

1 WILLIAM B. GOULD IV
2 FACTFINDING PANEL CHAIRMAN

3 KATE DISNEY
4 ASSOCIATION-APPOINTED PANEL MEMBER

5 GREGORY J. DANNIS
6 DISTRICT-APPOINTED PANEL MEMBER

7
8 IN THE MATTER OF THE FACTFINDING PROCEEDINGS BETWEEN THE PARTIES

9 AFT 1493, San Mateo Community College
10 Federation of Teachers

11 UNION,

12 and

13 San Mateo County Community College
14 District

EMPLOYER

Case No. LA-IM-4205-E

15 For the Union, AFT 1493, SAN MATEO COMMUNITY COLLEGE FEDERATION OF
16 TEACHERS:

17 Dr. Monica Malamud, AFT Chief Negotiator

18 Dr. Luis Zuniga, AFT Vice-President, Negotiation Team

19 Chet Lexvold, Executive Director, AFT 1493

20 Doriella Malier, AFT Grievance Officer, Faculty Presenter

21 Rika Yonemura-Fabian, Negotiator/Past President, AFT

22 Steven Lehigh, AFT Treasurer

23 Alexandra Anderson, Counsel for AFT

24 For the Employer, SAN MATEO COUNTY COMMUNITY COLLEGE DISTRICT:

25 Sarah Niemann, SCC, District Presenter

26 Elen Wu, DWK, District Chief Negotiator, District Presenter

27 Julie Johnson, Chief Human Resources Officer

28 Max Hartman, Dean of Counseling Cañada

Peter Fitzsimmons, Chief Financial Officer

Joe Morello, Vice President of Special Projects

Aaron McVean, Vice Chancellor of Educational Service

Richard Storti, Executive Vice Chancellor Admin. Services

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I. BACKGROUND

This matter before the Factfinding Panel involves unresolved issues which arose in the negotiation of the most recent collective bargaining agreement between AFT 1493, San Mateo Community College Federation of Teachers, hereinafter referred to as the Union, and the San Mateo County Community College District, hereinafter referred to as the Employer or District. The District has provided the Panel with the following material and information.

The San Mateo County Community College District was established in 1922, and operates three colleges: Cañada College, College of San Mateo and Skyline College. Located between San Francisco and Silicon Valley, the District colleges provide community college educational services to residents of County of San Mateo, California. Combined, the District's three colleges serve nearly 30,000 students annually and offer the first two years of college-level instruction in a wide variety of transfer programs as well as career-technical programs. Students can earn either Associate in Arts or Science degrees or receive Certificates of Proficiency in their chosen fields. The District's colleges offer a wide variety of programs and courses online. Additionally, the District offers a robust services for Middle College High Schools at each campus, as well as dual enrollment and concurrent enrollment high school students.

The District is governed by a six-member Board of Trustees, with five voting members elected by voters from designated areas of the County for four-year terms and one nonvoting student member elected by students for a one-year term. The day-to-day operations of the District are managed by the Board-appointed Chancellor, and the day-to-day operations of the three District colleges are managed by the Chancellor-appointed College Presidents.

Covering San Mateo County, the District serves a diverse area ranging from rural communities to tech hubs. Student demographics reflect state trends in ethnic diversity and varied educational goals. Regional challenges for the colleges include an increasing income gap, a projected decline in high school graduates, and the lack of a nearby major public university.

Approximately 40,000 people throughout San Mateo County attend one of the three Colleges of the San Mateo County Community College District: Cañada College in Redwood City, College of San Mateo, and Skyline College in San Bruno. Although the boundaries of the

1 San Mateo County Community College District are the same as those of the County, the District
2 Board of Trustees is independent of County government. The five-member Board of Trustees is
3 elected at large by County voters every four years, and governs one of the largest two-year college
4 systems in California.

5 The academic and vocational programs offered by the Colleges are designed to meet the
6 educational needs of the community. Anyone who is a high school graduate or 18 years of age or
7 older can select from thousands of courses offered at convenient times on the campuses and at a
8 number of off-campus locations.¹

9 The Union has submitted the following information about its recognition and bargaining
10 relationship with the District. The Union was certified as the exclusive bargaining agent for
11 faculty employed by the District on May 29, 1982. The bargaining unit represented by the Union
12 consisted of contract and regular academic employees; Hourly academic employees; Summer
13 session academic employees.

14 Excluded from the bargaining unit are the following: Management, supervisory and
15 confidential employees; Day-to-day substitutes; Guest lecturers; Teachers of credit classes who
16 are not teachers of record, unless they are contract or regular employees; Teachers of non-credit
17 courses in Community Services program.

18 There are approximately 993 bargaining unit members and, according to the Union, 857
19 are members of the Union. Approximately 58% of the bargaining unit are part-time faculty and
20 42% are full-time faculty. The Union represents a range of faculty in the District, including
21 instructional faculty, academic and personal counselors, coaches, librarians, nurses, and
22 instructional designers at three campuses Skyline College in San Bruno, College of San Mateo
23 (CSM) in San Mateo, and Cañada College in Redwood City.²

24
25 * * *

26
27
28 ¹ Binder submitted by Mateo County Community College District, San Mateo, CA July 13, 2026
to the Factfinding Panel, at pg. 2.

² Binder submitted by American Federation of Teachers, Local 1493 at B.

1 The first collective bargaining session, involving a new Agreement beyond the contract
2 expiration date, commenced on February 7, 2025, and continued in a series of negotiations until
3 October 24, 2025, around the time the collective bargaining agreement was set to expire. In all, 21
4 negotiation sessions preceded the instant matter before the Factfinding Panel. An impasse in
5 bargaining was declared by the California Public Employment Relations Board (PERB) on or
6 about November 5, 2025. The mediation process proceeded and the parties continued to meet with
7 a state mediator until March 5, 2026, at which time, the mediator certified the matter to
8 factfinding.

