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FF-631

In the Matter of the Fact Finding between )  
)  
KERN COMMUNITY COLLECT DISTRICT, )  
)  
Public School Employer, )  
)  
and )  
)  
CALIFORNIA SCHOOL EMPLOYEES )  
ASSOCIATION, )  
)  
Exclusive Representative )  
\_\_\_\_\_ )

FACT FINDING REPORT  
AND RECOMMENDED  
TERMS OF SETTLEMENT

PERB CASE No. LA-IM-3502E

**FACT FINDING PANEL**

Richard C. Anthony, Arbitrator/Fact Finder/Neutral Chairman  
P. O. Box 370, Branson, MO 65615  
Phone (916) 798-2763

Tim Liermann, Union Member  
Senior Labor Relations Representative  
California School Employees Association  
2501 West Shaw Avenue, Suite 107, Fresno, CA 93711  
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Bruce A. Barsook, Attorney at Law, District Member  
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6033 West Century Blvd., Suite 500, Los Angeles, CA 90045  
Phone (310) 981-2000

## **PERSONS IN ATTENDANCE AND MAKING PRESENTATIONS TO THE PANEL**

Michael Branham, CSEA Labor Relations Representative  
Bob Baker, CSEA Staff  
Jeff Kirby, CSEA Staff  
Terry Flanagan, CSEA Staff  
Steve Hanson, CSEA Intern  
Eileen O'Hare Anderson, KCCD Counsel  
Sean James, KCCD Vice Chancellor, Operations  
Abe Ali, KCCD Vice Chancellor, Human Resources  
Tom Burke, KCCD Chief Financial Officer

## **PREFACE**

This proceeding arises pursuant to the provisions of the Educational Employment Relations Act, California Government Code Section 3540, et. seq. The Kern Community College District and the California School Employees Association, Chapters 246, 336 and 617, have been unable to agree upon the terms of their collective bargaining agreement for the 2007-2008 through 2010-2011 school years through their negotiations and through mediation. Pursuant to Government Code Section 3548.1, they jointly chose the undersigned Fact Finding Panel to make findings of fact and recommended terms of settlement in accordance with Government Code Section 3548.3.

A hearing was held before the Fact Finding Panel on September 25, 2009, during which all persons present were afforded the opportunity to provide oral testimony and submit documentary evidence and to provide argument in support of their respective positions. Subsequent to the completion of the hearing, the District and the Association Panel Members provided to the Panel Chairman a confidential statement as to what they would be willing to accept to accomplish a resolution of the impasse. A telephone conference was held by the Panel on November 17, 2009. A Draft Fact Finding Report

was provided to the Panel Members by the Panel Chairman on November 25, 2009. The issues involved were not resolved with the comments and suggestions received by the Panel Chairman from the Panel Members and therefore this Report was finalized and is presented by the Chairman to the Panel Members for their consideration and signatures.

## **BACKGROUND AND PROCEDURAL HISTORY**

### Background Information

The Kern Community College District is located in Bakersfield, California. It serves portions of Kern, Tulare, Inyo, Mono, and San Bernardino Counties. It is 24,800 square miles in size. It serves approximately 28,000 unduplicated students each year. It served 19,067 full time equivalent students during the 2007/08 college year for apportionment purposes. The District operates three colleges: Bakersfield College, Porterville College and Cerro Coso Community College, and four satellite campuses.

The student body is diverse, composed of approximately 40.2% Latino students, 5.9% Asian Pacific Islander students, 38.7% Caucasian students, 5.8% African American students, 1.9% Native American students, and 7.5% other identifications. District wide, approximately 34% of the District's students are full time students, 65% are part time.

The work force includes approximately 378 tenured and tenure-track faculty, including librarians and counselors, 496 currently assigned adjunct (part-time) faculty, 78 administrators and 486 classified employees in the maintenance, trades, professional, paraprofessional/technical, clerical, public safety and supervisory/management positions. CSEA represents all classified employees except management, supervisors and confidential employees. CSEA technically represents two units; one unit (the "A" unit) covers professional, clerical and paraprofessional/technical employees; and the other unit (the "B" unit) covers athletics, custodial, grounds, maintenance, security, transportation and warehouse job families.

