PUBLIC EMPLOYMENT RELATIONS BOARD
#SF-F-46, M-474 (R-530)

Report and Recommendations of the Factfinding Panel

In the Matter of Factfinding:

Foothill-DeAnza Community College District
and
Foothill-DeAnza Faculty Association

Factfinding Panel:

Mr. John B. Mockler, Impartial Chairperson
Mr. Peter J. Landsberger, District Appointed Factfinder
Mr. Phillip Stokes, Association Appointed Factfinder

Hearing Held:

February 27, 1981
Los Altos Hills Town Hall
26379 Fremont Road
Los Altos Hills, California

In Attendance:

On behalf of the Association:

Renato Tuazon
Walt Maus
Alvin Hertzog
Janice Carr
C. Gulassa
Bob Bezmek
Jan Dickens

On behalf of the District:

Fred Layng
Milford A. Leal
Donald Ewing
Thomas W. Fryer, Jr.
Betty Jo Popp
Donald Perata
Fred Critchfield
James S. Fitzgerald
Thomas H. Clements
Claudina Madsen
A. Robert Dehart

I. BACKGROUND:

The Foothill-DeAnza Community College District (hereafter referred to as the "District") and the Foothill-DeAnza Faculty Association (hereafter referred to as the "Association") were not successful in negotiating a new agreement to replace their previous agreement. After months of negotiations and mediation, the impasse was referred to the San Francisco Regional Office of the Public Employment Relations Board. Upon his selection by the parties from a list provided by the Public Employment Relations Board, the Public Employment Relations Board appointed John B. Mockler to be the Impartial Chairperson of the three-member Factfinding Panel. As provided by law, the costs for the services of the Impartial Chairperson, including per diem fees and actual and necessary travel and subsistence expenses are paid by the Public Employment Relations Board.

Upon consultation with the parties, the Panel agreed to meet in Santa Clara County initially in an executive session February 27, 1981, and to take testimony on February 28, 1981. Additional meetings of the Panel took place on February 19 and 20, 1981. At the hearing and at all meetings, the parties were given full opportunity to present facts and submit evidence as called for by law. In addition, the parties were requested to submit to the Panel in writing additional information sought by members of the Panel. Because of the need of the parties for preparation time and because the issues at impasse were lengthy, each of the parties submitted signed stipulations that all time lines contained in law were to be waived. These waivers are attached to this report as Exhibit C.

It is important to note at the outset that from the beginning of bargaining until the issues were submitted to factfinding, the parties had essentially not moved from initial positions on economic issues and had made only minimum movements on non-economic issues. Indeed, at the time the issues were submitted to factfinding, the Association was still proposing a salary increase of 18%, major increases in benefits and substantial reductions in hours worked. The total cost of such proposals was in excess of 50% above the current cost of total compensation. The District's original offer of $1000 per full-time employee or approximately 3.5% had not been adjusted, except during mediation when a 6% offer was discussed by the District.

At the first hearing of the Factfinding Panel, the Association dramatically altered its negotiating proposal and submitted to the Panel, and for the first time to the District, a comprehensive revision of its positions with supporting data. The total estimated cost of this revised proposal was in excess of 30%.

II. CRITERIA:

The criteria the Factfinding Panel is required to consider are set forth in Section 3548.2 of the (California) Government Code:

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 employee-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) Such other facts, not confined to those specified in paragraphs (1) to (6) inclusive, which are normally or traditionally taken into consideration in making such findings and recommendations.

The Factfinding Panel has considered all of these criteria in arriving at its findings and recommendations.

Often the role of factfinding in the collective bargaining process is misunderstood. The law is quite clear as to the duties, responsibilities and information to be reviewed by the Factfinding Panel. As noted above there are seven specific criteria which must be reviewed by the Panel. The Panel has no choice in this respect though it may review additional information if necessary.

The reason criteria are listed in law is to ensure that honest and dedicated members of a panel objectively review a specified set of criteria which, while it does not prevent them from interpreting information differently, will result in their findings and recommendations being provided within the same context.

In the instant case, the major unresolved issues relate directly to criteria 1, 3, 4, and 6 of Section 3548.2. Criterion #2 relates only to minor issues which have already been agreed upon by the parties. Criterion #5, while it justifies as substantial a salary increase as the District can reasonably afford, is otherwise irrelevant because testimony on the record clearly indicates that both parties agree that proposals now under review cannot make up for full Urban Consumer Price Indices. Furthermore, the people of the State of California do not provide sufficient funding to Community Colleges to allow such compensation increases.

<u>Criterion #1 - State and Federal Laws that are Applicable to the Employer</u>

This criterion is important to the instant case because the parties, in much of the financial information they presented to the Factfinding Panel, confused the ability of the District to allocate restricted revenues to general salary increases. In fact, substantially all of the Association's financial presentations combine restricted and unrestricted income for purposes of trying to show the ability of the District to provide higher compensation. District displays preceding those requested by the Panel also did not clearly delineate this obvious legal distinction. Upon request of the Panel the District did provide clear separations of restricted and general purpose revenue and expenditure trends. It is this general purpose revenue that by law must be reviewed for purposes of Criterion #3.

In addition, applicable state and federal laws and related court decisions have an effect in that the District has proposed a solution to recent court decisions and has assigned to an expenditure account (rather than to a formal reserve which would have been more appropriate) some $550,000 should such funds be needed to settle a pending court suit. The Association has on the one hand proposed a more comprehensive and hence potentially more costly solution to the litigation, but on the other hand, has advocated reuse of the $550,000 for current purposes. Other legal issues noted by the Association clearly support the Association's position that issues regarding competency for purposes of reduction in force are bargainable issues under the Rodda Act.

<u>Criterion #3 - The Interests and Welfare of the Public and the Financial Ability of the Public School Employer</u>

The interests and welfare of the public are served if the residents of the District have a sound educational service for appropriate costs and the District is able to sustain such services and programs as needed over time. To provide such services, the District must be able to offer competitive salaries as well as quality educational programs and other services. In times of limited resources, the allocation of such resources forces the Community College community to make painful choices between the level of compensation needed to attract and retain quality staff and the level of educational offerings available to the public.

The financial ability of the District is controlled almost totally by laws governing Community College finance in California. It is not news to the parties that the level of support has not kept pace with full Urban Cost-of-Living increases over the past few years. The current ability of the District to offer increased compensation to the Association's members, therefore, is of paramount importance to the resolution of the majority of points at impasse.

The availability of revenues and the predictability of general expenditures is the major dispute between the parties. Clearly, all estimates of income and expenditures are based on only the best assumptions and predictions that can be made at a given point in time. One major prediction that must always be made is how the State will act - a dubious but necessary task. The Association has asserted that the District's revenue projections have been substantially in error over time. The Association's initial analysis, however, substantially confuses types of revenues and, thus, is of minimal value for the purposes of determining available general revenues. The Association's presentations have combined revenues that cannot, by law, be used to provide general compensation increases with revenues that can be so allocated. It has assumed that legally restricted funds and allocations to pay for benefits through the District's self-insurance procedures can, by sleight of hand, be utilized for compensation increases or discarded altogether in financial analysis. The District's financial displays initially submitted to the Panel were flawed because general purpose revenues (those available for general compensation increases) were grouped with restricted revenues in every District display except for its analysis of ending balances.

It serves no useful purpose to point out the substantial misstatements of fact contained in the Association's exhibits or to chide the District on its insensitivity to the consistent separation of revenues based upon their availability for use. It is important to note that the District's estimates of general purpose revenues and general purpose expenditures over the past few years have been surprisingly accurate given the nature of school finance and tax decisions and the fact that, because of delays in the bargaining process, expenditures which have accrued in one year were actually paid in subsequent years.

At the request of the Panel, the District provided a consistent three-year trend of revenues and expenditures separated by general and restricted categories. In addition, the Chair of the Panel has attempted to reconcile the last general purpose revenue projections of the parties and of the Factfinding Panel in Table I(pages 23 and 24) of this report. Table II (page 25) summarizes the significant differences between the Chair's estimates in Table I and the corresponding estimates of the parties. It is important to note that both Tables I and II contain general purpose figures only, the appropriate figures to use in any meaningful analysis of a district's ability to pay. From the parties' estimates and other data presented by them, it appears that:

(1) The Association assumes a working capital reserve is unnecessary.

(2) The Association assumes that First Principal Apportionment ADA will be the same as Final Apportionment ADA.

(3) The Association assumes that mandated cost reimbursements will be less than the District predicts.

(4) The Association assumes that potential increased fees associated with Flint Center have no associated costs and thus such fees are available for use.

(5) The District assumes interest income will be lower than is probable.

(6) The District assumes the need for a working capital reserve will be greater than is probable.

(7) The parties assume the deficit factor noted in the initial reports from the State Chancellor's Office will be effected without modification.

The Chair's assumptions differ somewhat from those of both parties and result in the revenue estimates listed in Table I. In the final analysis, the Chair's conclusion is that current general purpose income will be some $1 million higher than the estimate of the District at the time the Panel last met in March. The Chair's major assumption not shared by the District in March is that the State deficit factor will be .98 rather than .95 as noted by the State Chancellor in his First Principal Apportionment Report. This estimate is consistent with the most recent testimony of State officials at hearings on the subject, but is subject to change and as such creates a need in the District for a reserve in excess of the 2% the Chairperson believes is commonly accepted as appropriate for public agencies.

The Chair agrees with the District that a working capital reserve is needed for sound management, but would reduce the proposed amount to the level contained in the 1979-80 budget. The Chair believes that available evidence suggests a decline in ADA from that reported on the First Principal Apportionment. Even if ADA is somewhat higher than the Chair's estimate, costs associated with ADA growth beyond that budgeted have been estimated conservatively to reflect the interactions of income and costs for marginal ADA.

Table III presents a comparison of current income, available general balances and the cost of the proposed settlement. It reflects the following:

(1) Estimated expenditures at the time of the adoption of the District's final budget were $44.4 million. Current evidence indicates that salary accounts are being expended at or above projected levels excluding collective bargaining settlements.

(2) The estimated increased cost of 1980-81 settlements with classified and other employees is estimated to be $814,000.

(3) Estimated marginal costs of ADA increases not contained in the budget are $400,000.

(4) The District has reduced its commitment to self-insurance funds by $200,000.

(5) It is possible to exclude some $550,000 which was shown in the budget as part of the Other Operating expense category rather than as a reserve as it should have been at the time of the adoption of the final budget. These funds should have been set aside as a reserve since they were intended to be retained pending the resolution of a court case. In any event such costs are not recurring and will probably not be expended in the current fiscal year. As a result, the Chair has excluded them from current expenditures and assumed that if such costs occur, they will occur in future years and can then be subject to budget reductions if necessary to offset such costs in subsequent budgets.

Using these assumptions, the District's current projected general purpose revenues are approximately $120,000 less than its current projected expenditures. Stated conversely, the District is spending more dollars than it will likely receive in current income, even before any settlement with the Association.

Thus, any settlement with the Association must come substantially from available beginning balances. Such a decision by the District is not without potential consequences. A settlement of any kind will put the District in a position of having current expenditures above current income. However, it is the decision of the Chair that because of the negative effects of inflation, the costs proposed in the Factfinding Report are justifiable. The District and the Association should be aware, however, that the granting of such increases cannot be sustained in future years without adjustments to current programs or without increased state and/or local support of Community College revenues.

If the settlement as proposed in the report is adopted, the District will be left with an available ending balance in the range of $1 million plus. This is approximately 2% of the total budget. Should no deficit factor occur or should it be reduced beyond that estimated, including the recommended $100,000 contingency for part-time benefits, the District ending balance could increase (for each 1% variance in deficit, a potential gain or loss of some $400,000 is at issue). On the other hand, it could decrease sharply if (1) actual ADA earned is lower than estimated, (2) the deficit factor is increased, or (3) litigation goes against the District in the very near future. (Should the District lose pending litigation, a potential one-time cost of some $550,000 is possible with additional, but minimal on-going cost effects.

<u>Criterion #4 - Comparison of Wages, Hours and Working Conditions</u>

Evidence on the record indicates that current total compensation of those employees represented by the Association is well within the range of compensation for the so-called "Bay 10" Community College Districts.

Settlements gained in such districts over the past three years are comparable with those reached by the faculty in the instant District. Additional evidence on the record supports a similar conclusion regarding benefit packages and overall load and hour standards. The Association has argued that settlements in other employment sectors have been higher. However, information presented by the Association did not compare the base levels of such settlements to total compensation levels on an hourly, or per day, per employee basis. Such information, while it is interesting and provides good evidence for the need for increases in school funding, is beyond the criteria imposed by law. The Association has also argued that mean and median salary level comparisons are not appropriate, but rather highest salary possible is the appropriate measure. While such assertions in general stand the field of statistics on its head, they have no relevance to the current situation since no proposals were submitted to the Panel to adjust higher level salaries by more than lower level salaries. However, the Association's arguments do call into question the District's proposal for a flat dollar increase to each step on the schedule.

The increases proposed in the report will not provide full cost-of-living increases for the Association's members. However, they will increase the relative position of the salary schedule compared to other "Bay 10" community college districts.