9 On April 17, 2026, the undersigned was named as Chairman of the Factfinding Panel and
10 Ms. Kate Disney and Mr. Gregory J. Dannis were named as Union and Employer representatives
11 on the Panel respectively. The parties, the Union and District, advised me and the other Panel
12 members that, given the respective schedules of all involved, a hearing on this matter could not
13 proceed until at least a couple of months subsequent to the Panel's creation. Therefore, at my
14 request, the parties filed a request for a waiver of the statutory limitations relating to the time
15 period in which this matter was required to proceed. They did so and the request was granted.

16 The Factfinding Panel met to discuss this case and its management on July 6, 2026, and
17 hearings were held and discussions were engaged in by the Panel with the Union and the District
18 on both July 13 and July 14. And subsequent to the meetings on those dates, the parties,
19 determined that July 14 should be used for the purpose of both hearings and discussions if
20 necessary.

21 On July 13, the hearing began at shortly after 10 am and continued until approximately 7
22 pm. And on the following date, July 14, the hearing continued from 10 am onward with
23 discussions with the parties approximately until midnight. It is estimated that this process, during
24 the two day period of July 13 and 14, took place over a period of approximately 27 hours.

25 Since that time the Panel has met on a number of occasions to discuss this matter both by
26 Zoom and through emails and texts. During this process, a number of issues were placed before
27 the Panel by the parties. These issues have been articulated by the parties as relating to Ground
28 Rules, Article 6 Workload, Article 7 Hours of Employment, Article 8 Pay and Allowances, Article

1 9 Health and Welfare Benefits, Article 11 Leaves of Absence, Article 18 Summer Session
2 Employment, Article 27 Duration, Appendix F Faculty Load Credit (FLC) Allocation, and
3 Academic Freedom.

4 **II. STATUTORY CRITERIA**

5 The Statutory Factfinding Criteria are set forth in the Educational Employment Relations
6 Act in Section 3548.2(b).

7 [T]he factfinders shall consider, weigh, and be guided by all the following criteria:

- 8 1. State and federal laws that are applicable to the employer.
- 9 2. Stipulations of the parties.
- 10 3. The interests and welfare of the public and the financial ability of the public school
11 employer.
- 12 4. Comparison of the wages, hours, and conditions of employment of the employees
13 involved in the factfinding proceeding with the wages, hours, and conditions of
14 employment of other employees performing similar services and with other
15 employees generally in public school employment in comparable communities.
- 16 5. The consumer price index for goods and services, commonly known as the cost of
17 living.
- 18 6. The overall compensation presently received by the employees, including direct
19 wage compensation, vacations, holidays, and other excused time, insurance and
20 pensions, medical and hospitalization benefits; the continuity and stability of
21 employment; and all other benefits received.
- 22 7. Any other facts, not confined to those specified in paragraphs (1) to (6), inclusive,
23 which are normally or traditionally taken into consideration in making the findings
24 and recommendations.

18 **III. INTRODUCTION**

19 The issues before us are numerous and considerable. I shall address them in the following
20 section in order of the time expended and importance of them as manifested by both parties'
21 argument, both oral and written, and the judgment of the Panel. But, before so doing, it is
22 important to provide some kind of framework and understanding as to why and how this
23 proceeding has taken its current form and become so lengthy and detailed.

24 The presentation of issues by both parties was thorough and detailed, and enormously
25 challenging, considering the number of issues before the Panel and their complexity. In
26 consideration of this, the parties presented detailed data and thorough arguments and I and my
27 colleagues on the Panel benefited considerably from this.

1 The parties both, Union and District, did an excellent job in presenting these matters to us.
2 Advocacy on both sides was skilled and thorough throughout these proceedings. The
3 professionalism by both sides in the hearing process and in discussions was noteworthy. But, the
4 parties erred considerably in estimating the time that it would take to hear the issues that they
5 presented to the Panel. The Union estimated a period of 3.5 to 4 hours for their presentation, and it
6 used more than that time in their presentation. The District estimated that it needed two hours for
7 its presentation and it used that time. Though the parties initially scheduled only July 13, in
8 response to my July 7 letter to them, both sides accepted a second day for a hearing. As matters
9 developed, these two days fell far short of the mark in estimating the hearings' duration.

10 The effect of making such an underestimate i.e., 3.5 to 4 hours for the Union presentation
11 was troublesome. The problems flowing from this difficulty made it impossible to consider some
12 issues adequately (more of this below). And, at no time during the proceedings of July 13 and July
13 14 did the Union make a request or motion for a third day of hearings.³

14 Nonetheless, within these limitations, the presentations were good. But, in my judgement,
15 this stands in considerable contrast however, to the manner in which the parties conducted
16 themselves in the collective bargaining process itself. One thing about this is clear to me. The
17 relationship between the parties appears to have been an extremely poor one and hobbled
18 considerably by the way in which discussions were undertaken over a number of months. The
19 Union, for its part, maintains that proposals and counter-proposals were made back and forth
20 between the parties without any attempt to understand the position of the other side and to discuss
21 it. In any event, evidence submitted to the Panel stressed a background leading up to and
22 continuing through a 2025 commencement of negotiations which was awkward and disruptive,
23 diminishing the effectiveness of the collective bargaining process. Moreover, so far as I am aware,
24 practically all – and perhaps all – of the collective bargaining sessions in recent years have been
25 conducted through Zoom.

26
27
28 ³ Two weeks subsequent to close of hearings, Union - Appointed Panel Member Disney expressed concern about the lack of evidence in one area and, and subsequent to her request, I granted leave for the parties to file briefs on this issue. See discussion of Lab Pay Increases at pgs.13-15.

1 Thus, it appears that the parties did not have a practice of meeting with one another in
2 person. They blame each other for their inability to meet in person, the common thread in their
3 accusations aimed at one another regarding the collective bargaining process. Their allegations
4 were that primary negotiators on both sides were in other cities, states, or nations and therefore
5 unable to meet in person.

