

**STATE CENTER COMMUNITY COLLEGE DISTRICT AND  
CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION, CH. 379  
(CASE NO. SA-IM-3240-E)**

**FINDINGS OF FACT AND  
RECOMMENDED TERMS OF SETTLEMENT**

**March 5, 2013**

**FACTFINDING PANEL**

Impartial Chairperson:	David G. Miller
Association Representative:	Michael Noland
District Representative:	Shelline K. Bennett

**REPRESENTATIVES**

For the District:	Eileen O'Hare-Anderson Liebert Cassidy Whitmore
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For the Association:	Terry Flanagan California School Employees Association
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<b><u>HEARING DATE:</u></b>	February 25, 2013
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**BACKGROUND AND DISCUSSION**

The parties to the impasse and, therefore, this procedure are the State Center Community College District ("District" or "Employer") and the California School Employees Association, Chapter 379 ("Association" or 'CSEA").

There were no stipulations between the parties; nonetheless, the Chairperson will accept the following representations from the District's Presentation or public sources for purposes of background matters:

The District is a public school employer within the meaning of Government Code Section 3540.1(k).

The Association is an employee organization recognized by the District as the exclusive bargaining representative of a unit of classified employees within the meaning of Government Code Section 3540.1 (l).

The bargaining unit consists of five hundred fifty one (551) employees. A one percent (1%) salary increase for the unit would cost \$246,000. Altogether, the District employs over 2100 employees on a full or part time basis. The District is a merit system district meaning that a three person Personnel Commission determines handles certain personnel procedures for classified employees such as testing, selection, recruitment, classification and disciplinary appeals.

State Center's District Office is located in Fresno; the District operates two colleges—Fresno City and Reedley; it also operates four educational centers – Madera (in Madera), Oakhurst (in Oakhurst), Willow International (in Fresno) and a Career & Technology Center in Fresno. For 2010 the student headcount for all locations and programs numbered 37,578. The primary funding basis for community colleges is based upon the number of Full Time Equivalent Students (FTES); for State Center the most recent FTES count is 26, 478. The State has capped the number of FTES for which it will provide funding in any given school year. The District can choose, and has chosen, to educate more students than the number for which the State is providing funding.

The parties' most recent collectively negotiated agreement was, by its terms, in effect from July 1, 2009 through June 30, 2012. Negotiations for a successor agreement began on June 25, 2012. Impasse was declared on November 27, 2012; mediation did not result in a settlement and the matter was certified for factfinding. The factfinding hearing was held on February 25, 2013.

## ISSUES

The issues before the panel are listed in the order of review by this report:

1. TERM OF AGREEMENT.
2. HEALTH AND WELFARE BENEFITS: Premium contributions for medical insurance; retirees; LTD plan changes and new hires.
3. PAY AND ALLOWANCES.
4. WORKING OUT OF CLASSIFICATION: "Personnel office" or "Director of Classified Personnel".
5. CLASSIFICATION STUDIES
6. CSEA RIGHTS: Release time for Association business and training.
7. TRANSFERS-WORK LOCATION [NOTE: This item is the subject of a District objection because it does not appear during mediation or on subsequent CSEA issue statements].

## CRITERIA

Pursuant to Government Code Section 3548.2(b) the panel is required to consider, weigh and be guided by all the following criteria:

- (1) State and federal laws that are applicable to the employer.
- (2) Stipulations of the parties.
- (3) The interests and welfare of the public and the financial ability of the public 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 all other benefits received.
- (7) Any other facts, not confined to those specified in paragraphs (1) to (6), inclusive, which are normally or traditionally taken into consideration in making the findings and recommendations.

#### TERM OF AGREEMENT

We deal with this issue first because the duration of the agreement is critical to the timing for implementation of other recommendations contained in this report. The Association seeks a multiple year agreement with re-openers presumably for salary and benefits. The District is proposing a one year agreement to expire June 30, 2013.

The District argues that the instability of the statewide budget makes a multi-year agreement impractical particularly if the agreement contains a salary increase. Otherwise, the District professes interest in a multi-year agreement in principle.

As a practical matter if the parties settle, ratification will probably take place no earlier than the end of March. Thus, a one year agreement in reality is only a three month agreement. In less than two months the parties will return to negotiate a successor agreement. An additional year restores or helps preserve labor relations stability while the parties work on issues which led to the instant impasse. Further, a longer agreement permits staggered implementation of the recommendations which follow and eliminates the need for re-openers:

Recommendation for Term of Agreement: March 1, 2013 through June 30, 2014.