Criterion #6 - Overall Compensation (See Discussion of Criterion #4 Above)

In addition to those points discussed in relation to Criterion #4 above, it is important to note that all evidence submitted to the Panel indicates that the wages, hours and other conditions of employment in the District meet or exceed those provided in comparable districts and demonstrates that the overall compensation presently received by the faculty is in line with the compensation paid in other districts.

Criterion #7 - Such Other Facts Normally or Traditionally Taken Into Account

Records of factfinding activities under applicable rules and regulations indicate that no particularly unique situations are found in the instant case.

III. ISSUES AT IMPASSE:

The PERB notified the Panel that 14 issues were at impasse. These were:

(1) Effect of Agreement (II)

(2) Part-Time Faculty Re-employment Preference (VII)

(3) Special Part-Time Regular Faculty (VIIa)

(4) Load and Class Size (IX)

(5) Hours and Scheduling (X)

(6) Reduction in Force (XV)

(7) Professional Development Leaves (XVII)

(8) Early Retirement Incentive Program (XX)

(9) Paid Benefits for Retired Employees (XXIV)

(10) Paid Benefits for Regular Employees (XXIII)

(11) Salaries for Certificated Employees (XXV)

(12) Summer Sessions (XXVII)

(13) Contract Duration (XXVI)

(14) Integrity of the Bargaining Unit (New)

However, the Association's presentation to the Panel substantially revised its positions, and at the time of the Panel presentations the District had not received the Association's new positions. The following division of issues follows the list of issues submitted to the Panel by PERB. It does, however, assume that the substantially modified Association proposal is the one to be compared to the District's position.

It is understood that the Articles not mentioned or referred to in this report are to remain as is or as the parties have mutually agreed during negotiations or mediation and would be incorporated into a final agreement reached by the parties.

<u>(1) Effect of Agreement (PERB #1), Article II of the Agreement</u>

The District has argued for language to clarify Section 2.3 of the so-called "management rights" clause of the current contract. It indicates that there is a dispute regarding the actual effect of the current language and notes that a single grievant has attempted to circumvent management's understanding of current language.

The Association notes that while there may be some disagreement as to the intent of the Section, a single grievant is not sufficient showing to warrant changes proposed by the District and it notes that the Association did not officially vote to take the single case to arbitration.

<u>Recommendation:</u>

Retain current language.

<u>Rationale:</u>

Without sufficient documentation to indicate abuse of current language or to indicate that such language or current use of such language is at substantial variance with comparable districts, the Panel is not able to support the changes proposed by the District.

(2) Part-Time Faculty (PERB #2), Article VII of the Agreement

Article VII of the current contract provides a detailed, complex series of directions regarding the employment preference and seniority for re-employment for part-time certificated employees.

The District has proposed minor changes to the current agreement with levels of specificity which appear to clarify some provisions, but which confuse others.

The Association has proposed a substantial revision of the article which attempts to address problems which have affected the working conditions of part-time employees. Four major areas addressed by the faculty which are in conflict with the current agreement and the District proposal are:

(1) Service credit is to begin with the earliest date of employment;

(2) Service credit is to be accumulated within definitions contained in the District's accounting service guide;

(3) All current part-time faculty are to be offered assignments before any new part-time faculty are hired; and

(4) Part-time employees are to be given additional notification of assignments and payments for cancellations caused by administrative error, low enrollment or low attendance are to be made to part-time employees.

Recommendation:

Maintain current agreement except:

(a) Provide language which requires management to attempt to reach by telephone those part-time personnel who have been notified of teaching opportunities by mail but who have not responded within the required time lines. Records regarding such attempts at phone contact shall be kept by the appropriate college officials and shall be available to the Association.

(b) Create a task force of equal representatives appointed by the Association and the District to review proposed changes within the 1981-82 school year and report to the Board regarding their recommendations by January 1, 1982.

Rationale:

Both parties provided extensive information regarding the need for changes in this article. However, each party substantially refuted all or part of the other's request for change. With the exception of the current practice apparently occurring on one campus, the evidence of potential harm to employees if the sections were not altered was fundamentally nonexistent. Nor was any information provided to the Panel by either party which indicated that comparable districts had contract provisions similar to the ones proposed. Without such information, the Panel had difficulty in using the factfinding procedure to work out the complex issues and relationships in this article. Therefore, the Chair's recommendation for only one modest change with the remainder of the article referred to an appropriate task force study team is appropriate. The modest change proposed by the Chair is based upon evidence submitted to the Panel which suggests that, in some cases, reasonable attempts to notify part-time faculty of the availability of employment beyond a single mailed card were not being made. To prevent a narrow interpretation of the notification provisions of the current agreement, the Chair believes that District management has an obligation to make reasonable attempts to notify potential part-time employees by phone prior to invoking negative provisions of the contract.

(3) Special Part-Time Regular Faculty (PERB #3), Article VIIa of the Agreement

The District has argued for inclusion of a provision which would add a third type of special part-time faculty member. The District believes that such a provision would avoid substantial legal costs arising out of court decisions relative to the tenure and salary position of certain employees potentially affected by court decision. It indicates that a number of persons potentially affected have indicated support for inclusion of its proposed language.

The Association has proposed, pursuant to its understanding of recent court decisions, that such employees be granted tenure rights as well as compensation advantages. In the absence of this, the Association has argued that the legal rights of the affected persons would be solved by legal actions.

Recommendation:

Eliminate all proposed language. Provide for reopening this issue should either party feel that it is necessary in subsequent years.

Rationale:

The parties disagree on the potential effects of court decisions. No factual base has been established and the Association has argued that to accept the District's proposal could potentially place the Association in an adverse legal position.

(4) Load and Class Size (PERB #4), Article IX of the Agreement

(a) Definition of Load:

The District has proposed no changes.

The Association has proposed language changes which would restrict current practices by excluding from the definition of load unscheduled professional duties of faculty and which would add language regarding health and safety in class loads.

Recommendation:

Retain current language.

Rationale:

No evidence of abuse was submitted by the Association, nor was information submitted which would indicate that current practices and contract language are at variance with practices in similar districts. In addition, the health and safety language proposed by the Association is too vague to be readily enforceable.

(b) Preparations:

The District has proposed no changes.

The Association has proposed a basic limit on preparations at three per quarter but would allow the limit to be exceeded only with the consent of faculty and payment of a $500 fee.

Recommendation:

Retain current language.

Rationale:

While testimony indicated that some preparations in excess of three were occurring, both sides indicated that such was rare. In addition, the proposal by the Association does not distinguish between various types of preparations. The cost factor of the proposal cannot be calculated.

(c) Special Projects:

The District has no proposal in this area.

The Association has proposed that no faculty member should be required to accept an extra assignment by taking special projects and individual study units. In addition, if such assignments are accepted, the Association proposes the faculty member be compensated at $100 per unit per quarter.

Recommendation:

That no faculty member should be required to accept extra assignments as proposed by the Association, but that current compensation policies be retained and the $100 per unit proposal be rejected.

Rationale:

No showing of excessive abuse has been noted; however, the Association had a telling point in that while such assignments are in general voluntary, the pressure to conform to management requests could intimidate some faculty. The pay request is rejected because it does not relate costs to income, but more importantly, because the compensation increases recommended elsewhere in this report will already exceed the current ability of the District to maintain its current activities in future years.

(d) Load Equalization:

The District has proposed no changes.

The Association has proposed that the loads of non-teaching faculty be reduced if such loads exceed 35 hours per week on campus.

Recommendation:

That current contract be maintained.

Rationale:

The Association proposal has a cost in either increased allocations from the District or reduced services to the college community. Loads could be equalized on a non-cost basis by averaging hours for all services. However, this proposal was not considered. The need for rejection of this proposal is on costs. Recommendations elsewhere in this report will, if adopted, already put the District on a current expenditure plane that will be difficult to maintain without a reduction in services.

(e) Older Adult Education:

The District has no proposal.

The Association has proposed that the load in a single program - the Older Adult Education Program - be reduced.

Recommendation:

That the Association proposal be rejected.

Rationale:

The proposal has high unit cost implications. Recommendations elsewhere in this report will put the District on an expenditure plane that will be difficult to maintain. In addition, overall load must be reviewed within the overall contexts of duties, time and revenues.

(5) Hours and Scheduling (PERB #5), Article X of the Agreement

The District has proposed either retaining the current agreement, which is silent on the number of meetings required of faculty, or limiting the number of division meetings required to four per quarter. The District has proposed specifying precisely the manner in which service days are to be scheduled and the rate of pay as part of an annual contract beyond the 176-day academic work year.

The Association initially proposed limiting the total number of all required meetings to four per quarter. At the initial Factfinding hearing, the Association proposed a substantial number of additional changes in this area which included:

- narrowing the academic workweek;
- limiting the workday;
- limiting the span of assigned hours;
- limiting the District's ability to assign for the program needs of the district;
- limiting the days in which faculty must hold office hours; and
- increasing payment for employees working beyond the 176-day academic work year.

Recommendation:

That the District proposal be adopted with the following modifications:

(1) Mandatory meetings shall be restricted to 12 per year.

(2) Association 10.10 shall be modified to provide that except in unusual circumstances, faculty shall hold office hours on each day that the employee has a class scheduled.

(3) Rewrite District proposal 10.7 to insure that its application does not disadvantage employees who work more than the typical 176 days.

Rationale:

No evidence was submitted by the Association which related the new proposals to comparable districts and in only two cases was evidence submitted which indicated any potential abuse of the current practices. The Association did present evidence that language proposed by the District regarding payment for service beyond 176 days could be potentially used in a negative fashion and evidence that inordinate meeting schedules could detract from classroom instruction functions.

(6) Reduction in Force (PERB #6), Article XV of the Agreement

The issue here is a process for determining "competency" for purposes of a reduction in force.

The District must negotiate the standards for determining competency for such purposes. The District has proposed a process for determining competency which includes appropriate credentialling and appropriate graduate degree or prior service.

The Association has proposed a process which defines "qualification" to mean degrees and credentials earned, requires service of two full years in a division within the previous five years and then establishes a series of subcompetencies and definitions of particular services.

Recommendation:

That the District's proposal be accepted.

Rationale:

Evidence on the record indicates that the process for determining "competency" for purposes of reductions in force is to be negotiated. Evidence submitted to the Panel indicates that the Association proposal would exclude persons who have performed service outside of division but within a college or who have served in other capacities. The Association proposal by utilizing particular service definitions which are established for accounting purposes and not for academic decision-making could potentially require reduction in force decisions to be controlled by revisions in accounting manuals or to be determined solely by faculty.

(7) Professional Development Leaves (PERB #7), Article XVII of the Agreement

The District has proposed reducing professional development leaves to 60 quarters per year and adding a provision that would give the District final authority to decline to grant leaves to individuals for reasons that are not arbitrary or capricious.

The Association has proposed increasing leaves and increasing the level of pay for those on leave.

Recommendation:

Maintain current leaves (90 quarters) for approval in 1980-81 to be an expense for 1981-82. For leaves approved in 1981-82 and in subsequent years, reduce leaves to 5% of faculty. Maintain the current level of pay for those on leave. Add a provision which would allow the District to defer leaves for individuals for a period of time of up to one year for reasons which are neither arbitrary nor capricious.

Rationale:

The proposal to substantially reduce leaves granted in the current year is a reduction in total equivalent compensation. Such reduction should only be made prospectively in order for faculty to plan and be guided by District policy. The reduction in subsequent years to having 5% of faculty on leave is necessitated by long-term expenditure problems and to put the faculty leave policy of the District in line with the leaves granted in other comparable districts. Even with the 5% limit, leaves in the District will be in the top quartile of 10 comparable districts.

Pay for those on leave should remain unchanged because increased pay will only aggravate the District's long-term expenditure problem. Furthermore, pay for leaves of a full year is already the highest in the ten Bay Area districts used for comparison and pay for leaves of less than one year is at least comparable to the other districts.

The District's proposal for limited control of leaves in extraordinary circumstances is supported by evidence. However, a leave denied for narrow purposes should not leave the faculty member in limbo and, should the reasons for denial of leave be rectified, the employee should have the highest priority for leave in subsequent granting periods.

(8) Early Retirement Incentive Programs (PERB #8), Article XX of the Agreement

The District has proposed either maintenance of current contract procedures or substitution of a 200-hour non-teaching assignment or mutually agreeable teaching assignment.

The Association has proposed that a 150-hour standard be applied for both non-teaching and teaching service, with an assumption that teaching employees serve two hours out of class for each hour in class (i.e., 50 hours of classroom service would fully satisfy the proposed standard).

Recommendation:

Retain the current system.

Rationale:

While early retirement incentives may have short-term apparent savings, there are long-term costs which exceed benefits. The proposal by the Association has no real savings and assertions to the contrary in its financial publications belie logic and actuarial analysis. Suffice it to note that early retirement proposals have no long-range savings because a person can retire only once from the system. If a District takes such savings in the year of retirement, it forgoes such savings at the time the employee would have retired without such incentives.

The retirement inducements presently in effect in the District will have substantial long-range costs. Proposals to reduce work hours as a further incentive simply increase the cost of such practices.

(9) Paid Benefits to Retired Employees (PERB #9), Article XXIV of the Agreement

The District has proposed maintaining the current contract.

The Association has proposed that surviving spouses be covered by District health benefits and that the section which notes that current benefits for retirees are subject to contract negotiations be deleted.

