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3 FACTFINDING PROCEEDINGS UNDER CALIFORNIA
4 GOVERNMENT CODE SECTIONS 3548.2 AND 3548.3
5

6 **FF-600**

7 In the Matter of a Dispute /
8 /
9 between /
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12 STOCKTON UNIFIED SCHOOL DISTRICT /
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14 /
15 and /
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19 CALIFORNIA SCHOOL EMPLOYEES /
20 ASSOCIATION /
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REPORT AND
RECOMMENDATIONS OF
FACTFINDING PANEL

PERB NO. SA-IM-2698-E

October 04, 2003

22
23 Factfinding Panel

24
25 CHRISTOPHER D. BURDICK, Impartial Chair
26 MARILYN DOMINGO, District Appointed Factfinder
27 MARCIE BAYNE, Association Appointed Factfinder
28

29 Hearing

30
31 September 11, 2003
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33 Appearances

34
35 For the District: Dorothy Landsberg and Karen Daubendiek, Esqs.,
36 Kronick, Moskovitz, Tiedemann & Girard,
37 400 Capitol Mall, Ste. 2700
38 Sacramento, CA, 95814
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40 For the Association: Dan Morris and James Britton, CSEA Labor
41 Relations Representatives,
42 5375 West Lane,
43 Stockton, CA, 95210
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INTRODUCTION

The Stockton Unified School District ("Stockton USD" or "The District") is located in San Joaquin County and includes 44 schools serving 39,000 students. The District is the 16th largest in the State and employs 2900 certificated and between 1500 and 1900 classified employees, including the 575 (more or less) employees in Unit B (the so-called "paraprofessional unit") represented by the California School Employees Association ("CSEA" or "the Association").

In 1999, the District and the Association entered into a multi-year contract to remain in effect until June 30, 2002, with certain reopeners. The parties met and conferred starting in September of 2002 in an effort to reach agreement on a full and comprehensive successor agreement but were ultimately unable to reach such an agreement on a number of issues. This Factfinding arises out of that impasse.

CHRISTOPHER D. BURDICK was appointed by the Pubic Employee Relations Board ("PERB") to serve as Impartial Chair of the Factfinding Panel. MARILYN DOMINGO, the Assistant Superintendent of Business for the USD, was appointed by the employer and the Association appointed MARCIE BAYNE, CSEA Senior Labor Relations Representative. Both parties had previously waived, in writing all of the time limits and deadlines set forth in Cal. Govt. Code Sections 3548.2 and 3548.3. Hearing was held at District headquarters in Stockton on September 11, 2003, and the parties were afforded full opportunity to introduce documents and exhibits, to call and cross-examine witnesses, and to present arguments. At the conclusion of the evidentiary hearing, the parties waived written briefs and submitted short, concise oral arguments in support of their respective positions. The Factfinding Panel met in executive session on September 12, 2003.

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ISSUES

The following issues were submitted to the Panel for review and recommendation:

Professional Attire (or "Dress Code")

Compensation/Salary/Bonuses

Filling of vacancies and compliance with Ed. Code Sec. 45103

USD contribution to health benefit allowance premium payment and increases

Duration of Agreement ("Term")

II

STATUTORY CRITERIA

Gov. Code Sec.3548.2(b) mandates that the Panel consider and apply the following criteria in making its findings and recommendations:

- (1) State and federal laws that are applicable to the employer.
- (2) Stipulations of the parties.
- (3) The interest and welfare of the public and the financial ability of the public school employer.
- (4) Comparison of the wages, hours, and conditions of employment of the employees involved in the factfinding 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 other benefits received.
- (7) Any other facts not confined to those specified in paragraph (1) to (6), inclusive, which are normally or traditionally taken into consideration in making the findings and recommendations.

III

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GENERAL FACTUAL DISCUSSION

3 The students of the USD are overwhelmingly members of "minority groups", with
4 less than 15% of the student body classified as "white". Dist. Exs. 2 and 3. The students
5 come from generally poor and heavily "English as a second language" families. *Ibid.*

6 California's Central Valley has one of the highest unemployment (and poverty) rates in
7 the State. The schools are, as a result, academically challenged. No Stockton USD school
8 has yet reached the "800 goal" on the Academic Performance Index ("API"), and 60% of
9 the high school seniors in the class of 2004 failed the math portion of California High
10 School Exit Examination: 38% failed the English language arts portion of the same exam.
11 Dist. Ex. 3.

12 The District negotiates with eight bargaining units: (1) police officers, represented
13 by the Operating Engineers, Local 3; (2) bus drivers, also represented by Local 3; (3)
14 certificated teachers, represented by the Stockton Teachers Association; (4) classified
15 administrators, represented by the Stockton Unified Supervisors Unit; (5) certificated
16 school administrators, represented by the Stockton School Administrators; (6)
17 certificated pupil personnel workers (such as counselors and psychologists, etc.),
18 represented by the Stockton Pupil Personnel Association; (7) classified clerical, food
19 service and maintenance workers represented by CSEA's Unit A; and (8) the
20 paraprofessionals ("paras") here in question, represented by CSEA's Unit B .

21 The District budgets for and employs approximately 577 paraprofessionals, 295
22 of them on a part-time (4 hours per day or less) basis and 282 on a full-time basis.

23 Seventeen job are classes reflected in the Unit B salary schedule in the 1999-2002
24 Contract (Ass'n. Ex. 6, pp. 65-66), eight of them involved in Special Education and the
25 others in a variety of tasks, from infant and Native American cultural assistants to
26 bilingual and child assistants.

27 The part-time "paras" receive no pension or health insurance benefits; full-timers
28 do enjoy those benefits. The District provides retirement benefits to those eligible for
29 them through the California Public Employees Retirement System ("PERS") and
30 provides health insurance benefits through only two carriers, Kaiser and Pacificare.

1 Demographically, the vast majority of the paras (and most other USD employees) eligible
2 for health insurance elect Pacificare for their benefits.

3 The District claims, and the Association does not deny, that Stockton's
4 paraprofessionals are the highest salaried workers of that type among the other school
5 districts traditionally regarded by the parties as comparable (e.g., Manteca, Lodi, Lincoln,
6 Modesto, Ripon, San Joaquin Office of Education: see Dist. Ex. 7). Nevertheless, the
7 wage scales for the job classes in Unit B are fairly low, ranging from a high of \$2840
8 monthly (at the top step of each salary range) to a low in 1999 of \$2017. The District
9 does not contend that it lacks the financial ability to pay any or all of the Association's
10 proposals. Other than a comparison by the District of the salaries for its paras as
11 compared to other districts, neither party made any showing of prevailing practices for
12 any of the disputed items by other public employers nor of the increases (if any) in the
13 consumer price index.

14 In 2002 and 2003 the District managed to reach agreements (with greater or lesser
15 degrees of difficulty) with all of its units except for Unit B. Impasse was finally declared
16 on the issues set forth above.

17 A) Duration of Agreement/Term. In regards to Term and
18 salary/compensation, the parties were not, in fact, that far apart. The District had been
19 proposing a two-year contract but had indicated during the factfinding that, contingent
20 upon the contents of the contract, it would not be adverse to a three-year contract, with
21 some reopeners. The Association had been interested in a three-year agreement almost
22 from the inception.

23 B) Salary/bonuses/compensation. In regards to salary/compensation,
24 all the other units took essentially the same thing: for FY 2002-2003, an "off-the-scale"
25 bonus of 1%; for FY 2003-2004, a salary increase of 1%; and if the contract called for a
26 third year, no salary increase at all. CSEA's salary proposal shifted during negotiations
27 but, in the end, was tied into its health insurance proposal. For FY 2002-2003, CSEA
28 proposed a one-time "off-the-scale" bonus of 1% paid only to the employees working
29 four hours or less per day; for FY 2003-2004, an across-the-board salary increase of 1%;
30 and for FY 2004-2005, no salary increase. CSEA had hoped that the money saved (if

1 any) by extending the bonus to less than the full unit would encourage the District to back
2 off its health insurance premium proposal for set dollar caps: see *infra*.