## ECONOMIC ISSUES

This report will deal with Health and Welfare (including retiree medical and LTD) and Pay and Allowances under this heading. Before proceeding to the specifics there are some general considerations to discuss.

### GENERAL ECONOMIC ISSUES

Ability to Pay: At the hearing and in its presentation the District repeatedly stated that it was specifically not relying on ‘ability to pay’ (or ‘inability to pay’) to defend its positions on economic items. Thus, the panel must look to Government Code Section 3548.2(b) criteria other than “...the financial ability of the public school employer” (§ 3548.2(b) (3)). This approach does not necessarily eliminate the other element of (b) (3) namely,

“...the interests and welfare of the public...” Thus, factors comparing District employees with conditions of employment of public school employees performing similar services and with public school employment in comparable communities will weigh more heavily, along with the “cost of living” (§3548.2(b)(5) and other factors “...normally or traditionally taken into consideration in making findings and recommendations” (§3548.2(b)(7).

District Budget Discretion: Having conceded ‘ability to pay’ the District suggests, in effect, that there is nothing left for the Panel to do because, District counsel argues, the Panel should defer to the District Board’s sound discretion in establishing the budget and its corresponding reserves. There are at least three sound reasons for rejecting the District’s argument:

(1.) Where, as here, the District is not relying on ‘inability to pay’, the District’s argument implies that the factfinding panel’s only remaining task is to bow deeply (defer) to governing board discretion disregarding other statutory factors and disturbing the budgeting decision only if it is found to be “fraudulent, unreasonable or arbitrary”. That argument renders the factfinding process meaningless and creates an impenetrable barrier between the panel and its statutory duty. On economic issues the District’s argument may be translated as follows: “Non-reliance on ‘ability to pay’ absent fraud = rubber stamp”. Instead the process is designed to permit both parties to summarize their positions and supporting and/or opposing rationale for the Panel to review, analyze, and recommend adoption, rejection and/or modification.

(2.) By law our findings and recommendations are just that: recommendations submitted to both parties on an advisory basis. The Panel does not disturb, let alone usurp, the Board's discretion; rather it brings a certain knowledge, expertise and experience to bear on the negotiations and, through its report, advises the parties, leaving them free to exercise their discretion to adopt, reject, or adopt with modifications the Panel's report. The parties' discretion remains intact, untrammelled by EERA factfinding no matter the extent, if any, to which the report differs in recommendations from the Board's initial budgeting decisions.

(3.) The District's cited authority does not support its position. The District relies on a 2003 Factfinding Report from the College of the Sequoias Community College District (Factfinder: Joe Henderson) which, district counsel suggests, supports the proposition that absent fraud, arbitrariness or unreasonableness the District Board's discretion in establishing budget reserves is sacrosanct. The District's reliance is misplaced for at least three reasons: (a) The rule for which the District argues here appears at page 20 of the Sequoias Report; however, the language is part of the District's Position and Arguments which begin on page 6 and continue to page 26. Such rule is not part of the Panel's findings and Recommendations. (b) In the Sequoias Report the Factfinder found in favor of the Association's positions and against the District on the critical economic issue (Sequoias Report, pps. 30-31). (c) The Chairperson does not consider Factfinding Reports from other districts to constitute binding precedent for different districts and employee organizations. While such reports may be instructive and informative, they are typically unique to the involved parties and their own negotiating patterns, history and agreements.

In summary, the Chairperson will make appropriate economic findings and recommendations and the parties remain free to apply their discretion by accepting, rejecting, or accepting with modifications these recommendations.

## BUDGET AND THIS YEAR'S NEGOTIATING HISTORY

Like most California public school districts, State Center built its 2012-2013 Budget based upon then current projections for the State Budget and its projected impact on K-14 school districts. The District prudently planned for the real possibility of mid-year 'trigger cuts' which would be necessary if neither of the school funding initiatives on the November 2012 ballot passed. The District's initial proposals to the Association reflect these potentially dire straits by proposing, among other items, a salary schedule reduction of nine percent (9%) for current employees, ten percent (10%) for new employees.

