

**COUNTY OF LOS ANGELES SHERIFF’S DEPARTMENT and
ASSOCIATION OF LOS ANGELES DEPUTY SHERIFFS (“ALADS”)
CASE NO. IM 001-20
(EXPLOSIVES BREACHERS FACTFINDING)**

THE COUNTY OF LOS ANGELES SHERIFF’S DEPARTMENT’S OPINION ACCEPTING AND REJECTING PORTION OF THE FACTFINDER’S FINDINGS AND RECOMMENDED TERMS OF SETTLEMENT

The County of Los Angeles Sheriff’s Department (“Department”) by and through its Representative, Captain Dana A. Chemnitzer, submits its acceptance and rejection to portions of the *Factfinder’s Findings and Recommended Terms of Settlement* (“Report”).

I. ACCEPTED RECOMMENDATIONS

The Department accepts the Factfinder’s recommendations in the Report as to the following matters:

- 1) **11.6125% Bonus Is Excessive.** “The evidence before me persuades [me] that the 11.6125% has become excessive over the 22-year life of the [Special Enforcement Bureau (“SEB”)] Detail (“Detail”).”
- 2) **Full Time Bonus Pay for Work Done 25% of Time Is Excessive.** “It must be found that paying 17 deputies and a sergeant as if they were exclusively performing breacher functions when they are actually doing so less than one-fourth of their time cannot possibly be considered cost effective for the Department.”
- 3) **Reduction in Cadre Size is Not Detrimental to Law Enforcement Services.** “I am unpersuaded that, as opined by breaching instructor Klein, any reduction in the number of breachers would strike a serious blow to the effectiveness of the Detail[.]”

II. FACTUAL BACKGROUND CORRECTIONS

The Department rejects the Factfinder’s finding of facts in the Report as to the following matters:

Statement in Report	Location of Statement	Basis for Rejection and Support for Same
“The mission of the Detail, which was formed in 1999, is to provide SEB with an expedient and proven method of breaching structures during certain high	Page 2, Paragraph 1, Lines 1-3	Using explosives is only one method of breaching. Other breaching methods do not involve explosives (See Exhibit 6, pg. 3, Item 3 – explaining use of tools like pick, ram, shield and explosives; Statements made during hearing confirmed

Statement in Report	Location of Statement	Basis for Rejection and Support for Same
risk incidents through the use of C2 and C3 explosives”		that pick and ram is the most common method used for breaching.)
Such explosives are detonated by a blasting cap. Barricaded suspects or hostage situations are the main reasons explosive breaching is used.	Page 2, Paragraph 1, Lines 3-4	The Department accomplishes breaching by any appropriate method. For this reason, the Department rarely used explosives. In fact, out of the 37 incidents between 2014 and January 2021 where the Department considered utilizing breachers, the Department detonated explosives just 4 times. (See Exhibit 17 and included back-up documents; Statement during hearing confirmed that pick and ram is the most common method used for breaching.) Importantly, even if the breachers had detonated explosives on those 37 incidents between 2014 and January 2021, but they did not, those detonations fall far short of the thousands of incidents where the Department did not even consider using explosives for breaching.
The Court further ruled that the County was required to pay the affected breachers in accordance with the aforementioned County Code section not only retroactively to the date each breacher became eligible for the additional pay, but also prospectively.	Page 2, Paragraph 3, Lines 8- 11	The Court’s ruling specifically noted on note 3 of page 16 “The court uses this term [Explosive Breachers] to refer to the Affected Employees that successfully completed special training in explosive breaching and are assigned full-time to a detail that performs explosive breaching.” There were never more than 18 members assigned to the Explosives Breaching Detail. (See ALADS Exhibit 15, pg. 4 and 8 - only “above the line” names were assigned to cadre; not all persons with explosives training were assigned to the cadre; see also ALADS Exhibit 16.)
As of the date of the hearing in this Factfinding, the Department states they have paid the retroactive pay they believed owed breachers under that ruling.	Page 2, Paragraph 4, Lines 5-6	The County has paid the interest owed, but only one deputy at the time of the factfinding had received the retroactive pay.