3 C) Health benefit allowance. The District maintains a flat, single,
4 composite premium rate for its employees and all their eligible, covered dependents,
5 regardless of their number. Thus, there are no 1-party, 2-party or 3-party rates, which are
6 higher, the more dependents one cover. Departing from long-standing past practice
7 (whereby the District had traditionally agreed to pay the entire premium for the lowest
8 cost HMO health care plan during the life of the labor contract, whatever that premium
9 might be), the District insisted upon, and all the unions/associations except CSEA Unit B
10 ultimately agreed, to set dollar or percentage increase caps on the District's future
11 exposure. So, the contracts all provide for a "health benefit allowance (medical,
12 employee assistance program, vision, chiropractic and dental)" with a maximum District
13 monthly premium contribution of \$575.23 in FY 2002-2003 and \$661.91 in FY 2003-
14 2004.

15 The STA contract extended through FY 2004-2005 and for that year the parties
16 agreed to split the cost of any premium increase over \$661.91 on a 50/50 basis, with the
17 split "sunsetting" on June 30, 2005. Thus, STA employees, for the first time, assumed
18 some of the financial risk and exposure if premium increases for the lowest cost plan
19 went over an agreed threshold. STA also agreed to a zero percent salary increase for FY
20 2004-2005.

21 The other contracts were for two years, had firm, set dollar caps and did not
22 provide for such a split during the third year of their terms.

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24 D) Filling of Vacancies. The contract for Unit B (Ass'n Ex. 6) has contained,
25 since at least 1987 or so, a section 13.1.4, providing:

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27 13.1.4. Vacancy.

28 For purposes of this Article, a "vacancy" is a new position,
29 an opening arising from a resignation, retirement or
30 termination, or as a result of a voluntary transfer, or any
31 position which is not committed for purposes of leaves,
32 unresolved involuntary transfers, or layoffs.

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13.1.4.1

The District may fill any vacancy on an interim basis for a period not to exceed seventy-five calendar days. Any such interim appointments shall be listed pursuant to section 13.21. along with reasons for the appointment.

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The Education Code provides a shorter time period - 60 calendar days —for some, but not all, of these contingencies in Sec. 45103, as follows:

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Substitute employee means any person employed to replace any classified employee **who** is **temporarily absent** from duty. In addition, if the district is then engaged in a procedure to fill a vacancy through the employment, for not more than 60 calendar days, of one or more substitute employees, **except to the extent that a collective bargaining agreement then in effect provides for a different period of time.** {Emphasis added}.

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E) Professional Attire. Lastly, the District had asked STA and CSEA's Unit A to agree to a new "Professional Attire" clause in their contracts - STA adamantly refused, but CSEA's Unit A finally agreed to do so. That clause (Dist. Ex. 10) reads essentially as follows:

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Professional Attire

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The District believes that since the classified staff serves as role models, they should maintain professional standards of dress and grooming. Just as an overall attitude and instructional competency contribute to a productive learning environment, so do appropriate dress and grooming. Professional attire shall be established by each school site and/or department.

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Intent:

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The intent of this article is not to tell individual employees what to wear but is designed to deal with situations of inappropriate attire. Even though it is a management prerogative to establish dress codes, the District does not waive this right. Dress standards established by sites or departments will occur after consultation with each respective site or department. Should bargaining unit members have concerns regarding the administration of the articles [sic], such

1 concerns shall be addressed through the grievance procedures in this collective
2 bargaining agreement. This provision shall sunset on June 30, 2004.

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4 The District enforces a comprehensive and exhaustive attire policy for all of its
5 students. Board Policy 5132: Dist. Ex. 13. So-called "gang apparel", in particular is an
6 issue and a problem addressed by the Policy. A number of the schools require the
7 wearing of a standard uniform, so that all those students are identically attired,

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III
RECOMMENDATIONS

12 Based upon the general factual background set forth above, the Panel makes the
13 following recommendations on the disputed issues.

14 A. Health Insurance Premium Benefit/Allowance.

15 1. Positions of the Parties

16 The District proposes the same approach to CSEA Unit B as it had proposed to,
17 and had reached agreement on, all its other units, namely a departure from the guarantee
18 of the payment of the entire premium for the lowest cost plan and a move to a set, fixed
19 dollar amount. The District argues that it has no control over the insurance carriers but
20 needs to budget carefully and has to project now its future costs with some certainty and
21 that having the employees pay something towards their own premiums may encourage a
22 heightened awareness of health costs. The District also believes that salary and health
23 premium benefits must be negotiated together as part of a "total compensation" approach
24 to bargaining.

25 The Association points out that its Unit B members are the lowest paid of all the
26 District's employees and that shifting even *de minimis* premium costs on to workers
27 making less than \$15.00 per hour may force those employees to drop coverage or impose
28 other financial hardships on their families.

29 2. Discussion.

30 As noted above, no showing was made by either party of the criteria set
31 forth in Gov. Code Sec. 3548.2(B) 1 [state and federal laws], 2 [stipulations of the
32 parties], 4 [comparison of USD compensation with other public employers], or 5 [the

1 CPI] to the items in dispute. Instead, the parties concentrated their attention on Sec.
2 3548.2(b) 3 [interest and welfare of the public], 6 [the overall compensation received by
3 the paras], and 7 [other facts normally or traditionally considered in labor disputes of this
4 type - here, primarily, the contracts of the District with its other labor organizations].

5 CSEA points to the fact that these are the District's most poorly paid workers and
6 argues that any decrease in their net take home pay could be disastrous for these low-
7 income workers. The District observes (without contradiction) that the salary range for
8 the paras at Stockton is the highest of all comparables and says that a standard, district-
9 wide approach to the payment and sharing of increases in health premiums is the most
10 desirable course.

11 In Banning Teachers Ass'n. NEA/CTA v PERB, 44 Cal 3rd 799 (1988), the
12 Supreme Court noted that a school district has a *bona fide* interest in trying to maintain an
13 equivalent level of fringe benefits among differing bargaining units. In essence, here
14 CSEA's Unit B urges an approach under which the employer is saddled during the life of
15 the contract (and, ideally, as far as the Association is concerned, forever) with carrying
16 the entire burden and risk of future premium increases, without cap or limit. The cost of
17 medical insurance continues to increase nationally at a rate 3 or 4 times that of the
18 increase in the CPI, and there is no end in sight. The District desires to "negotiate
19 dollars", and not "coverage", in an effort to predict and control its costs, whereas the
20 Association wants, in essence, for third parties - here the carriers - to dictate and impose
21 whatever they chose to charge.

22 The Chair is persuaded that the criteria of (3) and (7) here support the District's
23 position on this issue.

24

25 3. Recommendation.

26 For its health benefits allowance, the District shall pay a sum not to exceed
27 \$570.25 for FY 2002-2003; a sum not to exceed \$661.91 for FY 2003-2004; and if there
28 is to be a third year in the contract, there shall be a reopener for negotiations dealing with
29 any premium increases in that year. Corresponding language concerning health benefits

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1 for early retirees and other pertinent sections of the collective bargaining agreement
2 concerning health benefits (e.g., spousal rebates, etc) shall be modified in accordance
3 with the terms of the overall contract.

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5 B. Compensation/Salaries/Bonuses.

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7 1. Positions of the Parties.

