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## **2023 Public Sector Conference**

Factfinding in a Volatile Time: Record-High Inflation, Vaccine-Mandate Protests, and  
Comparator Asymmetry

Friday, April 28, 2023

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### **Conference Reference Materials**

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# **Factfinding in a Volatile Time: Record-High Inflation and Comparator Asymmetry**

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**California Lawyers Association:  
Public Sector Conference  
April 28, 2023**

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## Legal Issues Related to Factfinding

The Educational Employment Relations Act (EERA), Cal. Gov. Code §§ 3540 *et seq.*, Higher Education Employer-Employee Relations Act (HEERA), Cal. Gov. Code §§ 3560 *et seq.*, and the Meyers-Milias-Brown Act (MMBA), Cal. Gov. Code §§ 3500 *et seq.* all create a factfinding mechanism for resolution of disputes in negotiation.

### ***Factfinding Applies to All Bargaining Disputes Over Negotiable Matters***

Factfinding is available for any differences over any and all matters within the scope of representation so long as the union's request is timely. (*County of Contra Costa* (2014) PERB Order No. Ad-410-M; *San Diego Housing Commission v. PERB* (2016) 246 Cal. App. 4th 1.) It is not limited to negotiations over new or successor MOUs but includes so-called single-issue disputes.

### ***Factfinding Triggers***

Under EERA and HEERA, factfinding may be invoked after the parties have reached "impasse." PERB will evaluate whether the parties have reached impasse. When determining whether impasse has been reached, PERB will consider, "the number and length of negotiating sessions between the parties, the time period over which the negotiations have occurred, the extent to which the parties have made and discussed counter-proposals to each other, the extent to which the parties have reached tentative agreement on issues during the negotiations, the extent to which unresolved issues remain, and other relevant data." (8 CCR § 32793.)

Under the MMBA, PERB does not evaluate whether the parties are at impasse (or whether the impasse concerns a matter within the scope of representation). (*City of Salinas* (2018) PERB Order No. Ad-457-M, p. 6; *City of Oakland* (2018) PERB Order No. Ad-462-M, p. 6.) PERB simply determines if there was a (1) written declaration of impasse or the appointment or selection of a mediator; and (2) the factfinding request was timely filed after the triggering event. (*Santa Cruz Central Fire Protection District* (2016) PERB Order No. Ad-436-M, p. 5.) PERB must accept the request if the request is timely under any plausible interpretation. Allegations that a party failed to bargain in good faith to impasse are addressed via an unfair practice charge. (*County of Santa Clara* (2020) PERB Order No. Ad-438-M, p. 6.)

### ***Factfinding Timelines***

The timelines for filing a factfinding request under the MMBA are: (1) "not sooner than 30 days, but no more than 45 days, following the appointment or selection of a mediator" or, if the dispute was not submitted to mediation, (2) "not later than 30 days following the date that either party provided the other with a written notice of a declaration of impasse." (Cal. Gov. Code § 3505.4; 8 CCR § 32802.)

A bright line rule applies to the timeliness of those requests. (*Lassen County In-Home Supportive Services Public Authority* (2015) PERB Order No. Ad-426-M, p. 6 (timeline enforced despite mediator's delay in scheduling mediation); *City of Redondo Beach* (2014) PERB Order

No. Ad-409-M, pp. 6-7.) Where an employee organization has provided the employer with a written notice of a declaration of impasse, and it later believes that the parties are no longer at impasse, the union must timely withdraw its declaration of impasse. (*Santa Cruz Central Fire Protection District*, PERB Order No. Ad-436-M.) Where it is the employer who has provided the employee organization with a written notice of a declaration of impasse, the union must keep track of the statutory window period and to file its request for factfinding within that period. (*Lassen County In-Home Supportive Services Public Authority* (2015) PERB Order No. Ad-426-M; *City of Redondo Beach* (2014) PERB Order No. Ad-409-M.) The timelines cannot be revived by breaking impasse followed by a second declaration of impasse. (*City of Watsonville* (2017) PERB Order No. Ad-445-M.)

### ***Post Completion of Impasse and Factfinding***

In general, bargaining is complete when the parties reach agreement or bargain to impasse and complete any applicable impasse procedures. (*County of Santa Clara* (2010) PERB Decision No. 2114-M, p.13.) That includes considering the factfinding report in good faith. (*City of Davis* (2018) PERB Decision No. 2582-M, pp. 26-27.) Only after any applicable mediation and factfinding procedures have been exhausted may a public agency implement its last, best and final offer. (MMBA § 3505.7; *County of Sonoma* (2010) PERB Decision No. 2100-M.) An employer need not implement its last, best and final offer. It need only refrain from implementing changes not reasonably contemplated in its last, best and final offer. (*County of Tulare* (2015) PERB Decision No. 2461-M, p. 17; *City of Clovis* (2009) PERB Decision No. 2074-M, p. 5, fn. 5.) The changes must be “neither proposals better than the last best offer nor proposals less than the status quo which were not previously discussed at the table.” (*Modesto City Schools* (1983) PERB Decision No. 291, p. 46-47, citation omitted.)

