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6 FACT FINDING PROCEEDINGS

7 PURSUANT TO EDUCATIONAL EMPLOYMENT RELATIONS ACT

8 SACRAMENTO CITY UNIFIED SCHOOL
9 DISTRICT,

10 Employer,

11 vs.

12 SACRAMENTO CITY TEACHERS
13 ASSOCIATION,

14 Union.

PERB Case No.: SA-IM-3415-E

REPORT AND RECOMMENDATION OF
FACT FINDING PANEL AFTER HEARING

14 Chairperson: Andrea L. Dooley, Arbitrator
15 Employer Panel Member: Jackson Parham, Atkinson, Andelson, Loya, Ruud & Romo
16 Union Panel Member: John Borsos, Sacramento City Teachers Association
17 For the Union: Nikki Milevski, Sacramento City Teachers Association
18 David Fisher, Sacramento City Teachers Association
19 For the Employer: John Gray, School Services of California
20 Scott K. Holbrook, Atkinson, Andelson, Loya, Ruud & Romo

21 **Background**

22 The Sacramento City Unified School District (District) and the Sacramento City Teachers
23 Association (SCTA) are parties to a Collective Bargaining Agreement (Agreement or CBA). The
24 District and the SCTA reached an agreement on June 10, 2016 to extend the current CBA until
25 December 1, 2016.
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1 Pursuant to their Agreement, on October 6, 2016, the parties “sunshined” their initial
2 proposals for a new CBA. Between October 11, 2016, and March 9, 2017, the parties met at least
3 fifteen (15) times but did not reach agreement.

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5 On March 13, 2017, SCTA requested an Impasse Determination/Appointment of
6 Mediator from PERB, which the District did not oppose.

7 The parties met with Tom Ruiz of State Mediation and Conciliation Service in formal
8 mediation on April 19, 2017, and on six subsequent occasions. The parties were unable to reach
9 any agreements in mediation and Mr. Ruiz certified the parties to fact-finding on May 18, 2017.
10 The parties properly selected their panel members and PERB appointed Neutral Panel Member
11 Andrea Dooley on July 17, 2017.

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13 The factfinding panel convened a hearing on October 2, 2017. Both parties presented
14 facts through their presenters (listed above) and the parties attempted mediation following the
15 close of presentations. The parties were not able to reach an agreement, so the Chair makes the
16 following recommendations.

17 **Fact Finding Criteria**

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19 Pursuant to California Government Code Section 3548.2, the panel has considered and
20 been guided by the following statutory criteria:

- 21 1. State and federal laws that are applicable to the Employer.
- 22 2. Stipulations of the parties.
- 23 3. The interests and welfare of the public and the financial ability of the public schools.
- 24 4. Comparison of the wages, hours and conditions of employment of the employees
25 involved in the factfinding proceeding with the wages, hours, and conditions of
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1 employment of other employees performing similar services and with other
2 employees generally in public school employment in comparable communities.

3 5. The Consumer Price Index for goods and services, commonly known as the cost of
4 living.

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6 6. The overall compensation presently received by the employees, including direct wage
7 compensation, vacations, holidays, and other excused time, insurance and pensions,
8 medical and hospitalization benefits, the continuity and stability of employment, and
9 all other benefits received.

10 7. Such other factors, not confined to those specified in paragraphs 1 through 6,
11 inclusive, which are normally and traditionally taken into consideration in making
12 such findings and recommendations.
13

14 State and Federal Laws Applicable to the Employer

15 Beginning in the 2013-2014 budget year, the District's finance system is funded by
16 California's Local Control Funding Formula (LCFF) which "creates base, supplemental, and
17 concentration grants in place of most previously existing K-12 funding streams."¹ In order to
18 maintain funding provided by the LCFF, the District was required to develop and adopt a Local
19 Control and Accountability Plan (LCAP) that must be updated annually, based on a template
20 adopted by the State Board of Education. "The LCAP shall demonstrate how services are
21 provided according to the chapter to meet the needs of unduplicated pupils and improve the
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¹ Local Control Funding Formula Overview, California Department of Education website,
<http://www.cde.ca.gov/fg/aa/lc/lcffoverview.asp>.