California voters approved Proposition 30 in November eliminating the immediate need for drastic budget cuts. The District's 2012-13 salary proposal on November 27, the first session following the election, still called for a 1.15% pay reduction utilizing unpaid furlough days; the Association declared impasse that same day. The District argues that it made substantial movement, indeed concessions, by progressing from a 9% pay cut to a 1.15% pay cut. Normally, such indeed represents substantial movement. Here, however, absent extraordinary conditions which do not apply, it's a non-factor because such movement was inevitable after Proposition 30

passed and relieved the immediate pressure and justification for dramatic reductions.

Although ability to pay is not at issue, note must be made of the District's Budget Reserves. The Association couched the Reserves in terms of Net Ending Balance arguing that the District's Net Ending Balance of \$39, 418,919 out of approximately \$160,000,000 in expenditures amounted to a Reserve of 24.8%, well above the Chancellor's recommended Reserve of 5% and Board Policy's recommended Reserve of 6%. According to the Association, the District's Balance ranks it 12<sup>th</sup> among all California community college districts.

In response the District argues that most of the Net Ending Balance is already encumbered and that the suggestion of a 24.8% Reserve does not accurately reflect the District's Budget commitments. The District's ending balance as of June 2012 amounted to \$38, 353,127 and its projected ending balance as of June 2013 is estimated at \$34, 703, 813, a projected decline of \$3,649,314. For purposes of this discussion I will refer to the District's numbers because they formed the basis for the District's Reserve analysis and for the District's testimony and, as numbers, are not seriously questioned by the Association. Edwin Eng, Vice Chancellor, Finance and Administration testified credibly and with expertise. He noted that the Unrestricted Fund Balance contained monies already allocated or restricted by Board Policy. For example, according to Eng, lottery monies listed at about \$4,000, 000 (but are actually closer to \$6,000,000) are restricted in use by Board Policy. Another \$23,000,000 represents prior and current commitments to individual colleges and centers for maintenance, deferred maintenance and other local projects. Because of economic uncertainty the colleges and centers have not spent down these allocations since 2008 and,

indeed, the individual amounts have grown since 2008. Notably the Reedley College allocation which was \$4.8 million in 2008 now stands at \$8.8 million. The Fund also contains the Board required 6% reserve at a little over \$10,000,000.

After allocations, lottery monies and required reserve for contingencies are subtracted it still leaves an estimated \$5,287,039 or 3.15% which is unallocated and unencumbered. This unallocated amount has been as high as \$12.5 million in 2011 and the current amount is less than one-half the amount of two years earlier.

The District has established a pattern of conservative budgeting. This, in turn, permitted the District and its employees to avoid layoffs over the past four years when other districts made substantial personnel reductions in order to cope with the prolonged downturn in the economy and related reductions in monies available for State and local budgets. Proposition 30 temporarily rescued districts from the need for continued dramatic reductions this year by restoring monies previously cut from district budgets. However, Proposition 30 is based upon tax increases which will sunset in the next four to seven years and did not grow school funding but, instead, restored it to a certain level. There is no requirement that the Legislature provide additional funds on top of Proposition 30; thus, growth prospects remain cloudy. Finally, while the bargaining unit has not received a salary increase since 2008 (although some employees not at the top of their salary range received incremental step increases during) it cannot be seriously argued that compensation is not a priority-- personnel expenses account for 91% of the District budget. Even for school districts 91% is a high number. Most districts utilize between 80 and 90% of their budgets for employee

compensation in the form of salary, health and welfare contributions and retirement.

## HEALTH AND WELFARE BENEFITS

The District currently contributes \$1029 monthly toward the payment of group medical premiums. The District's contribution has not increased since 2009. The District also provides dental insurance, vision insurance, life insurance and long term disability insurance; these latter insurances are provided at no cost to the employee. Additionally the District contributes to premiums for retiree medical insurance.

The Association is proposing fully paid premiums. The District is proposing status quo. Of the 457 classified employees participating in group medical insurance, 290 are enrolled in the Moderncare PPO and pay \$17 monthly toward the payment of premiums. The other classified employees are enrolled either in Health Net or Kaiser plans.

Typically premiums increase effective October 1. Consistent with prudent budgeting the District negotiated and has maintained a cap on its contribution. The Association is proposing to remove the cap and receive, on behalf of its members, fully paid medical insurance. The cost of premium increases for health insurance is unpredictable and it is not consistent with the public welfare for the District to write a blank check by removing the cap.