6 While Zoom as a method of communication has become important to the practitioners of –
7 labor - management relations in the wake of the pandemic, there is no substitution for real contact
8 between the parties as they engage in collective bargaining process. To contrast the manner of
9 presentation with more formal procedures such as arbitration hearings, the parties must be ready to
10 see one another, discuss their differences, benefit from the give and take of genuine discussion,
11 and attempt to remain civil with one another as they do so.

12 Regarding an issue which has emerged in these proceedings, the allegation has been made
13 that each side has insisted that their own priorities had to be discussed in order of priority for one
14 side or the other to proceed. Some of this, of course, is grist for the litigation mill and the Public
15 Employment Relations Board (PERB), not a matter which should have affected the parties in this
16 proceeding.

17 If the parties are to improve their relationship – and they must improve it dramatically,
18 here and now, they must deal with one another in an expeditious face to face manner to the extent
19 practicable so that they can reason and discuss issues effectively. This was not done in and at the
20 negotiations which antedated these factfinding proceedings. But it must be done in the future if
21 strife and acrimony are to be eliminated or diminished and third party involvement such as this
22 process avoided.

23 While it is our hope that the parties will promptly fashion and adopt a collective bargaining
24 agreement in the wake of these recommendations, that should be the beginning of their dialogue
25 and not the end at a time where a few years down the road the parties are back at factfinding with
26 more discord, frustration and anger.

27 **IV. ISSUES IN DISPUTE**

28 A. Ground Rules

1 The parties had a number of problems relating to the way in which their collective
2 bargaining process was to be handled. The District contends that joint negotiation sessions should
3 be closed to the public, press, and any other persons other than the designated negotiators, unless
4 the parties mutually agree to the contrary. The Union, for its part, proposes that it seeks adherence
5 to established practice which would permit both employee observers other than the individuals
6 who are designated negotiators and Board of Trustee members to attend the bargaining.

7 It appears to me that there has been no genuine dispute involving public and press and I do
8 not deem it necessary to address that issue in my recommendation. I believe that the negotiations
9 and the form of them are for the parties themselves and they are each to have representatives of
10 their own choosing. I am of the view that where it is necessary for Board of Trustee members and
11 comparable individuals on the Union's side to attend the process, they should be allowed to do so.
12 On the Union side, the Union may want to call in experts on particular subject matter and they, as
13 well as the District, should be able to do so as well under my Recommendation.

14 For instance, where an issue arises involving the teaching of English composition or
15 Calculus, the Union is entitled under this Recommendation to call upon those who teach or have
16 taught these subjects and thus can present their expertise. The District should be able to do the
17 same where it has individuals who can provide comparable expertise. Each side should give to the
18 other some notice of their intention to bring in such help if they wish to do so. The process should
19 be expeditious, informal, and one which promotes the good faith exchange of relevant facts and
20 information, the predicate for a useful and robust bargaining process.⁴ My judgment is that here,
21 and elsewhere, public schools and public education will benefit from this.⁵ Thus, my
22 recommendation is for the negotiations to occur amongst the parties' designated bargaining
23 representatives as well as subject matter experts that each side may deem necessary to bring to
24 negotiations with advance notice provided to the other party prior to the negotiation sessions. The
25 above referenced parties are the exclusive representatives.

26
27 _____
⁴ Q-1 Motor Express, Inc. 323 NLRB 767, 769-772 (1997) (Chairman Gould concurring).

28 ⁵ Gregory J. Dannis, *The Epiphanies of Negotiations: 40 Years of Bargaining for Public Schools* (2022).

1 B. Monetary Compensation and Benefits

2 The Union argues that the District is one of the wealthiest in California, though it is
3 characterized as a “basic aid” district which translates into the conclusion that it is community
4 supported, primarily from local property taxes. The Union points out that ““Basic Aid” districts
5 are excess tax districts.” States the Union through MS Disney:

6 “This means that if their property tax allocation is in excess of what they are guaranteed
7 from the State, they are allowed to retain this excess revenue. Districts in high cost-of-
8 living areas with low to moderate enrollment typically are in basic aid status, as is the case
with SMCCD, West Valley – Mission, San Jose – Evergreen, and Marin, among others.”

9 The Union also points out that San Mateo County’s Property Tax Assessment has
10 increased for 15 consecutive years, with an average annual increase of 6.16%. States the Union:
11 “with such a consistently healthy revenue stream SMCCD’s [San Mateo County Community
12 College District] revenues have consistently outpaced its expenditures....”⁶

13 The Union stresses reliance upon the so called “Fifty Percent Law” (California Education
14 Code § 84362 which requires California Community College districts to spend at least a half or
15 50% of their Current Education Expense on salaries and benefits for classroom instructors. I am
16 not certain that this latter fits within the statutory definition of comparability to which we are
17 obliged to accede. But, assuming *arguendo* that this subject matter is relevant, it is clear that the
18 District is below the 50% demarcation line. Chancellor Melissa Moreno testified at the hearing
19 that the District has turned 10 years of decline around and during the last two years of concerted
20 effort, it has gained 2 percentage points in the metrics. The District contends that it has plans to
21 meet the 50% requirement incrementally by 2030, though it stresses that the 50% demarcation line
22 is not properly before the Panel in that it does not raise issues involving comparability set forth in
23 the statutory criteria. Finally, the District emphasizes that San Mateo has been exempted from
24 many relevant state sanctions for failure to adhere to the 50% requirement by California.

25 The Union’s position is that monies obtained through property tax are being used for other
26 purposes such as public safety, free parking, and other benefits which, in the Union’s view have
27 been exalted over salary and benefit compensations for those represented by the Union. The Union

28 _____
⁶ San Mateo Community College Federation of Teachers 1493 (“Union Binder”), at E.

1 contends that the District has denied benefits to instructors while conferring them upon others.

