

IN FACTFINDING PROCEEDINGS
PURSUANT TO THE
EDUCATIONAL EMPLOYMENT RELATIONS ACT

FF-599

In the Matter of the Impasse Between

CAMPBELL UNION HIGH
SCHOOL DISTRICT

Employer,

and

CAMPBELL EDUCATION ASSOCIATION,

Exclusive Representative.

PERB No. SF-IM-2448-E
Arbitrator's Case No. 03-A-113

REPORT OF THE FACTFINDING PANEL

September 12, 2003

John F. Wormuth
Neutral Chair/Arbitrator

Bruce Sarchet
District Appointed Panel Member

Lee Lipps
Association Appointed Panel Member

Presentations by:

Bill McMurray, for the Campbell Education Association

Patricia White, Esq. for the Campbell Union High School District

1 I. INTRODUCTION

2 The Campbell Union High School District (hereinafter the "District") is
3 located in Santa Clara County, California. The District operates five comprehensive
4 high schools and one continuation high school. These schools serve a total of
5 approximately 7,500 students in grades 9-12.

6 The District employs approximately 550 individuals, including a total of
7 approximately 325 teachers and other certificated, non-management employees. The
8 terms and conditions of employment of the certificated non-management employees are
9 set forth in the Collective Bargaining Agreement between the parties, portions of which
10 are the subject of this factfinding. The categories of employees covered by the
11 Agreement include classroom teachers, librarians, and "all other certificated employees
12 of the District... excluding: management, supervisory, and confidential employees."

13 The certificated employees covered by the Agreement are represented by
14 the Campbell Education Association (hereinafter "CEA").

15 On September 1, 1998 the District and the CEA entered into a multi-year
16 agreement to remain in effect until August 31, 2001. This Factfinding arises out of the
17 parties' inability to reach agreement on a successor collective bargaining agreement,
18 one that would apply to the 2001 -2002 school year.

19 JOHN F. WORMUTH was selected Neutral Chair for the Factfinding
20 Panel, BRUCE SARCHET was appointed by the District, and LEE LIPPS was appointed
21 by the Association.

22 At the hearing held July 9, 2003, the parties were afforded full opportunity
23 to introduce relevant data, exhibits, and to offer oral testimony and argument. The

1 Factfinding Panel met in executive session on July 10, 2003, and again on August 5, 6
2 and 7, 2003.

3 The parties stipulated to the statutory authority, G.C. 3548.2, that the
4 Panel "...shall consider, weigh, and be guided by..." in arriving at its findings and
5 recommendations:

- 6 1. State and Federal laws that are applicable to the employer.
- 7 2. Stipulations of the parties.
- 8 3. The interests and welfare of the public and the financial ability of the public
9 schools.
- 10 4. Comparison of the wages, hours, and conditions of employment of the
11 employees involved in the factfinding proceeding with the wages, hours, and
12 conditions of employment of other school employees performing similar
13 services and with other employees generally in public school employment in
14 comparable communities.
- 15 5. The consumer price index for goods and services, commonly known as the
16 cost of living.
- 17 6. The overall compensation presently received by the employees, including
18 direct wage compensation, vacations, holidays, and other excused time,
19 insurance and pensions, medical and hospitalization benefits; the continuity
20 and stability of employment; and all other benefits received.

1 7. Such other facts, not confined to those specified in paragraphs 1 through 6
2 inclusive, which are normally or traditionally taken into consideration in
3 making such findings and recommendations.

4 The Panel greatly appreciates the efforts of the parties during these
5 proceedings. The information provided was valuable and presented in an orderly and
6 compelling fashion. The parties demonstrated a high degree of professional courtesy to
7 each other and to the factfinding process itself. The Panel believes that this cooperative
8 and professional attitude has served the parties, the Panel, and the community well, as
9 this approach has made it possible for the Panel to make recommendations on all
10 issues presented to it. The Panel also recognizes that both bargaining teams have
11 made substantial efforts over a prolonged period of time in a good faith effort to attempt
12 to reach agreement. The Panel is hopeful that this Report can provide some assistance
13 to the parties as they continue to work for a final agreement.