1 performance of all pupils in the state priority areas.” CCR Title 5, §15494. “Unduplicated
2 pupils” include pupils eligible for free or reduced-price meals, foster youth and English learners.
3 CCR Title 5, 15495(m).

4 “This funding shall be used to increase or improve services for unduplicated pupils as
5 compared to the services provided to all pupils in proportion to the increase in funds apportioned
6 on the basis of the number and concentration of unduplicated pupils as required by Education
7 Code section 42238.07(a)(1).” CCR Title 5, §15496.

9 The District’s LCAP must include an explanation of how expenditures of the funding
10 meet their goals for their unduplicated pupils. Because 70.33% of the District’s enrollment is
11 made up of unduplicated pupils, the District may spend their supplemental and concentration
12 grant funds on a districtwide basis.² However, the LCAP must describe the services to be
13 provided and describe how such services are effective in meeting the goals for serving the
14 unduplicated pupils in the District.
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16 Both parties have tailored their proposals in recognition of the application of these laws
17 to the District.
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² “A school district that has an enrollment of unduplicated pupils of 55 percent or more of the district’s total enrollment in the fiscal year for which an LCAP is adopted or in the prior year may expend supplemental and concentration grant funds on a districtwide basis.” CCR Title 5, §15496(b)(1).

1 Stipulations of the Parties

2 The District and SCTA have stipulated to the following facts, or these facts are
3 undisputed by the parties:

- 4
- 5 1. The Sacramento City Unified School District is a public school employer within the
6 meaning of Section 3540.1(k) of the Educational Employment Relations Act.
 - 7 2. The Sacramento City Teachers Association is a recognized employee organization within
8 the meaning of Section 3540.1(l) of the Educational Employment Relations Act and has
9 been duly recognized as the representative of the certificated non-management bargaining
10 unit of the Sacramento City Unified School District.
 - 11 3. The parties to this factfinding have complied with the public notice provisions of
12 Government Code section 3547 (EERA, "Sunshining" requirement).
 - 13 4. The parties have complied with the Educational Employment Relations Act with regard
14 to the selection of the Factfinding Panel and are timely and properly before the Panel.
 - 15 5. The parties have complied with all the requirements for selection of the factfinding panel
16 and have met or waived the statutory time limitations applicable to this proceeding.
 - 17 6. The re-opener contract issues which are appropriately before the Factfinding Panel are as
18 follows:

- 19
- 20 Article 5 – Hours of Employment
 - 21 Article 12 – Compensation
 - 22 Article 15 – Substitutes
 - 23 Article 17 – Class Size
 - 24 Article 18 – Organizational Rights

- 25 7. The parties have reached tentative agreements (TAs) on the following:

- 26 Article 1 – Recognition
 Article 2 – Definitions
 Article 3 – Effect of Agreement

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- Article 4 – Grievance Procedure
- Article 6 – Evaluations
- Article 7 – Assignments
- Article 8 – Transfers
- Article 9 – Leaves of Absence
- Article 10 – Personnel Files
- Article 11 – Safety Concerns
- Article 13 – Employee Benefits
- Article 26 – Duration (TA on language, years to be determined)

The parties also agreed to maintain the status quo on the following:

- Article 14 – Personal and Academic Freedom
- Article 16 – Liaison Committee
- Article 19 – District Rights
- Article 20 – Mentor Teacher
- Article 21 – Organizational Security
- Article 22 – Professional Growth
- Article 23 – Classroom Teacher Instructional Improvement
- Article 24 – Site-Based Decision Making
- Article 25 – Successor Agreement

- 8. The parties proceeded to mediation on April 19, 2017 with the Presiding Mediator, Tom Ruiz. At that time, the mediator was unable to facilitate a settlement. On May 18, 2017, the mediator certified the parties for factfinding.
- 9. The factfinding Chairperson, Andrea Dooley, was notified of her assignment on or about July 17, 2017.
- 10. The parties agreed to schedule, and did conduct, the factfinding hearing with Ms. Dooley presiding as the factfinding chair on October 2, 2017.