8 The parties are apart on only one relatively minor item - the extension of
9 the so-called "off-the-scale" bonus in FY 2202-2003. Surprisingly it is the employer that
10 wants to give more bonus than the Association would like to receive. The District wishes
11 to give the 1% to everyone in the unit - the Association hoped that by extending the
12 bonus to only the lowest paid of its unit members, it could encourage the District to
13 continue its past practice of picking up the entire health benefit allowance premium and
14 fixture increases.

15 The District observes that every other unit has taken the bonus in 2202-2003 as it
16 proposed and it does not wish to withhold that bonus from some of its lowest paid
17 workers.

18 The Association does not truly spurn the bonus - it would like to put the money
19 elsewhere, namely back in the District's pocket to use for the paras' health benefit
20 premium increases. There is no dispute about salaries in FY 2003-2004, and neither party
21 has made a firm proposal to the other on salaries for a possible third-year year.

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23 2. Discussion.

24 Here the criteria of Gov. Code Sec. 3548.2(b) 3, 4, 6 and 7 are applicable.
25 It would be anomalous for all of the District's employees to receive the 2002-2003 bonus
26 except the full-time paras. Given the recommendation, *supra*, on the health insurance
27 benefits premium, there is no reason for those employees to waive their bonus in an
28 attempt to maintain the *status quo* on health insurance premium pickups. The District
29 wishes to give the bonus to all and does not claim it lacks the ability to pay it.

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1 2. Recommendation.

2 The Panel recommends that the full 1% "off-the scale" bonus be given in
3 FY 2002-2003 be given to all employees in the bargaining unit¹; that for FY 2003-2004
4 salaries be raised by 1% across-the board; and that if the parties agree to a third year, that
5 there be a salary increase reopener.

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7 C. Filling Vacancies/Education Code Sec. 45103.

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9 1. Positions of The Parties. CSEA's' proposal to reduce the time under Art.
10 13.1.41.1 for filling all temporary vacancies (regardless of the event precipitating the
11 vacancy) from 75 to 60 calendar days was linked in the early negotiations to CSEA's
12 proposed changes to Art. 13.5.3, dealing with "lateral transfers" to vacant positions. The
13 present language of 13.5.3 allows the District to select any applicant for the vacancy -
14 CSEA proposed to base selection on strict seniority within classification. See CSEA
15 Ex.10.

16 CSEA claims (see CSEA Ex. 4) that the present language of Sec. 13.1.4.1 violates
17 Ed. Code Sec. 25103, quoted at page 7, *supra*, and should be changed for that reason
18 alone. This argument fails for two reasons: first, that section of the Code explicitly allows
19 the District and the Association to negotiate for different time periods, and they have
20 done so; second, the Education Code expressly covers only filling the position of "...any
21 classified employee who is temporarily absent from duty." Art. 13.1.4 deals with all
22 vacancies, permanent and temporary. The CSEA proposal (which is grounded on its
23 interpretation of the Education Code) would cover all vacancies and not just those
24 addressed by the Code.

25 2. Discussion. The "problem" that CSEA really wishes to address is not
26 the relatively minor difference between 75 and 60 calendar days (just a day over two
27 work weeks). The issue for CSEA is the inability (or unwillingness) of the District to
28 provide CSEA with timely information on which Unit B positions are vacant; which
29 vacancies are permanent or temporary; which vacancies are being temporarily filled; and

¹ This bonus should be paid, in whole or on a *pro rata* basis, to all those employed in FY 2002-2003, even if those workers are no longer employed by the District.

1 the status of the worker who is filling the vacancy. This is important because CSEA
2 members often wish to transfer to vacant positions to (1) receive additional pay for
3 "working out of classification" (see Art. 8.7 of the Collective Bargaining Agreement:
4 CSEA Ex. 6, p. 26); and (2) to gain experience working in a different job classification,
5 experience which is a "resume-builder" and helpful in future promotions. Unless the
6 employees and CSEA can quickly learn the relevant vacancy information, the workers
7 may lose the opportunity to apply for lateral transfers to such vacancies. This issue of
8 notice and reporting could be addressed via a reopener - see Duration of Agreement,
9 *infra*.

10 3. Recommendation.

11 The Panel recommends that the language of Art. 13.1.4 be amended to provide
12 that **temporary** vacancies be filled within 60 calendar days and that the rest of the
13 present language of the Section remain unchanged, so that all other vacancies may be
14 filled on the present 75-day basis.

15 D. Professional Attire.

16 1. Positions of the Parties.

17 The parties agree that this is the most contentious and significant issue separating
18 them from a new agreement. The District had unsuccessfully sought to get an agreement
19 on this issue from its "professionals" (that is, the teachers) but still wishes to achieve this
20 goal from its paraprofessionals. CSEA's Unit A (clerical and white-collar workers)
21 grudgingly agreed to this concept. See. Dist. Ex. 4, Item Number 7.3., p. 2869. The bus
22 drivers and police officers wear standard uniforms, receive a uniform allowance, and are
23 not impacted by this approach.

24 The rationale for this proposal was made during the hearing by Jess Serna, the
25 District's Director of Labor Relations, and is supported by a letter of the Superintendent
26 to the Panel dated September 11, 2003. Dist. Ex. 3. In his letter, Superintendent Ridler
27 outlined the efforts made by the District and its voters (who passed a substantial bond
28 issue to improve facilities) to upgrade the District's performance:

29 We have three critical interrelated priorities. The district's highest priority
30 is to improve student achievement...

31 An equally important priority is our employees. They are our priority
32 because student success is our mission and that success depends on the dedication

1 of our employees. We have a proven track record of the highest employee salaries
2 in San Joaquin County. ...Our employees are dedicated and work hard...

3.

4 When we examine how we have addressed our priorities, our record is
5 clear with respect to employee compensation; we are among the highest paying
6 districts in the county. However, our priority of improving student achievement is
7 far from realization. Much more must be done.

8

9 Serna described the District's student dress code and the uniform policy at a
10 number of the schools, and testified to the firm belief of the Superintendent and of the
11 Board that a key ingredient to greater student achievement is the role model success of
12 teachers and paraprofessionals. Serna testified that the Board strongly believes that
13 "proper, professional attire" is one important element in achieving that role model
14 success. Conceding that the District was unable to convince STA to agree to this
15 proposal², Serna said the Board was still firmly committed to establishing the policy
16 wherever it could.

17 CSEA and its Unit B members (a number of whom testified at the hearing on the
18 health and attire issues) object to the proposals on a number of not unconvincing grounds:
19 (1) if the District's "professionals" (the teachers) cannot be compelled to don
20 "professional attire", then the District should not insist that its lowly-paid para-
21 professionals do so; (2) there has never been a problem or complaint by a school/site
22 manager about the attire of a paraprofessional, so "if it ain't broke, don't fix it"; (3) the
23 policy allows each separate site/school to set its own standards and so there will be
24 inconsistent standards and enforcement, with a resulting lack of predictability of what is
25 acceptable as the worker moves from one site to another; (4) the proposed policy shuts
26 CSEA out of the consultation process at each site and puts the onus on individual
27 employees to deal with site/school managers; (5) some site/school managers are
28 autocratic and arbitrary and cannot be trusted to be fair; (6) the policy would require
29 employees to buy new wardrobes and clothing and would impose unreimbursed out-of-
30 pocket expenses on already overburdened, low paid workers.

31 The District replies that (1) it believes it has the inherent management right to
32 impose this standard, with or without the agreement of the Association, and has only an

² STA apparently believes that teachers have a First Amendment right to freedom of expression in their personal choice of classroom clothing, perhaps a mistaken belief given Kelly v Johnson, 47 L. Ed. 2d 708.

