FACT FINDING DISCUSSION AND RECOMMENDATONS

In the Matter of the Impasse Between	
SAN MATEO COUNTY COMMUNITY COLLEGE DISTRICT, Employer -and- SAN MATEO COUNTY COMMUNITY COLLEGE DISTRICT, FEDERATION OF TEACHERS LOCAL 1493 Exclusive Representative	PERB Case No: ARB16-0147 Report Issued July 11, 2017

Hearing Held on May 8, 2017
San Mateo County Community College District
3401 CSM Drive
San Mateo, CA 94402

Members of the Fact Finding Panel

Impartial Chairperson:
Donald Raczka, Fact Finder

Employer Panel Member:
John Gray, School Services of California, Inc.

Union Panel Member:
Zev Kvitky, California Federation of Teachers

Making Presentations to the Fact Finding Panel:

For the Union:
Joaquin Rivera, AFT, Local 1493

For the Employer:
Eugene Whitlock, San Mateo County Community College District

Background

The San Mateo County Community College District (hereinafter "District" or "Employer") and the San Mateo County Community College District, Federation of Teachers, Local 1493 (hereinafter "Union") are parties to a collective bargaining agreement. The District and the Union began successor negotiations on November 18, 2015. The parties met four times in 2015 and 9 additional times in 2016. The District requested an impasse determination and California Public Employment Board certified the impasse and assigned a mediator, Seymour Kramer.

The parties met with the State Mediator in formal mediation on August 22, 2016, and September 6, 2016. The mediator certified the parties to factfinding. The parties also met with an "unofficial mediator" six to eight times with no resolution. The parties then properly selected their panel members and Neutral Panel Member, Donald Raczka.

The factfinding panel convened a hearing on May 8, 2017. Both parties presented facts through their presenters (listed above) and the parties attempted mediation following the close of presentations. The parties were unable to reach an agreement on that date. The panel members made an additional effort to assist the parties to reach resolution via phone and personal contact.

Factfinding Criteria

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

1. State and federal laws that are applicable to the Employer.
2. Stipulations of the parties.
3. The interests and welfare of the public and the financial ability of the public schools.
4. Comparison of the wages, hours, and conditions of employment of the employees involved in the fact-finding proceeding with the wages, hours, and conditions of employment of other employees performing similar services and with other employees generally in public school employment in comparable communities.
5. The Consumer Price Index for goods and services, commonly known as the cost of living.

6. The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays, and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
7. Such other facts, not confined to those specified in paragraphs 1 through 6, inclusive, which are normally and traditionally taken into consideration in making such findings and recommendations.

Stipulations of the Parties

1. The District is a public school employer within the meaning of Section 3540.1(k) of the Educational Employment Relations Act.
2. The Union is a recognized employee organization within the meaning of Section 3540.1(l) of the Educational Employment Relations Act and has been duly recognized as the representative of the non-management bargaining unit of the District.
3. The parties to this factfinding have complied with the public notice provisions of Government Code section 3547 (EERA, "Sunshining" requirement).
4. The parties have complied with the Educational Employment Relations Act with regard to the selection of the Factfinding Panel and are timely and properly before the Panel.
5. The parties have complied with all the requirements for selection of the factfinding panel and have met or waived the statutory time limitations applicable to this proceeding.

Community College Districts Used in Comprability

Both the District and the Union identified the following districts as comparable because the members in the normal commuting area would be able to consider employment in these districts due to their proximity. These districts commonly referred to as the "Bay 10" are:

Chabot-Las Positas Community College District (CCD)

Contra Costa CCD

Foothill-DeAnza CCD

Marin CCD
Ohlone CCD
Peralta CCD
San Francisco CCD
San Jose-Evergreen CCD
West Valley-Mission CCD

The Panel will use the mutually agreed upon Bay 10 for analysis.