### Negotiating History

1. The most recent collective bargaining agreement was in effect from 2004 to 2007. On July 31, 2007 the parties signed an agreement extending the provisions of the bargaining agreement until a "successor agreement has been executed between the parties."

2. The parties have been negotiating for a 2008-11 successor agreement since April 2007. Although many of the early meetings concerned the transition of certain employees in the Child Development Center to the CSEA bargaining unit, the parties have spent considerable time negotiating the substantive issues in their contract. After months of slow progress the parties agreed at their July 1, 2008 meeting to limit the number of issues to a core number. (The remaining issues, other than those already resolved through tentative agreement were to remain status quo under the contract.) The parties agreed to limit the number of issues to seven (7): hours, reclassification, transfer/reassignment, vacation, salary, insurance and term.

3. Since that time the parties held additional meetings. A total of 35 meetings were held prior to the declaration of impasse.

4. The District offered several package proposals but did not deviate from its position that a 1.44% salary increase for the 2008/09 school year was the most it was prepared to spend. CSEA made proposals but did not deviate from its position that it is entitled to an 8.23% increase for the 2008/09 school year. Both parties base their proposals for the 2008/09 school year on their interpretation of the existing collective bargaining agreement. Their disagreement regarding this amount led to the filing of a grievance by CSEA, which, in turn resulted in an arbitration decision denying the Association's grievance and establishing a salary increase of 1.44% for the 2008-2009 school year. CSEA has filed a similar grievance for the 2009-2010 school year seeking an across the board increase of 7.9%. This grievance is still pending.

5. At the parties' meeting on November 10, 2008, District negotiators presented a package proposal to CSEA and informed it that 1.44% was the District's bottom line for the 2008/09 school year. On November 19, 2008, CSEA rejected the District's proposal and presented its own proposal, which varied little from its prior proposals.

6. The District and CSEA met thereafter on December 15, 2008 at which point the District declared impasse.

7. Mediation was held on February 26 and March 27, 2009. Following the March 27 meeting the mediator (Tony Butka) certified the matter for fact finding.

8. The District requested Fact Finding on April 23, 2009. The parties stipulated to the issues for fact finding on or about May 8, 2009.

#### Statistical Information

1. Number of numbers in the bargaining units (as of Fall 2008): 486
2. Cost of a 1% salary increase is \$235,901 for 2008-2009 (1% increase for all regular District employees, including CSEA employees, is ~\$704,829).

#### Financial Information

The State fiscal crisis has had a severe impact on the Kern Community College District's budgets. In 2008-09 unrestricted apportionments were lower than the adopted budget revenues by \$1.6 million. This was primarily due to lower property taxes, enrollment fees and base apportionment adjustments.

The 2009-10 State budget reflects the impact of continued double digit declines in State revenues. The State budget included significant reductions to the Community College system's budget that had been adopted for 2009-10 in February 2009. The proposed overall reductions to the Community College System revenues are just under a 10% reduction. However, the reductions are split unevenly between unrestricted and restricted funding. Unrestricted revenues decline about 7.26%. Most restricted categorical programs were cut an average of about 46% to their ongoing revenues. The categorical programs were classified into two groups Protected and Non-protected. Protected programs saw reductions of 32% and non-protected were typically reduced 62%. To temporarily reduce the impact of these reductions, the State assumed that community colleges would receive \$37 million of federal stimulus funds (ARRA), which would be allocated to offset approximately one-third of these categorical program reductions for the 2009-10 fiscal year.