For medical insurance the District's contribution falls on the lower end of districts with which it compares.<sup>1</sup> For example, College of Sequoias now contributes \$1178.50 per month; Merced pays the full cost. The latest

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<sup>1</sup> Such districts are community college districts comprising the Central 14 and are Allan Hancock, Cabrillo Cuesta, Gavilan, Hartnell, Kern, Merced, Monterey Peninsula, San Joaquin Delta, College of the Sequoias State Center, West Hills, West Kern and Yosemite.

figure for Kern is \$1158 per month which increased October 2012 pursuant to negotiated factors. Monterey Peninsula contributes \$1213.83 per month. San Joaquin contributes full cost of the composite rate for Blue Cross or Kaiser. Yosemite paid full costs between 2009-2012. Cabrillo provides an annual stipend for medical, dental, life and disability on a three-tier basis: \$751.57 (employee only), \$1459.67 (employee + one),<sup>2</sup> and \$2011.37 (employee + family). Hartnell provides full coverage for employee only and pays 95% of the premium for family coverage; those amounts stated monthly are \$573, \$1115.39 and \$1440.73 respectively.

Based upon the above comparisons, State Center can do a little better in this area without substantially depleting its reserve amounts. The District has contracted for two percent (2%) annual adjustments for certain retiree medical plans so that number is consistent with the Chairperson's recommendation of a 2% increase for active employees on October 1, 2013. That increase will cost the district approximately \$84, 646 for the balance of the 2013-2014 year and, if unchanged the following year, \$112, 861 for the entire 2014-2015 year. The total over the two years equals \$197,507 and leaves \$5,089,532 remaining in the "unallocated reserve."

Recommendation for Health and Welfare: Effective October 1, 2013 the District cap shall be increased by 2% to \$1049.58 monthly.

## HEALTH INSURANCE FOR RETIREES

The District provides four different options for retirees to continue with the District's medical insurance. Depending upon age of retirement and date of hire a retiree receives \$2400 annually, \$2008.08 annually (this

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<sup>2</sup> State Center's contribution appears based upon a composite rate which typically compares to the "employee plus one" rate in a three tier plan; that rate is my reference point when comparing with Cabrillo and Hartnell.

amount represents a contribution level which has increased by 2% per year at least since 2000 and will continue to do so) or \$8, 643.60 annually (70% of then current District contribution for active employees).

The District proposes to cease contributing to retiree health insurance for new hires. The Association proposes to maintain the current program.

Most of the comparable districts provide one or more programs of retiree medical insurance with eligibility based upon date of hire and years of service. In most programs district contributions end at age 65 or with Medicare eligibility. Districts such as Hancock, Sequoia, Gavilan, Hartnell and Kern pay the same premium contribution for retirees as for active employees. Cabrillo pays the full cost for the plan the employee was enrolled in at time of retirement; if the retiree switches plans he/she pays the difference.

Here, the District pays relatively limited amounts with the exception of the one plan at 70% of active employees' premium. Those plans with the 2% annual escalator are still reasonably priced insofar as the District's contribution. Stated otherwise, the District has, for the most part, stayed away from the pitfall of fully paid benefits for life for its retirees. The one exception is contained in the option for which the District currently pays \$2008.08 per year; an employee who retires under that option and has worked for the District 20 full time consecutive years is eligible for lifetime contributions.

On the basis of the District's current protections the Chairperson is not inclined to recommend eliminating new hires. However, some of the

open-ended provisions of the retiree medical program are unpredictable in eventual costs and should be closed to new hires.<sup>3</sup>

Recommendation for Retiree Health Insurance: The benefit should remain available for eligible new employees.

For employees hired on or after July 1, 2013 the provisions for a 2% escalator and eligibility for lifetime benefits should be eliminated.

### LONG TERM DISABILITY INSURANCE

The District currently provides a self-insured program of disability insurance (LTD) beginning after the 90<sup>th</sup> day of disability or the end of sick leave pay whichever occurs later. Eligible employees under the program receive 66 and 2/3 % of salary up to age 65. The District estimates its potential liability for current claims may reach \$2.3 million.

The District proposes to convert from self-insurance to an outside vendor plan which would provide 60% of salary up to a monthly maximum of \$5,000. The District proposes to eliminate District paid LTD for new hires; instead they may purchase the insurance at their own expense. The District's assertion that carriers will no longer write a plan for 66 and 2/3 % and that 60% is now the standard is uncontradicted.

The Association proposes to retain the status quo, arguing only that it opposes the two-tier approach.

