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 (**The Matter of the Impasse Between**)
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 (**Washington Unified School District**)
 ()
 (**and**)
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 (**Washington Teachers' Association**)
 (**CTA/NEA**)
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**FACTFINDING REPORT
 AND RECOMMENDED
 TERMS OF SETTLEMENT**

**PERB CASE #SA-IM-3370-E
 REPORT ISSUED
 September 16, 2016**

Hearing Held on August 30, 2016

COMPOSITION OF THE FACTFINDING PANEL

**Impartial Chairperson: John G. Moseley
 Fact-finder
 36835 Lexington Avenue
 Madera, CA 93636-8212**

**Washington Unified School
 District Panel Member: Ron Bennett, CEO
 School Services of California INC.
 1121 L Street, Suite 1060
 Sacramento, CA. 95814**

**Washington Teachers' Association CTA/NEA
 Panel Member:
 Kerry Moriarty
 Negotiations and Organizational Development
 California Teachers Association
 San Rafael RRC
 4300 Redwood Hwy, Suite 200
 San Rafael, CA 94903**

MAKING PRESENTATIONS TO THE FACTFINDING PANEL:

**For Washington Unified
School District:**

**Michael Reed
Assist. Superintendent, Human Resources
Washington Unified School District
930 Westacre Road
West Sacramento, Ca 95691**

and

**Marie A Nakamura
Attorney at Law
Dannis, Woliver, Kelly
555 Capitol Mall, Suite 645
Sacramento, CA 95814**

**For Washington Teachers
Association CTA/NEA:**

**Steve Savage
Regional Uniserv Staff
California Teachers Association
4751 Central Way
Fairfield, CA 94534-1612**

RELEVANT FACTORS

California Government Code

3505.4. (a) The employee organization may request that the parties' differences be submitted to a factfinding panel not sooner than 30 days, but not more than 45 days, following the appointment or selection of a mediator pursuant to the parties' agreement to mediate or a mediation process required by a public agency's local rules. If the dispute was not submitted to mediation, an employee organization may request that the parties' differences be submitted to a factfinding panel not later than 30 days following the date that either party provided the other with a written notice of a declaration of impasse. Within five days after receipt of the written request, each party shall select a person to serve as its member of the factfinding panel. The Public Employment Relations Board shall, within five days after the selection of panel members by the parties, select a chairperson of the factfinding panel.

(b) Within five days after the board selects a chairperson of the factfinding panel, the parties may mutually agree upon a person to serve as chairperson in lieu of the person selected by the board.

(c) The panel shall, within 10 days after its appointment, meet with the parties or their representatives, either jointly or separately, and may make inquiries and investigations, hold hearings, and take any other steps it deems appropriate. For the purpose of the hearings, investigations, and inquiries, the panel shall have the power to issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence. Any state agency, as defined in Section 11000, the California State University, or any political subdivision of the state, including any board of education, shall furnish the panel, upon its request, with all records, papers, and information in their possession relating to any matter under investigation by or in issue before the panel.

(d) In arriving at their findings and recommendations, the factfinders shall consider, weigh, and be guided by all the following criteria:

- (1) State and federal laws that are applicable to the employer.
- (2) Local rules, regulations, or ordinances.
- (3) Stipulations of the parties.
- (4) The interests and welfare of the public and the financial ability of the public agency.
- (5) 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 in comparable public agencies.
- (6) The consumer price index for goods and services, commonly known as the cost of living.
- (7) 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.

(8) Any other facts, not confined to those specified in paragraphs (1) to (7), inclusive, which are normally or traditionally taken into consideration in making the findings and recommendations.

(e) The procedural right of an employee organization to request a factfinding panel cannot be expressly or voluntarily waived.

3505.5 (a) If the dispute is not settled within 30 days after the appointment of the factfinding panel, or, upon agreement by both parties within a longer period, the panel shall make findings of fact and recommend terms of settlement, which shall be advisory only. The factfinders shall submit, in writing, any findings of fact and recommended terms of settlement to the parties before they are made available to the public. The public agency shall make these findings and recommendations publicly available within 10 days after their receipt.

(b) The costs for the services of the panel chairperson selected by the board, including per diem fees, if any, and actual and necessary travel and subsistence expenses, shall be equally divided between the parties.