14 II. ISSUES

15 The following issues were submitted to the Factfinding Panel:

16 Issue No. 1 - Class Size

17 Issue No. 2 - Part Time Employment

18 Issue No. 3 - Hours and Work Year

19 Issue No. 4 - Leaves

20 Issue No. 5 - Compensation

21 Issue No. 6 - Health and Welfare Benefits

22 III. RECOMMENDATIONS

23 A. Class Size

1 1. Positions of the Parties

2 The Association seeks several changes in the class size provisions of the
3 agreement. The current contract provides for flexible class size goals; the Association
4 proposes strict limits on class sizes. Specifically, the Association proposes that
5 individual class sizes in "core" classes be no greater than 32 students per class, and
6 that a penalty be imposed if this ratio is not achieved. In the event the contractual
7 averages are exceeded those unit members so affected would be compensated.
8 Finally, the Association proposes limits on continuation, opportunity, and independent
9 study class sizes.

10 The District proposes to maintain the status quo contract language.

11 2. Discussion

12 The current collective bargaining agreement provides that the District must
13 "attempt" to arrive at "core "class size averages of 28 . The language further states that
14 this average may be exceeded in specified circumstances, and following certain
15 procedures. This language has been in effect in the contract for many years. The
16 Panel presumes that at the time the language was mutually negotiated, both the District
17 and the Association concluded that, within the context of the overall
18 negotiations, the language was agreeable.

1 It is an underlying principle of Labor Relations that a party seeking a
2 change in the status quo of a collective bargaining agreement bears a heavy burden.
3 Further, as previously cited, the Government Code authorizing this proceeding provides
4 the guidelines the Panel must consider in weighing whether the moving party has met
5 that burden. Not having been a party to past negotiations, the Chair is naturally
6 reluctant to "undo" or amend a contract provision that has stood the test of collective
7 bargaining.

8 On the class size issue, the Association argues the District has made no
9 "attempt" to arrive at the contractual class size averages and provided evidence
10 indicating that class sizes in core subjects have exceeded 38 and even 40 students in a
11 class.

12 The District presented evidence to the Chair indicating that the current
13 class size language has been complied with and has resulted in the maintenance of
14 relatively reasonable average class size levels.

15 A number of the contract language items proposed by the Association
16 address legitimate concerns, but in the opinion of the Chair, those concerns ought to be
17 addressed in subsequent bargaining. Since by statute the Panel's recommendation is
18 limited to the 2001-2002 school year a retroactive recommendation of contract
19 language would exceed the Panel's authority.

20 3. Recommendation

21 The Chair recommends that current contract language on Class Size
22 remain at status quo, with no change in contract language.

23 B. Part Time Employment

1 1. Positions of the Parties

2 The Association proposes language be added to the current contract to provide
3 that part time unit members who work less than 1/2 of a full time assignment receive pro-
4 rated health and welfare benefits. Receipt of these benefits for unit members so situated
5 is contingent upon acceptance by the insurance carriers. The District proposes that the
6 contract language remain at status QUO. The current contract language requires that a
7 unit member must work at least a 1/2 time assignment in order to qualify for participation
8 in the District health and welfare benefits.

9 2. Discussion

10 Both the CEA and the District, through the collective bargaining process,
11 agreed to CalPERS as the health insurance provider. CalPERS' current eligibility
12 requirements include a minimum amount of annual service - unit members must work
13 at least 50% of the school year in order to be eligible for benefits. However, the
14 Association notes that if carriers are changed in the future, such carriers might not have
15 limitations on pro rated benefits for those working less than half time. The District
16 acknowledges that a different carrier may have eligibility rules that would accommodate
17 health benefits for unit members working less than 50%. Both parties understand that
18 any future District expenditures for this benefit may be not be significant. However,
19 any diversion of economic resources, no matter how small, should be considered within
20 the overall context of the District's financial resources and the total compensation
21 package offered to unit members at the time of its proposed implementation.

22 3. Recommendation

23 The proposed change would not have any impact unless the parties

1 changed insurance providers or CalPERS changed its rules. The Chair recommends
2 that the status quo be maintained with regard to the eligibility of part time employees for
3 health and welfare benefits.