Of the comparable community college districts, six provide LTD through an outside vendor, two have a cap on the District's contribution and

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<sup>3</sup> Case law suggests that aspects of public sector retirement programs vest once an employee begins work and, therefore, negotiators tend to focus retirement program changes on new hires. While some, including the Chairperson, may question the continuing validity of such legal theory that debate is irrelevant here because the District's proposal is limited to new hires.

two participate in SDI, one at the employee's sole expense. Two others provide no LTD coverage.

Were the District seeking only to change the carrier without plan changes and with little if any change in administrative procedures, the issue might not be negotiable. But where, as here, the conversion from self-funding to an outside carrier comes with changes in the plan specifications, the matter is negotiable. The District's concern with long term self funded exposure provides a legitimate rationale for recommending the District's proposals.

Recommendation for Long Term Disability: As soon as practicable following ratification the District may contract with an outside vendor for a Long Term Disability Plan providing 60% of salary up to a maximum of \$5000 monthly.

Employees hired on or after the effective date of the plan change shall not be eligible for District paid Long Term Disability. After three years of employment they may participate in the plan by paying 100% of the applicable premium.

## PAY AND ALLOWANCES

The Association proposes a salary increase of COLA plus 2% effective July 1, 2013. The District is proposing status quo on wages.

Neither party presented significant evidence on comparability of salary schedules. Like State Center a number of comparable districts have gone without salary increases for 3 to 4 years. Comparability in the classified area is frequently difficult because of variations in titles, job descriptions and duties from district to district. Nonetheless, a quick review of some similar job titles and salary schedules establishes that the State

Center salary schedule compares favorably with other comparable district salary schedules.

The District also expressed serious reservations about spending additional monies in light of the still uncertain future of the State's budget and economy for years following 2012-13.

The District points out that the most recent CPI is 0.4% for the month of January 2013; however that is a one month CPI. Bargaining unit employees have gone over four years without a raise and the CPI increase for that period exceeds 4%. The District does not deny that it has the ability to pay for a salary increase. An uncertain future, favorable comparisons and the Reserve source of funds militate against an ongoing salary increase. But the District has the resources to provide unit employees with some economic relief.

Recommendation for Pay and Allowances: No later than December 1, 2013 the District shall provide each bargaining unit member with an off schedule one-time payment in the gross amount of three percent (3%) of current salary.

#### ECONOMIC SUMMARY

As indicated under Health and Welfare, the cost for a 2% increase to the health insurance cap costs \$197,507 when extended through June 2015. A one time wage payment of 3% costs approximately \$738, 000. Thus through June 30, 2015 the cost of these recommendations totals \$935,507. When subtracted from the District's unallocated reserve there remains \$4,351,532 in the District's "unallocated reserve". The unallocated reserve represents an amount over and above the District's 6% reserve for contingencies and does not touch the carry-over monies which the District is holding for individual college and/or center needs. Further, except for the

medical insurance premium recommendation, the recommended monies are a one-time expenditure consistent with the one-time nature of district reserves. The Chairperson does not wish to be facetious and he recognizes that other claims, including those of teaching employees, police and administration, may be made against the “unallocated reserve”; but if, theoretically, the health insurance increase of \$112, 861 remained the only claim on the balance of the unallocated reserve, that reserve would be dissipated in thirty-eight and one-half (38 ½) years.

#### WORKING OUT OF CLASS AND CLASSIFICATION STUDIES

Article 33 Section 8 of the expired agreement provides for assignment to out of class duties, compensation for working out of class and further provides, “If doubt exists concerning any particular classification, the personnel office will clarify what is and what is not within classification.” The Association proposes to delete the reference to “personnel office” and substitute “Classified Director of Personnel.” The Association argues that some employees have been directed to work out of class but been denied a contractual (and statutory) pay adjustment because the personnel office determined that the work was not actually “out of class”.

Article 36 covers classification studies and reads, in its entirety, as follows: “Classification studies designed to analyze and study a whole class or classes and/or job families, shall be performed only by mutual agreement by and between the CSEA and district which shall be limited in frequency to not more than one such study in any five (5) year period.” The Association proposes to delete this article because there have been no classification studies over a long period of years.

In a letter to the Personnel Commission CSEA argued that ideally a classification study should be done at least every five (5) years but the contract language gives the District and the Association authority to withhold agreement and prevent a classification study from proceeding. In November 2012 agreement was reached to conduct a classification study rendering the Association's proposal temporarily moot.