The Interests and Welfare of the Public and the Financial Ability of the Employer

The panel members have considered the interests and welfare of the public as demonstrated by factual evidence presented by both the District and SCTA. Such facts include oral testimony from community members and bargaining unit members, demographic

1 information about the pupil population served in the District, general information about
2 Sacramento City, review of the applicable statutes and the District's LCAP.

3 The District's financial ability was considered as a part of the review of relevant state law
4 and the comparability of the District to geographically or demographically similar school
5 districts. While the District did not make an "inability to pay" argument, they asserted that Other
6 Post-Employment Benefits (OPEB) liabilities, projected California State Teachers' Retirement
7 System (CalSTRS) and California Public Employees' Retirement System (CalPERS)
8 contributions and a stagnant Average Daily Attendance rate make substantial increases to salary
9 and benefits financially difficult for the District. The District's budget has been given a positive
10 certification by the Sacramento County Office of Education.
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12 The Association's view is that OPEB contributions are not mandatory and are over-
13 funded, and that money would better be spent on improving teacher salaries. In the Association's
14 opinion, teacher salary increases would result in better teacher retention and make the District a
15 "destination" school district, thus resulting in higher enrollment and ADA.
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18 Comparability

19 The District identified the following districts as comparable, because Sacramento City
20 teachers in the normal commuting area would be able to consider employment in these districts
21 due to their proximity. These districts are:

- 22 Center Joint Unified School District
- 23 Davis Joint Unified School District
- 24 Elk Grove Unified School District
- 25 Folsom-Cordova Unified School District
- 26 Lodi Unified School District
- Natomas Unified School District
- River Delta Joint Unified School District
- Rocklin Unified School District

- 1 San Juan Unified School District
- 2 Stockton City Unified School District
- 3 Twin Rivers Joint Unified School District
- 4 Washington Unified School District
- 5 Woodland Joint Unified School District

6 The Association identified the following districts as comparable, because these districts
7 have an Average Daily Attendance rate of 30,000 students, similar to Sacramento City. These
8 districts are:

- 9 Capistrano Unified School District
- 10 Corona-Norco Unified School District
- 11 Elk Grove Unified School District
- 12 Fontana Unified School District
- 13 Fremont Unified School District
- 14 Fresno Unified School District
- 15 Garden Grove Unified School District
- 16 Irvine Unified School District
- 17 Long Beach Unified School District
- 18 Los Angeles Unified School District
- 19 Moreno Valley Unified School District
- 20 Mt. Diablo Unified School District
- 21 Oakland Unified School District
- 22 Poway Unified School District
- 23 Riverside Unified School District
- 24 San Bernardino City Unified School District
- 25 San Diego City Unified School District
- 26 San Francisco Unified School District
- 27 San Juan Unified School District
- 28 San Ramon Valley Unified School District
- 29 Santa Ana Unified School District
- 30 Stockton City Unified School District

31 Data about these was taken from State-Certified Reports, including the J-90, CBEDS and
32 SACS reports, for the years for which data is most recently available.

33 The common comparability districts are Elk Grove Unified School District, San Juan
34 Unified School District and Stockton Unified School District. These three districts are similar in

1 size and unduplicated pupil population to this District. These districts are also in reasonably
 2 close proximity to the District, and therefore it's reasonable to conclude that all four districts
 3 draw from the same pool of eligible certificated employees.

4 CPI

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 6 The panel did consider data concerning CPI.

Year	District % Salary Increases	State CPI % Increases
2014-2015	2.00%	1.53%
2015-2016	6.00%	1.90%
2015-2016	0.70% (collaboration time)	
2016-2017 (District proposal)	2.50%	2.63%
2016-2017 (Association proposal)	4.00% plus revised salary schedule 4.5%	See above

11
 12 Overall Compensation

13 The panel considered data on overall compensation provided by the District as well as the
 14 collective bargaining agreement. The Association's presentation highlighted disparities in the
 15 salary schedule when compared to other districts, while the District emphasized that overall
 16 compensation, including benefits, are competitive in the region.