4 C. Hours and Work Year

5 1. Position of the Parties

6 There are two sub-issues presented within this article. First, the District
7 proposes that the number of times an employee can be required to substitute, without
8 additional compensation, during his/her preparation period be increased from five times
9 per year to six times per year. The Association counters that this number should be
10 reduced to zero, that all substitute teaching during a preparation period should be
11 compensated. Second, the District proposes that contract language be added
12 indicating that teachers are required to be on campus 15 minutes before and 15
13 minutes after the student instructional day.

14 2. Discussion

15 The Association and the District presented a substantial amount of
16 information in support of their positions regarding the preparation period substitute
17 provisions of the Agreement. Both parties are proposing changes in the status quo.
18 The District proposes to increase the number of times during which a unit member may
19 be required to substitute without additional compensation and the Association proposes
20 to decrease the number of those times.

21 As discussed above, resolution of such contract language matters are
22 best left to the bargaining process itself.

23 The same holds true for the District's proposal mandating unit members

1 be present on campus 15 minutes before and after instruction. No such language
2 existed in previously negotiated collective bargaining agreements. It is unlikely that a
3 recommendation from the Chair that such language be included now will assist the
4 parties in reaching a final settlement.

5 3. Recommendation

6 The Chair recommends that current contract language on Hours and Work
7 Year remain at status QUO, with no change in contract language.

8 D. Leaves

9 1. Positions of the Parties

10 The District proposes to reduce the number of personal necessity leave
11 days from ten to seven. The Association proposes to increase the number of "no tell"
12 days from two to five.

13 2. Discussion

14 The Association and the District present competing proposals to modify long
15 established contract provisions and, as previously explained, the Chair is reluctant to
16 undo the work of the prior bargaining teams. While both parties advanced forceful
17 arguments on these issues, neither the District nor the Association has sustained the
18 heavy burden needed to convince the Chair to nullify the work of the prior collective
19 bargaining process.

20 3. Recommendations

21 Based on the evidence and information received, the Panel recommends
22 that current contract language on Hours and Work Year remain at status QUO, with no
23 change in current contract language.

1 E. Compensation-Salary

2 1. Positions of the Parties

3 The District proposes that the Chair adopt a "total compensation" model
4 under which the sum of \$597,769 (the equivalent of a 2.87% salary schedule increase)
5 be allocated to both salary and health and welfare adjustments for the 2001 -2002
6 school year. The Association proposes to set salaries according to a "compensation
7 formula" used by the parties in prior, expired collective bargaining agreements.

8 2. Discussion

9 While the parties in the past have utilized a compensation formula, in the
10 most recent round of negotiations the parties decided to discard the formula and
11 instead negotiated a simple salary schedule increase for 2000-2001. In the context of
12 those negotiations, two important events took place. First, the District and Association
13 agreed to a salary schedule increase, which was one percent greater than the cost of
14 living adjustment ("COLA") received from the State for the 00-01 year. Second, the
15 parties agreed to a "cap" on District contributions for health and welfare benefits. The
16 parties provided substantial comparability and cost of living information to the Chair in
17 support of their positions. For the 2001-2002 school year, the District did receive a
18 cost of living adjustment of 3.87%. The District did not advance a technical "inability to
19 pay" argument, the Chair recognizes that the State of California and the District is
20 facing difficult economic times.

21 3. Recommendations

22 The Chair recommends that the salary schedule be increased by 2.87% effective
23 July 1, 2001. This recommendation is arrived at by taking the State COLA provided to

1 the District, minus one percent. Essentially, the Chair believes that this is an appropriate
2 adjustment, and should be considered in the context of the health benefits
3 recommendation. The Chair notes that the District did not advance an inability to pay
4 argument.

5 The Chair further notes that the District's other employee's, both management
6 and classified, received a 3.0% salary increase for 2001-2002. However, these
7 employees have a different array of benefit packages which impact their total
8 compensation.

9 E. Compensation-Longevity

10 1. Positions of the Parties

11 The Association proposes modification of current language that only
12 allows actual years of service in the Campbell District to be counted for the purpose of
13 achieving the longevity steps on the teachers' salary schedule. The District proposes
14 status quo.