A comprehensive classification study should strengthen job descriptions and delineations improving employees' arguments when they assert that they have been working out of class under Article 33. There should be more certainty on behalf of employees and supervision when an employee is assigned to work out of class so that the employee is properly paid and the District does not run the risk of failing properly to pay for such work.

Other Districts have negotiated more comprehensive contract provisions on working out of class and classification studies. Here, the spartan nature of both parties' proposals on this subject matter does not signal that a full blown comprehensive article is currently necessary.

The use of the personnel office as opposed to the Classified Director of Personnel is a management right. While the designation may be impacted by Education Code provisions governing merit systems that is for another forum to decide. Suffice to say the Chairperson is not comfortable reassigning management duties as part of this process.

Recommendation for Working Out of Class and Classification Studies: Article 33 Section 8 shall remain unchanged except as follows: The first sentence of subparagraph B should be amended to read: "A unit member shall work out-of-class only when directed to do so *in writing* and

is therefore required to perform duties inconsistent with the duties for their assigned position.”

Article 36 shall remain unchanged. At some point the parties may wish to consider a more comprehensive approach to classification studies.

### CSEA RIGHTS

The Association proposes that the District provide it with fifty (50) days per year of release time for Association business, training and conferences. The fifty days would be in addition to the EERA release time already provided for negotiations and grievance handling.

The District proposes no additional release time arguing that it already provides or has provided such release time and that the matter may not be within the scope of representation.

Indeed it appears the District has a history of being generous with release time. In *State Center Community College District and CSEA Chapter 379* (2008) 33 PERC ¶ 28 an Administrative Law Judge made the following finding: “Since at least 1986, the District has released employees, selected by Association membership, to attend the CSEA annual conference as delegates...In recent years, Chapter 379 has sent five to seven delegates.”

Additionally, the District is close to correct when it asserts that the matter is non-negotiable. This is so because Education Code Section 88210 mandates that the District grant such time upon request; stated otherwise, the District has no choice in the matter. The flip side to the mandate upon the District is the mandate upon the Association to reimburse the District for such time off. As a general rule Education Code mandates cannot be modified through negotiations.

Further, the Chairperson believes that, particularly in questionable economic times, the District should not be expanding the amount of time it pays employees for not working for the District.

Recommendation for CSEA Rights: No change in current language.

### TRANSFERS-WORK LOCATION

The Association proposes to modify Article 22 which defines work locations and work sites for purposes of transfers and mileage between work sites. The parties earlier reached a partial tentative agreement modifying some time factors in Article 22.

The Association expressed some concerns about the naming and description of work locations to the extent that District plans might defeat certain transfer conditions as well as claims for mileage. The Article did not appear at mediation or in the Association's statement of issues for factfinding. On that basis the District objected to its being considered by the Panel.

The parties prepared comprehensive and detailed presentations in connection with most issues before the panel; but not so for Article 22. In the Chairperson's opinion it would do a disservice to the process to permit the Association to introduce it as a surprise at the hearing. Accordingly, the Chairperson sustains the District's objection and does not consider Article 22 to be a proper subject for findings and recommendations at this time.

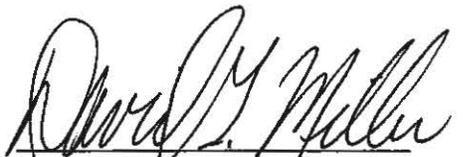
Nonetheless, the Chairperson urges the parties to work this one out so that the Article can operate in much the same way it has appeared to work in the past.

GENERAL

Items previously listed as tentative agreements should also be included.

Dated: March 5, 2013

Respectfully Submitted

  
David G. Miller, Chairperson

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Michael Noland, CSEA Representative

Concur( ) Dissent ( )  
Concur in part; dissent in part(x)

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Shelline K. Bennett, District Representative

Concur ( ) Dissent ( )  
Concur in part;dissent in part(x)

GENERAL

Items previously listed as tentative agreements should also be included.

Dated: March 5, 2013

Respectfully Submitted

David G. Miller, Chairperson

Michael Noland, CSEA Representative

Concur ( ) Dissent ( )  
Concur in part; dissent in part( )



Shelline K. Bennett, District Representative

Concur ( ) Dissent ( )  
Concur in part; dissent in part

*See Attached*

GENERAL

Items previously listed as tentative agreements should also be included.