2 One difficulty with any assessment of the Union's argument that funds are being
3 transferred out of the General Fund improperly and, that less is expended than in other districts for
4 salaries, is that the comparisons with other districts do not establish that each of them has the same
5 wage burden i.e., a comparable number of employees who possess similar education and
6 experience which would make the wage bill of other districts truly comparable. But, even if they
7 are for the purpose of this analysis, a second problem with this general line of argument is that it
8 involves this Panel in an assessment of the uses to which non-compensation allocations are put
9 and therefore requires us to act as a kind of mini legislative monitor of the District's expenditures.
10 Accordingly, this would involve us in considering a variety of non-compensation expenditures
11 made by other districts as well problems in obtaining such information. Absent unusual
12 circumstances, or at least as a general proposition, I do not think that the Factfinding Panel is
13 properly entrusted with this mission and that this matter is part of the process involving
14 comparability.

15 The Union also maintains that the comparable districts for purposes of establishing a
16 proper comparison of wages of employees in other districts are West Valley – Mission and San
17 Jose – Evergreen in Santa Clara County. States the Union:

18 These two districts serve as good comparisons for SMCCD due to their similarities in:

- 19 (1) having multiple colleges in their districts with similar student populations;
20 (2) increasing revenue from local property taxes; and
21 (3) cost of living.

22 The fact that both WVM and SJE neighbor San Mateo County is important too: our district
23 competes with both WVM and SJE when trying to hire and retain faculty.⁷

24 The Union also stresses that San Mateo County and Santa Clara County consistently rank
25 as two of the most expensive places to live in California. States the Union:

26 San Mateo County is the most expensive county in the state to buy a home, requiring a
27 minimum qualifying income of \$507,600 to afford a median-priced home. Santa Clara
28 County comes in second at \$470,800. As we show in section G.a(1), SMCCD full time

⁷ *Id.* at F.

1 faculty salaries range from \$90,000 to \$164,00, meaning we'd need to multiply our salaries
2 between 3 to 6 times in order to qualify to buy a median home in San Mateo County.⁸

3 For its part, the District states that San Mateo County CCD is quite competitive with all
4 districts in the Bay Area market and is superior to West Valley - Mission in at least one area, i.e.,
5 salaries paid at MA Step 6 – and runs a fairly close second in two other salary brackets.

6 In any event, while the parties were far apart in their salary compensation proposals in the
7 early stage of the negotiations and at the beginning of the Factfinding hearing, their differences
8 diminished considerably on the evening of July 14 after the formal hearing had been completed.
9 Regarding salary increases, the Union proposed increase of 4%, 4% in the second year and 5% in
10 the third year in a three year agreement and a 3% kicker in year three depending upon the success
11 of a bond measure passing. The District proposed the same numbers (4% in the first year, 4% in
12 the second year, and 5% in the third year) with no “kicker” language, coupled with a one-time off
13 schedule \$3500 stipend payable immediately to all full time teachers (both sides had retreated
14 considerably from their previous positions on wage compensation, their positions having been
15 taken throughout the collective bargaining process and at the beginning of this factfinding hearing
16 on July 13). Indeed, the District offer on salary compensation appears to be as generous and
17 equitable as that proposed by the Union except for its failure to include the “kicker” bond
18 language. I am of the view that 4-4-5 represents a consensus between the parties and I recommend
19 that this consensus be included in the contract as part of the salary compensation.⁹

20 Another difference, of course, between the parties is that the Union had other economic
21 proposals or demands which the District rejected because, in its view, the cost was excessive. In
22 the District's view this justified a stipend offer which was only made to full time unit employees
23 who constitute a minority of those whom the Union represents. Increases for part time workers
24 and other initiatives would, in the view of the District, compensate for the absence of the stipend

25 _____
26 ⁸ *Id.*

27 ⁹ One problem with the “kicker” is beyond consensus and fairness is that it raises unbriefed legal
28 issues which complicate matters for me. *cf.* Cal. Const. art. XIII, §1, subd. (b)(3)(A); *DiQuisto v.*
Cnty. of Santa Clara, Case No. 1-04-CV-020671 (Cal. Super. Ct. July 27, 2007), *aff'd*, 181 Cal.
App. 4th 236 (Cal. Ct. App. 2010). I was an expert witness for the County of Santa Clara in this
case.

1 provided to full time workers offered by it. The District estimates that increases for part time
2 workers altogether constitute a 20.5% increase – the Union states that it is 19% – over the term of
3 the Agreement.

4 The Union proposed a stipend of \$3500 for full time employees and \$2500 for part timers.
5 My sense is that the Union cannot and should not accept a bargain which would exclude a
6 majority of employees in the bargaining unit. Accordingly, I recommend a revision of the
7 District’s stipend offer so that full time employees will receive \$2500 and part time \$1250. In
8 order for a part time employee to receive the stipend, such employee must have the same
9 eligibility as full time faculty which is a paid assignment with the District for the 2025-2026
10 academic year. My judgement is that this arrangement will be approximately (though not
11 precisely) comparable to the District’s stipend offer and a more equitable resolution of their
12 competing economic positions. Accordingly, I recommend the acceptance of the Union and
13 District position on wage increases (4-4-5) coupled with an acceptance of the stipend offered by
14 the District, with the modifications set forth in this Recommendation.

15 On the matter of benefits, the parties have come to an agreement on which I recommend
16 acceptance. In the first year of the Agreement (already completed), the *status quo* will prevail.
17 However, in the second year effective with the Plan Year 2027 that begins on January 1, 2027, and
18 thereafter during the term of the Agreement 92% two-parties and family plans for Kaiser will be
19 provided.

20 C. Part Time (PT) Pay Parity: Instructional PT (HC Schedule)

21 During the first year a 0.75% will be provided to such workers and during the second year
22 an additional 0.75% will be provided. This means that the part time workers will be receiving a
23 4.75% increase in each of the first two years of the Agreement.