Recommendation:

Accept the District proposal for cleanup language; reject all proposals to increase coverage or to remove these benefits from collective bargaining.

Rationale:

The cost of this proposal, while initially small ($11,000), could have more significant long-term costs. Other proposals made in this report will put the District on an expenditure path that it will have difficulty maintaining over time, given current state laws on school funding.

(10) Benefit Increases for Current Employees (PERB #10), Article XXIII of the Agreement

The District has proposed maintaining current benefits with the District assuming the increased unit costs of the benefits.

The Association has proposed a series of benefit increases. Proposals submitted to Factfinding were substantially reduced by the Association in their presentation and this report reflects the modified proposals.

(a) The Association has proposed increased dental benefits with costs in excess of $39,000 annually.

(b) The Association has proposed increases in guaranteed disability income in three steps. The cost of such proposals begins at no increase over current costs for the current year and grows to an estimate of nearly $100,000 over current costs in the third year.

(c) The Association has proposed expanding current benefits for psychiatric and psychological care to include a variety of mental health and social welfare practitioners. The annual cost is estimated to exceed $25,000.

(d) The Association has proposed increasing district paid life insurance to $60,000 at a cost of approximately $23,000 per year.

(e) The Association has proposed adding coverage for the purchase of hearing aids. It is estimated that this benefit will cost $2,300 annually.

(f) The Association has proposed that part-time faculty not covered by any other health plan be allowed to purchase the District benefit package at the District's current cost for covered members but that the District pay costs up to 10% of the part-time employee's salary per quarter.

Recommendation:

Maintain current benefits and establish a study group to analyze possible options for including part-time employees under coverage. If the statewide deficit factor is less severe than the .98 factor assumed in this report and the District therefore realizes income above the estimates contained in this report, reserve the first $100,000 of such additional income to fund the annual cost of such part-time benefits if agreement can be reached and costs contained.

Rationale:

The Association noted a strong case for the need to have some available coverage for part-time employees. The cost of private health insurance for non-covered employees is quite high. The District noted its concern in this area, but also noted serious flaws in the Association's proposed plan. These flaws include (1) the non-sustained employment pattern of many part-time employees that contributes to the inability to control costs; (2) the potential health risk nature of a sub-set of employees who have not had coverage which may mean high initial charges for the system; and (3) the lack of any real actuarial studies on short and long-term costs to the District's self-insurance program.

The recommendation of the Chair is that three part-time employees appointed by the Association and three District management employees appointed by the Chancellor develop a series of options and their costs for providing at least minimum medical coverage for part-time employees.

The remainder of the Association's proposal cannot be recommended due to its cost. Testimony indicated that the District's current benefit package already equals or exceeds that offered in comparable districts. Recommendations made in other sections of this report will put the District on an expenditure plan which will be difficult to maintain over time.

(11) Salaries for Certificated Employees (PERB #11), Article XXV of the Agreement

The District has proposed a salary increase of $1,000 to each step on the schedule or an estimated 3.5% increase. This proposal is in addition to current step and column increases granted faculty and included in their current compensation. The District at one time during mediation increased its offer to 6% with several conditions.

The Association's salary increase proposal as the issue went to Factfinding totaled an estimated 18% with full cost-of-living increases over subsequent years of the contract. At the meeting of the Panel, the Association reduced its proposal for 1980-81, but continued its request for automatic cost-of-living increases for the subsequent two years.

During subsequent meetings of the Panel, the Association reduced its proposals to (a) a 16% increase in salaries for the first year; (b) specific improvements and additions to paid benefits over a three-year period; and (c) full CPI increases in salary for subsequent years of the agreement.

Recommendation:

That, effective June 1, 1981, the Faculty Salary Schedule and the Child Development Program Faculty Salary Schedule be increased by 8%. In addition each member of the bargaining unit who was employed by the District at any time during the 1980-81 school year should receive a lump sum payment equal to 8% of the base salary (including pay for extra duty assignments) he or she earned during the pay periods from July 1, 1980 through May 1981.

Rationale:

Factfinding panels are directed by law to review specified criteria as established by law. While the Panel may review other criteria, it must consider those criteria cited on Page 3 of this report. Three things have become apparent in this factfinding process:

(1) The increase in cost-of-living (Criterion #5), no matter how measured, has outstripped employee compensation increases not only in the District, but nationwide;

(2) Current revenues of Foothill-DeAnza (Criterion #3) cannot provide full cost-of-living salary increases due to the nature and level of Community College finance in the State; and

(3) Comparable districts have not offered anything approaching full cost-of-living salary increases (Criterion #4).

As a result, the most significant criteria in this case are the District's financial ability and the comparability of District salaries and benefits to salaries and benefits in other similar districts.

-- The District's ability to pay increased salaries --

The Foothill-DeAnza District, like school districts statewide, has suffered substantially declining real revenues per unit over the past several years. While the District has carefully husbanded its revenues, it shows a declining available balance. In other words, the District has been spending more than it has earned over the past few years.

Information on the record regarding the financial condition of the District is indeed confusing to the average citizen. A portion of the confusion can be attributed to the multi-agency funding system for Community Colleges, the legal requirements for Community College budgeting, and the numerous changes in Community College finance which have been taking place over the past three years.

However, initial presentations to the Panel by the parties created substantially more confusion than clarity. The Association's presentation concentrated substantial effort on areas which are irrelevant to the Factfinding Process and made assertions regarding the availability of revenues which are not accurate and, without explanation, could substantially mislead the average reader. The District cannot, as is implied in the Association presentation, use student financial aid grants to pay increased compensation to regular employees. It is not appropriate, as implied by the Association, for the District to use general purpose revenues to increase categorically supported activities by, for example, placing the Child Development Program faculty on the regular faculty salary schedule. The District's practice of using interfund transfers to pay for self-insurance is required by law for self-insurance districts. And ADA increases, while providing additional income, also create marginal costs which cannot be ignored by either the District or the Association.

Put succinctly, the District could not at the beginning of negotiations, and cannot now, provide or maintain the level of increased compensation proposed by the Association at the time of Factfinding. Financial displays which purport to show the contrary are neither honest nor accurate.

The District's presentation of its financial condition did not provide appropriate separation of revenues for purposes of Factfinding. The separation of revenues and expenditures by general and restricted purpose is necessary both for District management and to assist the negotiating process and public understanding of the real financial condition of the District. The District's increased compensation offer was substantially below settlements made by the District with others in its employ. Such offers both for internal consistency and external comparability tend to detract from the ability to reach a realistic solution to disputes.

At the request of the Panel, the District did provide a useful format to review income and expenditures. It is hoped that such formats and displays will provide a beginning guide for the District to use in displaying its financial condition more effectively in the future.

The 8% recommendation of the Chair will mean that the District's current expenditures will exceed current revenues and, if the District's estimate of court contingencies on the part-time issue is made manifest, the District could end the year with a minimal available ending balance of substantially less than 2% of its current revenues. The recommended compensation increase can only be sustained because of the historically sound financial management of the District and with an increased willingness of all of the Community College community to honestly and accurately review those activities which can be sustained, given current and foreseeable revenues.

-- Salaries in comparable districts --

The proposed 8% compensation increase, when coupled with related benefit costs, will mean that the relative mean and median position of the faculty's salary will be in the highest quartile of comparable districts and the marginal increases provided by the District to the Association's members will be above the average of comparable districts.

Thus, it is the opinion of the Chair that a compensation increase of 8% retroactive to July 1, 1980, is the maximum amount that the District can afford. It is in excess of what comparable districts have provided their faculties and it will place Foothill-DeAnza's faculty schedule higher than its comparative placement at the beginning of the year. There is no question that the increase offered does not meet the cost-of-living standard, but it does substantially exceed the District's sustained ability to pay.

(12) Summer Sessions (PERB #12), Article XXVII of the Agreement

The District has proposed maintenance of current contract.

The Association has proposed a 60% increase in the cost of compensation for summer session employment, as well as additional sick leave days.

Recommendation:

Maintain current contract.

Rationale:

The proposal by the Association has substantial cost considerations both in salary and in additional sick leaves. Information submitted indicates that current sick leave granted is not fully utilized and thus the sick leave increase is a compensation increase only upon retirement or other uses. The estimated cost of the proposal as submitted by the Association is $540,000 or more than a 2% total compensation increase for all faculty, but assigned to relatively few members of the Association.

(13) Contract Duration (PERB #13), Article XXVI of the Agreement

The District has proposed a one-year contract.

The Association has proposed a three-year contract with a mandated full Bay Area Consumer Price Index increase in salaries for subsequent years.

Recommendation:

That the contract duration be for three years, but the parties renegotiate wages and salaries in each of the subsequent years.

Rationale:

Both parties provided substantial justification regarding the benefits of multiple-year contracts. However, the uncertainty of financing for all governmental services, especially Community Colleges, makes it not only impossible to forecast the financial future of the District, but unsound policy to tie the hands of the District with long-term increasing cost considerations prior to having even remote knowledge regarding where such funds are coming from. If all other provisions are held for three years, perhaps the parties can concentrate on the real fiscal condition of the District.

(14) Integrity of the Bargaining Unit (New Article)

The District has proposed nothing in this area.

The Association has proposed that regular full-time certificated employees who leave the service of the District be replaced with new regular full-time certificated employees and that temporary employees have priority for filling available full-time positions.

Recommendation:

That the Association request be denied.

Rationale:

The proposal would restrict the ability of the District to make even temporary adjustments in positions and, in addition, would prohibit the District as a matter of priority from seeking and obtaining the finest faculty talent available from throughout the State.

TABLE I

FOOTHILL - DE ANZA

GENERAL PURPOSE REVENUE ESTIMATES

1980-81

	Original Budget Estimates	Current Faculty Association Estimates*	Current District Estimates*	Factfinding Chair's Estimates
Available Beginning Balance	$ 2,854,047	$ 3,044,047	$ 2,854,047	$ 2,904,047
Working Capital (Reserve)	(190,000)	-0-	(190,000)	(140,000)
<u>Income:</u>				
1. State Aid/ Local Tax	39,028,908	40,061,168	38,804,050	39,675,445
ADA	(20,568)	(22,923)	(21,659)	(21,659)
Deficit Factor	(-0-)	(.95)	(.95)	(.98)
2. Apprentice Allocations	-0-	52,511	35,000	40,000
3. Handicapped	1,680,745	1,712,916	1,590,010	1,590,010
4. Child Care Offset	-254,194	-408,535	-408,535	-408,535
5. Prior Year Adjustment	-185,431	-142,115	-142,115	-142,115

* Association and District Estimates as of March 1980

TABLE I (Page 2)

FOOTHILL - DE ANZA

GENERAL PURPOSE REVENUE ESTIMATES

1980-81

	Original Budget Estimates	Current Faculty Association Estimates*	Current District Estimates*	Factfinding Chair's Estimates
6. Mandated Costs Reimbursement	-0-	261,000	315,000	373,585
7. Interest Income	710,000	1,000,000	970,000	1,000,000
8. Sales/Other	220,208	1,070,000	220,208	220,208
9. Continuing Ed. Fees	932,660	990,800	932,660	990,800
10. Miscellaneous Fees	45,000		45,000	45,000
11. Non-resident Tuition	947,340	950,000	1,200,000	1,200,000
12. Grant Match	-71,400	-0-	-71,400	-71,400
13. Fed VEA	197,055	197,055	197,055	197,055
Total Current General Purpose Revenue	$43,250,891	$45,744,800	$43,686,933	$44,710,053
Total Available General Resources	$46,104,938	$48,788,847	$46,540,980	$47,614,100

* Association and District Estimates as of March 1980

TABLE II

FOOTHILL-DE ANZA COMMUNITY COLLEGE DISTRICT

ANALYSIS OF SIGNIFICANT DIFFERENCES BETWEEN

FACTFINDING CHAIR'S ESTIMATES OF GENERAL

PURPOSE REVENUES AND PARTIES' ESTIMATES

OF GENERAL PURPOSE REVENUES

Items on Which There Are Significant Differences	Association's Estimates Compared to Chair's Estimates	District's Estimates Compared to Chair's Estimates
1. Available Beginning Balance	+140,000	-50,000
2. State Aid/Local Tax	+385,723	-871,395
ADA	+1,264	-0-
Deficit Factor	+.03	+.03
3. Interest Income	-0-	-30,000
4. Mandated Costs Reimbursement	-112,585	-58,585
5. Sales/Other	+849,792	-0-
Total Current General Purpose Revenues	+1,034,747	-1,023,120
Total Available Revenues	+1,174,747	-1,073,120

TABLE III

FOOTHILL - DE ANZA

ESTIMATED GENERAL PURPOSE EXPENDITURES

COMPARED TO INCOME AND POTENTIAL CONTINGENCIES

1980-81

Budget Estimate		$ 44,366,072
Plus:		
(1) Previous Contract Settlements	+ $814,000	
(2) Estimated Cost of ADA Increases (+1,264)	+ 400,000	
		1,214,000
Less:		
(1) Reduction in for self-insurance	- 200,000	
(2) Elimination of Appropriation for Litigation	- 550,000	
		- 750,000
Estimated Current Expenditures		$44,830,072
Estimated Current General Purpose Revenues		44,710,053
		-$ 120,019
Plus Available Beginning Balance		2,904,047
Net Available Resources		$ 2,784,028
8% Faculty Salary Increase Retroactive to 7-1-80 ($214,202 = 1%)		1,713,616
Available After Settlement		$1,070,412

Potential Revenue & Expenditure Problems

1% Variance in State Deficit Factor	= ±$400,000
Potential Cost of Litigation	= ± 550,000
1% General Reserve	= 450,000
Potential Expenditure Shortfall	± 500,000

APPENDIX A

Phillip F. Stokes

Association Appointed Factfinder

Concurring and Dissenting

I. It is important that the public and the faculty of this district know that the chairman of the factfinding panel was not impartial in his examination of the facts in this case. In this factfinder's opinion to refer to the chairman as a "neutral" is to do a disservice to the English language. His lack of objectivity showed itself especially in the manner in which he conducted his analysis of district finances and it is clearly displayed in the narrative of his report which is replete with innuendo, unfounded and unsupported assertion and naked opinion. This member of the panel recommends, therefore, that the term "chairman" rather than "neutral" or "impartial chairperson" be used.