District ³	BA+30, Step 1 salary	BA+30, Step 1 total comp	BA+60, step 10 salaries	BA+60, step 10 total comp	Max salary	Max total comp	Benefits
Sac City	\$44,252	\$65,147	\$56,736	\$77,631	\$93,113	\$114,008	\$20,895
Elk Grove	\$43,546	\$57,457	\$64,573	\$78,484	\$90,983	\$104,894	\$13,911
San Juan	\$44,963	\$58,848	\$76,351	\$90,236	\$90,055	\$103,940	\$13,885
Stockton	\$45,819	\$62,014	\$67,772	\$83,967	\$85,377	\$101,572	\$16,195
Average	\$44,645	\$60,866	\$66,358	\$82,579	\$89,882	\$106,103	\$16,221

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³ Data culled from District's presentation. Averages computed by Chair from available data.

1 Other Factors

2 The panel reviewed and considered all facts and proposals presented by the District and
3 the SCTA.

4 **Recommendations**

5 After a review of the facts and arguments presented by both parties, the Chair
6 recommends the following⁴:

7 **Article 5 Hours of Employment**

8
9 5.2.11 The service year for school nurses shall be five (5) days beyond the teachers' required
10 days of service.

11 5.3.11 When eight-hour employees are required to work beyond their regular eight (8) hour day,
12 they will be granted compensatory time off equivalent to the overtime worked. The District will
13 provide employees with a method of tracking compensatory time to ensure the employee and
14 district are in agreement about compensatory time available.

15 5.3.12 Scheduling of compensatory time shall be consistent with the needs of the District. All
16 compensatory time shall be taken at times approved by the supervisor, but shall not be
17 unreasonably denied. The Employer will make every reasonable effort to enable employees to
18 use compensatory time.

19 5.6.2 Each elementary teacher, including but not limited to special day class teachers, will be
20 provided at least ninety (90) minutes of prep time per week.

21 *The parties should agree to increase the prep time allotment to one hundred twenty (120)*
22 *minutes if art/music specialists are added as a result of mutual efforts to increase arts education*
23 *through health care cost reduction efforts.*

24 5.10.4 The site administrator may schedule additional meetings from those noted above when
25 the administrator concludes there is a necessity for additional meetings. If such meetings are
26 mandatory and scheduled outside the regularly paid work time, unit members will be paid at the
contractual hourly rate for attending.

⁴ Recommendations are underlined. Factfinder Chair remarks are in *italics*.

5.11.4 For eight-hour bargaining unit employees, collaborative time will be structured in the same manner provided for teachers, or on a mutually agreed to schedule that reflects the needs of the department.

Article 12 Compensation

	2016-17	2017-2018	2018-19	Other Comp
District Proposal	2.5% retro to July 1, 2016	3.5% retro to July 1, 2017	2.5% contingent on state budget	Increase doctorate bonus to \$3000
Association Proposal	4% retro, plus 4.5% to adjust salary schedule	3.5% retro to July 1, 2017	3.5% effective July 1, 2018	
Neutral Factfinder's Recommendation	None	<u>3.5% retro to July 1, 2017</u>	<u>3.0% (no contingency) effective July 1, 2018</u> <u>2.5% towards salary schedule adjustment</u>	Increase doctorate bonus to <u>\$3000</u>

The parties should endeavor to make a second 2.0% salary schedule adjustment in 2019-2020.

While the District's total compensation is competitive with other districts in the geographic region, a substantial part of the difference is attributable to generous health benefits, which the parties believe can be maintained while achieving other health benefit cost savings. Teachers whose salaries lag the salaries of teachers in nearby districts may consider the higher salary to be more attractive than the health benefits available, and efforts should be made to control health care costs while improving teacher's salaries.

In addition, the Chair recommends adding the following language, if appropriate:

12. Unlimited years of experience credited to new hires for placement on salary schedule effective July 1, 2017.

12. Unlimited years of experience credited to current unit members for placement on salary schedule prospectively, i.e. current unit members will be credited for all years of experience as of July 1, 2017 and placed at applicable higher step moving forward.

1 12. The District and SCTA agree to work together diligently to effectuate on or before July 1,
2 2018 reductions in health insurance premiums with the understanding that our joint goal is not to
3 reduce benefits but to pursue cost reductions that maintain comparable benefits. The parties
4 agree that all savings realized from effectuating health benefits savings, e.g. by joining CalPERS
5 or other health benefits pool, etc. will be used to reduce class sizes in grades 4 through 6. Any
6 remaining savings may be used by mutual agreement to fund additional priorities such as: Art
7 and Music; Increase Elementary Prep; Increase Athletic Director Prep; Mentor Teachers; Money
8 for Extra Duty Sections; Counselors; Nurses; Class Size in other Grades; Program Specialists;
9 Department Chair Leads; School Psychologists.