1 "impact bargaining" obligation but wishes to reach a consensual agreement; (2) that it is
2 flexible on the precise language of the policy and does not object to a CSEA role in any
3 consultation; (3) that the policy does not require the purchase or wearing of any particular
4 clothes but merely prohibits "unprofessional attire" and that the clothes worn by the
5 CSEA witnesses that day were well within the desired "professional" standards; (4) that
6 different sites/schools have different goals and needs and so flexibility is important; (5)
7 that any employee aggrieved by the decision of a school/site member can resort to the
8 grievance procedure; (6) that it while it was a great disappointment not to get the
9 agreement of STA, the declination of that group does not detract from the desirability of
10 starting this program somewhere in the District's classrooms; and (7) and that the policy
11 will sunset out on June 30, 2004.

12 2. Discussion.

13 It is unfortunate that STA could not reach an agreement with the District on this
14 issue, as one cannot help but sympathize with the paraprofessionals in their belief that if
15 their professional "superiors" in the classroom cannot be forced to adhere to minimal
16 attire standards that they should not be compelled to do so either. But this refusal by STA
17 does not diminish the force of the District's argument that heightened classroom
18 standards are a necessary step towards the District's primary goal, improving student
19 performance. If the students can be compelled to adhere to far more stringent clothing
20 standards, it is not unreasonable that their adult supervisors should be subject to some *de*
21 *minimis* standards of propriety and appearance as well. The District has to start
22 somewhere, and if it cannot start with its teachers, the CSEA units (particularly the Unit
23 with a strong classroom presence, such as Unit B) are the next best place to do so.

24 The Chair is persuaded that the criteria of Gov. Code Sec. 3548.2(b) (3) [welfare
25 of the public] and (7) [other facts and criteria traditionally relied upon] dictate adoption
26 of the District approach and philosophy. The apparel worn by the Association's witnesses
27 at the hearing (clothing one could expect to see on the average shopper running errands at
28 the mall on a Saturday afternoon) were explicitly declared by the District witnesses and
29 counsel to be well within the reasonable expectations of the District. The policy does not
30 tell people what to wear - it tells them that they cannot wear attire that is contrary to their
31 role model status. There is certainly a lack of clarity in such a "thou shalt not" approach,

1 but that is the purpose of the consultation aspect of the policy. The Chair cannot assume
2 that some of the school/site administrators will be so arbitrary or capricious that their
3 excesses cannot be quickly relieved via the grievance and consultation process. Lastly,
4 the policy will sunset on June 30, 2004.

5 Having said this however, the Chair believes that the District's actual proposal
6 does not give a sufficient role to CSEA in the consultation process at each school/site.

7 3. Recommendation. The Panel recommends that the agreement contain
8 the following language:

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10 Professional Attire

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12 The District believes that its classified staff serves as role models and so should
13 maintain professional standards of dress and grooming. Just as one's overall
14 attitude and instructional competency contribute to a productive learning
15 environment, so too do appropriate dress and grooming. After consultation with
16 the Association, professional attire standards may be established by each school
17 site and/or department. The District believes that it has an inherent management
18 prerogative to establish dress codes, and, by adopting this Policy, the District does
19 not waive this right

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21 Intent:

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23 It is NOT the intent of this article to tell individual employees what to wear.
24 Instead, it is the intent of this Policy to deal with situations of inappropriate attire.
25 Any bargaining unit member, or the Association, or a group of employees who
26 have concerns regarding the application or administration of this Policy may
27 address those concerns through the grievance procedures in this collective
28 bargaining agreement. This provision shall sunset on June 30, 2004.

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30 E. Duration of Agreement/Term

31 1. Positions of The Parties.

32 As noted above, during negotiations the District had proposed a two-year
33 agreement, while CSEA had desired a three-year agreement. However, during
34 Factfinding the parties indicated a mutual interest in a three-year contract with several
35 reopeners.

36 2. Discussion. It makes little sense to sign now a contract expiring on June
37 30, 2004. The parties would have to sit back down at the table to negotiate a new contract

1 while the ink was barely dry on the "old" agreement. Stability, a chance to live with the
2 Professional Attire policy, and a myriad of logistic reasons (as well as the pattern of most
3 of the District's other agreements) militate for a three-year contract, with reopeners for
4 salary and health benefits and two additional reopeners per side for FY 2004-2005.

5 3. Recommendation. The Panel recommends a three-year collective
6 bargaining agreement, with a term of July 1, 2002-June 30, 2005, with reopeners for
7 salaries and health benefits and two additional reopeners per side for reopener year 2004-
8 2005.

9

10 DATED: October 04, 2003

11

12

Christopher D Burdick

13

Impartial Chair

14

15 Although I do not necessarily agree with all of the Chair's findings and
16 recommendations, I believe it in the best interests of the parties to adopt the settlement
17 recommended in this report.

18

19 DATED: October 06, 2003

20

Marilyn Domingo

21

District Appointed Factfinder

22

23

24 I respectfully dissent from the Findings and Recommendations on the
25 Professional Attire Issue, for the following reasons: The Professional Attire language has
26 been a key factor in the contentious negotiations between CSEA - Unit B and Stockton
27 Unified School District. The District does not cite any dress code issues or violations or
28 disciplinary matters that it has had with respect to this bargaining unit. It appears to want
29 to implement this particular requirement on the Paraprofessionals, even though it did not
30 reach agreement with the teachers on this same issue. The Stockton Unified School
31 District is using this issue with the Paraprofessionals as a wedge issue with the other

1 bargaining units. If Unit B agrees to this issue, the Stockton Unified School District will
2 use that agreement to put pressure, on the teachers for settlement. CSEA - Unit A
3 accepted the professional attire language mainly because of the types of jobs and
4 classifications in that bargaining unit and some specific circumstances which made this
5 issue one to be settled in Unit A. CSEA Unit B does not have the same or similar
6 circumstances.

7 The classifications and work performed by the Paraprofessionals is quite different
8 than Unit A. As testimony showed, they work on the floor with the children in games,
9 crafts and classroom activities. In many cases, especially in the Special Education
10 Assistants classification, they may deal with students who are in need of diapering, tube
11 feeding, and other bodily functions. The clothing they wear can become soiled and
12 stained. This language sets up a standard that is different than the certificated professional
13 in the same classrooms.

14 The language recommended also indicates that it is a "management prerogative to
15 establish dress codes". CSEA believes that this is a mandatory subject of bargaining
16 based on the tests for determining bargaining set forth in "Anaheim", [Anaheim UHSD
17 (1981) No. 177, 52 CPER 64], which states that a subject is negotiable if it

18 (1) *Logically and reasonably relates to an enumerated mandatory subject*
19 *of bargaining.* In this case, the dress attire becomes a "terms and
20 condition" of employment. If a paraprofessional does not follow the
21 prescribed "professional attire" outlined at their work site, they could
22 be subject to the discipline procedure.

23 (2) *Of sufficient concern to parties that conflict is likely and mediatory*
24 *influence of bargaining is appropriate to resolve the conflict.* This is
25 definitely the case with this issue. Impasse procedures have been
26 unable to produce a resolution to this issue.