The Kern Community College District projects its General Fund revenues to decrease by ~\$6.6 million when compared to the 2008-09 budget, due primarily to general apportionment base reduction. Unrestricted revenues are projected to decrease by ~\$1.7 million. Restricted revenues constitute the majority of the reductions and are projected to decline by ~\$4.9 million. The District is utilizing a contribution of about \$1.4 million of its reserves to offset approximately half of the proposed reductions in many of the state categorically funded programs. The Kern Community College District is anticipating mid-year

reductions (by the State) in 2009-10. Recent projections are indicating that the current State's adopted budget is out of balance by approximately \$7 to \$8 billion dollars. In anticipation of these midyear reductions, the District has delayed committing approximately \$4 million in ongoing revenues to operations. In addition, all District operations are evaluating a realignment of services to identify additional cost savings/reductions.

The Kern Community College District believes that the State's budget situation will continue to deteriorate through fiscal year 2012-13. This is primarily due to continued weakness in the State's economy and the magnitude of one-time funds (ARRA funds and the temporary 1% sales tax increase) incorporated into the State's 2009-10 budget. The District also believes that it will require the utilization of a significant portion of its current reserves to maintain minimum operational levels throughout this period. The District has not, however, raised the issue of inability to pay.

### **ISSUES INVOLVED**

It was agreed by the parties that there were seven broad issues in dispute between them, which are set forth as follows:

#### **1. Salary**

Two grievances were filed by CSEA with regard to salary issues for the 2008-2009 and 2009-2010 school years. The parties agreed that the arbitrator's decisions for those years would be binding on the parties. One of those arbitrations has now been resolved resulting in a denial of CSEA's contention that it was due a 8.23% salary increase resulting in a 1.44% salary increase for the 2008-2009 school year. Thus, that year is now resolved. The other grievance is still pending, and the District disputes the CSEA position that the 2009-2010 salary issue should be resolved by that grievance.

In addition, for the school year 2010-2011, there is no agreement between the parties. The CSEA has proposed that the District adopt the same salary formula as in the District's agreement with the faculty staff. The District has declined to agree to such a

proposal on the grounds that the faculty received that benefit because they agreed to forgo 2% of a 2.68% salary increase in order to maintain District paid insurance throughout the term of the agreement and CSEA has not agreed to forgo such 2%. In addition, the District declines to further expand the faculty salary formula to the classified employees because such formula is tied to the actions of other Districts and due to the present uncertain economic times, KCCD is no longer willing to tie compensation to factors beyond its control. The District has not raised the issue of inability to pay.

The District proposed a new formula for compensation for the 2009-2010, 2010-2011 school years based upon a proportionate allocation of state funding. CSEA proposed a salary increase equal to the COLA received from the state.

**Salary Recommendation:** The District's proposed new salary formula appears to be well founded, fair and workable, and it is therefore recommended that it be adopted and implemented for the 2009-2010 and 2010-2011 school years.

## 2. Benefits

Currently there is an \$891 cap on the amount the District pays for fringe benefits. Under current conditions and costs, this amount pays for the total benefit package with no out of pocket cost to the employees. CSEA asks that the cap be removed and that the District pay for all benefits just as is done with the faculty. The District resists that proposal contending that the faculty bargained for that benefit with a salary concession.

**Benefit Recommendation:** It is recommended that the \$891 cap remain.

## 3. Hours

### A) Work Week

Generally the work week is four nine-hour days and one four-hour day on Friday, with Friday afternoons off. This schedule has proven to cause some difficulties for the District and it proposes a return to the five day, eight hour per day schedule. The Association claims that the April 30, 2008 "Settlement Agreement" resolves this issue in the District's favor, but such claim is not accurate, as the Agreement does not resolve the issue but only requires further negotiations should the District desire to return to the five-day schedule.

**Hours Recommendation:** There was not sufficient evidence presented to require a change to a 5-day work week for all campuses and it is therefore concluded that the status quo should remain.

#### B) Holiday Closure

The District proposes a change in the Christmas holiday closure schedule, which would result in employees receiving fewer holiday days off contending that the present holiday closure schedule is obsolete because of related salary issues, and that the number of days off is substantially above that of other districts. The Association contends that the additional days they now have were negotiated and a salary increase was given up in return for those holidays.

**Holiday Closure Recommendation:** It is concluded that the District has not established the necessity for a different holiday closure schedule and that the holiday closure benefit was negotiated by the Association and it was not a one time benefit and therefore that the present schedule should remain.