(c) The costs for the services of the panel chairperson agreed upon by the parties shall be equally divided between the parties, and shall include per diem fees, if any, and actual and necessary travel and subsistence expenses. The per diem fees shall not exceed the per diem fees stated on the chairperson's résumé on file with the board. The chairperson's bill showing the amount payable by the parties shall accompany his or her final report to the parties and the board. The chairperson may submit interim bills to the parties in the course of the proceedings, and copies of the interim bills shall also be sent to the board. The parties shall make payment directly to the chairperson.

(d) Any other mutually incurred costs shall be borne equally by the public agency and the employee organization. Any separately incurred costs for the panel member selected by each party shall be borne by that party.

(e) A charter city, charter county, or charter city and county with a charter that has a procedure that applies if an impasse has been reached between the public agency and a bargaining unit, and the procedure includes, at a minimum, a process for binding arbitration, is exempt from the requirements of this section and Section 3505.4 with regard to its negotiations with a bargaining unit to which the impasse procedure applies.

Agreed to Stipulations

The District proposes the following stipulations as joint stipulations by the Washington Teachers' Association and the Washington Unified School District.

1. The Washington Unified School District is a public school employer within the meaning of §3540.1 (k) of the Educational Employment Relations Act.
2. The Washington Teachers' Association is a recognized employee organization within the meaning of §3540.1(l) of the Educational Employment Relations Act and has been duly recognized as the representative of the certificated non-management bargaining unit of the Washington Unified School District.
3. The parties to this fact-finding have complied with the public notice provisions of Government Code §3547 (EERA, sunshining requirement).
4. The parties have complied with the Educational Employment Relations Act with regard to the selection of the Fact-finding Panel and are timely and properly before the Panel.
5. The parties have complied with all the requirements for selection of the Fact-finding Panel and have met or waived the statutory time limitations applicable to this proceeding.
6. The contract issues which are appropriately before the Fact-finding Panel are as follows:
 - a. Article 5 – Transfers and Reassignments
 - b. Article 11 – Leaves
 - c. Article 16 – Class size
 - d. Article 17 – Compensation (Appendix A)
 - e. Article 18 – Unit Member Benefits
7. A request for impasse determination/appointment of a mediator was filed with the Public Employment Relations Board on or about April 13, 2016. The mediation process proceeded as scheduled, and the parties continued to meet with the mediator in an effort to reach agreement until June 23, 2016, at which point the mediator certified the matter to fact-finding.
8. On August 12, 2016, the parties selected Mr. John Moseley to chair the Fact-finding Panel.

AGREED TO STIPULATIONS (CONT.)

ARTICLE 1

GENERAL PROVISIONS

§3540.1. Definitions

(k) "Public school employer" or "employer" means the governing board of a school district, a school district, a county board of education, a county superintendent of schools, a charter school that has declared itself a public school employer pursuant to subdivision (b) of Section 47611.5 of the Education Code,

(l) "Recognized organization" or "recognized employee organization" means an employee organization that has been recognized by an employer as the exclusive representative pursuant to Article 5 (commencing with Section 3544).

ARTICLE 8

PUBLIC NOTICE

§3547. Proposals relating to representation; informing public; adoption of proposal; new subjects; regulations

(a) All initial proposals of exclusive representatives and of public school employers, which relate to matters within the scope of representation, shall be presented at a public meeting of the public school employer and thereafter shall be public records.

(b) Meeting and negotiating shall not take place on any proposal until a reasonable time has elapsed after the submission of the proposal to enable the public to become informed and the public has the opportunity to express itself regarding the proposal at a meeting of the public school employer.

(c) After the public has had the opportunity to express itself, the public school employer shall, at a meeting which is open to the public, adopt its initial proposal.

(d) New subjects of meeting and negotiating arising after the presentation of initial proposals shall be made public within 24 hours. If a vote is taken on such subject by the public school employer, the vote thereon by each member voting shall also be made public within 24 hours.

HISTORY OF NEGOTIATIONS

In October 2015, the Washington Unified School District, (District), and Washington Teachers Association, (WTA), began reopener negotiations for the 2015-2016 school year. In March 2016, the District proposed language, via letters, to WTA which would align with the law regarding Article 5, (Transfers), and Article 11, (Leaves, specifically 11.8, Parental Leaves). In April, 2016, WTA notified the District they had decided not to sign the side letters and requested that the District “sunshine” both Articles. In April 2016, the District sunshined Article 5, (Transfers), and Article 11, (Leaves, specifically 11.8, Parental Leaves).

WTA declared impasse on April 6, 2016. On April 25, 2016, the District presented their last best final offer. Impasse was filed with PERB.