However, if impasse is broken (if one party proposes a concession from its earlier bargaining position which indicates an agreement may be possible), the duty to bargain is revived and the employer may no longer unilaterally implement terms and conditions of employment. (*Rowland Unified School District* (1994) PERB Decision No. 1053; *Public Employment Relations Bd. v. Modesto City Schools Dist.* (1982) 136 Cal.App.3d 881, 899.)

A last, best and final offer may only be implemented after the parties have reached impasse after good faith negotiations. (*City of Glendale* (2020) PERB Decision No. 2694-M.) If there is a dispute regarding these facts, PERB’s unfair practice proceedings are the vehicle for resolution. (*City & County of San Francisco* (2014) PERB Order No. Ad-415-M, pp. 13-14.)

## Factfinding Criteria

- (1) State and federal laws that are applicable to the employer.
- (2) Local rules, regulations, or ordinances. (MMBA)
- (3) Stipulations of the parties.
- (4) The interests and welfare of the public and the financial ability of the public school employer/ 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 and with other employees generally in public school employment in comparable communities/ 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.

### The CPI Factor

The Consumer Price Index (CPI) consists of a family of indexes that measure price change experienced by consumers published by the U.S. Bureau of Labor Statistics.<sup>1</sup> Specifically, the CPI measures the average change in price over time of a market basket of consumer goods and services. The market basket includes everything from food items to automobiles to rent. It is fundamentally a measure of price change to approximate changes in the cost of living.

The CPI utilizes two different population measures: CPI-U and CPI-W.

The CPI for all urban consumers (CPI-U) is the broadest measure. It is based on the expenditure patterns of a sample of urban consumers representing over 90 percent of the population.

The Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) is based on the expenditures of urban households included in the CPI-U definition that also meet two additional requirements: more than one-half of the household's income must come from clerical or wage occupations, and at least one of the household's earners must have been employed for at least 37 weeks during the previous 12 months. The CPI-W population represents approximately 30 percent of the total U.S. population and is a subset of the CPI-U population. CPI is computed for several geographic areas.<sup>2</sup>

Enclosed is an excerpt of a fact-finding decision addressing CPI.

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<sup>1</sup> <https://www.bls.gov/cpi/>

<sup>2</sup> <https://www.bls.gov/regions/home.htm>

## **The Comparison of Wages, Hours and Conditions of Employment Factor**

This factor is often crucial and advocates must make several decisions in making comparator arguments. These include identifying which jurisdictions should be comparators, what to compare (e.g. wages v. total compensation and, if the latter, what is included), the appropriate title/classification match, and how to compare (e.g. mean v. median v. top scale) and over what time period.<sup>3</sup>

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<sup>3</sup> PERB used to public factfinding reports on its website. Currently, it provides only a list of decisions and the decisions themselves can be requested through a public records act request. <https://perb.ca.gov/decisions/fact-finder-report/>

Enclosed are excerpts from several factfinding reports addressing issues of comparability.



## Excerpts of a Factfinding Decision Addressing CPI

By Yuval Miller

### ***Cotati-Rohnert Park Unified School District and Rohnert Park-Cotati Educators Association, PERB Case No. SF-IM-3325-E (2022)***

Although other Sonoma County school districts have *historically* had similar financials relative to state averages, on this record it appears clear that the public interest has been changing rapidly in recent years throughout Sonoma County. With each new collective bargaining agreement, Sonoma County districts have accelerated wage increases to prioritize teachers.

CRPUSD requests that the Panel take into account its already-significant efforts to make teachers a high priority. It highlights that it gave teachers a 2% raise in 2020-2021 even though COLA was unfunded that year, and RPCEA members have received raises over the last nine years that cumulatively exceeded both COLA and CPI when those figures were low.

The District may be applauded for this, but the Chair is not persuaded that the District's past wage increases should be weighed as the District requests. The District asks the Panel to subtract 2% from any 2021-2022 wage increase because of the District's 2020-2021 wage increase in that amount. It would not be consistent, however, both to rely on the 2% increase as proof that the District believes in a higher priority for teachers and also to count such prior wage-increase agreements against the teachers. The first argument suggests a one-way ratchet upward to a higher priority level; the second suggests a pendulum swinging teachers back to their prior status.

The pendulum approach—i.e., counting last year's 2% raise against RPCEA—would be misguided. The parties are both entitled to the benefit of their 2020-2021 bargain. Negotiating parties, through the give-and-take of bargaining, make concessions to reach an agreement. When that agreement is signed, each concession has been traded for others. Whether it was a change to contract language, aversion of a strike, retention of good teachers, or achieving its stated goal of making teachers a higher priority in the budget, the District gained something in exchange for the 2% raise. It should not now seek to squeeze yet *more* value out of a concession it made in the past.