27 (3) *And negotiations will not significantly abridge managerial*
28 *prerogatives.* This was an issue included in the District's initial
29 proposal of November 6, 2002. In this initial proposal the Stockton
30 Unified School District made no claim that "professional attire" was a
31 managerial prerogative. The District then made the "managerial

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2
3 FACTFINDING PROCEEDINGS UNDER CALIFORNIA
4 GOVERNMENT CODE SECTIONS 3548.2 AND 3548.3
5

6 **FF-600**

7 In the Matter of a Dispute /
8 /
9 between / REPORT AND
10 / RECOMMENDATIONS OF
11 / FACTFINDING PANEL
12 /
13 STOCKTON UNIFIED SCHOOL DISTRICT /
14 / PERB NO. SA-IM-2698-E
15 /
16 and /
17 / October 04, 2003
18 /
19 CALIFORNIA SCHOOL EMPLOYEES /
20 ASSOCIATION /
21 /

22
23 Factfinding Panel
24

25 CHRISTOPHER D. BURDICK, Impartial Chair
26 MARILYN DOMINGO, District Appointed Factfinder
27 MARCIE BAYNE, Association Appointed Factfinder
28

29 Hearing
30

31 September 11, 2003
32

33 Appearances
34

35 For the District: Dorothy Landsberg and Karen Daubendiek, Esqs.,
36 Kronick, Moskovitz, Tiedemann & Girard,
37 400 Capitol Mall, Ste. 2700
38 Sacramento, CA, 95814
39

40 For the Association: Dan Morris and James Britton, CSEA Labor
41 Relations Representatives,
42 5375 West Lane,
43 Stockton, CA, 95210
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INTRODUCTION

The Stockton Unified School District ("Stockton USD" or "The District") is located in San Joaquin County and includes 44 schools serving 39,000 students. The District is the 16th largest in the State and employs 2900 certificated and between 1500 and 1900 classified employees, including the 575 (more or less) employees in Unit B (the so-called "paraprofessional unit") represented by the California School Employees Association ("CSEA" or "the Association").

In 1999, the District and the Association entered into a multi-year contract to remain in effect until June 30, 2002, with certain reopeners. The parties met and conferred starting in September of 2002 in an effort to reach agreement on a full and comprehensive successor agreement but were ultimately unable to reach such an agreement on a number of issues. This Factfinding arises out of that impasse.

CHRISTOPHER D. BURDICK was appointed by the Pubic Employee Relations Board ("PERB") to serve as Impartial Chair of the Factfinding Panel. MARILYN DOMINGO, the Assistant Superintendent of Business for the USD, was appointed by the employer and the Association appointed MARCIE BAYNE, CSEA Senior Labor Relations Representative. Both parties had previously waived, in writing all of the time limits and deadlines set forth in Cal. Govt. Code Sections 3548.2 and 3548.3. Hearing was held at District headquarters in Stockton on September 11, 2003, and the parties were afforded full opportunity to introduce documents and exhibits, to call and cross-examine witnesses, and to present arguments. At the conclusion of the evidentiary hearing, the parties waived written briefs and submitted short, concise oral arguments in support of their respective positions. The Factfinding Panel met in executive session on September 12,2003.

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ISSUES

The following issues were submitted to the Panel for review and recommendation:

Professional Attire (or "Dress Code")

Compensation/Salary/Bonuses

Filling of vacancies and compliance with Ed. Code Sec. 45103

USD contribution to health benefit allowance premium payment and increases

Duration of Agreement ("Term")

II

STATUTORY CRITERIA

Gov. Code Sec.3548.2(b) mandates that the Panel consider and apply the following criteria in making its findings and recommendations:

- (1) State and federal laws that are applicable to the employer.
- (2) Stipulations of the parties.
- (3) The interest and welfare of the public and the financial ability of the public school employer.
- (4) Comparison of the wages, hours, and conditions of employment of the employees involved in the factfinding 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 other benefits received.
- (7) Any other facts not confined to those specified in paragraph (1) to (6), inclusive, which are normally or traditionally taken into consideration in making the findings and recommendations.

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GENERAL FACTUAL DISCUSSION

3 The students of the USD are overwhelmingly members of "minority groups", with
4 less than 15% of the student body classified as "white". Dist. Exs. 2 and 3. The students
5 come from generally poor and heavily "English as a second language" families. *Ibid.*
6 California's Central Valley has one of the highest unemployment (and poverty) rates in
7 the State. The schools are, as a result, academically challenged. No Stockton USD school
8 has yet reached the "800 goal" on the Academic Performance Index ("API"), and 60% of
9 the high school seniors in the class of 2004 failed the math portion of California High
10 School Exit Examination: 38% failed the English language arts portion of the same exam.
11 Dist. Ex. 3.

12 The District negotiates with eight bargaining units: (1) police officers, represented
13 by the Operating Engineers, Local 3; (2) bus drivers, also represented by Local 3; (3)
14 certificated teachers, represented by the Stockton Teachers Association; (4) classified
15 administrators, represented by the Stockton Unified Supervisors Unit; (5) certificated
16 school administrators, represented by the Stockton School Administrators; (6)
17 certificated pupil personnel workers (such as counselors and psychologists, etc.),
18 represented by the Stockton Pupil Personnel Association; (7) classified clerical, food
19 service and maintenance workers represented by CSEA's Unit A; and (8) the
20 paraprofessionals ("paras") here in question, represented by CSEA's Unit B .

21 The District budgets for and employs approximately 577 paraprofessionals, 295
22 of them on a part-time (4 hours per day or less) basis and 282 on a full-time basis.

23 Seventeen job are classes reflected in the Unit B salary schedule in the 1999-2002
24 Contract (Ass'n. Ex. 6, pp. 65-66), eight of them involved in Special Education and the
25 others in a variety of tasks, from infant and Native American cultural assistants to
26 bilingual and child assistants.

27 The part-time "paras" receive no pension or health insurance benefits; full-timers
28 do enjoy those benefits. The District provides retirement benefits to those eligible for
29 them through the California Public Employees Retirement System ("PERS") and
30 provides health insurance benefits through only two carriers, Kaiser and Pacificare.

1 Demographically, the vast majority of the paras (and most other USD employees) eligible
2 for health insurance elect Pacificare for their benefits.

3 The District claims, and the Association does not deny, that Stockton's
4 paraprofessionals are the highest salaried workers of that type among the other school
5 districts traditionally regarded by the parties as comparable (e.g., Manteca, Lodi, Lincoln,
6 Modesto, Ripon, San Joaquin Office of Education: see Dist. Ex. 7). Nevertheless, the
7 wage scales for the job classes in Unit B are fairly low, ranging from a high of \$2840
8 monthly (at the top step of each salary range) to a low in 1999 of \$2017. The District
9 does not contend that it lacks the financial ability to pay any or all of the Association's
10 proposals. Other than a comparison by the District of the salaries for its paras as
11 compared to other districts, neither party made any showing of prevailing practices for
12 any of the disputed items by other public employers nor of the increases (if any) in the
13 consumer price index.

14 In 2002 and 2003 the District managed to reach agreements (with greater or lesser
15 degrees of difficulty) with all of its units except for Unit B. Impasse was finally declared
16 on the issues set forth above.

17 A) Duration of Agreement/Term. In regards to Term and
18 salary/compensation, the parties were not, in fact, that far apart. The District had been
19 proposing a two-year contract but had indicated during the factfinding that, contingent
20 upon the contents of the contract, it would not be adverse to a three-year contract, with
21 some reopeners. The Association had been interested in a three-year agreement almost
22 from the inception.

23 B) Salary/bonuses/compensation. In regards to salary/compensation,
24 all the other units took essentially the same thing: for FY 2002-2003, an "off-the-scale"
25 bonus of 1%; for FY 2003-2004, a salary increase of 1%; and if the contract called for a
26 third year, no salary increase at all. CSEA's salary proposal shifted during negotiations
27 but, in the end, was tied into its health insurance proposal. For FY 2002-2003, CSEA
28 proposed a one-time "off-the-scale" bonus of 1% paid only to the employees working
29 four hours or less per day; for FY 2003-2004, an across-the-board salary increase of 1%;
30 and for FY 2004-2005, no salary increase. CSEA had hoped that the money saved (if

1 any) by extending the bonus to less than the full unit would encourage the District to back
2 off its health insurance premium proposal for set dollar caps: see *infra*.

