



COUNTY of VENTURA

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September 26, 2023

Board of Supervisors
County of Ventura
800 South Victoria Avenue
Ventura, California 93009

Subject: Public Hearing Regarding Impasse With the Criminal Justice Attorneys' Association of Ventura County Concerning Annual Leave Redemption and Implementation of the County of Ventura's Last, Best and Final Offer.

Recommendations

It is recommended that your Board:

1. Commence a public hearing regarding the impasse with the Criminal Justice Attorneys' Association of Ventura County (CJAAVC) concerning annual leave redemption and, at the conclusion of the hearing, implement the County's Last, Best, and Final Offer regarding the provisions by which employees represented by CJAAVC may redeem annual leave.

Fiscal/Mandates Impact

Mandatory:	No
Source of Funding:	Various
Funding Match Required:	No
Impact on Other Departments:	None

Summary of Fiscal Impact:

	<u>FY 2023-24</u>
Total Cost	\$0

Discussion

In 2016, outside tax counsel advised that the County's leave redemption plans, under which employees could redeem previously accrued vacation or annual leave for cash,

created the circumstances for constructive receipt of income. Specifically, under the Internal Revenue Code and its implementing IRS regulations, when an individual has the right, without substantial restriction, to convert accrued vacation or annual leave into cash, the amount that could have been converted to cash, even if the individual chose not to, is considered income and creates tax obligations. When constructive receipt occurs, the County is obligated to withhold taxes on such constructively received income or potentially be liable for: a) payment of taxes that should have been withheld; and b) penalties for taxes not withheld.

At that time, the County informed all employee unions of the tax consequences of constructive receipt of income flowing from employee leave redemption plans and advised the unions that constructive receipt could be avoided by revising their leave redemption plans to include two restrictions: 1) irrevocable elections to receive cash instead of leave made prior to the beginning of the calendar/taxable year in which the leave will be cashed out; and 2) a provision that cashed out leave must be accrued in the same year it is cashed out.

By early 2018, all unions, with the exception of two (including CJAAVC), agreed to revise their leave redemption plan provisions. This caused significant administrative burden for the Auditor-Controller's Office (ACO), as all CJAAVC members are eligible to cash out leave and the reporting/withholding of constructively received income must be done manually by ACO staff. Moreover, CJAAVC's refusal to agree to the two restrictions means that the only way for its represented employees to avoid the tax consequences of constructive receipt is to cash out the maximum amount of leave available every year.

The County continued bargaining with CJAAVC until 2021 over both the County's proposals to amend the provisions of CJAAVC's leave redemption plan to minimize the risk of creating constructively received income and the financial effects of the County's decision to withhold taxes on any constructively received income. During this time, CJAAVC filed an unfair labor practice charge with the Public Employment Relations Board (PERB), alleging the County had failed to bargain with them. PERB decided the County was not obligated to bargain the decision to withhold taxes for employees found to be in constructive receipt. However, PERB also found that the County had failed to bargain in good faith over the effects of its decision to withhold taxes on constructively received income. The County disagreed with that decision, but was nevertheless ordered to:

1. Continue to engage in effects bargaining with CJAAVC over its decision to withhold taxes on constructively received income; and,
2. Compensate CJAAVC members for any professional tax preparer/advisor fees incurred due to the County's decision to implement constructive receipt income tax withholding. *(To date, the County has received no submissions for constructive receipt losses from CJAAVC members.)*

Bargaining continued through March 2021, when the County provided its Last, Best, and Final Offer (LBFO) concerning amendments to CJAAVC's annual leave redemption plan

designed to minimize the potential for constructively received income. A copy of the LBFO has been provided as Exhibit 1. At that point, after almost five years of bargaining, the parties had reached impasse. Normally, bargaining over meet and confer matters would not be as protracted as was the instant case; however, it was the desire of the parties to reach agreement and avoid impasse procedures. Under the County's LBFO, CJAAVC's leave redemption plan would be amended to, among other things, require that employees submit an irrevocable election to cash out leave by December 31 of the year preceding the year in which the leave is to be cashed out, and limits leave to be cashed out to leave that is accrued in the year of the cash-out (i.e., leave accrued in prior years could not be cashed out). At CJAAVC's request, the parties engaged in mediation, without reaching resolution. CJAAVC subsequently requested Factfinding.

In June 2023, the parties met with a Factfinder.

The Factfinder's Initial Recommendation would have obligated the County to purposefully fail to withhold and report taxes on constructively received income for two groups of CJAAVC employees. Because it would have required violation of tax obligations, the County dissented from the Initial Recommendation.

On August 9, 2023, the Factfinder issued a Final Recommendation that recommended:

1. Employees eligible to annually cash out 100 hours of leave should fall under the County's LBFO;
2. Employees eligible to annually cash out 160 hours of leave should be grandfathered under the current leave redemption provisions until January 1, 2025, to give those unit members time to adhere to the LBFO.
3. Employees eligible to annually cash out 200 hours of leave should be grandfathered under the current leave redemption provisions until separation from County employment.

The factfinding recommendation is advisory only. The only requirement is for the parties to consider whether it provides a basis for settlement. Notably, the recommendation acknowledges the appropriateness of the County's proposal by recommending that it be ultimately adopted for the majority of CJAAVC's represented employees. However, the recommendation is inherently flawed in its suggestion that the County continue to apply the current leave redemption provisions for longer tenured employees because it would retain the constructive receipt issues and the corresponding administrative burdens on the ACO. A copy of the Factfinder's recommendation has been included as Exhibit 2.

At this time, your Board may either take no action, leaving CJAAVC's leave redemption plan in the status quo, or implement the County's LBFO. We recommend that the County's LBFO be implemented to include the two essential restrictions discussed above. This will allow CJAAVC members who do not wish to redeem leave in a given year, or who wish to redeem less than the maximum amount, with the option to avoid the tax consequences

created by CJAAVC's current leave redemption plan. Implementing the LBFO will also reduce the burden on the ACO, whose staff is required to implement the withholding changes. Adopting the LBFO will also bring CJAAVC into alignment with all but one of the other employee associations.

This letter has been reviewed by the County Executive Office, the Auditor-Controller's Office, the Ventura County Civil Service Commission, and County Counsel. If you have any questions regarding this item, please contact me at (805) 654-2561.

Respectfully submitted,



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Assistant County Executive Officer/Human Resources Director



Sevet Johnson, PsyD
County Executive Officer

c: Jeffery S. Burgh, Auditor-Controller
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Criminal Justice Attorneys' Association of Ventura County

Attachments:

- Exhibit 1 – Leave Redemption Proposal (LBFO) dated March 2, 2021
- Exhibit 2 – Factfinder's Recommendation
- Exhibit 3 – Civil Service Commission Letter