Notably, several other districts CRPUSD highlighted as comparators gave substantial raises in 2020-2021 (when COLA was unfunded) and *again* in 2021-2022 (a year with a 5.07% funded COLA). For example, Santa Rosa City Schools<sup>4</sup> gave a 4% raise in 2020-2021 and a 6.5% raise in 2021-2022; Sonoma Valley USD gave a 5.25% raise in 2020-2021 and a 5.5% raise in 2021-2022; and Bellevue Union ESD gave a 5% raise in 2020-2021 and a 4% raise in 2021-2022. Petaluma City Schools gave a 5% raise in 2020-2021 and had not yet set wage increases for future years. While there are some jurisdictions providing lesser amounts, the evidence shows those jurisdictions are lagging behind the public interest. The Union presented undisputed evidence that the jurisdictions making strides to reprioritize teachers are doing so because of a Sonoma County public interest in improving teacher living conditions, preventing good teachers from leaving, and correcting a history, perceived by the public, of neglect for teacher welfare.

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<sup>4</sup> The District presented evidence that Santa Rosa City Schools submitted a "Qualified" certification in connection with its first-interim budget—indicating that district *might* not be able to meet its financial obligations in the next three years. This document, a subjective opinion by an unknown analyst, is speculative. Moreover, the District presented no evidence that Santa Rosa City Schools' even subjectively correlated its unknown analyst's speculative prediction with personnel costs, much less with any wage increase that district negotiated with its teachers. It is difficult to give much weight to the District's speculation about an unknown analyst's speculation about the possible result of an unknown correlation unsupported by any data.

With respect to the District's financial ability to pay, the Chair agrees with the District that Total Compensation is more important than salary. While salary is more important when considering CPI and purchasing power, Total Compensation is more important with respect to District costs because it represents the total money CRPUSD pays to RPCEA members. Total compensation is particularly applicable in this case, where the District has the would more than make up for the District's cited 1.48% cost of step-and-column increases.

In short, while the District's "financial insolvency" concerns should not be ignored, the figures presented by the District show an incomplete picture to substantiate those concerns. The Chair urges the District to update its figures and make missing data available in continuing negotiations. To the extent that data shows costs have outpaced the new revenue missing from the evidence at factfinding, lower wage increases than those recommended here might be appropriate. But, given that it is the District's burden to show any inability to pay, the Chair cannot credit data that understates Unrestricted COLA and leaves out Restricted COLA.

The portent of the District's evidence regarding other statistics is also problematic. For example, the District claims its expenditure on personnel costs is greater than the average of the districts it thinks are comparable based on 2019-2020 figures. But the District's personnel-cost data does not take into account the fact that many of the comparators it cites have raised teachers' salaries substantially since that data was created. For example, Sonoma Valley USD and Santa Rosa City Schools, in 2020-2021 and 2021-2022, have provided—according to the District's own chart—cumulative wage increases of 10.75% and 10.5%, respectively. As we see in *Figure 1*, the latter 10.5% increase would have had to be an increase of about 12.3% at CRPUSD to lead to the same increase in Total Compensation achieved at Santa Rosa City Schools (i.e., Total Compensation Value). Similarly, Petaluma City Schools, with the second highest personnel-cost percentage according to the District's table, gave a 5% wage increase in 2020-2021 alone, and will likely still agree on a significant 2021-2022 raise in light of the 6.17% COLA and 6.8% CPI.

Furthermore, as shown in *Figure 1*, districts in Sonoma County that are *not* on the District's tables have provided substantial raises in 2021-2022: 5% at Mark West ESD (which these tables—Mark West ESD and Piner-Olivet Union ESD—gave a 2021-2022 raise exceeded in *Figure 1* only by Santa Rosa City Schools. The Panel lacks information about how these raises would compare to GFR ADA, Total Compensation, or Reserve Percentage at Mark West ESD or Piner-Olivet Union ESD simply because the District did not provide this requested information.

The District contends that any comparison of comparable districts' wage increases must contend with the fact that other districts have high concentrations of "unduplicated" students that generate supplemental and concentration grants—grants that the District does not receive. Those districts do receive more LCFF funding for certain threshold percentages of high-needs students. At the same time, however, districts with a higher proportion of high-needs students must also provide more resources and staff to their higher-need student populations. The District's data regarding comparables does not show which districts are receiving unduplicated-student funding *or their unduplicated-student costs*, let alone whether the *funding-to-costs ratio* leaves those districts with more or less money available for teacher wage increases.

The Panel is statutorily required to consider CPI. The high CPI weighs in favor of RPCEA in this matter. The CPI rose 6.8 percent from November 2020 to November 2021, the largest 12-month increase since the period ending June 1982. It is predicted to be climb even higher in the following year. Although the District asserts COLA is the only important measure because schools are funded based on it, CPI is important because its basket of goods and services is a proxy for the purchasing-power hardships facing RPCEA members. When considering rising CPI, Total Compensation is less important than salary because health-and-welfare contributions

will not pay for food, gas, or shelter. Wage increases must be sufficient to support the public interest in retaining good teachers who can provide our students a decent education.