This member of the factfinding panel finds the chairman's discussion of the criteria used in factfinding rather odd. It was obvious to the panel that both the Association and the Board understood the criteria and knew the panel would use them in making its recommendations. Even more strange is the chairman's assertion in his draft report that increases in the Consumer Price Index are "fundamentally irrelevant." The law requires the factfinding panel to weigh the criteria provided in the law. The Association presented evidence under criteria 4, comparison of compensation with those performing similar services, and criteria 7, other facts traditionally considered in salary recomendations. The Association demonstrated that faculty in a number of other community colleges earn more than Foothill-De Anza faculty, but it also presented evidence on the record that all community college faculty have lost to inflation, especially in the last three years. The Association argued in its report to the panel that it is absurd to give more weight to the criteria which calls for comparing faculty compensation among community college districts than to the criteria which mandates consideration of CPI increases. Doing so would mean that the parties are obliged to accept the following reasoning: All faculty in the State have lost considerably to inflation. The compensation in this district must be comparable to that paid in other districts. Therefore, the factfinding panel cannot recommend a settlement which is equal to the increase in the CPI and must consider Association proposals in the light of faculty losses in other districts. This member of the panel agrees that comparing working conditions with other districts should be weighted heavily in some areas, faculty workload, for example. This factfinder does not find that there is justification for weighting this criteria more heavily than increases in inflation in this case. The only criteria which could be weighted more heavily than increases in inflation is the interest of the public and the ability of the district to pay. It is obviously in the interest of the public that the internationally recognized educational program in the district be supported and that the faculty of the district who are most directly responsible for the excellence of that program be supported. The ability of the district to pay is discussed in Part II of this report.

II. The chairman of the factfinding panel errs when he claims that both the Association's and the Board's fiscal displays are useless for determining funds available for faculty salary adjustments. It is a fact that both the Board and the Association did not separate restricted revenues and expenditures from unrestricted revenues and expenditures, except when analyzing ending balances. It is also a fact that the State requires districts to provide annual reports which do not separate them, except in the analysis of ending balances, and that in the last few years district reports to the Board, the public and the faculty and staff do not separate them. All official reporting regarding the fiscal condition of the district which provide the public with its only view of district finances do not separate them.

Neither the Association's nor the Board's initial reports to the panel confuse restricted and unrestricted monies. Both parties reported general fund income, expenditures and ending balances in the manner required by law, and restricted and unrestricted monies are broken out in the analysis of actual and projected ending balances. The Association provided a more specific and more detailed breakdown of restricted ending balances than the Board, but the Board provided a breakdown of projected current year restricted and unrestricted ending balances while the Association did not.

The following chart, contained in the Association's factfinding report, demonstrates that the Association certainly does not confuse restricted and unrestricted monies. Nor could it lead to the conclusion that the Association's estimated ending balance for 1980-81 in its factfinding report did not include any restricted money.

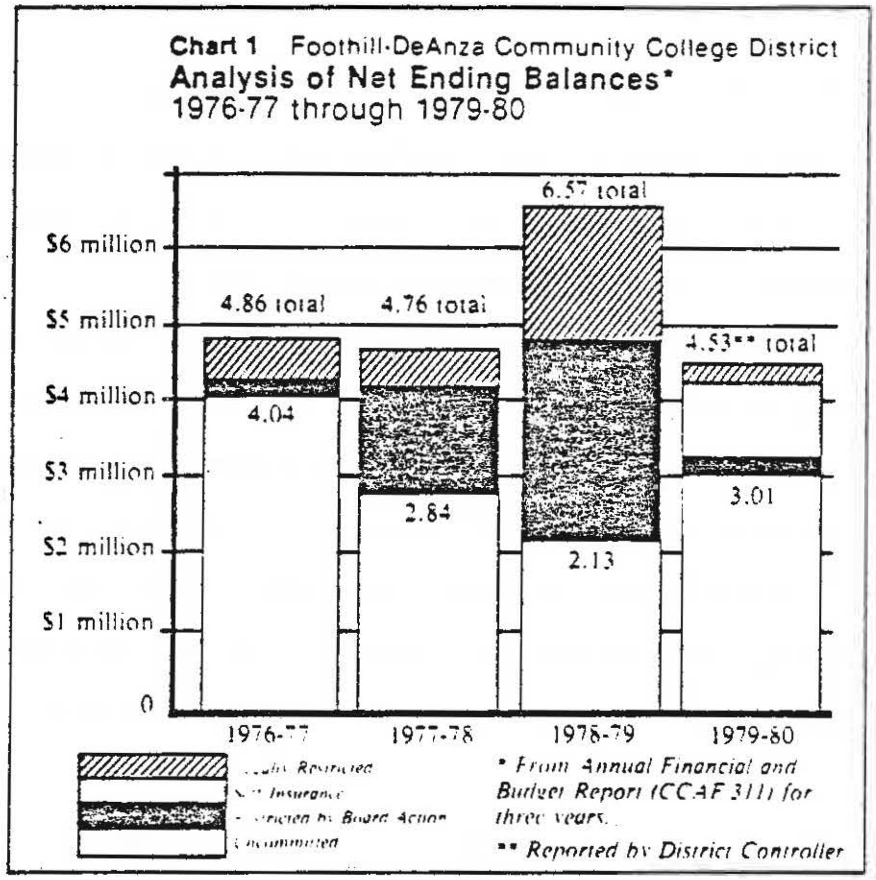

Chart 1 Foothill-DeAnza Community College District
Analysis of Net Ending Balances*
1976-77 through 1979-80

The Association argued that the initial reports submitted by the Board and the Association could easily be used to demonstrate the availability of unrestricted funds for faculty salaries, pointing out that income and expense for grants "wash," and therefore do not affect the analysis, and that restricted general fund amounts added up to such a small part of the budget that the Association would be willing to accept the Board's projection of ending balances for restricted accounts in the 1980-81 budget. The Association asked that its data be considered.

Instead, the chairman of the panel chose to focus his analysis on the fiscal display he had asked the Board to provide the panel during the public hearing. The display separated restricted funds, grant funds and unrestricted funds. After reviewing the Board's figures, the Association objected to using them as the basis for examining the fiscal position of the district because they contained serious flaws.

The Association pointed out that accepting the Board's display meant accepting the Board's assumptions regarding which money was restricted and which was not. It meant that the panel would have to consider community services money restricted even though the legal restriction tied to the old community services tax was eliminated when that tax was repealed. It meant that the panel would have to agree that grant money used to pay for salary increases negotiated for those working under grants could not be considered available for salaries. It meant that the panel would have to agree that none of the money transferred into the district's self insurance fund was available for salaries despite evidence on the record that the administration had already transferred money from that fund for salary increases negotiated for classified employees. The Association also pointed out that the Board's display of restricted and unrestricted monies artificially inflated unrestricted expenditures because of the way the self insurance transfer was displayed.

The chairman of the panel asserted that the Board's revised data (Tables 1, 2 and 3 at the end of this report) showed a declining available balance <u>trend</u> since, according to the Board's data, expenditures exceeded revenues in 1979-80. The Association pointed out, first, that--even if the Board's data were accurate--no downward expense-to-income trend could be assumed since the Board's display cites data for only three years and, according to that data, expenditures exceeded revenues in just the last year. One year, my dear chairman, doth not a trend make. The Association then presented evidence on the record (Tables 4 and 5 at the end of this report) that the Board's display distorted the relationship between actual unrestricted revenues and expenditures, considerably inflating unrestricted expenditures for 1979-80 and 1980-81 by double counting monies transferred within the general fund. The Board's display distorts unrestricted expenditures for 1980-81 by almost $3 million. The Board's data shows unrestricted expenditures exceeding revenues in 1979-80 by over $1.6 million. The Association's data shows that 1979-80 unrestricted income actually exceeded expenditures by about $662,000, but restricted expenditures exceeded income by $753,000. If the Board's display had been correct, the actual general fund ending balance would have declined by almost $1 million. However, when the ending balances for 1978-79 and 1979-80 are adjusted to account for the impact of retroactive salary payments for 1978-79 that were actually made in 1979-80, and when the $864,000 the administration placed in accounts payable to cover ADA corrections that would be made in 1980-81 is included in the ending balance, the ending balance for 1978-79 and 1979-80 are about the same, as shown in the following table.

Table 6

General Fund 1978-79 Ending Balance	$6.5 million	General Fund 1979-80 Ending Balance	$4.37 million
Less retroactive salary payment	1.2 million	Plus accounts payable ADA amounts	.86 million
Adjusted Ending Balance	$5.3 million	Adjusted Ending Balance	$5.23 million

THE GENERAL FUND ENDING BALANCE, ONCE THE ABOVE ADJUSTMENTS HAVE BEEN MADE, HAS REMAINED MORE OR LESS CONSTANT IN THE LAST FOUR YEARS. IT IS CLEAR, THEREFORE, THAT EXPENDITURES ARE NOT EXCEEDING REVENUES AND DISTRICT ENDING BALANCES ARE NOT DECLINING.

The chairman of the panel states in the narrative of his report that the Board's estimates of general purpose revenues and expenditures over the past few years have been surprisingly accurate, given the nature of school finance. This view is based in part on the misleading information contained in the Board's display and, it seems, on a generous and fraternal empathy for the administration of the district. The opinion that district budgets have been accurate in predicting income and expense is again based on only a three year comparison. In two of those years, the Board's own data shows that the administration underestimated general purpose revenues by $2,223,511 and $1,190,121 (Table 7, Part A). When faculty learned that, again, another million or two that could have gone for salaries was "found" at the end of the year, they were not ready to give the administration an award for "surprisingly accurate" estimates. In two of the three years cited for expenditure comparisons, Board figures show that expenditures were overestimated in the budget by $1,897,657 amd $1,420,684 (Table 7, Part B). The variance between budgeted expenditures and actual expenditures for 1979-80 was actually greater than indicated in the Board's display since the administration adjusted the data for 1978-79 to account for the impact of the retroactive salary payment that was not made until 1979-80, <u>but it did not adjust the data for 1979-80</u>, resulting in an apples 'n oranges comparison and another distortion. The actual variance between budgeted and actual expenditures for that year was $2,622,295.

FOOTHILL-DE ANZA COMMUNITY COLLEGE DISTRICT
Table 7
Comparison of Budget to Actual for Income and Expense
Fiscal Years 1977-78, 1978-79, and 1979-80

Schedule II	1977-78	1978-79 Adj. for Retro. Pay	1979-80
Part A			
Income			
Budget	36,041,358 (Page 1)	34,637,146 (Page 5)	40,406,624 (Page 10)
Actual	38,264,869 (Page 2)	35,827,267 (Page 6)	40,390,390 (Pp. 11,12)
Net Variance	2,223,511	1,190,121	16,234
Percent of Variance to Budget	6.1%	3.4%	.04%
Part B			
Expense			
Budget	37,919,862 (Page 3)	37,300,773* (Page 7)	44,625,686 (Page 13)
Actual	38,070,395 (Page 4)	35,403,116 (Page 9)	43,205,002 (Page 14)
Net Variance	150,533	1,897,657	1,420,684
Percent of Variance to Budget	.39%	5.0%	3.2%

*Budgeted expenditures reduced by $700,000 Project Contingency Reserve

Using the Board's data, the chairman of the panel insisted that current year expenditures would exceed income, and that faculty cost of living adjustments would have to be paid from beginning balances, reducing ending balances for 1980-81 to a bare minimum. This scenario could be true only if one accepts the absurd notion that the district received no increase at all this year in state funding, which pays for the majority of non-grant faculty salaries, and if one accepts the Board's expenditure assumptions.

The Association protested the chairman's stark assumption that the Board's estimate of expenditures in the adopted budget was generally an accurate reflection of what actual expenditures for the year would be. The Association presented a detailed analysis of current year expenditures in its factfinding report. All of the estimates in the expenditure projection were supported by comparisons with actual expenditures for prior years. Its expenditure projection (cf. Table 9) included settlements in both classified units and increases in management salaries. It included a 10% inflation increase for benefits, even though the cost of benefits has remained about the same for the last three years. The 10% increase projected for benefits assumed no improvements in the benefit program.

