section 933.05, the grand jury requests responses as follows:

- Sutter County Board of Supervisors
- Sutter County Auditor-Controller

INVITED RESPONSES

- Sutter County CAO

DISCLAIMER

Reports issued by the SCGJ do not identify individuals interviewed. Penal Code Section 929 requires that reports of the SCGJ not contain the name of any person or facts leading to the identity of any person who provides information to the SCGJ.