## **Brief Review of the Comparability Factor in Fact-Finding How many ways can you slice the pie?**

By Andrea Dooley

The following includes summaries and excerpts from factfinding reports that I have prepared for parties at impasse under EERA, HEERA, and MMBA. These are examples provided illustrative purposes but what is striking about the Comparability factor is how malleable it is.

### ***IBT Local 856 and County of Alameda Probation Department, PERB Case No. SF-IM-232-M (2020)***

#### Comparability:

The parties presented evidence about the wages and benefits for deputy probation officers at other agencies and the Caseload Management Standard policies at comparable agencies. The comparable public agencies are other counties in the region, counties of comparable population size and funding elsewhere in California, and the state of California. A discussion of the comparability of the caseload management standard policies of other probation departments is included below in Issues and Recommendations.

#### Discussion:

As the American Probation and Parole Association noted in their Caseload Standards for Probation and Parole (2006) article, the issue of caseload standards, “remains a contentious one, difficult to resolve and critically important to the field of community corrections.” UX 14, p. 1.

“The importance of caseload size to the effectiveness of probation and parole supervision cannot be overstated. . . Those caseloads must be of a size that provides officers with enough time to devote to each offender to achieve supervision objectives.” Id., pp. 2-3. At the same time, evidence shows that “reducing caseloads alone will not produce better results,” where it results in aggressive and rigid enforcement, and excessive supervision. Id. The APPA proposed caseload standards “[that] are designed to drive effective practices and guide decision-makers. To make these standards flexible and useful, they are stated in terms of ratios of cases to officers and are framed as numbers **not to be exceeded.**” Id., p. 6 (emphasis added).

#### Adult Caseload Standards (per APPA guidelines, 2006)

Case Type	Cases to Staff Ratio
Intensive	20:1
Moderate to High Risk	50:1
Low Risk	200:1
Administrative	No limit? 1,000?

Id., p. 7.

Finally, APPA notes the need to develop “best practices for community corrections,” and “having done that, [individual agencies and jurisdictions] can conduct the requisite time studies and develop their own specific staffing patterns.” UX 14, at p. 8.

Other jurisdictions in California have grappled with the question of optimal caseloads for effective supervision of the probationers in their counties. Contra Costa County Probation Department has three levels of community supervision: Low, Moderate, and High. In addition, they have separate caseload standards for specialized caseloads, including DUI, Auto Theft, Domestic Violence, and Sex Offenders. Low level clients are transferred to the Banked Caseload. Moderate requires one monthly face to face contact (office or field) with probationers who are not in custody or in a residential treatment program. High requires a minimum of two face to face contacts per month (office or field) with probationers who are not in custody or in a residential treatment program. UX 4, pp. 5-6. There is no specified caseload ratio for Contra Costa County Deputy Probation Officers.

City and County of San Francisco Adult Probation Department Case Load Standards do not set ratios for caseload management except at the Intensive Supervision level. Intensive Supervision has a 20:1 ratio and requires at least one face to face contact per week and one collateral contact per week. High Supervision requires two face to face contacts per month, including at least one home visit every 30 days. Medium supervision requires one face to face contact per month, including one home visit every 60 days. Low supervision clients need to report every 60 calendar days by mail, email or telephone reporting system. UX 5, p. 16.

In San Diego County, High Risk requires face to face contact two times per month, including one field and one office contact, and one home visit every other month. Medium risk requires contact once every three months or more often based on the specific case requirements. Low risk clients are referred to the administrative offender program, and there is a separate caseload management standard for sex offenders and ICE holds. UX 7, pp. 8, 24, 35.

The Department’s proposal would set the High Supervision requirements at one home contact every 30 days, one office/field contact every 30 days, and one collateral contact every 90 days, which counts toward the office/field contact requirement. Medium supervision requires one office/field visit every 30 days and one home visit every 60 days. Low supervision will be transferred to Alternative Reporting as appropriate. EX 1.

The different county standards are summarized below:

<b>County</b>	<b>Low Supervision</b>	<b>Medium Supervision</b>	<b>High Supervision</b>	<b>Other</b>
Alameda (proposed)	Alternative Reporting	1 office/field per 30 days one home per 60 (1/month)	1 office/field per 30 days 1 home per 30 days (2/month)	Separate policy for specialized caseload forthcoming
Contra Costa	Banked Caseload	1 office/field per month	Minimum of 2 per month (2/month)	Specialized caseloads under separate section
San Diego	Administrative Offender Program	1 contact per 3 months	2 contact per month (1 office, 1 field, 1 home every other month)	Separate caseloads for sex offense and ICE holds
San Francisco	Report every 60 days by mail, email, telephone reporting system	1 face to face per month including 1 home visit every 60 days	2 contacts per month, 1 home visit per 30 days (2/month)	Intensive: ratio of 20:1 and at least 1 contact per week and 1 collateral contact per week.