The Association's expenditure projection allowed for a 10% increase over 1979-80 in other operating expense, and estimated student financial aid at a little more than 1979-80 actual because it excluded, both on the income and on the expenditure side, additional student aid funds incorporated into the general fund this year. The projection assumes that contingency funds will not be spent. All other expenditures were those contained in the adopted budget. The adopted budget contained benefit expenditures which exceed last year's by $1,811,316, or 32.4%, and expenditures for other operating expense that were $5,088,569 greater than last year, a 134.3% increase. The chairman of the panel asked Board representatives questions now and then about the likelihood of some of the Board's budgeted expenditures and accepted their responses with no supporting detail. On one occasion, the chairman asked why there was a need to increase expenditures for operating expense by so much. He listened to talk about the increased costs of utilities and such for a few minutes, and then accepted the entire $5 million increase. At the same time, he studiously ignored the Association's expenditure projection.

Despite the repeated insistence by the Association that the chairman recognize the flaws in the Board's data, the chairman of the panel refused to consider the Association's fiscal presentation. The Association then agreed to respond to the Board's display and submitted two displays which gave unrestircted income and expenditures, one using the Association's assumptions and one using the Board's assumptions. The display incorporating the Association's assumptions is given in Table 8 below. The display assumes an overall compensation increase of 18%.

Table 8
FA PROPOSAL FOR 18% COMPENSATION PACKAGE
SUPPORTING DATA

Beginning Balance	$ 3,044,047*	
State Apportionment & Local Tax Income	41,118,039	(excludes Child Dev.)
Apprenticeship Allowance, remaining two-thirds	35,000	
Handicapped Student Allowance, 9% COLA	122,906	
Collective Bargaining Reimbursement	261,000	
Interest	1,000,000	(assumes 13.5% rate)
Sales	670,000	
Leases and Rentals	200,000*	
Continuing Education Fees	990,800*	
Non-Resident Fees	950,000	
Other Local Income	200,000	
Federal VEA Income	197,055	
TOTAL UNRESTRICTED FUNDS AVAILABLE	$48,788,847	

Total Unrestricted Funds Available	$48,788,847
Budgeted Expenditures	-41,462,435*
	$ 7,326,412
18% Compensation Package	- 3,819,960
Unrestricted General Purpose Net Ending Balance	$ 3,506,452

*Assumes no salary adjustment $ in budget.

The chairman of the panel then began to work up a series of comparative figures, using some of the Association's data and the Board's assumptions. These appear in Tables I, II, and III of the chairman's report. The Association did not see these tables until it received the chairman's report, and they do not represent the Association's position on District expenditures or ending balances.

The Association's position can be accurately reflected by making use of the data it provided in its factfinding report, as the following table indicates. Table 9 is a summary of exhaustive data provided in the Association's report.

Table 9

1980-81 General Fund Beginning Balance	$ 4,533,325
1980-81 Income Projected by the Association	49,528,601
Total Funds Available	$54,061,926
Less 1980-81 General Fund Expenditures Projected by the Association	46,622,748
General Fund Balance (excluding faculty salary adjustments) $ 7,439,178	
Less Restricted Ending Balance Projected by the Board (all restricted funds and grants)	1,204,149
Unrestricted Ending Balance (Net Available Resources)	$ 6,235,023
18% Compensation, retroactive to 7/1/80 ($212,220 = 1%)	3,819,960
Available after Settlement in Unrestricted Funds	$ 2,415,063*
Available after Settlement in Restricted Funds	1,204,149
Total Year End Resources	$ 3,619,212

*Differs from Table 8 because the Association had not received the February apportionment report at the time its factfinding report was published. That apportionment report increased district revenues.

The above data, gathered from the Association's factfinding report, and the display presented later by the Association (Table 8) show that the district has the ability to pay for the Association's offer in factfinding. Two matters need to be clarified, however. The Association allowed for a 3% ADA increase in 1980-81 in its factfinding report (the ADA assumed in Table 9) but assumed that first principal apportionment ADA would be the same as final apportionment ADA in Table 8. Usually, Spring quarter enrollments are lower than Fall and Winter quarter enrollments, decreasing the total ADA for the year from that given in the first report. In its estimates the Board has allowed for a decrease in annual ADA of 5%. Information available to the Board and the Association indicates that Spring enrollment has not decreased as much as it has typically done. This factfinder's estimate of annual ADA is 22,234, or 689 less than the Association assumes in Table 8 and 575 more than the Board has projected. This factfinder notes that the chairman of the panel simply accepts the Board's estimate of ADA. Above ADA assumptions would decrease the Association's projected revenue in Table 8 by $791,661 and increase the Board's revenue projection by $660,675.

The other matter requiring clarification is the deficit factor being applied to community college revenues. In AB8 the legislature allowed funding for enrollment growth statewide, but enrollment in some districts had, according to first principal apportionment reports, exceeded that growth by substantial amounts. If final apportionment reports do not show the usual decline in Spring enrollments, there would not be enough money available to fund enrollment growth statewide. In the absence of legislation providing additional funding to cover this growth, there would be a shortfall that would be distributed among the 70 community college districts. Each district's revenues would then be reduced. The first principal apportionment report anticipates a deficit of .958, a reduction in district income of 4.2% or $2,162,561 from total revenues due the district if no deficit factor is applied. It is important to note that in both the Association's and the Board's calculations that $2,162,561 has already been deducted. If the deficit does not actually occur or if it is reduced, the district will receive additional income. It is almost certain that the deficit will not be as great as the currently estimated 4.2%. The State Chancellor of California Community Colleges has indicated publicly that his office has already isolated enough funds to lessen the effects of the deficit to no more than 2%. This factfinder conservatively estimates the deficit factor to be .98, or 2%. A 2%

deficit would increase both the Board's and the Association's revenue estimates by $1,132,770. Tables 10 and 11 compare the positions of the parties and summarize the conclusions of this member of the factfinding panel.

1. Effect of Agreement (Article II)

The Board has argued for a language change in Section 2.3 of the management rights clause of the current contract. The Board is seeking to eliminate part of the section which specifies that the authority of the Board is limited by law. The Board indicates that there is a dispute over the meaning of the current language and notes that a single faculty member has attempted to grieve on Section 2.3 to support a claim of violation of due process.

The Association notes that, while there may be disagreement as to the intent of the Section, a single grievance is not sufficient to warrant changes proposed by the Board, and the Association notes that it did not take the grievance to arbitration.

Recommendation: Retain current language.

Rationale: The Board has not provided sufficient reasons for eliminating the provision that the Board's authority be limited by "applicable provisions of law."

2. Part-Time Faculty (Article VII)

The Board has proposed that class assignments be made on the basis of seniority (date of hire) to faculty who have established reemployment preference, except for those who have had a break in service. Seniority for those with a break in service of four or more consecutive quarters or three or more consecutive semesters would begin at the first quarter or semester following the most recent break. The Board has proposed that reemployment preference be established in a course by earning three service credits, one service credit for each class assignment, except that no service credits are earned for service before November 23, 1977.

The Association has proposed that class assignments be made on the basis of seniority (date of first service) to faculty who have established reemployment preference. The Association has proposed that reemployment preference be established in a discipline by earning three service credits, one service credit for each class assignment completed. The Association's proposal does not contain the November 23, 1977 cutoff date. The Association has also proposed that no new part-time faculty be hired until all current part-time faculty have been offered an assignment, and that faculty not lose previously earned service credits and reemployment preference for declining an assignment. The current contract provides that all service credit and reemployment preference is lost when an assignment is declined. In addition, the Association has proposed that if assignment notification cards have not been returned 15 day after the date of mailing, the faculty member shall be notified by phone that an assignment is being offered. The Association has proposed that faculty whose assignment is cancelled because of low enrollment or administrative error receive 50% of the salary that would have been received for the assignment.

Recommendation: (1) That class assignments be made on the basis of seniority (date of first service) to faculty who have established reemployment preference except for those who have had a break in service of four or more consecutive quarters or three or more consecutive semesters, seniority for those with a break in service beginning with the first quarter or semester following the most recent break. (2) That reemployment preference be established in a discipline by earning three service credits in that discipline, one service credit for each class assignment within that discipline, except that no service credits can be earned for service before November 23, 1977. (3) That the Associations proposal that no new faculty be hired until all faculty with earned service credit are offered an assignment be rejected. (4) That the Association's proposal that faculty not lose previously earned service credit and/or reemployment preference for declining an assignment be adopted. (5) That Sections 7.1.4 and 7.1.5, of the Association's proposal pertaining to the offering of assignments, be adopted, except that "shall be notified by phone" be replaced with language incorporating the chairman of the panel's recommendation that the Board attempt to notify faculty by phone and that adequate records of such attempts be kept and made available to the Association. (6) That faculty whose assignments are cancelled because of administrative error receive 25% of the salary for the assignment, but that "administrative error" be defined in the agreement to include only those errors that can be objectively determined, and that faculty whose assignments are cancelled for low enrollment receive 10% of the salary for the assignment. (7) That the chairman's recommendation that a task force be appointed to review changes in Article VII be rejected.

Rationale: (1) Date of first service is preferable as a benchmark for establishing seniority to date of hire because it is directly related to the performance of duties. It is reasonable to adopt the Board's proposal which allows breaks in service to interrupt seniority. Otherwise, it would be possible for a faculty member who had taught one class in previous years and had not taught since to have seniority over a faculty member who had taught many classes without a break but who had begun teaching at a later date. (2) The Association argued persuasively that reemployment preference in a discipline, rather than a single course, is preferable because it allows part-time faculty to teach in areas that are comparable to those used in assigning contract faculty. Course by course seniority is too restrictive since neither credentials nor degrees are earned in a single course. The November 23, 1977 cutoff date was agreed upon in negotiations on the current contract, and the Association has not established that eliminating that date will significantly benefit part-time faculty who were employed prior to 1977, nor that retaining the date will significantly harm those employed prior to that date. If the Association's proposal that all faculty with service credits be offered a class before new faculty are hired were adopted, it would render reemployment preference upon earning three service credits meaningless since it would grant employment preference to faculty who had earned but one or two service credits. (4) The current practice of denying all seniority to a faculty member who refuses an assignment imposes too severe a penalty for a break in service of only one quarter. The Board's current proposal denies previously earned seniority only after a break in service of at least four quarters. A faculty member should obviously not receive credit for an assignment that is refused, but denying all previously earned service credit and reemployment preference is excessive. (5) There is no disagreement among the parties that faculty who have not returned notification cards be phoned and given an opportunity to respond before an assignment is withdrawn. (6) It is reasonable for faculty to receive some pay for assignments that are cancelled because of administrative error, but 50% pay is excessive and administrative error needs to be defined in such a way that it refers only to errors that can be objectively determined. Twenty-five percent of salary for assignments cancelled because of administrative error is reasonable since the faculty member whose class is cancelled receives the payment only if he or she is not offered an alternate assignment. Ten percent payment to faculty whose classes are cancelled because of low enrollment is reasonable since it recognizes work performed by the faculty member before he or she meets with students, class preparation time. (7) The chairman's recommendation that a task force be appointed to clarify part-time issues is unnecessary if this factfinder's recommendations are adopted. The chairman's recommendation is also inappropriate, in any circumstances, since it calls on the parties to meet and confer, rather than negotiate, on an issue that is clearly within the scope of representation.

3. Part-Time Regular Faculty (New)

The Board has proposed that pre-1967 part-time faculty who qualify under the Balen and Peralta decisions of the California Supreme Court be granted tenure status. The Association has argued that these faculty members are entitled to back pay and prorata pay in addition to tenure. Since the parties were unable to reach agreement on this issue after months of negotiations, the Association has proposed that the matter be resolved by the courts. The Association has filed suit on behalf of the affected part-time faculty, and has been advised by its attorneys that to accept the Board's proposal could place the Association in a precarious legal position.

Recommendation: Reject the Board's proposal. Add the following language to Article VII: "In the event that legal action on behalf of pre-1967 part-time faculty results in improved status and/or increased compensation and/or benefits, the parties agree to reopen negotiations for the sole purpose of including such changes in status and/or compensation and benefits in the Agreement."

Rationale: The parties disagree on the potential effects of court decisions in the Balen, Peralta, and San Diego cases. Since the parties have not been able to resolve the issue in negotiations and suit has been filed in the matter by the Association, the parties must abide by the decision of the courts.

4. Load and Class Size

A. Definition of Load: The Board has proposed no changes, but there is disagreement over the meaning of language in Section 9.2 "...and other such assignments as they pertain to hours of employment." The Association has proposed language to clarify the definition by distinguishing between load for teaching faculty and load for non-teaching faculty. The Board has claimed that the language in dispute imposes a contractual obligation on the faculty to participate in committee work, curriculum development, and community service work, "and the like."

Recommendation: That the Association proposal be adopted.

Rationale: Current contract language is vague, inconsistent and incomplete as noted by the Association on page 18 of its Report to the Factfinding Panel. The Association's proposal removes "load factor" from the definition of load and places it in a separate sub-section since it refers to a method for weighting classes in determining loads for teaching faculty and is not itself a component of load. Adopting this part of the Association's proposal eliminates the obvious inconsistency. The Association has argued convincingly that, were the Board's interpretation of the definition of load be accepted, (1) the Agreement would be left with no definition of load for non-teaching faculty and (2) faculty would be contractually obligated to perform services currently described in P.E.R.B. decisions as "overtime." Requiring faculty to participate in committee work, curriculum development and community service work is not in keeping with past practice in the district, where some faculty have voluntarily assumed such responsibilities, and some faculty have chosen not to participate in these activities.