Article 15 Substitutes

9 15.2 Fully credentialed day-to-day substitutes working in excess of thirty (30) days, who are
10 responsible for lesson planning and other teacher duties, will be paid on the regular teachers'
11 salary schedule at their daily rate for the time period they are in the position listed above.

11 15.3 The District shall provide long term substitute sick leave consistent with AB 354.

12 *The Chair recommends that the parties negotiate a health benefit stipend for long-term substitute*
13 *teachers. Due to the cost of health benefits in the District, an alternative method of providing*
14 *compensation in lieu of full benefits could be negotiated in this or a future agreement.*

15 15.14 By the fifteenth of every month, the Human Resources Office will provide the
16 Association with an itemized statement of dues deducted from substitute teachers' pay in the
17 prior month, and shall remit the dues which were withheld to the Association.

18 *The parties may negotiate different language to achieve the Association's interest in accounting*
19 *for substitute teachers' membership dues.*

Article 17 Class Size

21 *Education Code Section 42238.02 requires that absent collective bargaining agreement*
22 *providing for an alternative level of student to teacher ratio, class sizes are supposed to be 24 to*
23 *1 teacher per classroom. In this matter, there is a CBA which provides for an alternative level of*
24 *student to teacher ratio, which the Association seeks to change and which the District endeavors*
25 *to change subject to continued LCFF funding. Therefore, the Chair recommends the following:*

25 17.1.1 At the kindergarten, the maximum class size shall not exceed 30 students per teacher in
26 2018-19; shall not exceed 28 students per teacher in 2019-2020; and shall not exceed 24 students
per teacher in 2020-21. The parties will review the District's progress toward meeting the goal of
24 students per teacher in 2018-2019.

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2 17.1.2 At grades 1-3, the maximum class size shall not exceed 30 students per teacher in 2018-
3 19; shall not exceed 28 students per teacher in 2019-2020; and shall not exceed 24 students per
4 teacher in 2020-21. The parties will review the District's progress toward meeting the goal of 24
5 students per teacher in 2018-2019 to determine whether the LCFF funding is available to meet
6 this goal.

7 17.1.5 The maximums established in Section 17.1 of this Article may be exceeded by mutual
8 agreement between the Site Administrator and the affected teacher. The District will provide
9 Association with a report on class sizes, including information about all agreements reached by
10 teachers and site administrators, not later than the end of the first quarter of the school year.

11 **Article 18 Organizational Rights**

12 18.8 The District agrees to release two (2) persons⁵ designated by the Association for not more
13 than two (2) consecutive semesters to serve on Association business leave. The Association will
14 reimburse the District in the amount of the average hiring-in salary plus the cost of fringe
15 benefits including health, medical/dental/life insurance for each person released for this purpose.
16 During this leave the designated person(s) will continued to be compensated by the District and
17 will retain all rights and benefits as though in regular service. The number of bargaining unit
18 representatives released for Association business may be increased by mutual agreement.

19 **Other Issues**

20 The panel recommends that the parties mutually agree to establish the following
21 committees: a Destination District Committee and a Professional Learning Committee. The panel
22 also recommends that the parties adopt a Whole Child Education article, based on mutual
23 agreement.

24 The panel recommends that all other "sunshined" issues remain status quo.

25 The panel acknowledges the high cost of alleged grievances and unfair practice charges
26 (if any) pending between the parties. While it is beyond the scope of the panel to attempt to

⁵ Remove "not more than" language

1 adjudicate those matters, the panel strongly recommends that resolution of all pending disputes
2 be included as part of any settlement.

3 **Conclusion**

4 It is the hope of the Chair that these recommendations will be used by the parties to
5 negotiate a settlement to the current impasse.