Other California probation departments and California Department of Corrections and Rehabilitation have other caseload management standards and/or practices. Contact standards vary from department to department but there is no evidence that probation departments have adopted caseload ratios in the manner proposed by APPA. In the County of Marin, they have adopted a case range rather than a ratio. For example, the high-risk caseload is a range of 50-60 clients per probation officer.

It is important to note the difference between caseloads and contacts. Caseloads are the number of individuals a DPO is responsible for monitoring and supporting. Contacts are the number of times each individual probationer will meet by their DPO. As noted above, no other jurisdiction has a caseload ratio, although they all have similar contact standards. Based on the evidence provided at the hearing, the proposed Department contact standards are consistent with other similarly sized departments in California.

***IBT Local 856 and Contra Costa County Department of Conservation and Development, PERB Case No. SF-IM-326-M (2020)***

Comparability:

The parties each submitted job specifications for building inspectors and senior building inspectors from other counties in the Bay Area. The parties' proposals, as well as certification requirements in other Bay Area Counties are listed below. (table omitted).

Discussion:

After a review of the facts and arguments presented by both parties, the Chair recommends the following terms for settlement of the Agreement. These recommendations have been crafted to maintain parity with other Building Inspector II and Senior Building Inspectors in comparable public agencies and to achieve a better balance among classifications in this job series.

The Building Inspector II and Senior Building Inspector job specifications should have distinct minimum qualifications that are identifiable to applicants and achievable for employees. For that reason, specific subject areas should be spelled out in each specification and vague language like "proficiency" and "extensive knowledge" should be replaced with specific, measurable, and achievable certification requirements.

The parties should give current employees a generous opportunity to meet the minimum qualifications of their position using the continuing education process defined in Health and Safety Code Section 18949.29 and the collective bargaining agreement.

***Santa Clara San Benito Building Trades Council and County of Santa Clara, PERB Case No. SF-IM-230-M (2021)***

Comparability:

The Union is a labor organization comprised of other unions which represent several building trades employees in both the public and private sector. Historically the parties jointly relied on comparability measures that included the private sector building trades as well as prevailing wage in the County.

The Union’s proposals are also based on a review of other bargaining units in the County, including employees covered by the agreements.

## **ARTICLE 7 – PAY PRACTICES**

Several different issues arise under Article 7:

- wage rate increases over the life of the next agreement;
- retroactive pay;
- wage realignment.

In agreements reached with other unions, the County has agreed to 3% annual increases, paid those increases retroactively to the expiration of those agreements, and agreed to wage realignment in other bargaining units as well. In bargaining with BTC, the County has offered a lump sum payment in lieu of retroactive pay and would implement annual increases at the time the Agreement is finalized. The County has not agreed to wage realignment.

The Union seeks a full retroactive wage increase back to November 1, 2020, with future increases of 3% each November. The Union also seeks wage realignment because county positions in their CBA have fallen behind the prevailing wage. County Charter Section 709 states:

Rates of pay shall be fixed by the Board of Supervisors which are commensurate with those prevailing throughout the county for comparable work. Rates of pay fixed pursuant to an agreement between the Board of Supervisors and a recognized employee organization shall be conclusively presumed to be commensurate with those prevailing throughout the county for comparable work and no action may be brought against the county or any county officer alleging that such rates of pay are not comparable.

In further support of its contention that its members are falling behind on wages comparable to the prevailing wage, the Union provided evidence of the growing gap in wages for carpenters, roofers, tilers, and locksmiths. UX4. The CBA paid 96% of prevailing wage for those classifications in 2016. That had fallen 89.7% in 2020 and is estimated to fall further to 87.1% in 2023. Id. Given the restrictive language of Section 709, the Union’s only course of action to increase its position relative to the prevailing wage is to make those gains in bargaining.

Through correspondence submitted by the Union, the panel understands that the County raises fiscal concerns because of the COVID-19 pandemic. However, the County did not appear at the hearing or otherwise provide facts to support this claim. The County has also never made an “inability to pay” argument during bargaining and the overall fiscal health of the County is strong. This is supported by the fact that the County agreed to 3% annual increases, retroactive increases, and wage realignment for much larger bargaining units.

Since there’s no evidence that there is a fiscal challenge to the proposed increases, and since they’ve been given to all other bargaining units, **the panel concludes that 3% annual increases retroactive to November 1, 2020, as well as re-alignment capped at the prevailing wage rates (implemented over three years without retroactive pay), is an appropriate increase for settlement of this agreement.**

***AFSCME Local 3299 and University of California, Hastings Law School, PERB Case No. SF-IM-3214-H (2019)***

Comparability

Both parties provided extensive evidence about comparability. UC Hastings submitted a market assessment report commissioned from Sibson Consulting (“Sibson”). EX 16. Sibson reviewed market surveys conducted by four different sources in general industry and higher education, concluding that UC Hastings salaries are market competitive. The data relied upon by the market surveyors that Sibson cites is confidential, making it difficult to determine if the positions selected for comparison are in fact comparable to the bargaining unit positions. Sibson has applied a geographical factor and “aged” the data by 2.7% to account for cost of living increases. However, UC Hastings isn’t offering 2.7%, so the aging factor increases the salaries more than the Employer proposes to increase them. The geographic factor (that is, increasing the amount because the geographical area is more expensive) does not seem to track with the specific cost of living (or the CPI-U) for the San Francisco Bay Area. In general, UC Hasting’s data is too general to draw conclusions applicable to their wage proposals.

