INTRODUCTION:

This paper will discuss SB 402, Binding Interest Arbitration, and explore the ways in which this legislation impacted the bargaining process in the County of Riverside. SB 402 presented several issues and concerns that influenced our negotiations and altered our bargaining strategies both during the negotiations process, and afterwards, when the parties were at impasse. The things that we discovered along the way and how we dealt with some of the issues presented may be helpful to those currently facing negotiations.

While the California Supreme Court ultimately ruled that SB 402 was unconstitutional (see (2003) 30 Cal. 4th 278), at this writing, SB 440, a remarkably similar bill on binding interest arbitration, has made its way through the legislature and is pending the governor’s signature. Binding interest arbitration may once again become a reality for us to deal with in California’s public sector jurisdictions.

BACKGROUND AND HISTORY:

Binding interest arbitration is used when the parties engaged in contract negotiations reach a bargaining impasse. The issues that create the impasse generally are submitted for resolution to a three-member arbitration panel, with each side picking one representative to serve along with a third, neutral member. The panel conducts an evidentiary hearing during which each party presents evidence that supports its bargaining position. Some of the factual issues taken up during this proceeding usually involve the employer’s ability to pay the union’s economic demands, salary and benefit comparisons to other public sector jurisdictions, and past practice. The panel then renders an award based on criteria outlined in the law authorizing binding interest arbitration. The panel’s award is final and binding. The award that is rendered forms the basis of the parties’ new agreement.

Prior to SB 402 which became effective on January 1, 2001, none of California’s public sector collective bargaining statutes authorized binding interest arbitration. The Meyers-Millas-Brown Act, however, which governs bargaining in local government jurisdictions, permits agencies to adopt binding interest arbitration procedures for the resolution of bargaining disputes if they choose to. Since the passage of the MMBA in 1968, only about 20 cities and counties have enacted local ordinances that permit binding interest arbitration.

SB 402 however, was a bill that expanded binding interest arbitration in the public sector. This law required that cities and counties submit to binding arbitration impasses on economic issues that arose during negotiations with unions representing police and firefighters. This bill empowered only unions, not public agencies, to declare an impasse in labor negotiations. That declaration required the parties to submit any unresolved economic issues to binding arbitration.
After hearing each side’s case the three-person panel was authorized to then choose, without alteration, between each side’s last, best offer based on a list of factors specified in the statute.

The factors that the arbitration panel was required to consider and use as a basis for its findings, opinions, and decisions included, but were not limited to, the following:

1. The stipulations of the parties.
2. The interest and welfare of the public.
3. The financial condition of the employer and its ability to meet the costs of the award.
4. The availability and sources of funds to defray the costs of any changes in matters within the scope of arbitration.
5. Comparison of matters within the scope of arbitration of other employees performing similar services in corresponding fire or law enforcement employment.
6. The average consumer prices for goods and services, commonly known as the Consumer Price Index.
7. The peculiarity of requirements of employment, including, but not limited to, mental, physical, and educational qualifications; job training skills; and hazards of employment.
8. Changes in any of the foregoing that are traditionally taken into consideration in the determination of matters within the scope of arbitration.

In May of 2001, after reaching an impasse in its negotiations with Riverside Sheriff’s Association, the Association made a demand to submit the impasse to binding arbitration under SB 402’s procedure. The County refused the union’s demand. It was the County’s position (and that of a number of other counties and cities) that SB 402 was unconstitutional in that it violated the following two sections of the State Constitution:

Article XI, Section 1(b) which states in part that a county’s “governing body shall provide for the …compensation…of employees,” and

Article XI, Section 11(a), which provides in part that the Legislature may not “delegate to a private person or body power to …interfere with county or municipal corporation…money…or perform municipal functions.”

Based on the County’s position that it would not voluntarily comply with the union’s demand for binding arbitration, Riverside Sheriff’s Association filed a petition in the local court to compel arbitration. The County believed in good faith that SB 402’s attempt to eviscerate local democracy was unconstitutional and desired to secure a judicial resolution of the constitutional issues raised by the statute.

The County argued that over 120 years ago, the framers of California’s Constitution adopted a provision “intended primarily to prevent the creation of a debt or burden payable from local taxation by persons other than the legislative body of the local subdivision.” John C. Peppin, Municipal Home Rule in California: IV, 34 Cal. L. Rev. 644, 682 (1946). Article XI, Section 11(a) of the California Constitution (“Section 11(a)”) prohibits the Legislature from delegating to “a private person or body” the power to “interfere” with money belonging to a county. Similarly,
Article XI, Section 1(b) of the Constitution (“Section 1(b)”) provides that the “governing body” of a county “shall provide for the….compensation……of [county] employees.”

The County argued that SB 402 was unconstitutional for two separate and independent reasons. First, it violated Section 11(a). That provision was added to the Constitution to prohibit the Legislature from authorizing private persons, who do not have to live with the fiscal consequences of their decisions, from creating financial obligations binding on California’s cities and counties. SB 402 violated Section 11(a) because it gave private arbitrators who are neither accountable to nor removable by the public power to “interfere” with county money by issuing binding arbitration awards that determine the compensation of county employees.