B. Preparations: The Board has proposed no changes. The Association has proposed an outside limit on the number of preparations, recognizing it as a component of load. The chairperson of the Factfinding Panel, evidently, has not understood the Association's proposal since he assumes that the Association has proposed "an absolute limit on preparations at three per quarter." Actually, the Association has proposed that "past practice with regard to number of preparations shall be maintained except that members of the contract or regular faculty teaching classes of 3 or more units shall be assigned no more than three preparations in a given quarter unless the faculty member agrees to accept additional preparations. The Association proposes that faculty members required to have preparations in excess of the limits imposed by its proposal be compensated at a rate of $500 per additional preparation.

Recommendation: That the Association proposal be rejected, and past practice with regard to the number of preparations be continued.

Rationale: While the argument for outside limits on the number of preparations by the Association is reasonable, sufficient evidence of abuse in this area has not been demonstrated.

C. Special Projects: The Board has proposed no changes. The Association has proposed that no faculty member be required to accept special projects/classes or independent study classes. The chairperson of the factfinding panel says faculty would be paid $100 per unit per semester under the Association's proposal. It should be pointed out to the chairperson of the panel that the Association's proposal calls for payment of $100 per student per unit per quarter - both Foothill College and De Anza College are on the quarter system, not the semester system.

Recommendation: That no faculty member be required to accept special projects or independent study classes. Eliminating any requirement to perform such services automatically eliminates payment for required service, and thus the Association's proposal for payment for these classes is rejected.

D. Load Equalization: The Board has proposed no changes. The Association has proposed that non-teaching faculty workloads be equalized at 35 hours per week.

Recommendation: That the Association proposal be adopted.

Rationale: The Association argued that the proposed reduction in load can be accomplished by adjusting the work schedules of current personnel, thus requiring no additional costs. The Association also noted on the record that current practice calls for a 37-1/2 hour on site requirement for librarians but a 35 hour on site requirements for other non-teaching faculty. It is fair and reasonable that work loads of librarians be decreased from 37-1/2 to 35 hours per week since the statewide average workload for librarians is less than 35 hours per week.

E. Older Adult Education Program: The Board has proposed no changes in load for faculty working in the Older Adult Education Program. The Association has proposed that OAE teaching loads be reduced from 18 to 15 contact hours per week, and that preparation be done at a location of the instructor's choice.

Recommendation: That OAE teaching loads be reduced from 18 contact hours per week to 16 contact hours per week. That preparation be done at a location of the OAE faculty member's choice.

Rationale: This factfinder rejects the Factfinding Panel Chairman's assertion that the OAE proposal has high cost implications. In addition, this factfinder rejects the Board's position that a reduction in load for one special program in order to eliminate an inequity is unfair to faculty teaching in other special programs. The OAE proposal is not a costly one since it provides a reduction in load for only eleven faculty, and no reopeners on load and class size are proposed by the Association for a three year agreement. It is not unfair because faculty in other special programs who had the opportunity to do so did not propose changes in load for this contract.

5. Hours and Scheduling (Article X)

The Board has proposed, and the Association has proposed, that teaching faculty hold office hours only on days the faculty member is scheduled to teach classes. The Board has also proposed that faculty have the option of working during a recess or beyond the regular academic year in lieu of working a like number of days during the regular academic year. The Board proposes, in addition, that faculty who, by mutual agreement, work beyond the regular academic year as part of contract be paid at a rate of two-and-one-half percent of annual pay for each week of additional service. The Board also proposes that required meetings be limited to four per quarter or that current contract, which does not specify that meetings are required, be retained. The Association has proposed that the administration require no more than ten meetings per academic year. The Association also proposes that teaching faculty not be required to provide services over a daily span of 5 hours, for those teaching lecture classes, 6 hours, for those teaching lecture/lab classes, and 7 hours, for those teaching lab classes. The Association has proposed that faculty retain the right to work on 11 or 12 month contracts, and that they be required to work no more days in a given month than ten month contract faculty.

Recommendation: Office Hours: That the Board's proposal which requires that office hours be held only on days classes are scheduled, be adopted. This factfinder thus rejects the chairman's recommendation that the phrase "except under unusual circumstances: be added to the section, and wonders why the chairman saw fit to include that phrase since neither the Board's nor the Association's proposal call for including such a phrase.

Meetings: That the faculty be required to attend meetings, but that no more than ten meetings called by management be required in any given academic year.

Work Beyond the Academic Year: That ten month contract faculty not be required to work beyond the academic year or during intersessions or breaks within the academic year. That faculty who choose to work during these periods may receive payment for such services or "comp time" during the regular academic year equal to the number of days worked during the above-mentioned periods. That faculty currently employed on 11 and 12 month contracts retain the right to work on 11 or 12 month contracts, that they be required to work no more than the average number of days per month required of ten month contract faculty, and that they be paid at a rate of two-and-one-half percent per week for such service.

Work Span: That the daily work span for faculty teaching lecture classes be no greater than 5 hours, and that the work span for those teaching lecture/lab and lab classes be 6 and 7 hours respectively.

Rationale: Since the parties have agreed on the scheduling of office hours, no further rationale is necessary. The Association argued that ten meetings per year, the 5-6-7 hour work span proposal, and maintaining 11 and 12 months contract either meet or exceed requirements imposed by past practice. The Board has argued that payment at a rate of 2-1/2 percent of annual salary per week for work performed outside the academic calendar and providing payment or comp time for such work by 10 month contract employees represent current practice. Since neither party has argued that these are not current practice, it is reasonable, therefore, to incorporate these practices into the contract.

6. Reduction in Force (Article XV)

The parties were directed by P.E.R.B. to negotiate competency standards to be used in layoffs. The Board's proposal calls for a credential specifying qualifications to render a service. It requires a graduate degree in the service or experience in the service in the District for 3 quarters. The Board's proposal would also consider competent those who have previous full-time employment in another district for one-year within the previous 5 years or previous full-time employment for one year within the previous 5 years in business or industry in a position qualifying for experience toward achieving a vocational credential.

The Association has proposed a general test of competency which calls for the equivalent of two years of service in a division within the previous 5 years. The Association's proposal also enumerates secondary competency standards for establishing competency for particular services.

Recommendation: That the Association's proposal be adopted except that Section 15.10 be amended to include the following underlined language: "Particular service" shall mean disciplines or work area classifications such as those listed in the Foothill-De Anza Community College District Accounting Services Guide.

Rationale: The Board's proposal contains serious flaws which chairman of the Factfinding Panel has overlooked. The Board's proposal says that faculty must be competent to perform a service, but it does not define "service." If the Board's proposal were adopted, competency would be determined solely by the Board, this circumventing the direction given by P.E.R.B. that the parties negotiate competency standards. The Board's proposal also does not consistently distinguish "qualified" from "competent." (cf. the Association's Factfinding report pp. 32 and 33.)

The chairman of the Factfinding Panel is evidently not familiar with the Association's proposal, for he assumes that competency standards proposed by the Association would exclude "persons who have performed service outside of divisions." The Association's proposal applies to each and every member of the bargaining unit. Section 15.9 of the Association's proposal reads, "All services performed by members of the bargaining unit shall be assigned to a division." The Association pointed out on the record that the above section was necessary since the Association's general competency test requires service in a division.

Despite the fact that the Association stressed that disciplines cited in the District's Accounting Services Guide were to be used to <u>illustrate</u> how faculty would define "particular service," the chairman of the factfinding panel continues to insist that reduction in force decisions could be controlled by revisions in accounting manuals. The language change recommended by this factfinder should eliminate any confusion about the role of the accounting guide in establishing areas of particular service for the purpose of layoffs.

7. <u>Professional Development Leaves (Article XVII)</u>

The Board has proposed reducing professional development leaves from 90 to 60 quarters per year and adding a provision that would allow the Board to reject leaves already approved by the professional development leave committee for reasons that are neither arbitrary nor capricious.

The Association has proposed that the number of quarters made available each year for professional development leaves be increased from 90 to 114 quarters, and that pay for such leaves be increased from 75% to 100% for a full leave and from 80% to 100% for two and one quarter leaves respectively.

<u>Recommendation</u>: That the number of quarters made available for professional development leaves be increased from 90 to 114 quarters. That pay for full

year and two quarter professional development leaves be increased from 75% and 80% respectively to 85%. That the Association's proposal for increased pay for one quarter leaves be rejected. That the Board's proposal allowing the Board to deny such leaves after they have been approved by the professional development leave committee be rejected.

Rationale: The Association's argument for improvements in the District's professional development leave program is persuasive. Information on the record shows that the backlog of faculty eligible for such leaves is increasing each year, and that the stated goal of the program, a leave after six years of service, is not being realized. Information on the record shows that 218 faculty are eligible for such leaves in 1981-82, and that it would take 654 quarters of leave to eliminate that backlog. The Association argues, in addition, that it did not propose continuing a provision in the current agreement providing $25,000 per year for professional development stipends because it wanted to use that money to reduce the backlog in the professional development leave program, thereby reducing the costs of the Association's proposal.

The current agreement provides that the Board must grant all leaves approved by the professional development leave committee. The Board has not offered compelling reasons for changing that provision. It could cite only one case that the Board felt warranted disapproving a leave. In that case the faculty member had already earned a leave before the Board began to institute suspension procedures.

8. Early Retirement Incentive Program

The Board has proposed either (1) maintaining current contract, which allows mutually agreeable service to earn the $5,000 yearly maximum salary provided by law, or (2) maintaining current contract for teaching service, but substituting a 200-hour requirement for non-teaching service. The Association has proposed that both teaching and non-teaching faculty work 150 hours per year under this program.

Recommendation: That teaching and non-teaching faculty working under the Early Retirement Incentive Program perform 175 hours of work.

Rationale: "Short term" savings from early retirement programs are well documented: the "high cost" employee is replaced with a "low cost" contract faculty member, or a lower cost part-time faculty member, or a no cost non-replacement. If a faculty member, who would have retired at 65, retires at 55 under this program, there are ten years of savings before the "savings" that would have occurred when the employee retired at 65, retires at 55 under this program, there are ten years of savings before the "savings" that would have occurred when the employee retired at 65. That's well over one-third the employment life of the typical faculty member. The chairman of the panel asserts that the district incurs long term additional costs as a result of such a program, but fails to indicate what these costs might be. The Board could provide no substantiation of additional costs that were not balanced by a compensating benefit to the district provided by the employee retiring under this program.

9. Paid Benefits for Retirees

The Board has proposed no improvements in this area. The Association has proposed that surviving spouses continue to receive district paid benefits. The Association has also proposed that Section 24.8 be eliminated.

Recommendation: That the Association's proposal be adopted.

Rationale: The chairman's argument that the Association's proposal could have "long term financial costs" is misleading since it implies that the magnitude of those costs will be great. Long term minor costs are minor costs. The Association's proposal specifies that only spouses (1) whose husband or wife has retired from the employ of the district (2) whose spouse has died (3) who is not eligible for coverage under any other paid benefits program, and (4) who

who has not remarried are eligible for coverage. It is highly unlikely that more than a few persons will qualify for benefits under the proposal in a given year.

10. Paid Benefits (Article XXIII)

The Board has proposed that current benefits be maintained. The Association has proposed improvements in dental benefits, psychological care and life insurance. It has also proposed that payment for hearing aids be included in the District's medical plan and that disability benefits be maintained at 66 and 2/3's of salary. For part-time faculty, the Association has proposed a buy-in plan with district contributions.

Recommendation: That the Association's proposal be adopted.

Rationale: Since this factfinder is recommending a salary adjustment that is considerably below the increase in the CPI for the 13 month period used by the parties, it is reasonable and fair to recommend improvements in benefits which provide a greater potential benefit for the employees at a lower cost to the district than an equivalent salary increase. In addition, the Association has noted on the record that partly through its efforts the cost of the district's benefits program has remained essentially the same for the last three years and the district has been able to accumulate a self-insurance reserve of over one million dollars in that time. In particular, past Association proposals have actually decreased the district's costs for disability coverage and for life insurance coverage. The Association's benefit proposal for contract faculty is not excessive since the total cost of improving benefits proposed by the Association and maintaining disability coverage at two-thirds of salary is just a little over $87,000, equivalent to a 0.4% salary adjustment. The Association's proposal for part-time faculty benefits is reasonable since (1) it does not propose paid benefits for all part-time faculty, but only for those who need them, percentage increase in District, State and local income for 1982-83. That the Child Development Salary Schedule be eliminated. That interest at the average rate earned by the District be paid from July 1, 1980 to the date retroactive payments are made to faculty.

Rationale: The salary adjustment recommended by this factfinder is reasonable because it does not depart radically from salaries paid faculty in other comparable community college districts, it is less than the percentage increase in the CPI for the 13 months used by the parties, the Foothill-De Anza Community College District has the ability to pay for the recommended increase, and--given the superior quality of education provided taxpayers in the district--it is in the interest of the public to provide professional salaries for faculty who are making a significant contribution to the community, and it is in the interest of the public to preserve the quality of education provided by the faculty of the district.