24 In year three (2027-28 academic year), the District will continue to pay by contract hours
25 and increase the part time instructional schedules (HC Schedule) so that 100% of the cells will be
26 at an 85% parity of the Regular Faculty schedules (80 schedule). The hourly rate on the new part
27 time instructional schedule (HC Schedule) will include pay for mandatory office hours.

28 The Union, however, has contended that under this formula some instructors will see their

1 wages reduced. To counter that argument the District has agreed that nothing in the pay parity
2 process will produce a reduction for any employee. Accordingly, I recommend that the above
3 described District's position coupled with their promise not to reduce any employee's pay as a
4 result of the pay parity process, be incorporated into the Agreement.

5 D. Pay By Load

6 The District has agreed to implement a conversion to a cost-neutral pay by load for agreed
7 upon faculty classifications in Fall 2028 contingent "on completion of all legally required impacts
8 and effects negotiations by May 2027." If the parties do not resolve their differences and reach an
9 agreement on impacts and effects negotiations, then there will be no load conversion. I
10 recommend that acceptance of this position be implemented.

11 E. Overload (OL Schedule)

12 I recommend acceptance of the District proposal that for the 3 year term, the OL Schedule
13 will get the general raises (4, 4, and 5% and additionally, for Year 3, plus 2.5% on top of the raise
14 for the OL Schedule, total of 7.5%).

15 F. Appendix F

16 1. Class Size

17 The aim of the District is to average class sizes across all sections at 35, the statewide
18 benchmark for the community college system. The class size for English composition is 26. The
19 Union proposes adoption of the same class size for Math 251 and 252. The District, on the other
20 hand, proposes a pilot starting in the Spring 2027 semester, that the temporary class size
21 maximums for these Math 251 and 252 classes consist of 33 students per section, and that such
22 pilot shall sunset at the end of term of the contract.

23 Class size is particularly important to both productive working conditions in teaching and
24 the ability of teachers to effectively teach students. The District maintains that its proposals strike
25 a reasonable balance between cost and working conditions. The Union maintains that examination
26 success has been declining and that a class size reform can change student success and that reform
27 of class size is a prerequisite to changing a decline in student success.

28 I am of the view that we can make findings that are predicated upon the common sense

1 reality that class size is important to both educational and working condition objectives. This is a
2 matter of which we can take quasi-judicial or administrative note just as a court does so in a
3 number of contexts. While I am unwilling to simply adopt the same class size number which exist
4 in English for Math 251 and 252, I do believe that some reduction in class size is warranted in the
5 District and therefore recommend a class size of 31 for Math 251 and 252 as a beginning and that
6 the parties attend to this matter anew during the first year of the Agreement.

7 2. Lab Pay Increases

8 The Union argued that many changes were warranted in this arena, but no employees
9 directly affected were produced or testified in the instant proceeding. As noted above, see page 5
10 *infra* at no point did the Union file a motion or request for additional hearing dates which would
11 go beyond the 27 hours given to this matter on July 13 and 14. (Indeed, in retrospect, it seems
12 clear that more than an additional day was required, given the large scope of individuals and
13 documents referenced in the Union brief which was provided to the Panel. Moreover, this matter
14 was recognized to be so considerable in scope that it had been studied in depth in 2022. (At that
15 time, a committee consisting of both faculty and administration concluded that no adjustments
16 were merited at that time.)

17 Subsequent to the close of the hearing and meeting session on July 14, I met with the other
18 Panel members and, subsequent to consulting with them on July 24, I provided an opportunity for
19 the Union to submit additional material in writing on July 27 with an opportunity for the District
20 to respond on July 28. Briefs were filed by both parties and the Union filed an extensive and
21 persuasive “Brandeis Brief”¹⁰

22
23 ¹⁰ Muller v. Oregon, 208 U.S. 412 (1908). In the instant case, the Union made a number of
arguments and particularly important, they stated:

24 “Laboratory instruction is an active, high-stakes, and pedagogically demanding endeavor
25 that often exceeds the intensity of traditional lecture delivery. The lower FLCs for labs that
26 exist in the parties’ current CBA are based on an outdated assumption that laboratory
27 teaching is a passive, supervisory role requiring less effort than lecturing. This is an artifact
28 from past institutional models where senior faculty lectured while junior faculty and
graduate students managed grading and hands-on instruction. Community College faculty
do not have access to teaching and instructional assistants (TAs). The District may argue it
provides classified staff to assist with labs, but the reality is that classified staff are not

1 The District, in response, raised a number of arguments, the most persuasive of which was
2 that they were denied “contemporaneous access to the information [provided in the Union’s July
3 27 Brief] [was also denied the opportunity]... to cross-examine and rebut during the fact-finding
4 process.”

5 The Union’s position is a thoughtful one. But the District’s response is more compelling at
6 this juncture because the Union relied upon material, which was not in the form of evidence, i.e.,
7 testimony of individuals and exhibits which could be examined and rebutted by the District. It
8 would be unfair and inequitable to consider the Union’s argument without an opportunity for the
9 District to respond effectively to any of this. Cross examination of witnesses, experts, etc. and the
10 ability to review the relevant material are essential to due process.

11 Now that I have read the Union’s arguments, I realize that the Union should have
12 scheduled between one and two days of hearings *on this issue alone*. Indeed, examinations of
13 these papers coupled with other issues under discussion makes it obvious that the parties should
14 have scheduled an entire week of hearings to address the many issues which have been brought to
15 this Factfinding Panel. It is not our assignment to surmise why this was not done in July. But, it
16 was not done. A Brandeis Brief is argument based upon evidence which was properly introduced
17 at the hearing. Here, this material was not introduced as evidence.¹¹

18 At the same time this appears to be an extremely important issue for the Union and, while I
19 cannot subscribe to its positions, this was not done. Therefore, under the present circumstances, I
20 recommend that the Union and the District immediately consider this issue subsequent to
21 acceptance of a new Agreement. The parties may wish to negotiate, establish a joint committee
22 which can examine this issue and/or submit the matter to arbitration under the new collective

23
24 _____
25 allowed to assist with grading, instruction, etc., and many faculty do not receive *any*
26 support from classified staff for their labs due to lack of funding. Ultimately, in our
community college district, all aspects of laboratory instruction are the responsibility of the
faculty.” *The Union’s Lab Parity Proposal, Supplemental Material for Factfinding Panel*,
July 27, 2026.