The parties met on May 20, 2016, to participate in impasse mediation with Tom Ruiz from State Mediation and Conciliation. A sidebar mediation was also held with Tom Ruiz on May 24, 2016, and June 8, 2016. Mediation was unsuccessful, and on June 23, 2016, another unsuccessful mediation session was held with the support of Fact Finding Panel members Ron Bennett, (School Services), Kerry Moriarty, (CTA), and the parties, and the parties were then certified by Mr. Ruiz to Fact-finding.

John Moseley was selected by the parties as the Chair of the Fact-finding Panel on August 12, 2016. Fact-finding was held at the Ramada Inn in West Sacramento on August 30, 2016 commencing at 9AM, a second session scheduled for September 26, 2016 at 9AM, location to be determined.

ISSUE(S)

WASHINGTON UNIFIED SCHOOL DISTRICT ISSUES FOR FACTFINDING Summary of District and Association Positions

Issue	District Position	Association Position
Article 5 Transfer and Reassignment	Update language to align with current Education Code.	No response has been provided to proposed language.
Article 11 Leaves	Update current language to align with current Education Code	No response has been provided to proposed language.
Article 16 Class Size	Status quo	WTA proposed reducing the class size below limitations set forth by the LCFF
Article 17 Compensation	<ul style="list-style-type: none"> • Proposed 2% ongoing effective 7/1/15. • Proposed 1% one-time payment for 2015-2016. • Proposed 2% ongoing effective 7/1/16 • Proposed 1.81% ongoing effective 7/1/16 for three(3) added Professional Development Days. • Revise practice of “blue-slipping to provide only compensation to teachers who cover a class during a provided preparation period • For purposes of initial placement on the salary schedule, increase the allowable years of experience to twelve (12) years with placement at step thirteen (13). • Provide column 1 placement to staff earning a credential in an embedded bachelors program. The placement would be column one instead of the state minimum as defined by Education Code. 	<ul style="list-style-type: none"> • Proposed 5% effective 7/1/15. • Proposed 3% effective 7/1/16. • Proposed 0.6% ongoing effective 7/1/16 as compensation for one (1) added Professional Development Day. • Proposed 0.6% one-time payment for one (1) added Professional Development Day in 2016-2017. • Remain at status quo regarding the practice “blue-slipping” allowing for the option of compensation or time-in-lieu to teachers who cover a class during a provided preparation period. • For purposes of initial placement on the salary schedule, increase the allowable years of experience to twelve (12) years with placement at step thirteen (13). • Did not provide response to adjusting the salary schedule to accommodate staff earning a credential in an embedded program.
Article 18 Unit Member Benefits	<ul style="list-style-type: none"> • Increase annual medical contribution by \$400 effective 7/1/16 • Increase annual dental contribution by \$110 effective 7/1/16. • Increase annual in-lieu payment of enrolled in medical plan. • Article 18.7: Updated to read – Effective July 1, 2016 and ten (10) years of service working in the District. 	<ul style="list-style-type: none"> • Increase annual medical contribution by \$600 effective 7/1/16. • Increase annual dental contribution by \$110 effective 7/1/16 • Increase annual in-lieu payment of \$210 for those individuals not electing to be enrolled in medical plan • Article 18.7: Status quo

RELAVENT FACTS FROM THE HEARING

1. The District enrollment is approximately 7500 children.
2. The District appears to be in good fiscal condition.
3. The District is not raising the claim or the defense of an inability to pay.
4. The Parties both express a desire to reach a tentative agreement and avoid a decision from the Fact-finder.
5. The Fact-finder was originally selected as the Fact-finder to rule on the 2015-2016 fiscal year, however, both parties have agreed that the Fact-finder may issue a multi-year decision covering fiscal years 7/1/2015 to 6/30/2018.
6. The Fact-finder agrees with WTA that the employer may utilize Local Control Funding Formula (LCFF) for salary increases and still be in compliance with the Local Control Accountability Plan (LCAP)

DECISION/RECOMMENDATION for SETTLEMENT

The following recommendations for settlement are based upon testimony presented to the Panel, the evidence received, the documentation submitted, and the discussions that the Fact-finding Chair had with the Fact-finding Panel members, both individually and as a group. We have scheduled a second date for an additional mediation/fact-finding on September 26, 2016. I encourage the parties to meet and utilize the time between Friday September 16, 2016 and September 26, 2016 to meet and make a good faith effort to achieve a settlement. As the Fact-finding Chair and issuer of this recommendation/decision for settlement, I am maintaining jurisdiction over this case until such time as it is settled.