3 C) Health benefit allowance. The District maintains a flat, single,
4 composite premium rate for its employees and all their eligible, covered dependents,
5 regardless of their number. Thus, there are no 1-party, 2-party or 3-party rates, which are
6 higher, the more dependents one cover. Departing from long-standing past practice
7 (whereby the District had traditionally agreed to pay the entire premium for the lowest
8 cost HMO health care plan during the life of the labor contract, whatever that premium
9 might be), the District insisted upon, and all the unions/associations except CSEA Unit B
10 ultimately agreed, to set dollar or percentage increase caps on the District's future
11 exposure. So, the contracts all provide for a "health benefit allowance (medical,
12 employee assistance program, vision, chiropractic and dental)" with a maximum District
13 monthly premium contribution of \$575.23 in FY 2002-2003 and \$661.91 in FY 2003 -
14 2004.

15 The STA contract extended through FY 2004-2005 and for that year the parties
16 agreed to split the cost of any premium increase over \$661.91 on a 50/50 basis, with the
17 split "sunsetting" on June 30, 2005. Thus, STA employees, for the first time, assumed
18 some of the financial risk and exposure if premium increases for the lowest cost plan
19 went over an agreed threshold. STA also agreed to a zero percent salary increase for FY
20 2004-2005.

21 The other contracts were for two years, had firm, set dollar caps and did not
22 provide for such a split during the third year of their terms.

23

24 D) Filling of Vacancies. The contract for Unit B (Ass'n Ex. 6) has contained,
25 since at least 1987 or so, a section 13.1.4, providing:

26

27 13.1.4. Vacancy.

28 For purposes of this Article, a "vacancy" is a new position,
29 an opening arising from a resignation, retirement or
30 termination, or as a result of a voluntary transfer, or any
31 position which is not committed for purposes of leaves,
32 unresolved involuntary transfers, or layoffs.

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13.1.4.1 The District may fill any vacancy on an interim basis for a period not to exceed seventy-five calendar days. Any such interim appointments shall be listed pursuant to section 13.21. along with reasons for the appointment.

The Education Code provides a shorter time period - 60 calendar days —for some, but not all, of these contingencies in Sec. 45103, as follows:

Substitute employee means any person employed to replace any classified employee **who is temporarily absent** from duty. In addition, if the district is then engaged in a procedure to fill a vacancy through the employment, for not more than 60 calendar days, of one or more substitute employees, **except to the extent that a collective bargaining agreement then in effect provides for a different period of time.** [Emphasis added].

E) Professional Attire. Lastly, the District had asked STA and CSEA's Unit A to agree to a new "Professional Attire" clause in their contracts - STA adamantly refused, but CSEA's Unit A finally agreed to do so. That clause (Dist. Ex. 10) reads essentially as follows:

Professional Attire

The District believes that since the classified staff serves as role models, they should maintain professional standards of dress and grooming. Just as an overall attitude and instructional competency contribute to a productive learning environment, so do appropriate dress and grooming. Professional attire shall be established by each school site and/or department.

Intent:

The intent of this article is not to tell individual employees what to wear but is designed to deal with situations of inappropriate attire. Even though it is a management prerogative to establish dress codes, the District does not waive this right. Dress standards established by sites or departments will occur after consultation with each respective site or department. Should bargaining unit members have concerns regarding the administration of the articles [sic], such

1 concerns shall be addressed through the grievance procedures in this collective
2 bargaining agreement. This provision shall sunset on June 30, 2004.

3

4 The District enforces a comprehensive and exhaustive attire policy for all of its
5 students. Board Policy 5132: Dist. Ex. 13. So-called "gang apparel", in particular is an
6 issue and a problem addressed by the Policy. A number of the schools require the
7 wearing of a standard uniform, so that all those students are identically attired,

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RECOMMENDATIONS

11

12 Based upon the general factual background set forth above, the Panel makes the
13 following recommendations on the disputed issues.

14 A. Health Insurance Premium Benefit/Allowance.

15 1. Positions of the Parties

16 The District proposes the same approach to CSEA Unit B as it had proposed to,
17 and had reached agreement on, all its other units, namely a departure from the guarantee
18 of the payment of the entire premium for the lowest cost plan and a move to a set, fixed
19 dollar amount. The District argues that it has no control over the insurance carriers but
20 needs to budget carefully and has to project now its future costs with some certainty and
21 that having the employees pay something towards their own premiums may encourage a
22 heightened awareness of health costs. The District also believes that salary and health
23 premium benefits must be negotiated together as part of a "total compensation" approach
24 to bargaining.

25 The Association points out that its Unit B members are the lowest paid of all the
26 District's employees and that shifting even *de minimis* premium costs on to workers
27 making less than \$15.00 per hour may force those employees to drop coverage or impose
28 other financial hardships on their families.

29 2. Discussion.

30 As noted above, no showing was made by either party of the criteria set
31 forth in Gov. Code Sec. 3548.2(B) 1 [state and federal laws], 2 [stipulations of the
32 parties], 4 [comparison of USD compensation with other public employers], or 5 [the

1 CPI] to the items in dispute. Instead, the parties concentrated their attention on Sec.
2 3548.2(b) 3 [interest and welfare of the public], 6 [the overall compensation received by
3 the paras], and 7 [other facts normally or traditionally considered in labor disputes of this
4 type - here, primarily, the contracts of the District with its other labor organizations].

5 CSEA points to the fact that these are the District's most poorly paid workers and
6 argues that any decrease in their net take home pay could be disastrous for these low-
7 income workers. The District observes (without contradiction) that the salary range for
8 the paras at Stockton is the highest of all comparables and says that a standard, district-
9 wide approach to the payment and sharing of increases in health premiums is the most
10 desirable course.

11 In Banning Teachers Ass'n. NEA/CTA v PERB, 44 Cal 3rd 799 (1988), the
12 Supreme Court noted that a school district has a *bona fide* interest in trying to maintain an
13 equivalent level of fringe benefits among differing bargaining units. In essence, here
14 CSEA's Unit B urges an approach under which the employer is saddled during the life of
15 the contract (and, ideally, as far as the Association is concerned, forever) with carrying
16 the entire burden and risk of future premium increases, without cap or limit. The cost of
17 medical insurance continues to increase nationally at a rate 3 or 4 times that of the
18 increase in the CPI, and there is no end in sight. The District desires to "negotiate
19 dollars", and not "coverage", in an effort to predict and control its costs, whereas the
20 Association wants, in essence, for third parties - here the carriers - to dictate and impose
21 whatever they chose to charge.

22 The Chair is persuaded that the criteria of (3) and (7) here support the District's
23 position on this issue.

24

25 3. Recommendation.

26 For its health benefits allowance, the District shall pay a sum not to exceed
27 \$570.25 for FY 2002-2003; a sum not to exceed \$661.91 for FY 2003-2004; and if there
28 is to be a third year in the contract, there shall be a reopener for negotiations dealing with
29 any premium increases in that year. Corresponding language concerning health benefits

30

31

1 for early retirees and other pertinent sections of the collective bargaining agreement
2 concerning health benefits (e.g., spousal rebates, etc) shall be modified in accordance
3 with the terms of the overall contract.

4

5 B. Compensation/Salaries/Bonuses.

6

7 1. Positions of the Parties.

8 The parties are apart on only one relatively minor item - the extension of
9 the so-called "off-the-scale" bonus in FY 2202-2003. Surprisingly it is the employer that
10 wants to give more bonus than the Association would like to receive. The District wishes
11 to give the 1% to everyone in the unit - the Association hoped that by extending the
12 bonus to only the lowest paid of its unit members, it could encourage the District to
13 continue its past practice of picking up the entire health benefit allowance premium and
14 future increases.