Statement in Report	Location of Statement	Basis for Rejection and Support for Same
As with breacher deputies, members of the Dive Team do not perform such activities full-time yet receive their bonus pay as if full-time.	Page 2, Paragraph 5, Lines 2-3.	The County Code provision providing for explosive detail duty pay specifically states the employee must be assigned explosive duties on a full-time, permanent basis to receive the bonus pay. The County Code provision providing for dive pay does not require a full-time assignment. The Department is complying with the County Code when it requires the breaching detail be assigned explosive duties on a full-time, permanent basis as a condition to receiving the bonus pay. (County Exhibit 2, pg. 4 - County Code § 6.120.020(B) (4) and (5).)
LASD has not advocated a similar reduction in the number of deputies on the Dive Team.	Page 2, Paragraph 5, Line 4	The breaching detail has not used explosives for years. In contrast, the dive team performs dive duties on a regular basis. One dive operation, for example, can require 20 to 30 divers. A breaching operation, if even conducted, requires two breachers, and rarely three (See County Exhibit 17 and related back-up documents. Statement confirmed during Factfinding hearing.
Department representatives said they had not calculated the savings and cited operational efficiency as an additional reason for the cuts in the cadre.	Page 3, Paragraph 5, Lines 4-5	The Department did not have a calculation of the exact savings at the parties' initial meeting. The Department, however, subsequently calculated the savings and operational efficiencies and shared the information with ALADS (See County Exhibits 10 and 11. Statement confirmed during Factfinding.)
Williams' s memo further mentioned an estimated savings of \$363,320 as the result of the proposed reduction in staffing of the Explosive Breaching Unit	Page 3, Paragraph 6, Lines 7-8	While the Department acknowledges the statement set forth in the memo re the estimated savings the Department expected to receive, the Factfinder makes no mention of the multi-million dollar retirement costs the Department would incur without a reduction in the number of breachers performing explosive duties. (See County Ex. 11, p. 2.)

Statement in Report	Location of Statement	Basis for Rejection and Support for Same
Rather than the \$363,320 indicated in the September 25 Williams memo, the October 5 memo asserted savings of \$203,537.	Page 3-4, Paragraph 7, Lines 3-5	The Department issued a revised memo after ALADS asked for clarification of the issue, and the Department reviewed its records. Again, however, the Factfinder is silent as to the multi-million dollar retirement costs the Department would incur without a reduction in the number of breachers performing explosive duties. (See County Ex. 11, p. 2.)
On December 23, Mediator Adams informed the Department that ALADS had declined his offer of participation in the process and had requested that the parties proceed to Factfinding.	Page 4, Paragraph 7, Lines 6-9	The parties participated in mediation with Gerald Adams on December 8, 2020. Thereafter, the parties engaged in email exchanges with Mediator Adams as he continued to try to resolve the dispute. On December 23, 2020, Mediator Adams advised that the matter would proceed to Factfinding. (See the Department’s History of Negotiations, p. 2; Exhibit 18.)
In addition, since the parties last met and conferred, as a result of the COVID-19 relief bill, the County now expects to receive a \$1.9 billion in funding from the federal government as a result of the federal government’s COVID-19 relief bill.	Page 5, Paragraph 1, Lines 3-6	The funding the County “expects” to receive is not necessarily the funding it actually will receive. Moreover, even if the funding does arrive at some point to the County, there is no guarantee that the Department will receive any of those funds. Further, based on recent resolutions adopted by the County Board of Supervisors, the Department is scheduled to lose 10% of its funding through Measure J. The Department continues to face a severe budgetary crisis. (Statement confirmed during Factfinding.)
Various references to the bonus as 11.1625%	Page 7, Paragraph 6; Page 7, Paragraph 7; Page 8, Paragraph 1; Page 9, Paragraph 3; Page 10, Paragraph 2.	The correct percentage is 11.6125% (County Code § 6.120.020 (B) (5) (b).)

III. REJECTION TO CONCLUSIONS AND RECOMMENDATIONS IN REPORT

The Department rejects the Factfinder's conclusions in the Report as to the following matters:

A. BUDGET ISSUES AND SAVINGS FROM CADRE REDUCTIONS

The Report suggests that the savings to the Department, and the County, are minimal based on the ALADS calculations that the 11.6125% bonus paid to the current breachers amounts to approximately "one-hundredth of one percent of the Department's budget." The Report also suggests, based on speculative media reports, that the County *expects* to receive approximately \$1.9 billion in funding from the federal government as a result of the federal government's COVID-19 relief bill. Neither "finding," however, is accurate as the report ignores several key facts to reach those conclusions. And it is those key facts, as detailed below, that support the Department's position on both the cost-savings and the need for cost reduction.