Second, SB 402 violated Section 1(b) because that provision gives county boards of supervisors the exclusive authority to “provide for the …..compensation” of county employees. The people adopted this provision to transfer the power to determine the compensation of county employees from the Legislature to county supervisors. Consequently, the Legislature may not usurp this power by authorizing private arbitrators to set the compensation of county employees.

The County contended that this case presented a blatant violation of Sections 11(a) and 1(b). In enacting SB 402 during the 1999-2000 legislative session, which was codified as Code of Civil Procedure Sections 1299-1299.9, the Legislature empowered private arbitrators to impose decisions regarding the compensation of local firefighters and law enforcement employees on local public entities and their taxpayers. SB 402 thus gave private arbitrators the authority to control large portions of most city and county budgets, even though the arbitrators are unelected and politically unaccountable, and even though the Constitution gives exclusive power to make these crucial decisions to local elected officials.

The only real issue before the Court was the purely legal question of whether or not SB 402 was constitutional.

While the trial court ruled against the County, and ordered the County to submit to SB 402’s arbitration procedure, the Court of Appeals reversed, holding that the law was in violation of both sections of the Constitution as asserted by the County. The Riverside Sheriff’s Association petitioned for review by the California Supreme Court, which granted the petition.

On April 21, 2003, the California Supreme Court struck down SB 402, handing down its decision that SB 402 is in violation of the State Constitution. The Court stated in part the following:

“Section 1, subdivision (b), provides as relevant: “The governing body [of each county] shall provide for the number, compensation, tenure, and appointment of employees.” The County argues that Senate Bill 402 violates this provision by compelling it to submit to binding arbitration of compensation issues. We agree. The constitutional language is quite clear and quite specific; the county, not the state, shall provide for the compensation of its employees. Although the language does not expressly limit the power of the Legislature, it does so by “necessary implication.” (Methodist Hosp. of Sacramento v. Saylor, supra, 5 Cal.3d. at p. 691.) An express grant of authority
to the county necessarily implies the Legislature does not have the authority. But Senate Bill 402 compels the county to enter into mandatory arbitration with unions representing its employees, with the potential result that the arbitration panel determines employee compensation. Senate Bill 402 permits the union to change the county’s governing body from the body that sets compensation for its employees to just another party in arbitration. It thereby deprives the county of authority section 1, subdivision (b), specifically gives to counties.”

Further the Court ruled:

“Section 11, subdivision (a), provides: “The Legislature may not delegate to a private person or body to make, control, appropriate, supervise, or interfere with county or municipal corporation improvements, money or property, or to levy taxes or assessments, or perform municipal functions.” The county argues that in enacting Senate Bill 402, the Legislature has impermissibly delegated to a private body - the arbitration panel -the power to interfere with county money (by potentially requiring the county to pay higher salaries than it chooses) and to perform municipal functions (determining compensation for county employees). Again we agree. This constitutional provision expressly denies the Legislature the power to act in this way. (Methodist Hosp. of Sacramento v. Saylor, supra, 5 Cal.3d at 691.)”

The Riverside Sheriff’s Association argued that SB 402 should be upheld because it involved a matter of “statewide concern”. On this issue, the Court responded in part as follows:

“As with section 1, subdivision (b), the Sheriff’s Association argues that the Legislature’s power to regulate labor relations as to matters of statewide concern permits it to delegate this regulatory authority to an arbitration panel. The argument fails for the same reasons; Senate Bill 402 does not just permit the arbitration panel to impinge minimally on the county’s authority; it empowers the panel actually to set employees salaries. The Sheriff’s Association also argues that binding arbitration is a “quid pro quo for the lack of a right to strike.” (See Lab Code § 1962; County Sanitation Dist. No. 1 v. Los Angeles County Employees’ Assn. (1985) 38 Cal.3d 564, 586.) This may (or may not) provide a policy argument in favor of binding arbitration, but it provides no reason to disregard a clear constitutional mandate. Moreover, like the Court of Appeal, we note that the state has exempted itself from this binding arbitration requirement. (Code Civ. Proc., § 1299.3, subd. (c).) We are skeptical that awarding binding arbitration as quid pro quo can be of statewide concern to everyone except the state.”

As a result of the California Supreme Court’s Ruling, SB 402 is null and void, and public sector jurisdictions are not required to arbitrate negotiation impasses unless it is provided for in their charters.

THE BARGAINING PROCESS

As outlined briefly above, the Riverside Sheriff’s Association, was certified as the exclusive representative of the Public Safety Unit. Negotiations to establish a successor
agreement began on July 20, 2000. During eleven (11) regular bargaining sessions, and two (2) subsequent mediation sessions, the County offered what it considered to be fair and equitable increases in salaries and benefits for Deputy Probation Officers and Group Counselors. The offers were consistent with the previous agreements reached with Unions representing other County employees.