Professional Recognition Awards: The Board has made no proposal in this area. The Association has proposed that these awards be increased from $500 to $100 per year for each award earned.

Recommendation: That the Association's proposal be adopted.

Rationale: About 60% of the faculty are beyond Step 12 of the salary schedule and, therefore, do not receive step increases. The overwhelming majority of them are already in comumn 4 and 5 and thus cannot expect much of an increase in salary from column changes. These faculty incurr greater losses to inflation than those who receive step increases in addition to cost of living adjustments. These faculty receive Professional Recognition Awards every three years. The amount of these awards has not changed in well over 10 years.

Salaries for Part Time Temporary Faculty: The Board has proposed no additional compensation for part time faculty beyond a cost of livng adjustment. The Association has proposed an increase in the rate of pay for these faculty from 70% of the first 5 steps of the regular faculty salary

(2) it proposes benefits only for part-time faculty who have been employed in the district for three years and who are not covered by other benefit plans, and (3) it proposes a fixed cost contribution by the district. It is the current practice of the district to provide fully paid benefits for contract certificated and classified employees who work 50% or more of a full work load.

The chairman of the Panel's argument that the "non-sustained employment pattern of many part-time employees" makes it difficult to control costs is not convincing since the Association proposes benefits only for employees who have been employed in the district for 3 years, and since the Board has full control over the number of part-time faculty hired in any given year. It is also unlikely that initial costs of the proposed benefits will be significantly higher than those of employees now covered. There are two reasons for this. One, the district is self-insured for paid benefits and pays only actual claims and administrative costs. Second, the employees covered by the proposal must pay approximately 60% of that cost. Sufficient cost containment is built into the Association's proposal to make dramatically increased costs unlikely.

11. Salaries for Certificated Employees (Article XV)

The Board has proposed a cost of living adjustment of $1,000 per employee, about 3.5% when applied to the mean salary for full time faculty on the regular salary schedule. The Association has proposed a cost of living adjustment of 16% for 1980-81 and an automatic cost of living escalator clause for 1981-82 and 1982-83. In addition to cost of living adjustments, some faculty earn step increases, and a few faculty receive pay as a result of column changes for earning higher degrees. The Association has also proposed that the Child Development Faculty Salary Schedule be eliminated, and that faculty on that schedule be placed on the regular faculty salary schedule.

Recommendation: That salaries for the bargaining unit be increased by 12% retroactive to July 1, 1980, 10% for 1981-82, and a percentage equal to the schedule to 75% of that schedule for 1980-81, 80% for 1981-82 and 85% for 1982-83.

Recommendation: That the rate of pay for part time temporary faculty be increased from 70% to 75% in 1981-82, and 75% to 80% in 1982-83.

Rationale: Part time faculty provide the same services as full time faculty except that they are required to hold office hours and are not expected to participate in curriculum planning or attend occasional faculty meetings. The actual differences between the duties of part time and full time faculty do not warrant the current discrepancy in pay. It should be noted, however, that community colleges require greater financial support from the community if part time teachers are ever to receive pro rata pay.

12. Summer Sessions (Article XXVII)

The Board has proposed that summer pay remain at 63% of the salary faculty receive during the regular academic year for performing similar services. The Association has proposed that summer pay be comparable to pay for such services during the regular academic year, a 37% increase in pay for individual faculty. The Association has also proposed an additional day of sick leave for summer session work.

Recommendation: That pay for summer work be increased to 70% in 1980-81 and 80% in 1982-83. That the Association's proposal for an additional day of sick leave for summer sessions be rejected.

Rationale: The Board could provide no rationale for paying faculty 63% of contract for summer work, as opposed to 65% or 75% or 50%, or any other amount, except to say that 63% was what was paid in the past for such work. The Association provided information on the record that faculty on 11 and 12 month contracts receive 100% pay for summer work, that faculty working as librarians during the summer earn 100% pay, and that administrators working during the summer receive 100% pay. Paying faculty who teach the majority of courses during the summer less than full pay is indefensible in this factfinder's view, but it is prudent to increase summer pay significantly after the State adjusts to the demise of the surplus.

13. Contract Duration (Article XXXI)

The Board has proposed a one-year contract. The Association has proposed a 3-year contract, with adjustments to the salary schedule equal to the Bay Area Consumer Price Index increase in 1981-82 and 1982-83.

Recommendation: That the Association's proposal for a 3-year agreement be adopted, but that salary adjustments equal this factfinder's recommendations for Article XI.

Rationale: The Association stated on the record that the morale and effectiveness of district faculty has been severely damaged by protracted negotiations over the first 3 contracts. It is in the interest of the public to establish a setting that enhances rather than detracts from the kind of education the taxpayers in this district have become accustomed to. Ultimately, that means the taxpayers will have to support additional money for education, but it does not mean that preventing additional losses in faculty buying power must await long-term financing of community colleges.

The chairperson of the factfinding panel argues that the present uncertainty of financing for community colleges automatically precludes making a long term commitment to faculty compensation, even when it is in the public's interest to do so. As the chairman of the panel knows, "long term" financing for education in California these days means financing for no more than two years. That means that community college financing will be "uncertain" every two years. Using the chairman's logic, if present methods of financing continue, there will never be a time when the Board could consider it sound policy to make a long-term commitment to preventing the further deterioration of faculty salaries. The Association has provided information on the record that community college financing in the first half of the 1980's is not bleak. The Association has pointed out that the

Chancellor of the California Community Colleges himself anticipates cost of living increases for community colleges of 10% or more after 1981-82.

14. Integrity of the Bargaining Unit (new)

The Association has proposed that regular full-time faculty be replaced with other full-time contract faculty and that temporary part-time faculty be given priority for filling available positions. The Board, by making no proposal in this area, has proposed to continue the current general practice of either not replacing faculty who retire or replacing them with part-time temporary faculty.

Recommendation: That the Association's proposal be adopted except that the section establishing preference for part-time faculty with the longest service be written so that the naming of "perference" is clarified.

Rationale: The Association provided information on the record that the full time faculty has been steadily decreasing in the district. The Association also pointed out that the ratio of part-time faculty to full-time faculty in the State has increased dramatically in the last few years. The Asssocation has argued that the quality of education in the district is suffering because of the inordinate use of part-time teachers who, the Association points out, are not required to hold office hours, participate in in-service training, or attend curriculum meeting, and are not expected to do curriculum development work or participate in community service work. It is in the public interest that the superior quality of education offered at Foothill College and De Anza College be maintained. The chairman of the panel argues that the Association's proposal "would restrict the ability of the District to make even temporary adjustments in positions" is misleading. It overlooks the fact that the Association's proposal does not require an increase in full-time staff, nor does it call for reduction in part-time staff; it merely prevents further erosion of the full-time staff. With almost 900 part-time faulty working in the District, the Association argues, the administration has enough flexibility to operate the district.

Table 1

FOOTHILL-DE ANZA COMMUNITY COLLEGE DISTRICT

Comparison of Actual Income to Expense
Fiscal Years 1977-78, 1978-79, and 1979-80

		1977-78	1978-79 Adj. for Retro. Pay	1979-80 Adj. for Retro. Pay	Net Deficit 3 Yr. Per.
Schedule I					
Actual					
1.	Income	38,264,869 (Page 2)	35,827,267 (Page 6)	40,390,390 (Pages 11 & 12)	
2.	Expense	38,070,395 (Page 4)	35,403,116 (Page 9)	42,036,891 (Page 15)	
3.	Net Difference	194,474	424,151	(1,646,501)	(1,027,876)

Table 2

FOOTHILL-DE ANZA COMMUNITY COLLEGE

1979-80
Actual Income
(Beginning Balance Adjusted to Omit Impact of 1978-79
Retroactive Pay Increase Paid in 1979-80

	Total General Fund	Restricted Funds	General Purpose Grants	General Purpose Unrestricted
Beginning Balance	5,377,329	948,422	(261,661)	4,690,548
Working Capital	324,087			324,087
Reserves	1,448,442	948,442		500,000
Other	3,604,800		(261,661)	3,866,461
Income	46,656,184	2,667,407	3,598,387	40,390,390
Federal Sources	2,358,110		2,269,921	88,189
Work Study	357,304		357,304	
C.E.T.A.	1,068,259		1,068,259	
V.E.A.	501,722		413,533	88,189
Student Aid Grants				
Other	403,825		403,825	
State Sources	29,600,871		626,343	28,974,528
Apportionment - Principal	27,359,913			27,359,913
- Handicapped	1,614,615			1,614,615
Other	626,343		626,343	
Local Sources	11,979,055	526,007	643,326	10,809,722
Taxes	7,606,090			7,606,090
Interest	1,222,403			1,222,403
Fees	2,016,262	384,840		1,631,422
Contracts	643,326		643,326	
Sales/Other	349,807			349,807
Flint Center	141,167	141,167		
Interdistrict Tuition	514,297			514,297
Intrafund Transfers	2,203,851	2,141,400		62,451
Adjust For Grant Matching			58,797	(58,797)
TOTAL FUNDS AVAILABLE	52,033,513	3,615,849	3,336,726	45,080,938

Table 3

FOOTHILL-DE ANZA COMMUNITY COLLEGE DISTRICT
1979-80
Actual Expenditures
(Adjusted to Omit Impact of 1978-79 Retroactive Pay Increase Paid in 1979-80)

Total General Fund	Restricted Funds	General Grants	Purpose Unrestricted	
EXPENDITURES	47,500,188	2,288,458	3,174,839	42,036,891
Certificated Salaries	21,732,094	192,138	433,363	21,106,593
Contract Teachers	12,044,112		151,261	11,892,851
Contract Non-Teachers	3,521,286	173,271	65,975	3,282,040
Other Teachers	5,863,982		92,185	5,771,797
Other Non-Teachers	302,714	18,867	123,942	159,905
Classified Salaries	10,628,260	20,361	1,589,044	9,018,855
Contract Non-Instruction	7,195,170	16,483	532,796	6,645,891
Contract Instructional Aides	793,864		3,832	790,032
Other Non-Instruction	635,433	3,878	88,279	543,276
Other Instructional Aides	75,783		26,356	49,427
Students	1,928,010		937,781	990,229
Staff Benefits	5,493,385	1,714,377	194,902	3,584,106
Operating Expense	5,332,600	85,889	526,893	4,719,818
Capital Outlay	1,001,138	1,366	91,254	908,518
Sites	43,897			43,897
Buildings	179,069			179,069
Books	83,920		2,814	81,106
Equipment	579,059	1,366	88,440	489,253
Lease-Purchase	115,193			115,193
Other Outgo	666,932		339,383	327,549
Interdistrict Tuition	326,058			326,058
Student Fiancial Aid	340,874		339,383	1,491
Fund Transfers	2,433,903	62,451		2,371,452
Flint Center	211,876	211,876		
Accrual Adjustment				
Ending Balance	4,533,325	1,327,391	161,887	3,044,047
Working Capital	208,624			208,624
Reserves	2,527,391	1,327,391		1,200,000
Other	1,797,310		161,887	1,635,423

Table 4

UNRESTRICTED GENERAL PURPOSE INCOME AND EXPENSE*

Schedule 1 Comparison of Actual Income to Expense

	1977-78	1978-79	1979-80	1980-81 Budget
Actual Income	$38,013,238	$35,624,145	$40,327,939	$43,505,025
Actual Expense	37,975,847	34,152,530	39,665,439	41,462,435
Net Difference	$ 37,391	$ 1,471,515	$ 662,500	$ 2,042,590

Schedule 2 Comparison of Budget to Actual Income/Available Funds

Part A	1977-78	1978-79	1979-80
Budgeted Income	$35,789,727	$34,434,024	$40,344,173
Actual Income	38,013,238	35,624,145	40,327,939
Net Variance	$ 2,223,511	$ 1,190,121	$ 16,234

Unrestricted General Purpose
Total Funds Available

	1977-78	1978-79	1979-80	1980-81
Total Funds Available (Budget)	$39,962,193	$38,432,796	$45,953,235	$46,549,072
Total Funds Available (Actua)	42,087,257	39,862,327	45,018,487	

Comparison of Budget to Actual Expenditures
Unrestricted General Purpose Fund

Part B	1977-78	1978-79	1979-80	1980-81
Budgeted Expense	$37,825,314	$36,310,440	$42,287,734	$41,462,435
Actual Expense	37,975,847	34,152,530	39,665,439	?
Net Variance	$ 150,533 .39%	2,157,910 5.94%	$ 2,622,295 6.2%	?

* One problem with district's figures on unrestricted funds is they fail to avoid double-counting of funds transferred within the General Fund.

The figures in Table 5 are all taken from the District's summaries of income and expenditure, but they include no double counting. Restricted, Grant and Unrestricted funds are broken out so that each may be totalled independently.