First, the Report only discusses the savings the Department could achieve in a single fiscal year if it reduced the size of the Explosives Cadre. But it ignores the multi-million dollar retirement costs the Department will necessarily incur as a result of having to pay breacher deputies the bonus pay set forth in County Code section 6.120.020, subsection (B)(5). (See County Ex. 11, p. 2.) So in addition to the yearly savings, (County Exhibits 10 and 11; Statement confirmed during hearing), the County would save millions in the associated retirement costs.

Second, the Report suggests that since the County is *expected* to receive additional funding from the federal government, the Department's financial situation may change, thereby allowing a less severe reduction in the cadre. As an initial point, although referenced in the Report, neither side presented any evidence of an alleged \$1.9 billion increase in funding. Nor was there any evidence presented as to how the County will earmark those alleged additional funds, or whether the County will provide *even a dollar of that money* to the Department, given the serious budgetary issues across all County Departments.

Further, the Report ignores the fact that County voters passed Measure J in November 2020, which requires that 10% of the County's budget be dedicated to criminal justice reform and excludes those funds from going to the Sheriff's Department. The Department reasonably expects that County will take the 10% allocation required by Measure J from the Department's current budget, a deduction that compounds the existing budget shortfalls that were already crippling the Department's budget.

Finally, even if the Department had an unlimited amount of funding (which it does not), it is operationally inefficient to have 17 deputies assigned to explosive duties. Not only has the Department not engaged in explosive breaching for years, advances in technology now allow the Department to perform breaches via other methods, such as via a Tac-Cat (a heavily armored tractor used in tactical operations).

B. THE PROCESS OF REDUCING THE CADRE AND THE EFFECT OF A REDUCED CADRE WILL NOT NEGATIVELY IMPACT LAW ENFORCEMENT SERVICES

The Factfinder claims in the Report that he could not understand “how the Department could possibly have once advocated that 17 breachers be reduced to merely three, two of which would be less than full-time.” The Report incorrectly concludes that the Department failed to explain how explosive breaching could function with only one full-time person. Associated with these points, the Report suggests that the proposed cuts will likely affect the level of services available to the cities that contract with the Department for law enforcement services (“Contract Cities”).

Each of these conclusions relies on a misunderstanding of both the facts and the County’s arguments.

1. The History of the Department Supports a Smaller Part-Time Cadre

First, as explained throughout the Factfinding, the Department has a successful history of operating its breaching detail without any full-time personnel. For fifteen years, the breaching detail operated *without a single full-time* deputy and only part-time deputies. This “part-time” cadre conducted all of the current training and responded to incidents without issue. They also completed actual breaches, which have not occurred in years. (Statement of Chief Ewell.)

Further, the Report incorrectly concludes and assumes that “explosives breaching” is the only or primary form of breaching. The facts, however, confirmed that the Department utilizes a variety of breaching methods that do not involve explosives, such as pick, ram, and shield, and, in more recent years, the Tac-Cat. (See Exhibit 6, pg. 3, Item 3; and Statement that confirmed that – pick and ram is the most common tool.) For this reason, the Department rarely uses explosives. In fact that out of the 37 incidents between 2014 and January 2021, where the Department considered using explosives, the Department detonated explosives in just four situations. (See Exhibit 17 and included back-up documents.) These numbers do not include the thousands of incidents during that same time in which the Department did not even consider using explosives.

Finally, the technology available for breaching in recent years has significantly improved. For example, as a result of improved technologies, such as the Tac-Cat, the Department has not utilized explosive breaching since August 21, 2018. The Department expects this trend to continue.

2. Process for Reducing Size and Effect on Bonus Pay

In the Report, the Factfinder suggests that he does not understand how the Department will pay the part-time breachers for their time. First, the County Code specifically states employees must be assigned on a full-time, permanent basis to explosive detail duties to receive the bonus pay provided by the ordinance. Deputies assigned on a part-time basis would not get this bonus because they would not satisfy the County Code’s full-time, permanent assignment requirement. (See County Exhibit 2 and Statement of Chief Ewell during hearing.)

As for the process and proposal for the new cadre size, the Department proposed one full-time member, plus additional part-time members. The process of how the Department will select

these individuals will be similar to how the Department has always selected individuals to perform explosive duties: the Unit Commander will assign the employee to this collateral duty. Indeed, the Unit Commander has always been the decision maker in terms of assignments within the Special Enforcement Detail.

3. There is No Effect on Contract Cities

Finally, the Factfinder opined that a reduction in the cadre size would negatively affect the Contract Cities. But aside from the speculative statements from ALADS' representative, there was no evidence actually presented to support that claim.