Dated: March 5, 2013

Respectfully Submitted

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David G. Miller, Chairperson

  
Michael Noland, CSEA Representative

Concur( ) Dissent ( )  
Concur in part; dissent in part()

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Shelline K. Bennett, District  
Representative  
Concur ( ) Dissent ( )  
Concur in part; dissent in part( )

State Center Community College District and  
California School Employees' Association, Chapter 379  
(Case No. SA-IM-3240-E)

District's Representative to Factfinding Panel  
Shelline K. Bennett

Concurring and Dissenting Opinion to the Findings of Fact and Recommended Terms of Settlement:

As the representative of the State Center Community College District (SCCCD or District) to the Factfinding Panel, I concur with some portions of the Findings of Fact and the Recommended Terms of Settlement (the Report). There are several significant points, however, with which I disagree, and for that reason, I am providing this concurring and dissenting opinion.

**I. Term of Agreement**

Although the points made in the Report justifying the recommended term of the Agreement extending through June 30, 2014 are well taken, I dissent with the recommendation. Due to various issues related to uncertainty and instability of the state-wide budget, a multi-year Agreement is currently impractical. The District and CSEA can return to the table in a few short months and begin negotiating a successor Agreement, and hopefully at such time or following the same, some sense of financial stability is ascertained.

**II. Health and Welfare Benefits**

**A. Premium Contributions For Medical Insurance**

As the District's witnesses showed, the District's ending fund balances are significantly encumbered. The District's unallocated ending fund balance is just over \$5 million. There are already demands on those funds well in excess of \$5 million. These include health and safety repairs to the District's facilities, replacing essential equipment and supplies, and other dire needs that the District has deferred for several years.

In addition, there is still significant uncertainty that exists in the state budget, including the temporary nature of Proposition 30 and Prop 30's significant reliance on personal income tax revenues, which are concentrated in the highest 1% of income earners in the state. Given this backdrop, it is imprudent to recommend that the District undertake additional ongoing personnel costs.

Moreover, the District still has a structural deficit: it is spending more money each year than it receives in revenues. The state will be deferring in excess of 40% of its revenues as

compared to last year. The District will be forced to rely on its ending fund balances to help it weather these continuing fiscal storms.

Accordingly, I dissent from the findings and recommendations that the District increase the cap on the District's contribution to the Health and Welfare benefits. It is simply not in the District's best interests to increase its maximum contribution (cap) at this time.

#### **B. Retirees**

Similarly, the finding that the District continue retiree medical benefits for new employees is neither fiscally sound nor financially prudent. The findings of fact and recommendations significantly underestimate or ignore the ongoing cost of this benefit. The District must eliminate this benefit for new employees as a sustainability item. The annual payment due for this liability for the 2012-2013 fiscal year for existing employees is \$1,176,530. This amount increases annually, and in fiscal year 2034-2035 will exceed \$2.6 million. The amount this figure will increase is, of course, unknowable, and depends on the number of new employees, who will retire, when, and how long they will live after retirement. It is a certainty, however, that this is a significant ongoing expense and liability to the District. Accordingly, I must dissent from the findings of fact and recommendation regarding retiree health care benefits.

#### **C. LTD -- Plan Changes and New Hires.**

I concur with the findings of fact and recommended terms of settlement regarding LTD.

### **III. Pay and Allowances**

As with the findings of fact and recommendations regarding the health and welfare cap and the retiree medical benefits, I cannot support the finding regarding the proposed 3% pay increase.

The recommended payment is a one-time, off-schedule payment to employees. The cost of this recommendation approaches \$750,000. This is 1.4% of the District's unallocated, unencumbered ending fund balance. This is still not fiscally prudent or consistent with the long-term financial stability of the District. Accordingly, I dissent from the findings of fact and recommendation regarding a one-time, off-schedule payment to unit members.

### **IV. Working out of Classification**

I generally concur with the findings of fact and recommended terms of settlement regarding working out of class; however, I dissent with the recommendation to revise Article 33,

section 8, subparagraph B which adds the words "in writing", as this was not raised as an issue by either the District or CSEA during negotiations or at the hearing nor were examples provided that an "in writing" requirement was needed.

**V. Classification Studies**

I concur with the findings of fact and recommended terms of settlement regarding classification studies.

**VI. CSEA Rights – Release Time for Association Business and Training**

I concur with the findings of fact and recommended terms of settlement regarding CSEA release time.