The Union, on the other hand, offered a huge volume of data concerning comparable job titles at other law schools in the Bay Area. The Union also analyzed the job requirements for comparable titles to determine whether those jobs perform the same or similar work and have the same or similar job qualifications. AFSCME concluded from its own research that job titles at UC Hastings have higher job requirements (for example, require college degrees) than the same job titles at other law schools, while on average earn less than those job titles, even at schools that are not within the higher cost geographic area.

***Santa Maria Joint Union High School District and Santa Maria Union High School District Faculty Association, CTA, NEA, PERB Case No.: LA-IM-3883-E (2016)***

Comparability

The District identified the following districts as comparable because Santa Maria teachers in the normal commuting area would be able to consider employment in these districts due to their proximity. These districts are Atascadero Unified School District, Blochman Union Elementary School District, Carpinteria Unified School District, Cuyama Joint Unified School District, Guadalupe Union Elementary School District, Lompoc Unified School District, Lucia Mar Unified School District, Orcutt Union Elementary School District, Paso Robles Joint Unified School District, San Luis Obispo Coastal Unified School District, Santa Barbara Unified School District, Santa Maria-Bonita Elementary School District, Santa Ynez Valley Union High School District, and Templeton Unified School District.

The Association identified the following districts from the county, as well as districts from elsewhere in California which have similar Unduplicated Pupil populations:

County Districts Comparables

Carpinteria Unified School District  
Lompoc Unified School District  
Santa Barbara Unified School District

State District Comparables

Anaheim Union High School District  
Brawley Union School District  
Central Union School District



Santa Ynez Valley High School District

Delano Joint Union High School District  
El Monte Union High School District  
Le Grand Union High School District  
Salinas Union High School District  
South Monterey County Joint Union High School District  
Sweetwater Union High School District  
Wasco Union High School District

Data about these was taken from State-Certified Reports, including the J-90, CBEDS and SACS reports, for the years for which data is most recently available.

### CPI

The panel did consider data concerning Consumer Price Index. Ongoing salary settlements between the District and the Association since 2013 have exceeded the California CPI.

Year	District % Increase	State CPI
2013-2014	5.50%	1.40%
2014-2015	6.00%	1.50%
2015-2016	3.50% (District proposed increase)	1.90%
Total	15.00%	4.80%

## Article 2 Compensation

### 2.1.1 Salary Schedule

2015-16: **2.63%** increase, retroactive to July 1, 2015.

2016-17: **3%** total compensation increase, allocation to be determined by the parties.

*The District offered a 3.5% total compensation increase for 2015-16. The Association requested that .87% of that be allocated towards benefits, leaving 2.63% for the salary increase.*

### 2.5.3 Mock Trial added to the Activity Stipend List

### 2.7 Benefits

2.7.1.1 **.87%** increase for 2015-16

*These increases bring certified employee increases from 2013-2016 into conformity with the increases given to Classified and Management employees for the same period, and are competitive to comparable districts in the region.*

## Comparison of Factfinding (EERA, HEERA, MMBA)

	<b>EERA</b>	<b>HEERA</b>	<b>MMBA</b>
<b>Trigger</b>	Declaration by either party of impasse	Declaration of either party of impasse	Declaration of either party of impasse OR Appointment/selection of mediator
<b>Does PERB determine if impasse exists</b>	Yes	Yes	No. PERB only determines whether there was a written declaration of impasse and factfinding request timely filed
<b>Mediation mandatory step</b>	Yes	Yes	No – unless required by local rules
<b>Time limit on initiating factfinding</b>	Within 15 days after the appointment of the mediator. Mediator also must declare that factfinding is appropriate.	Within 15 days after the appointment of the mediator. Mediator also must declare that factfinding is appropriate.	Factfinding request must be 30-45 days following appointment or selection of mediator OR if no mediation, not later than 30 days following written notice of a declaration of impasse
<b>Who can initiate factfinding</b>	Either party	Either party	Union
<b>Form</b>	<a href="https://perb.ca.gov/wp-content/uploads/forms/eera-heera-factfinding-request.pdf">https://perb.ca.gov/wp-content/uploads/forms/eera-heera-factfinding-request.pdf</a>	<a href="https://perb.ca.gov/wp-content/uploads/forms/eera-heera-factfinding-request.pdf">https://perb.ca.gov/wp-content/uploads/forms/eera-heera-factfinding-request.pdf</a>	<a href="https://perb.ca.gov/wp-content/uploads/forms/mmba-factfinding-request.pdf">https://perb.ca.gov/wp-content/uploads/forms/mmba-factfinding-request.pdf</a>
<b>Time limits on factfinding after initial appointment</b>	Each party designates panel member within 5 days. Within 5 days of panel selection, Board selects chairperson. Parties can mutually agree on a different chairperson within 5 days.  Panel to meet within	Each party designates panel member within 5 days. Within 5 days of panel selection, Board selects chairperson (unless parties mutually agree to waive requirement that Board pays).  Panel to meet within 10 days of	Each party designates panel member within 5 days. Within 5 days of panel selection, Board designates chairperson. Parties can mutually agree on a different chairperson within 5 days.  Panel to meet within 10 days of appointment.