#### 4. Vacation

On September 9, 2008, the Association made a vacation proposal which is accepted by the District as a part of the overall settlement.

**Vacation Recommendation:** It is recommended that the Association's September 9, 2008 proposal be implemented.

#### 5. Transfer/Reassignment

The position of the District in part proposes that the current contract be modified to delete section 9M4E4, which provides as follows:

9M4E4 If two (2) or more employees in the same department are equally qualified for the same involuntary reassignment based upon the relevant job description, the least senior of these employees shall be so reassigned. Prior to implementing an involuntary reassignment, the District will give consideration to employees who have requested to transfer voluntarily ('volunteers') who are equally qualified and whose voluntary transfer would not negatively impact the operations of the District. As between those volunteers, the District's review shall be done in accordance with the transfer language found in the parties' collective bargaining agreement. However, whether to staff a particular position by virtue of transfer or reassignment shall be the District's decision.

And also to delete the words "and shall only occur as a result of the displacement process" from Section 9M4D, which would then cause it to read as follows:

9M4D An involuntary transfer is movement from one college to another, or from the District Learning Services Center to a college within the district ~~and shall only occur as a result of the displacement process.~~

The Association advocates maintaining the status quo, pointing out that the campus of Bakersfield, Ridgecrest, Bishop, Porterville and Mammoth Lakes are so widely separated and so divergent in character that a transfer or reassignment of an

employee can have a devastating effect on an employee and could result in a resignation because of an impossibility for an employee to move.

**Transfer/Reassignment Recommendation:** It is concluded that the language identified above is ambiguous and unduly restrictive. The District should have greater leeway in making transfers and assignments as it is unreasonable to base all involuntary transfers on the layoff process. It is recommended that the language identified above should be deleted and restrictive language added, which would prevent the District from making transfers for retaliatory, punitive or discriminatory reasons, or in an arbitrary or capricious manner. Employees should be entitled to grieve any such transfer.

#### 6. Reclassification

A) The District proposes the hiring of a consultant to review reclassification requests and is willing to have Association input in that selection process.

B) The District proposes the hiring of a consultant to do a wage/class study and is willing to have Association input in that selection process.

C) The District proposes that the ability to file a grievance as a means to achieve reclassification be eliminated.

**Reclassification Recommendation:** It is recommended that a consultant be hired to review reclassification requests and to do a wage/class study, with Association input into the selection process and with the District bearing the entire cost of the studies.

#### 7. Term

Both parties agree that a three-year contract would be appropriate. The Association would like openers on wages, benefits and one unspecified opener for each

side. The District proposes no openers.

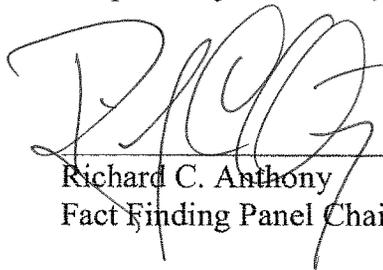
**Term Recommendation:** It is recommended that the term of the Agreement be for three years with no openers.

### CONCLUSION

In accordance with the requirements of Section 3548.3 of the Government Code, the duly authorized Fact Finding Panel makes the above delineated recommendations for resolution of a new collective bargaining agreement between the parties.

Dated: December 23, 2009

Respectfully submitted,



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Richard C. Anthony  
Fact Finding Panel Chairman

Concur     Dissent

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Tim Liermann  
CSEA Member

Concur     Dissent  
(SEE ATTACHMENT)



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Bruce A. Barsook  
KCCD Member

## CONCURRING OPINION OF BRUCE BARSOOK

While I believe that the District provided compelling evidence that there is a need to restore the general work schedule to a 5-day, eight hour work schedule and that the holiday closure time period should be changed to conform to other comparable community college districts, I recognize that there is great value to ending these protracted negotiations and reaching a multi-year agreement. Although the recommendations are imperfect, I believe the chair has presented the parties with a realistic and useful guide to resolving their negotiations impasse. As a result, I concur with the recommendations of the fact finding chair and urge the parties to resolve their negotiations impasse under the terms outlined in these recommendations.

side. The District proposes no openers.