15 2. Discussion

16 When the District hires a certificated employee, it will grant up to eleven
17 years credit for previous teaching experience for purposes of initial placement on the
18 certificated salary schedule. For example, if a hiree had eleven years previous
19 experience, she/he would be placed on Step 12 of the salary schedule, which is the last
20 regular step on the schedule. This practice certainly helps the District recruit
21 experienced teachers into the District. However, after the 12 regular steps of the salary
22 schedule, there are four longevity steps that can be attained for further salary
23 advancement. They are at years 17, 22, 27, and 32. Under the current contract, these

1 longevity steps can only be attained through actual years of service in the Campbell
2 District. Thus, a newly hired teacher granted 11 years prior service credit on the salary
3 schedule would not receive any such credit toward longevity step 17. The Association
4 argues that it is unfair to attract experienced teachers by granting them their previous
5 experience for one purpose but not for all purposes. The District argues that it wishes
6 to encourage and reward loyalty to the District and that this is a long standing provision
7 of the collective bargaining agreement.

8 3. Recommendation

9 The Panel recommends that this issue be addressed in subsequent
10 negotiations.

11 E Compensation—Mileage Compensation

12 1. Position of the Parties

13 The Association proposes that work experience teachers receive \$250 per month
14 as mileage compensation, and that Peer Assistance and Review teachers, adaptive
15 P.E. teachers, and nurses who are required to use their personal automobiles in the
16 performance of their duties receive \$80 per month as mileage compensation. The
17 District proposes the status quo.

18 2. Discussion

19 Currently, the work experience teachers receive \$80 per month for mileage
20 compensation. The Association argues that the \$80 monthly allocation for work
21 experience teachers has not been increased in fifteen years and is inadequate today.
22 The District argues that it has a policy that any employee required to use his
23 automobile in the performance of his duty can file for actual mileage reimbursement at

1 the IRS rate.

2 3. Recommendation

3 Based on the evidence presented, the Panel recommends the status quo.

4 F. Health and Welfare Benefits

5 1. Positions of the Parties

6 The District proposes that the health benefits cap continue to be based
7 upon the applicable Lifeguard rates in effect on December 31, 2001. The Association
8 proposes an increase in the floating benefits cap, effective February 1, 2002, based on
9 the average increase to the family rates of all plans offered by CalPERS.

10 2. Discussion

11 The Chair believes that the issue of benefits is the most difficult and
12 divisive issue facing the parties. The Chair notes that with the dramatic recent increase
13 in health insurance cost, it is not surprising that this issue presents a significant
14 challenge to the parties. This issue is made even more difficult because the parties
15 agreed to cap insurance contributions based on a particular HMO insurance plan -
16 Lifeguard - that has since ceased to exist.

17 The Chair is cognizant of the rationale for the District's "total compensation"
18 approach to bargaining. However, the Chair also recognizes that it has been several
19 years since teachers have received any increase in the District's contribution toward
20 benefits.

21 The Chair's authority in these proceedings is limited to one year only - the 2001 -
22 2002 school year. While the Chair strongly suggests to the parties that they explore a
23 multi-year solution, the Chair's ability to make recommendations is limited to the 2001

1 2002 school year. Assuming that the parties adopt this Report, they soon thereafter will
2 return to the bargaining table to address all issues for the 2002-2003, school year. The
3 parties are burdened further because the 2003-2004 school year is about to begin and
4 there is no agreement.

5 The benefit year runs through the calendar year, January 1 thru December 31, as
6 opposed to the school calendar. There remains some disagreement regarding the
7 precise bargaining history as to how the current health insurance cap was arrived at.
8 The Chair notes that the Lifeguard HMO is specified by name in the collective
9 bargaining agreement. It is apparent the parties agreed to a benefit's cap that was to
10 "float" at the level of the second highest plan offered by PERS. Through their
11 discussions the parties selected Lifeguard HMO as a benchmark. Unfortunately, PERS
12 dropped Lifeguard HMO effective December 31, 2001. The defunct Lifeguard rate did
13 not "float" to the premium level of any other comparable plan. In the view of the Chair,
14 had PERS not eliminated Lifeguard as choice, the District would have contributed more
15 toward health insurance for the 2001, 2002 school year.