<p><b>Cost of chairperson</b></p>	<p>If selected by the Board, paid by the Board, however the Board can limit the number of days.</p> <p>If selected by the parties, paid by the parties (divided equally)</p>	<p>Paid by the Board, however the Board can limit the number of days it will pay.</p>	<p>Paid by the parties (divided equally)</p>
<p><b>Deadline to issue factfinding report</b></p>	<p>Within 30 days of appointment of panel or longer upon agreement of the parties.</p>	<p>Within 30 days of appointment of panel or longer upon agreement of the parties.</p>	<p>Within 30 days of appointment of panel or longer upon agreement of the parties.</p>
<p><b>What happens to the factfinding report</b></p>	<p>It is submitted to the parties privately and made public after 10 days</p>	<p>It is submitted to the parties and <i>may</i> be made public after 10 days</p>	<p>It is submitted to the parties privately and made public after 10 days (and must hold public hearing prior to implementing last, best and final offer)</p>

**Statutory Appendix**  
**Educational Employment Relations Act (EERA)**  
**Cal. Gov. Code §§ 3540 *et seq.***

**ARTICLE 9. Impasse Procedures [3548 - 3548.8] (Article 9 added by Stats. 1975, Ch. 961.)**

**3548.** Either a public school employer or the exclusive representative may declare that an impasse has been reached between the parties in negotiations over matters within the scope of representation and may request the board to appoint a mediator for the purpose of assisting them in reconciling their differences and resolving the controversy on terms which are mutually acceptable. If the board determines that an impasse exists, it shall, in no event later than five working days after the receipt of a request, appoint a mediator in accordance with such rules as it shall prescribe. The mediator shall meet forthwith with the parties or their representatives, either jointly or separately, and shall take such other steps as he may deem appropriate in order to persuade the parties to resolve their differences and effect a mutually acceptable agreement. The services of the mediator, including any per diem fees, and actual and necessary travel and subsistence expenses, shall be provided by the board without cost to the parties. Nothing in this section shall be construed to prevent the parties from mutually agreeing upon their own mediation procedure and in the event of such agreement, the board shall not appoint its own mediator, unless failure to do so would be inconsistent with the policies of this chapter. If the parties agree upon their own mediation procedure, the cost of the services of any appointed mediator, unless appointed by the board, including any per diem fees, and actual and necessary travel and subsistence expenses, shall be borne equally by the parties.

**3548.1.**

(a) If the mediator is unable to effect settlement of the controversy within 15 days after his appointment and the mediator declares that factfinding is appropriate to the resolution of the impasse, either party may, by written notification to the other, request that their differences be submitted to a factfinding panel. 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 board shall, within five days after such selection, select a chairperson of the factfinding panel. The chairperson designated by the board shall not, without the consent of both parties, be the same person who served as mediator pursuant to Section 3548.

(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.

**3548.2.**

(a) 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 as it may deem 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. The several departments, commissions, divisions, authorities, boards, bureaus, agencies, and officers of the state, or any political subdivision or agency thereof, 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.

(b) 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) 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.

**3548.3.**

(a) If the dispute is not settled within 30 days after the appointment of the panel, or, upon agreement by both parties, within a longer period, the panel shall make findings of fact and recommend terms of settlement, which recommendations shall be advisory only. Any findings of fact and recommended terms of settlement shall be submitted in writing to the parties privately before they are made public. The public school employer shall make such findings and recommendations public 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 borne by the board.

(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 and actual and necessary travel and subsistence expenses. The per diem fees shall not exceed the per diem fees stated on the chairperson's resume on file with the board. The chairperson's bill showing the amount payable by the parties shall accompany his 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 such 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 school employer and the exclusive representative. Any separately incurred costs for the panel member selected by each party, shall be borne by such party.

**3548.4.** Nothing in this article shall be construed to prohibit the mediator appointed pursuant to Section 3548 from continuing mediation efforts on the basis of the findings of fact and recommended terms of settlement made pursuant to Section 3548.3.