27
28 ¹¹ In retrospect, I regret inviting briefs two weeks after the close of the hearing so as to give the
Union some recompense for its failure to present its material during the hearing itself. This was
not a good use of anyone’s time and I regret granting the request for that reason.

1 bargaining agreement.

2 3. Summer Employment Compensation

3 Only part time faculty are presently paid for office hours in the summer and full time
4 faculty are paid only for teaching and not for office hours. Under these circumstances, there can
5 be no formalized student - teacher contact for which faculty receive compensation outside of
6 teaching hours when the faculty are full time faculty. This simply cannot be justified. Office hours
7 or their equivalent are an important adjunct to teaching, and in my view, there is no justification
8 for any demarcation line between full time and part time faculty when it comes to provision
9 teacher-student contact outside teaching hours.

10 Full time faculty must provide office hours or their equivalent and therefore they must be
11 paid for that time and time spent engaged on working conditions. The District points out that this
12 is a cost item. But it is part of the cost providing the full time faculty with the ability to perform
13 their work adequately. Accordingly, I recommend that full time as well as part time faculty be paid
14 for office hours for summer employment.

15 4. Counseling Pay for "Mental Health Clubs"

16 There is one club out of the three colleges in the District where issues on matters relating
17 to mental health counseling have arisen. This is out of 102 total clubs which exist out of all the
18 colleges. The Union seeks compensation for time spent on this work.

19 Personal counseling duties consist of 30 hours per week. 8 of these hours are for
20 preparation and 21 are direct personal counseling. Of course, counseling in mental health is vital.
21 As a society, it is vital that are educational and other institutions focus upon the important matter
22 of mental health. However, under the circumstances presented, the record before me is not
23 adequate for the making of any recommendation. The District contends that this Union proposal
24 would actually reduce the time that counselors spent in 1 to 1 counseling. There is not enough
25 evidence in the record before me to warrant any recommendation for acceptance of the Union
26 position and accordingly I do not make any recommendation in this area.

27 5. Leaves of Absences

28 The Union and the District have agreed to resolve their differences about leaves of

1 absences. The parties will revise contract language to comply with the law that employee may use
2 up to 6 sick days for Personal Necessity (PN) purposes. For 3 PN days, employee may use days
3 without prior approval or subsequent documentation.

4 The District shall provide 2 paid personal days for unit members to be used for whatever
5 reason. (The parties recognize that in accordance with Education Code sections 87784 and
6 87781.5, an employee cannot convert more than 6 days of sick leave into PN days per year.)

7 The District has undertaken to create a supplemental parental leave program, whereby
8 faculty members may donate up to 2 District-paid personal days to each person taking parental
9 leave. The number of personal days that can be received by a faculty member is limited to 20.

10 I recommend that this agreement and understanding between the parties should be
11 incorporated in the Agreement.

12 V. ACADEMIC FREEDOM

13 The Union and the District both agree that there should be protection for academic
14 freedom. The District, however, maintains that the subject matter is not a “mandatory” subject to
15 bargaining and should not be included in the collective bargaining agreement. The Union contends
16 that this issue should be part of the Agreement. I recommend that the parties make this matter a
17 part of the Agreement because of centrality to employment relations where academic teaching and
18 research are involved. As the Supreme Court said in addressing this issue nearly seventy years
19 ago:

20 [T]he essentiality of freedom in the community of American universities is almost self-
21 evident. No one should underestimate the vital role in a democracy that is played by those
22 who guide and train our youth. To impose any strait jacket upon the intellectual leaders in
23 our colleges and universities would imperil the future of our Nation. No field of education
24 is so thoroughly comprehended by man that new discoveries cannot yet be made.
25 Particularly is that true in the social sciences, where few, if any, principles are accepted as
26 absolutes. Scholarship cannot flourish in an atmosphere of suspicion and distrust. Teachers
27 and students must always remain free to inquire, to study and to evaluate, to gain new
28 maturity and understanding; otherwise, our civilization will stagnate and die. See *Sweezy v.*
New Hampshire, 354 U.S. 234, 350 (1957).

26 See generally James Weinstein, *Different Strokes for Different Folks: Academic Freedom,*
27 *Civility, and Educational Diversity Among Private Colleges and Universities*. 2 J. Free Speech L.,
28 385, 395-397 (2022). But, as the parties’ competing arguments make clear, the devil is in the

1 details. The District would rely upon the San Jose /Evergreen (SJE) Community College and AFT
2 Agreement there as well as the San Mateo Community College District Board Policy No. 6.35(BP
3 4030). The District argues that these constitute conditions of employment which are comparable
4 and therefore appropriate for the Panel to rely upon. It emphasizes (1) the way in which such
5 procedures have protected instructor and faculty rights in their working capacity; (2) reliance upon
6 the First Amendment and the California Constitution, a distinction between method of instruction
7 etc. and adherence to subject matter within the approved curriculum, course outline, educational
8 mission of the District etc. The District also emphasizes a difference between employee
9 constitutional rights to engage in freedom of expression where the speeches engaged in as a citizen
10 as opposed to an employee.