15 The District observes that every other unit has taken the bonus in 2202-2003 as it
16 proposed and it does not wish to withhold that bonus from some of its lowest paid
17 workers.

18 The Association does not truly spurn the bonus - it would like to put the money
19 elsewhere, namely back in the District's pocket to use for the paras' health benefit
20 premium increases. There is no dispute about salaries in FY 2003-2004, and neither party
21 has made a firm proposal to the other on salaries for a possible third-year year.

22

23 2. Discussion.

24 Here the criteria of Gov. Code Sec. 3548.2(b) 3, 4, 6 and 7 are applicable.
25 It would be anomalous for all of the District's employees to receive the 2002-2003 bonus
26 except the full-time paras. Given the recommendation, *supra*, on the health insurance
27 benefits premium, there is no reason for those employees to waive their bonus in an
28 attempt to maintain the *status quo* on health insurance premium pickups. The District
29 wishes to give the bonus to all and does not claim it lacks the ability to pay it.

30

31

1 2. Recommendation.

2 The Panel recommends that the full 1% "off-the scale" bonus be given in
3 FY 2002-2003 be given to all employees in the bargaining unit¹; that for FY 2003-2004
4 salaries be raised by 1% across-the board; and that if the parties agree to a third year, that
5 there be a salary increase reopener.

6

7 C. Filling Vacancies/Education Code Sec. 45103.

8

9 1. Positions of The Parties. CSEA's' proposal to reduce the time under Art.
10 13.1.41.1 for filling all temporary vacancies (regardless of the event precipitating the
11 vacancy) from 75 to 60 calendar days was linked in the early negotiations to CSEA's
12 proposed changes to Art. 13.5.3, dealing with "lateral transfers" to vacant positions. The
13 present language of 13.5.3 allows the District to select any applicant for the vacancy -
14 CSEA proposed to base selection on strict seniority within classification. See CSEA
15 Ex.10.

16 CSEA claims (see CSEA Ex. 4) that the present language of Sec. 13.1.4.1 violates
17 Ed. Code Sec. 25103, quoted at page 7, *supra*, and should be changed for that reason
18 alone. This argument fails for two reasons: first, that section of the Code explicitly allows
19 the District and the Association to negotiate for different time periods, and they have
20 done so; second, the Education Code expressly covers only filling the position of "...any
21 classified employee who is **temporarily** absent from duty." Art. 13.1.4 deals with **all**
22 vacancies, permanent and temporary. The CSEA proposal (which is grounded on its
23 interpretation of the Education Code) would cover **all** vacancies and not just those
24 addressed by the Code.

25 2. Discussion. The "problem" that CSEA really wishes to address is not
26 the relatively minor difference between 75 and 60 calendar days (just a day over two
27 work weeks). The issue for CSEA is the inability (or unwillingness) of the District to
28 provide CSEA with timely information on which Unit B positions are vacant; which
29 vacancies are permanent or temporary; which vacancies are being temporarily filled; and

¹ This bonus should be paid, in whole or on a *pro rata* basis, to all those employed in FY 2002-2003, even if those workers are no longer employed by the District.

1 the status of the worker who is filling the vacancy. This is important because CSEA
2 members often wish to transfer to vacant positions to (1) receive additional pay for
3 "working out of classification" (see Art. 8.7 of the Collective Bargaining Agreement:
4 CSEA Ex. 6, p. 26); and (2) to gain experience working in a different job classification,
5 experience which is a "resume-builder" and helpful in future promotions. Unless the
6 employees and CSEA can quickly learn the relevant vacancy information, the workers
7 may lose the opportunity to apply for lateral transfers to such vacancies. This issue of
8 notice and reporting could be addressed via a reopener - see Duration of Agreement,
9 *infra*.

10 3. Recommendation.

11 The Panel recommends that the language of Art. 13.1.4 be amended to provide
12 that **temporary** vacancies be filled within 60 calendar days and that the rest of the
13 present language of the Section remain unchanged, so that all other vacancies may be
14 filled on the present 75-day basis.

15 D. Professional Attire.

16 1. Positions of the Parties.

17 The parties agree that this is the most contentious and significant issue separating
18 them from a new agreement. The District had unsuccessfully sought to get an agreement
19 on this issue from its "professionals" (that is, the teachers) but still wishes to achieve this
20 goal from its paraprofessionals. CSEA's Unit A (clerical and white-collar workers)
21 grudgingly agreed to this concept. See. Dist. Ex. 4, Item Number 7.3., p. 2869. The bus
22 drivers and police officers wear standard uniforms, receive a uniform allowance, and are
23 not impacted by this approach.

24 The rationale for this proposal was made during the hearing by Jess Serna, the
25 District's Director of Labor Relations, and is supported by a letter of the Superintendent
26 to the Panel dated September 11, 2003. Dist. Ex. 3. In his letter, Superintendent Ridler
27 outlined the efforts made by the District and its voters (who passed a substantial bond
28 issue to improve facilities) to upgrade the District's performance:

29 We have three critical interrelated priorities. The district's highest priority
30 is to improve student achievement...

31 An equally important priority is our employees. They are our priority
32 because student success is our mission and that success depends on the dedication

1 of our employees. We have a proven track record of the highest employee salaries
2 in San Joaquin County. ... Our employees are dedicated and work hard...

3
4 When we examine how we have addressed our priorities, our record is
5 clear with respect to employee compensation; we are among the highest paying
6 districts in the county. However, our priority of improving student achievement is
7 far from realization. Much more must be done.
8

9 Serna described the District's student dress code and the uniform policy at a
10 number of the schools, and testified to the firm belief of the Superintendent and of the
11 Board that a key ingredient to greater student achievement is the role model success of
12 teachers and paraprofessionals. Serna testified that the Board strongly believes that
13 "proper, professional attire" is one important element in achieving that role model
14 success. Conceding that the District was unable to convince STA to agree to this
15 proposal², Serna said the Board was still firmly committed to establishing the policy
16 wherever it could.

17 CSEA and its Unit B members (a number of whom testified at the hearing on the
18 health and attire issues) object to the proposals on a number of not unpersuasive grounds:
19 (1) if the District's "professionals" (the teachers) cannot be compelled to don
20 "professional attire", then the District should not insist that its lowly-paid para-
21 professionals do so; (2) there has never been a problem or complaint by a school/site
22 manager about the attire of a paraprofessional, so "if it ain't broke, don't fix it"; (3) the
23 policy allows each separate site/school to set its own standards and so there will be
24 inconsistent standards and enforcement, with a resulting lack of predictability of what is
25 acceptable as the worker moves from one site to another; (4) the proposed policy shuts
26 CSEA out of the consultation process at each site and puts the onus on individual
27 employees to deal with site/school managers; (5) some site/school managers are
28 autocratic and arbitrary and cannot be trusted to be fair; (6) the policy would require
29 employees to buy new wardrobes and clothing and would impose unreimbursed out-of-
30 pocket expenses on already overburdened, low paid workers.

31 The District replies that (1) it believes it has the inherent management right to
32 impose this standard, with or without the agreement of the Association, and has only an

² STA apparently believes that teachers have a First Amendment right to freedom of expression in their personal choice of classroom clothing, perhaps a mistaken belief given Kelly v. Johnson, 47 L. Ed. 2d 708.