**Term Recommendation:** It is recommended that the term of the Agreement be for three years with no openers.

### CONCLUSION

In accordance with the requirements of Section 3548.3 of the Government Code, the duly authorized Fact Finding Panel makes the above delineated recommendations for resolution of a new collective bargaining agreement between the parties.

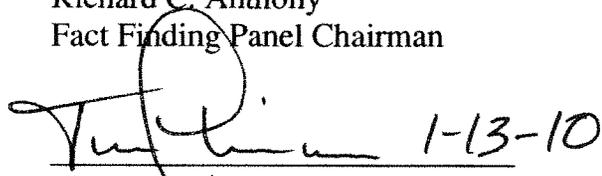
Dated: December 23, 2009

Respectfully submitted,

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Richard C. Anthony  
Fact Finding Panel Chairman

( ) Concur  Dissent



Tim Liernann  
CSEA Member

( ) Concur ( ) Dissent

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Bruce A. Barsook  
KCCD Member

Tim Liermann  
Senior Labor Relations Representative  
Partisan Member for the Union  
California School Employees Association  
and its chapters 246, 336 and 617  
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**DISSENTING OPINION  
OF THE  
EXCLUSIVE REPRESENTATIVE**

**PERB CASE NO. LA-IM-3502-E**

The following is the dissenting opinion of the exclusive representative concerning Factfinding Report issued by Neutral Chairman Richard C. Anthony.

It is the intent of the advocate for the Union to only address the issues for which a dissenting opinion is warranted.

**SALARY**

On July 31, 2007, the California School Employees Association (CSEA) and the Kern Community College District (KCCD) mutually agreed to a Memorandum of Understanding (MOU) that states in part the following [First Tab 2 of CSEA’s Presentation Binder]:

“Although the current CBA includes an expiration date of June 30, 2007, the parties mutually agree and acknowledge that the terms and conditions of that Agreement remain in full force and effect until a successor agreement has been executed between the parties.” [Emphasis added]

Nowhere in the embodiment of this MOU is there a clause or a statement that allows either party to escape from or claim that this MOU is null and void.

On October 30, 2008, CSEA filed a grievance concerning the “Salary Formula” that is contained in the Collective Bargaining Agreement (CBA).

That grievance concluded in an arbitration decision which was implemented by the KCCD in the fall of 2009, retro-actively to July 1, 2008.

On August 11, 2009, CSEA again filed a grievance concerning the “Salary Formula” that is contained in the CBA that would be effective July 1, 2009. On September 1, 2009, both CSEA and KCCD mutually agreed to place this grievance in abeyance due to the pending October 30, 2008 grievance. CSEA has per the MOU removed the grievance from abeyance and has proceeded to the next step of the grievance process.

The Neutral Chairman has recommended that the Parties accept the Salary Formula proposed by the KCCD for both 2009/2010 and 2010/2011 fiscal years.

It is CSEA’s strong opinion and assertion that the Factfinding process including any recommendations cannot waive any of CSEA’s contractual process rights. The District is attempting to gain through the Factfinding process retro-actively what it could not achieve for over two years at the negotiating table.

CSEA is willing to accept whatever “Salary Formula” adjustment for July 1, 2009, that is provided through current contractual agreement and the grievance process. It must be noted that the KCCD has never rejected the August 11, 2009 grievance as improperly filed. In fact, the KCCD willingly agreed with CSEA to place this grievance in abeyance until the October 30, 2008 grievance was decided.

It is CSEA’s assertion that the only outstanding salary issue is the 2010/2011 fiscal year.

A closer examination of the Faculty Collective Bargaining Agreement [Second Tab 2 of CSEA’s Presentation Binder] Article Eleven – Compensation and Benefits provides no connection between salary compensation and the KCCD’s obligation to provide Health and Welfare Benefits to its Faculty members for the term of the contract, even if there are premium rate increases.