6 Dated: November 1, 2017

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9 _____
10 Andrea L. Dooley, Chair, Panel Member

11 Concur X
12 Concur in part _____
13 Dissent in part _____
14 Dissent _____

Concur _____
Concur in part _____
Dissent in part _____
Dissent _____

15 Jackson Parham
16 Jackson Parham, District Panel Member

_____ John Borsos
John Borsos, Union Panel Member

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

SACRAMENTO CITY UNIFIED SCHOOL
DISTRICT,

Filing Party,

v.

SACRAMENTO CITY TEACHERS
ASSOCIATION,

Respondent.

PERB Case No.: SA-IM-3415-E

**DISTRICT'S CONCURRENCE TO
FACTFINDING REPORT AND
RECOMMENDED TERMS OF
SETTLEMENT**

Date: November 2, 2017

By: Jack Parham, District Panel Member

I concur with the Factfinding Report issued in this matter by Andrea L. Dooley (“Arbitrator”) regarding the fiscal realities facing the District. In particular, I applaud the Arbitrator’s recognition that “Other Post-Employment Benefits (OPEB) liabilities, projected California State Teachers’ Retirement System (CalSTRS) and California Public Employees’ Retirement System (CalPERS) contributions and a stagnant Average Daily Attendance rate make substantial increases to salary and benefits financially difficult for the District.” In that context then, I hope those judging this panel’s success view the scale of the increases as a commitment to the teachers and professionals in the District.

I also concur with the Arbitrator’s determination that “The common comparability districts are Elk Grove Unified School District, San Juan Unified School District and Stockton Unified School District” because “These three districts are similar in size and unduplicated pupil population to this District;” and “These districts are also in reasonably close proximity to the District, and therefore it’s reasonable to conclude that all four districts draw from the same pool of eligible certificated employees.” To this end, I also support the Arbitrator’s factual determination that “the District’s total compensation is competitive with other districts in the geographic region” and that “a substantial part of the difference is attributable to generous health benefits.”

With regard to the Arbitrator’s recommendations for settlement, my opinions set forth below are my comments as the District’s Panel Member in review of the Arbitrator’s advisory

Factfinding Report and do not bind the District but are made in hope of resolving the current impasse.

Article 12 Compensation

I concur with the Arbitrator's rejection of SCTA's request for a 4% retroactive increase, plus an additional 4.5% to adjust the salary schedule, equaling a total of 8.5% for the 2016-17 school year. I agree with the Arbitrator's recommendation to award 0% for 2016-17, 3.5% for 2017-18, and 3.0% for 2018-19. I also concur with her recommendation that an additional 2.5% in 2018-19 be used "towards salary schedule adjustment" with these qualifications: The additional 2.5% will be based on the cost of one percent of the certificated teacher salary for 2017-18; the monies will be used to target the mid-range cells of the salary schedule; and that the parties agree to a mid-August start date in the 2018-19 school calendar as previously proposed by the District. With regard to the Arbitrator's suggestion that "The parties should endeavor to make a second 2.0% salary schedule adjustment in 2019-2020," (although 2019-20 is not on the table nor before the Arbitrator) I concur with her suggestion that the parties endeavor to make a 2% salary schedule adjustment in 2019-20, if after receipt of the Governor's January 2019 budget proposal the LCFF base revenues exceed projections by 5%. I also concur with the Arbitrator's recommendation to adopt the District's proposals to increase the Doctorate stipend to \$3,000; and to offer unlimited years of experience credit to new hires and current unit members for placement on the salary schedule effective July 1, 2017.

The parties signed a Tentative Agreement on September 15, 2017 settling Article 13 Employee Benefits which includes a good faith promise to effectuate on or before July 1, 2018 reductions in health insurance premiums with the understanding that our joint goal is not to reduce benefits but to pursue cost reductions that maintain comparable benefits and to use those savings by mutual agreement. When signing that agreement, the District stated it was doing so with the clear understanding that its compensation proposal for 2018-19 included agreement by SCTA as to how those health benefits savings would be utilized and at no time did the District withdraw that proposal on September 15, 2017 or thereafter. Accordingly, I strongly concur with the Arbitrator's recommendation to adopt that District proposal as stated below:

"The parties agree that all savings realized from effectuating health benefits savings, e.g. by joining CalPERS or other health benefits pool, etc. will be used to

reduce class sizes in grades 4 through 6. Any remaining savings may be used by mutual agreement to fund additional priorities such as: Art and Music; Increase Elementary Prep; Increase Athletic Director Prep; Mentor Teachers; Money for Extra Duty Sections; Counselors; Nurses; Class Size in other Grades; Program Specialists; Department Chair Leads; School Psychologists.”