**Higher Education Employer-Employee Relations Act (HEERA)**  
**Cal. Gov. Code §§ 3560 *et seq.***

**ARTICLE 9. Impasse Procedure [3590 - 3594] (Article 9 added by Stats. 1978, Ch. 744. )**

**3590.** Either an employer or the exclusive representative may declare that an impasse has been reached between the parties in negotiations over matters within the scope of representation and may request the board to appoint a mediator for the purpose of assisting them in reconciling their differences and resolving the controversy on terms which are mutually acceptable. If the board determines that an impasse exists, it shall, in no event later than five working days after the receipt of a request, appoint a mediator in accordance with such rules as it shall prescribe. The mediator shall meet forthwith with the parties or their representatives, either jointly or separately, and shall take such other steps as he may deem appropriate in order to persuade the parties to resolve their differences and effect a mutually acceptable memorandum of understanding. The services of the mediator, including any per diem fees, and actual and necessary travel and subsistence expenses, shall be provided by the board without cost to the parties. Nothing in this section shall be construed to prevent the parties from mutually agreeing upon their own mediation procedure and in the event of such agreement, the board shall not appoint its own mediator, unless failure to do so would be inconsistent with the policies of this chapter. If the parties agree upon their own mediation procedure, the cost of the services of any appointed mediator, unless appointed by the board, including any per diem fees, and actual and necessary travel and subsistence expenses, shall be borne equally by the parties.

**3591.** If the mediator is unable to effect settlement of the controversy within 15 days after his appointment and the mediator declares that factfinding is appropriate to the resolution of the impasse, either party may, by written notification to the other, request that their differences be submitted to a factfinding panel. 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 board shall, within five days after such selection, select a chairman of the factfinding panel. The chairman designated by the board shall not, without the consent of both parties, be the same person who served as mediator pursuant to Section 3590.

**3592.** The panel shall, within 10 days after its appointment, meet with the parties or their representatives and consider their respective positions. The panel may make additional inquiries and investigations, hold hearings, and take other steps that it may deem appropriate. For the purpose of the hearings, investigations, and inquiries, the panel may issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence. The Regents of the University of California, the Board of Directors of the college named in Section 92200 of the Education Code, and the Trustees of the California State University 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, except for those records, books, and information that are confidential by statute.

**3593.**

(a) If the dispute is not settled within 30 days after the appointment of the panel, or, upon agreement by both parties, within a longer period, the panel shall make findings of fact and

recommend terms of settlement, which recommendations shall be advisory only. Any findings of fact and recommended terms of settlement shall be submitted in writing to the parties privately before they are made public. The panel, subject to the rules and regulations of the board, may make those findings and recommendations public 10 days thereafter. During this 10-day period, the parties are prohibited from making the panel's findings and recommendations public.

(b) The costs for the services of the panel chairperson, including per diem fees, if any, and actual and necessary travel and subsistence expenses, shall be borne by the board. Any other mutually incurred costs shall be borne equally by the employer and the exclusive representative. Each party shall bear the costs it incurs for the panel member it selects.

(c)

(1) This subdivision applies only to disputes relating to the faculty and librarians of the University of California and the college named in Section 92200 of the Education Code. For the purposes of this subdivision, "faculty" means teachers employed to teach courses and authorize the granting of credit for the successful completion of courses, and excludes employees whose employment is contingent on their status as students.

(2) Irrespective of whether the panel makes its findings and recommendations public pursuant to subdivision (a), the Regents of the University of California and the Board of Directors of the college named in Section 92200 of the Education Code, as appropriate, shall make the findings and recommendations of the panel public after the 10-day period prescribed by subdivision (a) has ended. These findings and recommendations shall be posted in a prominent public place, and copies of the findings and recommendations shall be made available to any person attending the next regularly scheduled public meeting of the regents or the directors, as appropriate. The publicly distributed agenda of the next regularly scheduled meeting of the Regents of the University of California or the Board of Directors of the college named in Section 92200 of the Education Code, as appropriate, shall reference the availability of these findings and recommendations.

(3) It is the intent of the Legislature that the Regents of the University of California or the Board of Directors of the college named in Section 92200 of the Education Code, as appropriate, shall act upon the findings and recommendations of the panel at an open and public meeting within 90 days of their submission to the parties by the panel.

**3594.** Nothing in this article shall be construed to prohibit the mediator appointed pursuant to Section 3590, with the permission of the parties, from continuing mediation efforts on the basis of the findings of fact and recommended terms of settlement made pursuant to Section 3594.

**Meyers-Milias-Brown Act (MMBA)**  
**Cal. Gov. Code §§ 3500 *et seq.***

**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.

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**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.

**3505.7.** After any applicable mediation and factfinding procedures have been exhausted, but no earlier than 15 days after the factfinders' written findings of fact and recommended terms of settlement have been submitted to the parties pursuant to Section 3505.5, a public agency that is not required to proceed to interest arbitration may, after holding a public hearing regarding the impasse, implement its last, best, and final offer, but shall not implement a memorandum of understanding. The unilateral implementation of a public agency's last, best, and final offer shall not deprive a recognized employee organization of the right each year to meet and confer on matters within the scope of representation, whether or not those matters are included in the unilateral implementation, prior to the adoption by the public agency of its annual budget, or as otherwise required by law.