16 3. Recommendation:

17 Based on the evidence and information received, the Panel recommends that
18 the District's health and welfare benefit contribution float at the rate of the weighted
19 average of the second highest eligible plan offered by PERS (which is currently PERS
20 Choice) and the third highest eligible plan offered by PERS (which is currently Blue
21 Shield) The rate shall be calculated annually by factoring in the second highest plan
22 twice, the third highest plan once and dividing the sum by three (3). (Example based on
23 2003 Single person rates):

1	Blue Shield	\$3207
2	Kaiser	\$3110.52
3	PERS Choice	\$3552
4	PERS Care	\$6576

5 PERS Choice, the second highest, would be factored in twice. Blue Shield, the
6 next highest, would be factored in once. District's contribution for those taking single
7 person medical coverage for the 2003 benefits year would be \$3437. These
8 calculations would be made annually based on the eligible plans offered by PERS and
9 contingent upon the parties agreeing to remain in the PERS system.

10 The floating cap is to be applied to the tiered allocation of one party, two party
11 and family rates. As previously noted, the benefit rates are based on a calendar year
12 and the next opportunity to negotiate a change is January 2004, unless the parties
13 mutually agree otherwise. In view of the limited amount of revenues available, the
14 Panel recommends that there be no retroactive payment of out of pocket expenses as
15 a result of premium increases since January 1, 2002, incurred by unit members. This is
16 consistent with the original agreement of the parties and does not exceed the current
17 contribution levels of the comparison Districts.

18 H. Duration

19 2. Position of the Parties

20 Both parties support a multi-year agreement, if other negotiated aspects of
21 the contract are agreeable.

22 3. Discussion

23 Multi-year collective bargaining agreements serve an important purpose in

1 public education. The Panel is cognizant of the benefits, which would result from a
2 multi- year agreement in the Campbell District. In contrast, a one-year agreement will
3 require the parties to immediately evaluate and negotiate the terms and conditions of
4 employment for the immediately preceding year as well as the upcoming year.

5 The parties are not in disagreement regarding the use of a multi-year
6 contract. Disagreement remains over other terms in such an agreement - including
7 substantial disagreements over benefits and salary. The Panel is hopeful that this
8 Report will assist the parties in reaching agreement on those issues, which in turn will
9 open the way to a multi-year agreement.

10 IV. CONCLUSION

11 The Panel applauds the efforts of the individual negotiations teams to continue to
12 work together to reach resolution of these issues. It has been our privilege to serve the
13 parties in these proceedings. We are hopeful that this Report will assist the parties in
14 reaching a final contract settlement.

John F. Wormuth
Neutral Chair/Arbitrator

Date: 9-12-03

Bruce Sarchet
District Appointed Panel Member

Date: _____

Concur _____

Concur in Part _____

Dissent _____

Lee Lipps
Association Appointed Panel Member

Date: _____

Concur _____

Concur in Part _____

Dissent _____

FROM : John F. Wormuth-Arbitrator FAX NO. : 530-367-2670

Sep. 12 2083 09:24AM P:

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 John F. Wormuth
 Neutral Chair/Arbitrator

Date: .. _ _ _ _ .

 Bruce Sarchet
 District Appointed Panel Member

Date: 9-12-03

Concur /

Concur in Part _____

Dissent _____

 Lee Lipps
 Association Appointed Panel Member

Date: _____

Concur _____

Concur in Part _____

Dissent _____

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DISSENT OF LEE LIPPS

**John F. Wormuth
Neutral Chair/Arbitrator**

**Bruce Sarchet
District Appointed Panel Member**

**Lee Lipps
Association Appointed Panel Member**

Presentations by:

Bill Mc Murray, for the Campbell Education Association

Patricia White. Esq. for the Campbell Union High School District

On behalf of the Campbell Education Association, I respectfully dissent with the recommendations contained in this Factfinding Report as finally issued.

Whereas the Association was willing, albeit with some concerns, to concur with the preliminary report submitted to the Association on September 10, 2003 for its consideration, this final report contains substantive changes, the sum of which negatively impact our bargaining unit members and thus no longer meet the needs or the goals of the Association.

A Fact-finding Panel Is charged with making recommendations based on facts and guided by statutory criteria.

The recommendations contained herein are based on the Chair's judgment of what could best get a concurrence by the District and not on the facts as presented at hearing.

Respectfully Submitted,

**Lee Lipps
Association Panel Appointee
Campbell Education Association
September 11, 2003**