No agreement was reached and impasse was declared. Prior to reaching impasse however, the County offered to increase salaries at least 9.68% over a three-year period. In addition, the County offered and implemented the enhanced retirement benefit of 3% at 50 on July 1, 2001. With an average annual cost of 4.68% of pay, the 3% at 50 proposal effectively raised the County’s offer to a 14.36% increase in total compensation over three years. This increase, if accepted, would have brought salaries and benefits in line with the local labor market.

The Association rejected the County’s offer and made a formal demand for binding arbitration under Senate Bill 402 legislation. The Association’s last, best and final offer prior to applying for interest arbitration consisted of the following:

2. Insurance Benefits – Employees shall participate in the Association’s Benefits Trust to secure medical benefits (e.g. Health, Dental, Vision and other insurances)
3. Insurance Benefits – Beginning January 1, 2001, the County shall contribute $42.00 per biweekly pay period times the number of employees into the Association’s Benefits Trust – Equal to 2.09% salary increase

This proposal from the Association was a signal that it intended to apply for interest arbitration because SB 402 permitted only a one-year agreement. The Association’s offer went from an increase in salaries and benefits of at least 27.31% over a 30-month agreement, to a proposal to increase salaries and benefits of at least 21.09% in a 12-month period.

Because of the Association’s move to a 12-month offer, the County was forced to make a one-year “last, best and final offer” covering the period of July 1, 2000, through June 30, 2001. The proposal offered 3% at 50 for Deputy Probation Officers and Group Counselors, and a step increase of 2.71% for Deputy Probation Officers. The offer included an understanding that the parties would return to the bargaining table July 1, 2001 to negotiate further contract and wage increases.

The Association rejected the county’s offer and filed suit on July 16, 2001, in an attempt to force the parties to binding arbitration. The Association also filed an Unfair Labor Practice Complaint with the Public Employment Relations Board (PERB), on August 6, 2001, claiming that the County did not bargain in good faith. In October of 2002, PERB issued its decision that, even though we did not yet have a contract; the County had negotiated in good faith with the Riverside Sheriff’s Association (see 26 PERC ¶33129).

While the case was working its way through the courts, in an ongoing effort to resolve the salary issues and move forward, the County again offered the same 9.68% salary increase (plus
The Association continued to reject the County’s offers to settle the matter, preferring to await the outcome of the litigation on SB 402.

Following the Supreme Court’s favorable ruling on binding interest arbitration, the County reached an agreement with Riverside Sheriff’s Association on a new contract for the Public Safety Unit in April of 2003.

ISSUES AND CONCERNS PRESENTED

During the bargaining process we became aware of several issues and concerns that SB 402 presented. Some of these became most evident at the bargaining table. Meaningful bargaining was inhibited by the promise of interest arbitration, making it very difficult to reach an agreement. There were also concerns over the following issues:

- Possible loss of control over a substantial part of our budget
- Funding higher settlements induced by the potential for arbitration
- An award by an arbitrator not bound by overall budget priorities
- The costs of arbitrations running to six figures
- Being subject to criteria for the arbitration process that are slanted in favor of the unions
- Coverage of a very broad spectrum of employee classifications far beyond what we normally think of as “law enforcement officer” and “firefighter”

Additionally, as a result of the SB 402 legislation, the bargaining unit structure became an issue during negotiations. Probation Officers were covered by the SB 402 legislation but Group Counselors were not. (Attachment “A” outlines some important labor-related differences that apply to our current safety employees that may require changes to current bargaining unit structure.)

Looking at the theoretical question of whether or not the existence of binding arbitration had a “narcotic effect” on our bargaining process, the answer may well be yes. During negotiations, the union appeared to rely more on its ability to demand binding interest arbitration to secure its economic demands, rather than its ability to achieve a mutually acceptable economic agreement at the table. With the possibility of having binding arbitration available, the union did not appear to be motivated to resolve our economic differences at the table. Demands for economic increases remained high with very little movement, both prior to, and post impasse. The County was forced to alter its bargaining strategy as a result of the union’s tactics at the table. While the purpose of binding interest arbitration is to resolve bargaining disputes between the parties, there did not appear to be an incentive for the parties to reach an agreement at the bargaining table because of its availability.

Overall we found that it was critically important throughout this entire process to understand the bargaining process and make a commitment to adhering to sound bargaining principals. The benefits of preparation, planning and being organized in our approach to the process, especially in light of the potential of interest arbitration and unfair labor practice charges, cannot be over emphasized. Taking good notes at the bargaining table and researching market data proved to be
extremely valuable, especially in defending against charges of bad-faith bargaining. In addition we found that developing a strategy for the course of bargaining, as well as impasse, was crucial for the successful outcome of negotiations, and for being prepared in the event we are again faced with binding interest arbitration. The process wasn’t easy but by adhering to our principles we ultimately concluded an agreement with the Association on mutually agreeable terms and not by imposition.

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September 18, 2003
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**Correctional Deputies**

**Probation Officers**

**Group Counselors**

**When Amended (Weferre Fraud not covered, Corner covered)**