**VII. Transfers – Work Location**

I generally concur with the findings of fact and recommended terms of settlement regarding transfers – work location; however, based on the practicalities of the various campuses/sites and a District center no longer being in existence, and as indicated in the District's third revised Last, Best, and Final proposal, the changes to Article 22, section A, should be: "Fresno City College; District Office (multiple sites); Reedley College (includes Willow International, Madera Center, and Oakhurst)", as it was understood by the District that this was agreed to by CSEA since it had not been raised by CSEA as an issue in its request for determination of impasse filed with PERB, at the mediation of this matter, nor in its fact finding statement of issues.

**Conclusion**

The findings of fact and recommendation recites that the cost of the recommended economic items equates to \$ 939,537.00. This figure does not include the continuing, ongoing, and significant increased cost of providing retiree medical benefits for new employees.

The District largely concurs with the findings, which recognize that the District is facing an on-going and serious fiscal crisis requiring that the District contain its costs. The District appreciates the Panel's consideration of the above factors.

Dated: 3-12-13

  
\_\_\_\_\_  
Shelline K. Bennett

Dissent to Fact-finding Panel Recommendation  
PERB Case No: SA-IM-3240-E

The Association Panel member respectfully submits the following concurrence and dissent of the "Recommendation of the Neutral Panel Member or a Majority Thereof" as follows:

Recommendation #1: Term of Agreement

The Association Panel Member concurs with the term of the Agreement recommended by the Neutral Panel Member.

Recommendation #2: Health & Welfare Benefits

The Association Panel Member disagrees with moving the "cap" to \$1,049.50 effective October 1, 2013 for unit members receiving Health and Welfare benefits. Given the financial condition of the District, the Association Panel Member recommends the District move the "cap" to cover the full cost of the Kaiser High plan.

The Association Panel Member concurs with the Neutral Panel Member regarding health insurance for retirees.

The Association Panel Member disagrees with the Neutral Panel Member regarding the LTD (Long Term Disability Insurance). The Association Panel Member recommends changing the plan to fully insured, however, the Association Panel Member recommends locating a LTD plan that covers 66 2/3 of salary and continue to include new employees in the plan.

Recommendation #3: Pay & Allowances

The Association Panel Member agrees with the Neutral Panel Member of a 3% pay increase, however, this Panel Member recommends the increase be placed on the classified salary schedule effective July 1, 2013.

Recommendation #4: Working Out of Classification

The Association Panel Member disagrees with the Neutral Panel Members' recommendation to leave Article 33 Section 8 unchanged except requiring the employee to receive in writing directives to work out of class. The Neutral Panel Members' recommendation does not address the issues that have occurred due to the current language. The Association Panel Member recommends changing the language from Personnel Office to Classified Director of Personnel.

Dissent to Fact-finding Panel Recommendation  
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March 13, 2013  
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Recommendation #5: Classification Studies

The Association Panel Member disagrees that Article 36 should remain unchanged. Testimony was clear at the hearing, the way the language is written, classification studies could be delayed indefinitely. The Association Panel Member recommends Article 36 be stricken.

Recommendation #6: CSEA Rights

The Association Panel Member disagrees with the Neutral Panel Members' recommendation of no change to Article 7. As release time is a mandatory subject of bargaining per (PERB Case No. SF-CE-36, San Mateo Elementary Teachers Association, CTA/NEA v. San Mateo City School District) and addressed in Education Code 88210 (recent legislation). The Association Panel Member recommends 50 days of release time to be utilized by the Association for Union business.

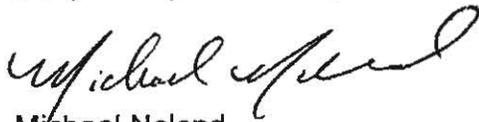
Recommendation #7: Transfers-Work Location

The Association Panel Member disagrees with the Neutral Panel Member as it relates to Article 22. The Association Panel Member recommends at a minimum that Article 22 remains status quo ante as it existed prior to negotiations.

Summary:

After reviewing the record of evidence and testimony introduced at the hearing, it is clear the District is withholding monies that could be utilized to enhance the pay and benefits of the classified bargaining unit. The District asserted at the hearing that much of its 24.8% reserves were spoken for with projects that have been on hold, however, the District produced not one piece of evidence to support its claim. Given the stable financial condition of the District, there is no reason that the economic issues should not have been able to be settled.

Respectfully submitted,



Michael Noland  
Association Appointed Panel Member