Table 5

Beginning Balance	1977-78	1978-79	1979-80
Restricted	$ 689,481	$ 758,403	$ 948,442
Grants	42,240	(239,920)	(261,661)
Unrestricted	4,044,019	4,238,182	4,690,548
TOTAL	$4,775,740	$4,756,665	$5,377,329
Income			
Restricted	$ 3,426,820	$ 2,292,791	$ 526,007
Grants	2,304,648	$ 2,836,725	3,598,387
Unrestricted	38,013,238	23,624,145	40,327,939
TOTAL	$43,744,706	$40,753,661	$44,452,333
Beginning Balance & Income			
Restricted	$ 4,116,301	$ 3,051,194	$ 1,474,449
Grants	2,346,888	2,596,805	3,336,726
Unrestricted	42,087,257	39,862,327	45,018,487
TOTAL	$48,520,446	$45,510,326	$49,829,662
Expenditures			
Child Care			$ 230,052
Restricted	$ 3,200,814	$ 3,109,937	2,226,007
Grants	2,586,808	2,858,466	3,174,839
Unrestricted	37,975,847	34,152,530	39,665,439
TOTAL	$43,763,469	$40,120,933	$45,296,337
ENDING BALANCE	4,756,665	5,377,329	4,533,325
TOTAL	$48,520,134	$45,498,262	$49,829,662
ACCRUAL ADJUSTMENT	312	12,064	
TOTAL	$48,520,446	$45,510,326	$49,829,662

Table 10

FOOTHILL-DE ANZA COMMUNITY COLLEGE
General Purpose Revenue Estimates for 1980-81

	Original Budget	Faculty Assoc. Projections	Board's Projections	Factfinding Estimate
Unrestricted Beginning Balance	2,854,047	3,044,047	2,854,047	3,044,047
State and Local Tax Funding	39,028,908	40,061,168	38,804,050	41,459,148
ADA	20,568	22,923	21,659	22,234
Apprenticeship Allocations	0	52,511	35,000	52,511
Handicapped	1,680,745	1,712,916	1,590,010	1,590,010
Child Care Deduction	-254,194	-408,535	-408,535	-408,535
Prior Year Adjustment Less Deferred Income Offset	-185,431	-142,115	-142,115	-142,115
Mandated Costs Reimbursement	0	261,000	315,000	315,000
Interest Income	710,000	1,000,000	970,000	1,000,000
Sales & Other	220,208	1,070,000	220,208	775,000*
Continuing Education Fees	932,660	990,800	932,660	990,800
Miscellaneous Fees	45,000	0	45,000	45,000
Nonresident Tuition	947,340	950,000	1,200,000	1,200,000
Grant Match	-71,400	0	-71,400	-71,400
Fed VEA	197,055	197,055	197,055	197,055
Total 1980-81 General Purpose Revenue	$43,250,891	$45,744,880	$43,686,933	$47,002,474
Total Available General Resources	$48,788,847	$48,788,847	$46,540,980	$50,046,521

*Data available to the Board and the Association shows income from this source at $629,647 as of 4/30.

Table 11

Estimated Expenditures, Calculation of Available Funds
1980-81

Budgeted Expenditures less Non-expenditure Disbursements	$41,118,039
Estimated Cost of ADA Increases	460,000
	$41,578,039
Estimated 1980-81 Revenues and Beginning Balance	50,046,521
Net Available Resources	$ 8,468,482
Cost of Factfinder's Recommendation for 1980-81	3,235,355
Unrestricted Balance	$ 5,233,127
Restricted Balance (Board's Estimate)	1,204,149
Total Resources	$ 6,437,276

APPENDIX B

PETER J. LANDSBERGER
DISTRICT APPOINTED FACTFINDER
CONCURRING AND DISSENTING

I. The Financial Ability of the Public School Employer (Criterion No. 3).

While I concur in the finding that the District's current projected general purpose revenue is less than its current projected expenditures, even before any settlement with the Association, I must respectfully dissent from the Chairperson's conclusions that the state-wide deficit factor will be .98 rather than .95; that the District's working capital reserve should be reduced by $50,000 to $140,000; and that the financial exposure the District is currently facing in pending litigation is limited to costs that are not recurring.

With regard to the deficit factor the evidence before the Panel, in the form of the State Chancellor's First Principal Apportionment Report, predicts a state-wide deficit factor of .95. (In other words, the State Chancellor predicts that each community college district will, because of insufficient state funding for ADA disbursements, receive only 95% of the money it would otherwise be entitled to). The Panel does not have any other official report projecting a less severe deficit factor (like the .98 factor predicted by the Chairperson) and I believe it is therefore incumbent upon the Panel to accept the .95 factor specified in the First Principal Apportionment Report as being accurate. For the Foothill-De Anza Community College District, a .95 deficit factor means a loss of approximately two million dollars.

Turning to the issue of the working capital reserve, the evidence shows that the District considered a working capital reserve of approximately $140,000 to be appropriate during 1978-79 (the first year of Prop 13, a particularly tight and difficult year). However, it was compelled to increase the reserve to $190,000 during 1979-80. The working capital reserve covers primarily the cost of the District's inventories of paper, gasoline, lumber, janitorial supplies, and similar products. To reduce the District's working capital reserve to $140,000 is to return the reserve to a level that was appropriate in 1978-79, thereby ignoring nearly two years of high inflation. Such a reduction is not reasonable or desirable. It is especially undesirable given the District's substantial use of several products that have had extraordinary price increases since 1978. Gasoline, for example, has dramatically escalated in price during the period in question. Because the District has a large fleet of vehicles, many of them supporting its programs for the handicapped, it has no choice but to maintain a sizeable inventory of gasoline. Similarily, District operations require significant inventories of paper and lumber, two other products that have had price increases that are disproportionate to other increases in the general economy. As a result, I believe a working capital reserve of $190,000 is entirely appropriate.

Finally, regarding the Chairperson's conclusion that the District's financial exposure in the pending litigation brought by the Association is limited to non-recurring costs, it must be noted that the Association believes, "There is a disagreement...over whether the Peralta Decision also gives pro-rata pay and benefits and pro-rata backpay. Management claims these people are entitled only to tenure rights; FA claims they are also entitled to the additional rights previously mentioned." ("The Faculty Association Position:

A Report to the Factfinding Panel," February 27, 1981, page 71, emphasis added). The District produced testimony that the $550,000 it set aside for the litigation in question would cover its probable defense costs and the estimated backpay liability it could incur if the lawsuit were decided against the District. However, it is clear from the quotation set out above that the Association seeks to impose upon the District a substantial ongoing liability for so-called pro-rata pay and benefits, and it is not merely pursuing a goal that will impose non-recurring costs alone. It is therefore inappropriate in my view to deduct the $550,000 from the calculation of the District's current expenses as the Chairperson has done.

The significance of my dissent from these conclusions by the Chairperson is that they cause him to minimize to some extent the serious problem he has found the District to be facing; namely, that it is spending more than it is earning. Elsewhere in his findings and recommendations the Chairperson states that the cost increases recommended by the Factfinding Panel "can only be sustained because of the historically sound financial management of the District and with an increased willingness of all of the Community College community to honestly and accurately review those activities which can be sustained given current and foreseeable revenues." While, as explained elsewhere in this dissent, I reluctantly concur in the most significant cost-related recommendation of the Chairperson, I am very concerned that even with the best financial management and even with a renewed willingness by the faculty honestly and accurately to review the District's ability to sustain activities, it will be very difficult in the future to meet the reasonable expectations of the community as well as reasonable compensation proposals for the staff.

II. Issues at Impasse.

1. Effect of Agreement (PERB #1), Article II of the Agreement.

When Section 2.3 of the 1978-80 Agreement, the so-called "management rights clause," was originally negotiated the parties discussed and rejected the idea that the section would impose contractual obligations on management. The parties also included in the 1978-80 Agreement a provision for binding arbitration of grievances but only after the District's insistence upon limiting the definition of a grievance to an alleged violation, misinterpretation, or misapplication of "specific provisions of the Agreement" was understood by the Association and incorporated into the grievance procedure. Therefore, one of the premises that enabled the parties to agree upon binding arbitration was that matters outside the "four corners" of the agreement (like the Education Code and other state and federal laws) were not subject to being grieved. However, the Association now maintains that Section 2.3 does incorporate the Education Code and other provisions of law. Such an interpretation would, of course, make any alleged violation, misinterpretation, or misapplication of any law grievable despite the clear understanding under which binding arbitration was agreed to by the parties.

Since the parties never intended to incorporate the law into the agreement, a change in the language of Section 2.3 of the agreement is necessary to eliminate any ambiguity that exists on this point, and I therefore respectfully dissent from the recommendation of the Chairperson. Instead, I recommend adoption of the District's proposal.

2. Professional Development Leaves (PERB #7), Article XVII of the Agreement.

On December 7, 1972, the Board of Trustees adopted a sabbatical leave plan that provided for twenty-four faculty members to be on leave during the 1973-74 year "with this number to be changed annually to reflect changes in total number of faculty." Twenty-four faculty members equaled five percent of the faculty employed at that time. Given the number of faculty employed this year, ninety quarters of leave to be taken during the 1981-82 year is substantially more than five percent of the faculty and is therefore an inappropriate number. Furthermore, the District's limited financial ability to sustain programs and services as well as increased compensation costs justifies a reduction in the number of quarters of leave. Sixty quarters of leave per year is 4.2% of the faculty. The evidence before the Panel shows that this is a higher percentage than six of the ten Bay Area districts used for comparison. I, therefore, recommend that sixty quarters of leave be approved in 1981 for 1981-82 with the provision that the District shall return to the five percent standard as soon as the Board determines that the financial condition of the District makes that action appropriate.

With regard to the District's proposal to include a provision authorizing the Board of Trustees to reject individual leave applications for reasons that are neither arbitrary nor capricious, the evidence shows that the need for such a provision actually became apparent during the 1979 application review and approval procedure. A situation under which the Board must approve a leave for a faculty member who is facing dismissal or suspension charges is intolerable and the recommendation that the Board be able merely to defer the leave does not adequately address the problem. I therefore respectfully dissent from the Chairperson's recommendation on Section 17.8 and recommend adoption of the District's proposal.

3. Benefit Increases for Current Employees (PERB #10), Article XXIII of the Agreement.

Regarding the proposal to provide paid benefits for selected members of the part-time faculty, the evidence before the Panel demonstrates that the proposal is impractical and wasteful. Since the majority of the part-time faculty are covered by benefit plans of other employers, a large part of any expenditure for benefits would be merely a wasteful duplication. If only those who desire benefits were to be covered, the rates for all employees of the District would be increased since the District's current rates are based on coverage of employees on an unselected basis. Furthermore, the financial ability of the District to sustain a reasonable level of programs and services as well as increased compensation costs is, as the Chairperson has noted, severely limited. For that reason, I must respectfully dissent from the recommendation that the District set aside $100,000 of its apportionment income if the state-wide deficit factor turns out to be less severe than the .98 the Chairperson now predicts and the District's income is therefore at least $100,000 above the Chairperson's current expectations. That increased income, if it becomes available, may very well be needed to fund any increase in compensation that can be negotiated <u>next year</u>.

4. Salaries for Certificated Employees (PERB #11), Article XV of the Agreement.

As the Chairperson notes, a compensation increase of eight percent retroactive to July 1, 1980 "does substantially exceed the District's sustained ability to pay." It therefore requires strong justification. The Chairperson appears to rely on two basic justifications: (1) the District's offer to the Association is substantially below the offers it made to other District employees, offers that amounted to approximately an eight percent increase in compensation for the 1980-81 year, and (2) while the eight percent recommended does not meet the increased cost of living, the dramatic increase in the consumer price index justifies as substantial an increase as the District can reasonably afford.

I do not believe the first justification is valid. The District entered into negotiated agreements with its classified employees and granted salary increases to its management and confidential employees in September 1980. At that time, with the information then available to the District, those increases appeared to be feasible and appropriate. However, the Panel cannot conclude that if the District knew then what it knows now (for example, that there will probably be a state-wide deficit factor applied to apportionment) that it would have agreed to increases as substantial as those provided the classified, management, and confidential staffs. With hindsight of nearly seven months, it now appears that those increases may have been too high given the District's financial condition.

Nevertheless, I do agree that the effects of inflation on wages justify as substantial an increase for the faculty as the District can reasonably afford. Like the Chairperson, I am very concerned about the District's ability to afford a level of ongoing expenditures that includes a wage increase like that recommended for the faculty (that is, there is real doubt about the District's <u>sustained</u> ability to pay), but I am convinced that the District has sufficient resources to pay the recommended increase, at least during 1980-81. For that reason, I reluctantly concur in the Chairperson's recommendation.

Return to: John Mockler, Impartial Chairperson
Foothill - DeAnza Community College District
PERB Case #SF-F-46, M-474 (R-530)

Government Code Section 3548.2 provides that the panel shall meet within 10 days after its appointment and Section 3548.3 requires the panel to make its findings and recommendations within 30 days of appointment of the panel.

Since all parties have agreed to the intial meeting date of February 27, 1981 they have also agreed to waive the time line provisions of Government Code Sections 3548.2 and 3548.3.

The undersigned stipulates to the waiver of the above mentioned time lines.

Phillip J. Stokes

Phillip Stokes
For the Foothill-DeAnza
Faculty Association

APPENDIX D

Return to: John Mockler, Impartial Chairperson
Foothill - DeAnza Community College District
PERB Case #SF-F-46, M-474 (R-530)

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Peter Landsberger
For the Foothill-DeAnza
Community College District