Issues

The contract issues before the Factfinding Panel are as follows, all other matters being agreed upon by the parties during the course of negotiations:

- Article 3 Payroll Deductions for Union Dues *(Signed TA not ratified)*
- Article 5 Peaceful Settlement of Differences
- Article 7 Hours of Employment
- Article 8 Pay and Allowances
- Article 9 Health and Welfare Benefits
- Article 10 Retirement *(Signed TA not ratified)*
- Article 11 Leaves of Absence *(Signed TA not ratified)*
- Article 12 Transfers and Reassignments
- Article 13 Professional Development Program *(Signed TA not ratified)*
- Article 17 Grievances Procedures
- Article 22 Unit Banking *(Signed TA not ratified)*
- Appendix F Faculty Load Credit (FLC) Allocation Lecture Assignment Schedule
- Appendix G Evaluation Procedures
- New Article on Academic Freedom
- New Article Discipline and Investigations

Fact Finding Panel's Findings and Recommendations

After a review of the facts and arguments presented by both parties, the Chair recommends the following for each of the Articles:

5 Articles have been TA'd

Article 3: Payroll Deductions for Union Dues

Article 10: Retirement

Article 11: Leaves of Absence

Article 13: Professional Development Program

Article 22: Unit Banking

Union and District Positions:

The parties have reached a signed TAs on each of these Articles that have not been ratified.

The Panel recommends all TAs become part of the Collective Bargaining Agreement upon ratification of the entire Agreement.

Article 5: Peaceful Settlement of Differences

Union and District Positions:

The Union proposes to strike Article 5.3, No Strike or Concerted Action and the District proposes Status Quo. There is much caselaw and PERB decisions around this issue. In the opinion of the Chair, this provision is not necessary nor enforceable in the CBA.

The Chair recommends Article 5.3 be dropped from the Collective Bargaining Agreement.

Article 7: Hours of Employment

Union and District Positions:

The District proposed requiring participation at 4 of the current 6 FlexDays. The Union proposed no change to the required 2 FlexDays.

The Chair recommends that full time employees be required to attend 3 of the current FlexDays. The parties should meet to mutually schedule this days. All other provisions of this Article remain Status Quo.

Article 8: Pay and Allowances

Union and District Positions:

At the core of the impasse is the use of the "Formula" or "Fair Share" that provides the basis of "fair share of new income" model for compensation. The Chair believes a similar formula was used to provide compensation as outlined in Article 8.1 of the expired Agreement, although the Chair cannot find the specific formula listed as a provision of this pact, only the resulting compensation and a process to be used if the assessed valuation exceeds a base rate for each year.

The parties based their respective proposals for this successor agreement using the same formula, which used 45.63% of 80% of new income used for employee compensation. This formula yielded an initial amount of $2,431,403 to be used for compensation of the unit.

The District proposed this be the amount applied to "total compensation" and that all increases related to compensation for this unit be paid from this amount. This would include step and column movement and increased Employer contribution to the STRS rate(1.85% in 2016-17). Additionally, any costs for changes to compensation proposed by the Union and agreed to by the District (such as increased steps to the salary schedule) be deducted from this "Pot" of new money.

The Union proposed this formula be applied only to salary and with "no total compensation" process. The Union argues that the District has the ability to pay their proposed solution which would yield 4.77% across-the-board salary increases as well as funding the proposed additional step to the salary schedules, increased Health and Welfare contributions with "no deduction for District's portion of STRS regulatory increases, Step and Column increases or medical benefits increases".

While the District does not make an "inability to pay" claim, they argue that the formula should apply to costs "which go to the unit", including additional employer costs to STRS contributions and Step and Column. This formula, after funding those automatic increased costs, provided a 3.84% "pot" of money dedicated the unit to be used to fund any additional proposals they wished – across-the-board raises, new salary schedule steps and any increases to Health and Welfare. They argue that any additional dollars spent on the unit should be considered in such a formula. They also argued that the 3.84% is higher than most, if not all, of the settlements of the Bay 10. From the data provided by both parties, the 3.84% does leave the unit high in its comparability.

The Chair believes there is much to be said for the use of such a formula. It promotes labor peace and provides predictability for employees and the employer in their fiscal planning. Additionally, it gives the parties hard data for fiscal decision-making about possible changes in salary schedules or health benefits changes, etc. It dedicates an identified proportion of District new revenue to the Union and, in 3 years, when the regulatory STRS increases are met, the money dedicated to those unit costs will be in the "pot" for salary increases. From the data provided by both parties, the 3.84% does appear to leave the unit high in its comparability. If there are specific cells in the schedule that need adjustments, or if the rates of pay for the adjunct schedules need boosting, or if the unit wishes to dedicate more money to the Health and Welfare Benefits plan, using the "pot" of 3.84% provides great flexibility to address those

areas, while still providing an very competitive across-the-board salary increase. Indeed, the District provided a worksheet that funded each of the additional proposals made by the Union and still provided a 3.17% across-the-board salary increase (worksheet attached).