I urge SCTA to honor its agreement to effectuate on or before July 1, 2018 reductions in health insurance premiums to generate savings to fund the priorities inset above.

Article 5 Hours of Employment

I concur with the Arbitrator’s recommendations to revise Articles 5.2.11, 5.3.11, 5.3.12, 5.10.4, and 5.11.4 regarding the service year for school nurses, tracking and scheduling compensatory time for 8-hour employees, payment for mandatory meetings outside the work day, and collaborative time for eight-hour employees. I also concur with the Arbitrator’s recommendation that Article 5.6.2, “Each elementary teacher, including but not limited to special day class teachers, will be provided at least ninety (90) minutes of prep time per week,” to be increased if the health benefit savings are allocated to art/music specialists.

“The parties should agree to increase the prep time allotment to one hundred twenty (120) minutes **if** art/music specialists are added as a result of mutual efforts to increase arts education through health care cost reduction efforts.” [emphasis added.]

Article 15 Substitutes

I concur with the Arbitrator’s recommendations to revise Articles 15.3 and 15.14 regarding sick leave compliant with AB 354 and a system to confirm the collection of union dues. As for the Arbitrator’s recommendation regarding Article 15.2, that “Fully credentialed day-to-day substitutes working in excess of thirty (30) days, who are responsible for lesson planning and other teacher duties, will be paid on the regular teachers’ salary schedule at their daily rate for the time period they are in the position listed above,” I concur provided that the language is clarified to specify thirty “consecutive” days. With regard to the Arbitrator’s recommendation “that the parties negotiate a health benefit stipend for long-term substitute teachers,” I agree that the District should consider this alternative method of providing additional compensation to substitutes in “lieu of full benefits”.

Article 17 Class Size

I concur with the Arbitrator's recommendations to revise Articles 17.1.1, 17.1.2, and 17.1.5 regarding class size maximums in Kindergarten through grade 3.

Article 18 Organizational Rights

I concur with the Arbitrator's recommendations to maintain the limit of two (2) unit members being released for full time union duties in Article 18.8, while adopting the District's proposal that "The number of bargaining unit representatives released for Association business may be increased by mutual agreement."

Other Issues

Although these items involve non-mandatory subjects of bargaining proposed by SCTA which may not be advanced to impasse, and to do so is a per se refusal to bargain in good faith (Lake Elsinore School District (1986) PERB Dec. No. 603), I acknowledge the Arbitrator's recommendations "that the parties mutually agree to establish the following committees: a Destination District Committee and a Professional Learning Committee," provided that such committees are advisory, do not interfere with management rights, and include other stakeholders from the community as applicable. I also acknowledge the Arbitrator's recommendation "that the parties adopt a Whole Child Education article, based on mutual agreement," provided that this new article does not interfere with management rights, provides clarity and/or replaces Appendix D regarding the servicing of special needs students, and does not attempt to reopen matters already tentatively agreed to by the parties.

With regard to the Arbitrator's recommendation "that resolution of all pending disputes be included as part of any settlement" due to their "high cost," i.e., "alleged grievances and unfair practice charges (if any) pending between the parties," I concur with her statement that "it is beyond the scope of the panel to attempt to adjudicate those matters." Rather, those matters fall within the jurisdiction of the legal and/or contractual processes in which they were initiated.

Conclusion and Recommendation

In closing, I want to thank Ms. Dooley for her time and effort in receiving and reviewing the earnest testimony, and multitude of documents, provided in support of each parties' position.

Ms. Dooley was mutually selected by SCTA and the District to serve as the neutral arbitrator in this matter, and charged with the responsibility of weighing through the evidence presented by both parties. Accordingly, I recommend that the District and SCTA reconvene negotiations and utilize Ms. Dooley's Factfinding Report as a guide to resolve their differences.



Jack Parham, District Panel Member

1 adjudicate those matters, the panel strongly recommends that resolution of all pending disputes
2 be included as part of any settlement.