As an example only, if the Faculty salary compensation formula could provide for a 2% increase and the Health and Welfare premiums increased by 1%. According to the Faculty CBA, salaries would increase by 2% and KCCD would continue to pay the full cost of the Health and Welfare premiums including the additional 1%.

The proposed KCCD Compensation Allocation Formula proposed on September 16, 2008, would become a “Compensation Funding Pool” to be used not only to fund salary compensation, but also used to fund health and life insurance, statutory benefits and step progression costs!

This “Compensation Funding Pool” is grossly unfair and continues to treat classified employees as second class citizens.

As the CSEA advocate on the Factfinding Panel, I continue to reject the KCCD Salary Compensation proposal as unjustly unfair towards CSEA’s bargaining unit employees in light of the fact that KCCD

has not raised the issue of inability to pay. A Salary Formula that reflects what the Faculty agreed to would treat CSEA bargaining unit employees in a much fairer manner.

### **BENEFITS**

CSEA continues to object to a cap on Health and Welfare Benefits especially in light of the fact that the Neutral Factfinder has recommended a closed CBA. This recommendation provides CSEA with no opportunity to negotiate over any increase in Health and Welfare Benefit premiums.

The Faculty CBA actually calls for Salary Schedule increases and no cap on Health and Welfare Benefits. The two (Salary and Health and Welfare) are treated separately and distinct from each other.

The Compensation Funding Pool for CSEA provides that any dollars available shall pay for everything including salaries, health and life insurance, statutory benefits and step progression.

This again is grossly unfair and continues to treat CSEA's bargaining unit employees as second class citizens.

At a minimum, CSEA should have a right to reopen Health and Welfare Benefits Article 9H if premiums increase above the \$891.00 cap.

### **RECLASSIFICATION**

CSEA has a concern with the recommendation in that reclassifications affect terms and conditions of employment. Reclassifications are a subject of negotiations including any study that is taken by KCCD.

The word "input" appears to have the effect of waiving CSEA's statutory right under the Educational Employment Relations Act (EERA) which provides at a minimum the right to negotiate the effects of a reclassification study.

Effects could be, but not limited to: when the reclassification study will be implemented, how the reclassification study will be implemented, what colleges will be part of the reclassification study and how salaries are implemented whether increased or decreased.

CSEA will not, and the Factfinding process cannot, waive any of CSEA's statutory rights under the EERA.

### **TERM**

CSEA continues to object to a closed CBA in light of no guarantees that the "Compensation Funding Pool" proposed by KCCD will generate any dollars towards Health and Welfare Benefits, Salaries, statutory benefits and step progression.

Though there is a clause about negotiating, what happens if the "Compensation Funding Pool" has negative dollars from the outset?

Will the KCCD be allowed to not pay for longevity increments as negotiated in the CBA?

Will the KCCD force employees to pay KCCD's CalPERS statutory obligation?

Will the compensation for CSEA's bargaining unit employees be unilaterally reduced?

There are so many questions that are left unanswered concerning the KCCD "Compensation Funding Pool" proposal.

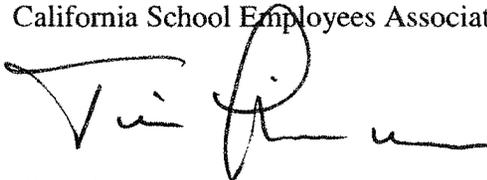
That is why CSEA still insists that reopeners (salary, health and welfare and one unspecified article) are a legitimate proposal in order to continue or to have an opportunity to negotiate all these unknowns prior to any implementation.

### CONCLUSION

It is CSEA's strong belief that a mutually agreeable tentative agreement for a Collective Bargaining Agreement can still be reached by both parties at Post Factfinding negotiations.

I would encourage the KCCD to meet with CSEA to work out any differences especially with concerns related to Salary Compensation and Health and Welfare Benefits.

Respectfully Submitted,  
California School Employees Association



Tim Liermann  
Senior Labor Relations Representative  
CSEA appointed Panel Member

Date: 1-13-10