11 I recommend that the academic freedom clause should adhere to existing constitutional
12 standards as of the time that the Agreement between the parties is adopted. The caselaw has
13 emerged in a series of Supreme Court decisions subsequent to *Sweezy*, standards which can be and
14 should be accepted by arbitrators appointed by the parties for the purpose of interpreting the
15 collective bargaining agreement as well as appropriate legal standards. See, for instance, *Elko*
16 *County*, 131 Lab. Arb. 1593 (William B. Gould IV Arbitrator, 2013).¹²

17 The issue in *Elko County* related to a relatively new Supreme Court public employee
18 freedom of speech standard which emanates from *Garcetti v. Ceballos*, 547 U.S. 410 (2006)
19 which protected public employee free speech when engaged in as a citizen or a member of the
20 community and not as an employee. The Court, however, did not address the question of whether
21 *Garcetti* applies to academic freedom as opposed to constitutionally protected speech of other
22 employees.

23 The Court of Appeals for the Ninth Circuit, however, has done so. *Demers v. Austin*, 746
24

25 ¹² For discussion of public law standards relating to labor arbitration, see *Alexander v. Gardner-*
26 *Denver Co*, 415 U.S. 36 (1974); *Wright v. Universal Maritime Service Corp.*, 525 U.S. 10
27 (1998); *14 Penn Plaza LLC v. Pyett*, 556 U.S. 247 (2009); William B. Gould IV, *Labor Arbitration*
28 *of Grievances Involving Discrimination*, 118 U. PA. L. REV. 40 (1969); William B. Gould IV, *A*
Half Century of the Steelworkers Trilogy: Fifty Years of Ironies Squared, in Arbitration 2010: The
Steelworkers Trilogy at 50: Proceedings of the Sixty-Third Annual meeting of the National
Academy of Arbitrators (2011).

1 F.3d 402 (9th Cir. 2014). In *Demers*, Judge William A. Fletcher speaking for a unanimous court,
2 concluded that *Garcetti* does not apply to academic speech under the First Amendment. Said
3 Judge Fletcher, “We conclude that *Garcetti* does not—indeed, consistent with the First
4 Amendment, cannot—apply to teaching and academic writing that are performed “pursuant to the
5 official duties” of a teacher and professor. We hold that academic employee speech not covered
6 by *Garcetti* is protected under the First Amendment, using the analysis established in *Pickering*.”¹³

7 The *Pickering* process involves a reiteration of First Amendment standards for
8 schoolteachers as well as a balancing of such rights against other considerations. The judgment,
9 while occasionally difficult in the academic context, is a necessary one under the Ninth Circuit
10 *Demers* standard which applies here in California. Accord, *Pernell v. Florida Board of*
11 *Governors*.¹⁴ I recommend that the standard established in *Demers* and *Pernell* be incorporated in
12 the parties’ Academic Freedom clause in the new Agreement.¹⁵ I have attached a copy of the
13 collective bargaining agreement between San Jose / Evergreen Community College District and
14 San Jose / Evergreen Federation of Teachers, AFT 6157 (2023-2024) (Attachment 1) [a slightly
15 revised version] which might guide the parties in establishing appropriate parameters for their
16 negotiations.

17 VI. CONCLUSION

18 In contrast to most other industrialized countries, collective bargaining was late to arrive in
19 the United States and here in California. The collective bargaining process expanded considerably
20 in the private sector in the 1930’s and 1940’s. But it took a few decades more for the same general
21 framework to emerge in most portions of the public sector.

22 In a sense, the major changes were to result from the 1966 New York City transit strike
23 and the enactment of comprehensive labor legislation in the New York Taylor Law in its wake.¹⁶
24 This statute, as well as a few others antedated it, promoted a new process of factfinding through
25

26 ¹³ *Demers v. Austin*, 746 F.3d 402, 412 (9th Cir. 2014).

27 ¹⁴ __ F.3d __ (11th Cir. July 7, 2026).

28 ¹⁵ Should the Supreme Court alter the standard presently accepted in both *Demers* and *Pernell*, the parties may and should nonetheless adhere to the above referenced circuit court precedent which would provide bargaining unit employees with a more expansive protection.

¹⁶ William B. Gould IV, Managing Emergency Strikes, *New Leader*, 49 (March 14, 1966).

1 which a public report could foster an environment for effective collective bargaining which would
2 culminate in new contracts and relationships and simultaneously bring public pressure to bear on
3 the parties which resisted the public recommendations. I was part of the first factfinding board
4 established under the New York Taylor Law 58 years ago.¹⁷ This experience brought me directly
5 to public education labor disputes in both New York, Michigan, Nevada, and elsewhere.¹⁸

6 The overriding objective of this process is to obtain the peaceable resolution of labor
7 disputes. Inevitably in the public sector as well as its private counterpart, there are tensions
8 between self interest and the amity of constructive cooperation.¹⁹ The objective is to facilitate a
9 peaceable agreement which need not track all the recommendations in a factfinders' report but
10 which might nonetheless give help to the parties through some of the broad parameters established
11 by the third party. This is a roadmap – but not a diagram that should or could be necessarily
12 replicated *in toto*. This is a job for the parties themselves.

13 In the Introduction, I have spelled out some factors which contribute to a weak relationship
14 and I have urged the parties to proceed directly in dialogue with one another and meet both during
15 the term of this agreement as well as at the time of its expiration date so as to foster a better
16 environment. Like both the country and California, the parties here in San Mateo have a
17 substantial challenge in front of them. I am confident – in part, based upon the way in which each
18 presented their case in this proceeding – that both sides can meet this challenge, and I encourage
19 them to do so without delay.

20
21 Dated: August 20, 2026



22
23 William B. Gould IV
24 Factfinding Panel Chairman

25 ¹⁷ City of Mt. Vernon & Mt. Vernon Police Ass'n, 49 Lab. Arb. 1229 (Jan. 10, 1968).