3 **Conclusion**

4 It is the hope of the Chair that these recommendations will be used by the parties to
5 negotiate a settlement to the current impasse.
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7 Dated: November 1, 2017

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10 Andrea L. Dooley, Chair, Panel Member

11 Concur _____
12 Concur in part _____
13 Dissent in part _____
14 Dissent _____

15 Jackson Parham, District Panel Member

Concur _____
Concur in part _____
Dissent in part _____
Dissent _____

16 John Borsos, Union Panel Member

17 *Please see*
18 *attached.*

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November 1, 2017

DISSENT of the Sacramento City Teachers Association (SCTA) to the Non-binding, Advisory Recommendation from the Neutral Third Party in PERB Case No. SA-IM-3416-E

The neutral third party's non-binding, advisory recommendation is severely flawed and following its recommendations would be a disservice to the 40,000 students of the Sacramento City Unified School District. The deficiencies in the report include, but are not limited to:

1. **A failure to understand basic facts prior to making a recommendation.** For example, the report recommends a phase-in of class size reduction to 24 to 1 in grades Kindergarten through 3rd over the next two to three years, including years beyond the scope of this proceeding (i.e., 2019-2020, and 2020-21). The author of the report is obviously unaware that current class sizes in grades K through 3 are already at 24 to 1.

Similarly, in making a recommendation regarding potential savings from health plan changes, the non-binding recommendation incorporates verbatim language from an outdated employer proposal that was subsequently superseded by the parties' actual tentative agreement on Article 13, Benefits. The tentative agreement was noted in the fact-finding hearing on October 2nd, and the actual tentative agreement on Article 13, Benefits, was included as part of the Association's post-hearing brief. The tentative agreement supersedes the outdated Employer proposal that was incorporated into the advisory recommendation. Rather than rely on the actual tentative agreement, the report relies on an outdated proposal made by the employer, prior to reaching the tentative agreement on the issue.

These two glaring, monumental errors call into question the entire credibility of the recommendation because of an inability to cite basic facts related to these negotiations.

2. **The non-binding report also completely ignores a settlement the District had reached with its represented administrators just last month that includes increases to total compensation between 11 and 20 percent, significantly higher than the economic improvement recommended for SCTA-represented educators.** Although the weight given to such a settlement is certainly open to debate, totally ignoring the settlement is a fundamental error. The comparability of compensation of other certificated staff in the same exact district is not a fact that should be simply ignored, creating another gross flaw in the report.


3. **The advisory recommendation also fails to address certain issues related to the replacement of Appendix D, concerning special education, by reverting to the status quo when both parties have indicated the status quo is not acceptable and both parties have indicated their strong desire to reach a new agreement on this issue.**

4. **The non-binding report regressively recommends reopening and setting aside items that were not in dispute--retroactive pay increases effective to July 1, 2016--and substitutes its own illogical, flawed judgment over the negotiated conceptual agreements of the parties.** Moreover, the recommendation came from out of nowhere without any prior consultation with the panel members as a possibility prior to its inclusion in the report.

5. The advisory report also includes recommendations regarding issues that extend beyond the contract expiration date proposed by both parties. Both parties have proposed that the contract expire on June 30, 2019, an expiration date also contained in the report. Nonetheless that doesn't inhibit the author from offering unsolicited advice well beyond the scope of the report, opining on what should occur in 2019/2020 school year, beyond the mutually-desired expiration date of the contract. Given that any recommendations in the report are non-binding, the objective regarding the inclusion of recommendations for the NEXT collective bargaining agreement between the parties serves no discernible purpose except to give the appearance of trying to appease one party or the other rather than make the difficult decisions on the issues that are actually before the fact-finder.

6. **Splitting the baby is not fact finding.** While the report includes some recommendations that are indeed favorable to the Association -- for example, recommending higher salary increases than proposed by the Employer (coupled with a recognition of the need to revamp the salary schedule), benefits for part-timers, as well as the need to create a number of committees -- on balance the report fails to truly get to the heart of the issues that have divided the parties, and appears to give a little to each side. But that is not fact finding.

For the reasons stated above, SCTA dissents from the report.


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11-2-17