The Chair believes this formula should be captured in the Agreement.

Other employee groups in the District received a 1% off-schedule payment for 2016-17.

The Chair recommends the District Compensation Proposal (calculation yielding $3,696,770 at 45.63% and a salary "pot" equivalent to 3.84% salary increase) be incorporated within the Agreement, including dates for measuring the assessed valuation to determine the calculation. The Chair also recommends the parties meet and agree upon how to distribute that proportion using the District's estimated costs of each of the Union's chosen compensation proposals for each of the years of the contract.

The Chair further recommends a 1% off schedule increase for 2016-17.

Article 9: Health and Welfare Benefits

The Chair recommends this Article remain Status Quo, excepting any mutual agreed upon changes funded from the discussion outlined above in Article 8.

The Chair further recommends the parties join other represented groups of the District to form a Health Benefits Committee. This Committee should receive training and use facilitation, if necessary, to make recommendations to respective bargaining teams for 2019-20.

Article 12: Transfers and Reassignments

Union and District Positions:

The District proposed changes to the current Article that would provide more management discretion on selecting transfers or reassignments to "best serve the instructional needs of the District". The Union had no proposal other than Status Quo on this Article.

The Chair recommends this Article remain Status Quo.

Article 17: Grievance Procedure

Union and District Positions:

The Union proposes adding Binding Arbitration as a final step to the procedures used for processing grievances. They also propose dropping the step that appeals to the Governing Board. The District argues for Status Quo, pointing out that there is not a history of grievances being filed and, thus, is not necessary. They also refer to a grievance filed that related to granting permanent status to an employee as a remedy.

With long experience as a neutral, the Chair believes that arbitration has long been established as a method to resolve disputes. But it is not the end-all answer to addressing legitimate allegations of misapplications of the provisions of the Collective Bargaining Agreement. Including a mediation step, at no cost to the parties using a mediator from the California State Mediation and Conciliation Service, would be of great benefit to the process. This would provide the parties with a more "standard" system of processing grievances. Not having binding arbitration is the rare exemption of CBA's under the HEERA. A look at the data of comparable districts in the Bay 10 clearly demonstrates this.

However, the Chair does not believe that any provision that relates to the granting of tenure or permanent status of an employee should be grievable.

The Chair recommends deleting the current language of Level IV (Board Appeal) and inserting a mediation step in its stead. The Chair also recommends adding a fifth step, Level V, to include a standard Binding Arbitration step EXCLUDING contract issues involving employee tenure from arbitration.

Appendix F: Faculty Load Credit (FLC) Allocation Lecture Assignment Schedule

The Chair recommends this Article remain Status Quo.

Appendix G: Evaluation Procedures

Union and District Positions:

The District proposed significant changes to the Procedures used for the evaluation of unit members. The Union wants process to remain Status Quo. The Chair believes the process used for evaluating the faculty needs periodic review. The Chair believes the correct approach to making changes in the Evaluation of employees is best done by a working group of experts, with recommendations on any changes coming back to the bargaining table.

The Chair recommends the formation of a joint committee of Union and Management representatives to study this issue and present joint recommendations to the bargaining teams for 2019/20. A reasonable number of representatives, perhaps 3-5 per side, would be more efficient. Stating clear start dates and end dates for this committee is necessary.

New Article: Academic Freedom

The Chair recommends this issue be dropped.

New Article: Discipline and Investigation

The Chair recommends this issue be dropped.

Article 23: Duration

The Chair recommends closing the contract for the three years of 2016-17, 2017-18, and 2018-19. For 2018-19, the Chair recommends three non-compensation reopeners plus Appendix G Evaluation Procedures.

The Chair hopes that these recommendations will assist the parties in a settlement of this impasse. The Panel Members representing the District and the Union have conferred with the Chair in Executive Session via phone and email exchanges to thoroughly discuss and finalize this Report and Recommendations. Based on the above Recommendations of the Chair, they concur or dissent as noted below.

Respectfully submitted,

Donald S. Raczka, Chair

For the District:

X Concur

_____ Dissent

John Gray
District Panel Member

For the Union:

X Concur

_____ Dissent

Zev Kvitky
Union Panel Member