1 "impact bargaining" obligation but wishes to reach a consensual agreement; (2) that it is
2 flexible on the precise language of the policy and does not object to a CSEA role in any
3 consultation; (3) that the policy does not require the purchase or wearing of any particular
4 clothes but merely prohibits "unprofessional attire" and that the clothes worn by the
5 CSEA witnesses that day were well within the desired "professional" standards; (4) that
6 different sites/schools have different goals and needs and so flexibility is important; (5)
7 that any employee aggrieved by the decision of a school/site member can resort to the
8 grievance procedure; (6) that it while it was a great disappointment not to get the
9 agreement of STA, the declination of that group does not detract from the desirability of
10 starting this program somewhere in the District's classrooms; and (7) and that the policy
11 will sunset out on June 30, 2004.

12 2. Discussion.

13 It is unfortunate that STA could not reach an agreement with the District on this
14 issue, as one cannot help but sympathize with the paraprofessionals in their belief that if
15 their professional "superiors" in the classroom cannot be forced to adhere to minimal
16 attire standards that they should not be compelled to do so either. But this refusal by STA
17 does not diminish the force of the District's argument that heightened classroom
18 standards are a necessary step towards the District's primary goal, improving student
19 performance. If the students can be compelled to adhere to far more stringent clothing
20 standards, it is not unreasonable that their adult supervisors should be subject to some *de*
21 *minimis* standards of propriety and appearance as well. The District has to start
22 somewhere, and if it cannot start with its teachers, the CSEA units (particularly the Unit
23 with a strong classroom presence, such as Unit B) are the next best place to do so.

24 The Chair is persuaded that the criteria of Gov. Code Sec. 3548.2(b) (3) [welfare
25 of the public] and (7) [other facts and criteria traditionally relied upon] dictate adoption
26 of the District approach and philosophy. The apparel worn by the Association's witnesses
27 at the hearing (clothing one could expect to see on the average shopper running errands at
28 the mall on a Saturday afternoon) were explicitly declared by the District witnesses and
29 counsel to be well within the reasonable expectations of the District. The policy does not
30 tell people what to wear - it tells them that they cannot wear attire that is contrary to their
31 role model status. There is certainly a lack of clarity in such a "thou shalt not" approach,

1 but that is the purpose of the consultation aspect of the policy. The Chair cannot assume
2 that some of the school/site administrators will be so arbitrary or capricious that their
3 excesses cannot be quickly relieved via the grievance and consultation process. Lastly,
4 the policy will sunset on June 30, 2004.

5 Having said this however, the Chair believes that the District's actual proposal
6 does not give a sufficient role to CSEA in the consultation process at each school/site.

7 3. Recommendation. The Panel recommends that the agreement contain
8 the following language:

9

10 Professional Attire

11

12 The District believes that its classified staff serves as role models and so should
13 maintain professional standards of dress and grooming. Just as one's overall
14 attitude and instructional competency contribute to a productive learning
15 environment, so too do appropriate dress and grooming. After consultation with
16 the Association, professional attire standards may be established by each school
17 site and/or department. The District believes that it has an inherent management
18 prerogative to establish dress codes, and, by adopting this Policy, the District does
19 not waive this right

20

21 Intent:

22

23 It is NOT the intent of this article to tell individual employees what to wear.
24 Instead, it is the intent of this Policy to deal with situations of inappropriate attire.

25 Any bargaining unit member, or the Association, or a group of employees who
26 have concerns regarding the application or administration of this Policy may
27 address those concerns through the grievance procedures in this collective
28 bargaining agreement. This provision shall sunset on June 30, 2004.

29

30 E. Duration of Agreement/Term

31 1. Positions of The Parties.

32 As noted above, during negotiations the District had proposed a two-year
33 agreement, while CSEA had desired a three-year agreement. However, during
34 Factfinding the parties indicated a mutual interest in a three-year contract with several
35 reopeners.

36 2. Discussion. It makes little sense to sign now a contract expiring on June
37 30, 2004. The parties would have to sit back down at the table to negotiate a new contract

1 while the ink was barely dry on the "old" agreement. Stability, a chance to live with the
2 Professional Attire policy, and a myriad of logistic reasons (as well as the pattern of most
3 of the District's other agreements) militate for a three-year contract, with reopeners for
4 salary and health benefits and two additional reopeners per side for FY 2004-2005.

5 3. Recommendation. The Panel recommends a three-year collective
6 bargaining agreement, with a term of July 1,2002-June 30, 2005, with reopeners for
7 salaries and health benefits and two additional reopeners per side for reopener year 2004-
8 2005.

9
10 DATED: October 04, 2003

11
12 Christopher D Burdick
13 Impartial Chair

14
15 Although I do not necessarily agree with all of the Chair's findings and
16 recommendations, I believe it in the befit interests of the parties to adopt the settlement
17 recommended in this report.

18
19 DATED: October06,2003

20 Marilyn Domingo
21 District Appointed Factfinder

22
23
24 I respectfully dissent from the Findings and Recommendations on the
25 Professional Attire issue, for the following reasons: The Professional Attire language has
26 been a key factor in the contentious negotiations between CSEA - Unit B and Stockton
27 Unified School District. The District does not cite any dress code issues or violations or
28 disciplinary matters that it has had with respect to this bargaining unit. It appears to want
29 to implement this particular requirement on the Paraprofessionals, even though it did not
30 reach agreement with the teachers on this same issue. The Stockton Unified School
31 District is using this issue with the Paraprofessionals as a wedge issue with the other

1 bargaining units. If Unit B agrees to this issue, the Stockton Unified School District will
2 use that agreement to put pressure on the teachers for settlement. CSEA - Unit A
3 accepted the professional attire language mainly because of the types of jobs and
4 classifications in that bargaining unit and some specific circumstances which made this
5 issue one to be settled in Unit A. CSEA Unit B does not have the same or similar
6 circumstances.

7 The classifications and work performed by the Paraprofessionals is quite different
8 than Unit A. As testimony showed, they work on the floor with the children in games,
9 crafts and classroom activities. In many cases, especially in the Special Education
10 Assistants classification, they may deal with students who are in need of diapering, tube
11 feeding, and other bodily functions. The clothing they wear can become soiled and
12 stained. This language sets up a standard that is different than the certificated professional
13 in the same classrooms.

14 The language recommended also indicates that it is a "management prerogative to
15 establish dress codes". CSEA believes that this is a mandatory subject of bargaining
16 based on the tests for determining bargaining set forth in "Anaheim", [Anaheim UHSD
17 (1981) No. 177, 52 CPER 64], which states that a subject is negotiable if it

18 (1) *Logically and reasonably relates to an enumerated mandatory subject*
19 *of bargaining.* In this case, the dress attire becomes a "terras and
20 condition" of employment. If a paraprofessional does not follow the
21 prescribed "professional attire" outlined at their work site, they could
22 be subject to the discipline procedure.

23 (2) *Of sufficient concern to parties that conflict is likely and mediatory*
24 *influence of bargaining is appropriate to resolve the conflict.* This is
25 definitely the case with this issue. Impasse procedures have been
26 unable to produce a resolution to this issue.

27 (3) *And negotiations will not significantly abridge managerial*
28 *prerogatives.* This was an issue included in the District's initial
29 proposal of November 6, 2002. In this initial proposal the Stockton
30 Unified School District made no claim that "professional attire" was a
31 managerial prerogative. The District then made the "managerial

1 prerogative" claim in their impasse proposal of August 22, 2003,
2 which was only the second proposal made on this issue. Therefore, by
3 bringing this issue to the union in their initial proposal, the Stockton
4 Unified School District deemed it a negotiable issue.

5

6 CSEA can not agree to the recommendation stated in the above "Report and
7 Recommendations of Fact-finding Panel". It does not have agreement of the parties and
8 CSEA can not accept this as part of the collective bargaining agreement.

9

10

11 DATED: October 06, 2003

12

Marcie Bayne

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CSEA Appointed Factfinder

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