1. Article 5: Transfers and Reassignments;

- a. The Parties agree to meet and negotiate implementation language in Article 5, to reflect the requirements of the Education Code 35036, which prohibits the school district from entering into a collective bargaining agreement that is signed, after April 15, of the school year prior to the school year in which the transfer would become effective , priority to a teacher who has requested to be transferred to another school over qualified applicants who have applied for positions requiring certification qualification at the school.

2. Article 11: Leaves;

- a. The Parties agree to meet and negotiate implementation language in Article 11, to reflect the addition of Education Code 44977.5 and the resulting child bonding differential time.

3. Article 16: Class Size;

- a. The Parties agree to the status quo agreed to during the negotiations for 2014-2016, and contained in the current collective bargaining agreement.

4. Article 17: Compensation;

- a. Increase maximum placement on salary schedule for new teachers to a maximum of twelve years, and to be placed on step 13. In compliance with the requisite uniform salary requirements of the Education Code, this adjustment will result in the movement of some current teachers being moved on the salary schedule. Teachers hired prior to ratification of this agreement, who were placed on step 8, but were hired between seven, (7), and twelve, (12), or more years may be moved on the salary schedule to the appropriate step. This adjustment will not result in retroactive pay nor will any teacher receive a reduction in their current salary due to the change.
- b. Teachers entering the district after completing an embedded BA-credential program shall be placed in group III, (BA+30), when hired.
- c. The Unit's salary schedule shall be increase by 2.2% retroactive to July 1, 2015.

- d. The Unit's salary schedule shall be increased by an additional 3.6% increase retroactive to July 1, 2016.
- e. The Unit's salary schedule shall be further increased by an additional 2% effective July 1, 2017.
- f. Members of the Unit shall receive an additional 0.6% increase on the salary schedule retroactive to July 1, 2016, in exchange for one, (1), professional development day.
 - i. The teachers shall have the right to individually schedule this day by giving their site administrator reasonable notice of the date that they are going to utilize it for their personal professional development during the remainder of the 2016-2017 fiscal school year.
- g. Members of the Unit shall receive an additional 0.6% increase on the salary schedule beginning July 1, 2017 in exchange for a second, (2nd), professional development day, which shall be scheduled by the employer.
 - i. No later than 60 calendar days after the training occurs from the 2nd professional development day, the Association and the District shall meet to determine if the trainings (both employer scheduled day and individually scheduled day), were useful and informative for improving the teachers' skills and to determine if the District and the Association will continue with the professional development days.
- h. Blue Slipping: The parties shall meet and negotiate implementation language to provide compensation for teachers who are assigned individual classes or other coverage that are currently covered by the Blue Slip language. The teachers shall not receive less than their hourly rate when performing Blue Slip duties and the assignment of Blue Slip assignments shall be based on seniority and skills required for the class or coverage.

5. Article 19: Unit Members' Benefits;

- a. Effective July 1, 2016, the Parties agree that the District will increase the maximum annual District contribution to medical benefits by \$600 per year, and increase the maximum annual District contribution to dental benefits by \$110 per year, and increase the annual contribution to the in-lieu of benefits by \$210 per month. There will be no increase in the District's contribution to Unit Members Benefits in the 2017-2018 school year.
- b. Effective July 1, 2016, to be eligible for retiree health benefits the unit member must have ten (10) years of service working in the District and be at least 52 years of age.

SIGNATURE PAGE

Association Panel Member
Concur _____ Dissent _____

_____ Attached Statement

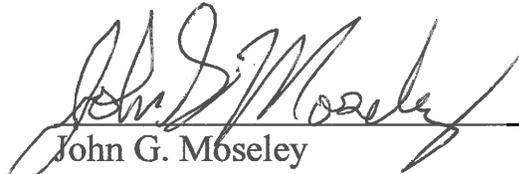
District Panel Member
Concur _____ Dissent _____

_____ Attached Statement

Ms. Kerry Moriarty
for WTA

Mr. Ron Bennett
for WUSD

Panel Chair



John G. Moseley
Factfinder

SIGNATURE PAGE

Association Panel Member
Concur _____ Dissent _____

District Panel Member
Concur X Dissent _____

_____Attached Statement

_____Attached Statement



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for WTA

Mr. Ron Bennett
for WUSD

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John G. Moseley
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SIGNATURE PAGE

Association Panel Member
Concur X Dissent _____

District Panel Member
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_____ Attached Statement

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