In fact, ALADS presented no information regarding the nature of services provided to the Contract Cities, and did not produce a single contract to support its speculative claim. The simple fact is the reduction in the Explosive Detail cadre will neither reduce the level of services provided to the Contract Cities, nor negatively affect those services. Indeed, the Contract Cities do not contract for explosives breaching services and close to 99% of law enforcement departments do not even have explosive breaching capabilities. Moreover, as previously noted, the Department has not conducted an explosive breach in a Contract City for years.

C. THE REPORT MAKES INAPPOSITE COMPARISONS TO THE DIVE CADRE

The Report also makes several inapposite comparisons to another cadre at the Department – the Dive Cadre. The Report concludes that “As with breacher deputies, members of the Dive Team do not perform such activities full-time yet receive their bonus pay as if full-time.” The Report indirectly takes issue with the Department’s decision not to advocate for a similar reduction in the number of deputies on the Dive Team.

First, the comparison between the Dive Cadre and the Explosives Breaching Cadre is both unfair and unhelpful. The breaching detail has not used explosives in at least three years, and even then, the last incident in which the Department detonated explosives involved just two breachers. In fact, the Department presented uncontroverted records showing that, in the 37 incidents between 2014 and January 2021, in which the Department mobilized the Explosive Breaching Cadre, all but one involved a two-member explosive team. In contrast, the Department uses the Dive Team on a regular basis. Moreover, a single dive operation can easily require 20 to 30 divers due to the restrictions on how long a person can stay under water using a breathing apparatus. (County Exhibit 17 and related back-up documents; Statement confirmed during hearing.)

Second, the County Code provision providing for dive pay differs significantly from the County Code provision governing explosive detail duty pay. To qualify for explosive detail bonus pay, the County Code specifically requires that the employee be assigned explosive detail duties on a full-time, permanent basis. In contrast, the County Code provision providing for dive pay does not require assignment to dive duties on a full-time, permanent basis. This is a distinction with a difference. (County Exhibit 2, pg. 4 - County Code § 6.120.020(B) (4) and (5).)

CONCLUSION

Accordingly, for all the above-mentioned reasons, the Department both accepts and rejects the Report.

DANA A. CHEMNITZER

Captain Dana A. Chemnitzer
Los Angeles County Sheriff's Department
Bureau of Labor Relations and Compliance

Dana A. Chemnitzer

Signature

6.17.21

Date

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: **6033 West Century Boulevard, 5th Floor, Los Angeles, California 90045.**

On **June 18, 2021**, I served the foregoing document(s) described as **DEPARTMENT’S ACCEPTANCE AND REJECTION TO PORTIONS OF THE FACTFINDER’S FINDINGS AND RECOMMENDED TERMS OF SETTLEMENT**, in the manner checked below on all interested parties in this action addressed as follows:

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- (BY U.S. MAIL)** I am “readily familiar” with the firm’s practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- (BY FACSIMILE)** I am personally and readily familiar with the business practice of Liebert Cassidy Whitmore for collection and processing of document(s) to be transmitted by facsimile. I arranged for the above-entitled document(s) to be sent by facsimile from facsimile number 310.337.0837 to the facsimile number(s) listed above. The facsimile machine I used complied with the applicable rules of court. Pursuant to the applicable rules, I caused the machine to print a transmission record of the transmission, to the above facsimile number(s) and no error was reported by the machine. A copy of this transmission is attached hereto.

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- (BY OVERNIGHT MAIL)** By overnight courier, I arranged for the above-referenced document(s) to be delivered to an authorized overnight courier service, FedEx, for delivery to the addressee(s) above, in an envelope or package designated by the overnight courier service with delivery fees paid or provided for.
- (BY ELECTRONIC SERVICE)** By electronically mailing a true and correct copy through Liebert Cassidy Whitmore’s electronic mail system from fguerra@lcwlegal.com to the email address(es) set forth above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.
- (BY ELECTRONIC SERVICE PROVIDER)** I am readily familiar with the firm’s practice for filing electronically. Through use of OneLegal, an electronic service provider, I arranged a true and correct copy of the above-reference documents to be electronically served to the e-mail address(es) registered with the court this day in the ordinary course of business following ordinary business practices.
- (BY PERSONAL DELIVERY)** I delivered the above document(s) by hand to the addressee listed above.

Executed on **June 18, 2021**, at Los Angeles, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

/s/ Frances Guerra

Frances Guerra