26 ¹⁸ WILLIMA B. GOULD IV, THOSE WHO TRAVAIL AND ARE HEAVY LADEN: MEMOIR OF A LABOR
27 LAWYER, 171-173 (2025). Aspects of these early days are chronicled in William B. Gould IV,
28 *Public Employment: Mediation, Fact Finding and Arbitration*, 55 A.B.A. J. 835 (1969).

¹⁹ NLRB v. Insurance Agents' International Union, 361 U.S. 477 (1960) compare in the public
sector San Diego Teachers Ass'n v. Superior Court, 24 Cal. 3d 1 (1979); County Sanitation Dist.
No. 2 of Los Angeles v. Los Angeles County Employees Ass'n, 38 Cal. 3d 564, 586 (1985).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

<u>Gregory J. Dannis</u>	– Concur
<u>District-Appointed Panel Member</u>	– Concur in Part
	– Dissent
	– Dissent in Part
	– (See attached)
<u>Kate Disney</u>	– Concur
<u>District-Appointed Panel Member</u>	– Concur in Part
	– Dissent
	– Dissent in Part
	– (See attached)

Attachment 1

Collective Bargaining Agreement Between San Jose/Evergreen Community College District and San Jose/Evergreen Federation of Teachers, AFT 6157 (2023–2026)

4.6 ACADEMIC FREEDOM

4.6.1 Institutions of higher learning exist for the common good and not to further the interest of either the individual instructor or the institution as a whole. The common good depends on the uninhibited search for truth and its open expression, and to this end both faculty and students must hold the right of full freedom of inquiry and expression.

4.6.2 Academic freedom is equally essential to both teaching and research. Freedom in research is fundamental to the advancement of truth. Academic freedom is fundamental to the protection of the rights of the instructor in teaching and scholarship and to the student in learning.

4.6.3 Academic freedom cannot be separated from academic and professional responsibility.

4.6.4 Instructors have the right to study and investigate, to interpret their findings, and express conclusions. Instructors may present views that are controversial and may evaluate opinions held by others, while respecting the right of free expression. As such, in the performance of their duties, faculty have the right to speak and write free from viewpoint censorship and shall be afforded the Academic Freedom protections, and uphold the Academic Freedom responsibilities, set forth in this Article. The District shall not place any viewpoint-based restrictions on Faculty speech.

Academic freedom does not include speech that violates the District's policies, including its computer and network use and discrimination and harassment policies; speech that is defamatory or obscene according to current legal standards; or which advocates for the use of force, or of law violation, where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action, or which causes the substantial disruption of classroom or college/district/campus activities or operations.

Nothing in this Article shall prohibit the enforcement of District policies or current legal standards, so long as the regulation conforms to the requirements of the First Amendment to the United States Constitution, and of Section 2 of Article 1 of the California Constitution.

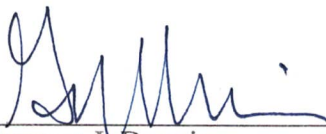
Professional Autonomy: Faculty members have the principal right and responsibility to determine the methods of instruction, the planning and presentation of course materials, and the fair and equitable methods of assessment in their assignment in accordance with the approved curriculum, course outline, educational mission of the District, District policies, requirements of accreditation bodies, and state and federal laws and regulations.

4.6.5 **Civic and Public Autonomy:** Except as stated in this subsection, employment by the District does not restrict or limit the Federal First Amendment and California Constitutional right to freedom of expression and political activity enjoyed by faculty as members of their communities when expressed during non-work. Faculty members shall not be subject to District regulation of their non-work related speech on any issue, as long as they do not indicate or imply they are speaking for the institution. It is understood that these free speech protections do not preclude the District from addressing any demonstrable, negative impacts of private speech on the workplace, consistent with the District's discrimination and harassment policies and negotiated standards of performance.

1 presented their case in this proceeding – that both sides can meet this challenge, and I encourage
2 them to do so without delay.

3
4 Dated: August 20, 2026

5
6 William B. Gould IV
Factfinding Panel Chairman

7
8  8/19/2026
9 Gregory J. Dannis Concur X
10 District-Appointed Panel Member – Concur in Part
– Dissent
11 – Dissent in Part
– (See attached)

12
13 Kate Disney – Concur
14 District-Appointed Panel Member – Concur in Part
– Dissent
15 – Dissent in Part
– (See attached)

AFT 1493 Panelist/Representative Statement
***Dissent in Part* with the Report of the Fact-Finder**

PERB Case No. LA-IM-4205-E

San Mateo County College District, Employer (District)

vs.

AFT 1493, San Mateo Community College Federation of Teachers (Union)
(Collectively the Parties)

Fact-Finding Panel:

- William B. Gould IV, Neutral Chair
- Gregory Dannis, Employer Representative
- Kate Disney, Union Representative

The Union's Representative (Panelist) concurs with some recommendations and findings outlined in the FactFinding Report dated August 20, 2026, but dissents with others recommendations and findings.

Concurrence and dissenting points will be made in the same order those points were made in the Factfinder's Report.

I. Background

The Parties to this factFinding are the San Mateo County College District (SMCCD, District) and AFT 1493, San Mateo Community College Federation of Teachers (Union). The Factfinding concerns the parties unsuccessful efforts over eighteen months to bargain a successor agreement to a Collective Bargaining Agreement (CBA) that expired on June 30, 2025.

SMCCD has six salary schedules:

Regular Faculty Schedule (aka **80**); schedule for regular (full-time) faculty representing two semesters of full-time work; 14 steps & five columns

Adjunct Faculty Schedule, instructional lecture (aka **HC**); an hourly schedule used for adjunct instructional lecture work; 15 steps & five columns

Adjunct Faculty Schedule, non-instructional (aka **AJ**); an hourly schedule used for adjunct non-instructional and some laboratory work; 11 steps & two columns depending on the type of work

Adjunct Faculty Schedule, instructional laboratory (aka **HB**); an hourly schedule used for adjunct laboratory work; 15 steps & five columns

Adjunct Faculty Schedule, instructional special (aka **HI**); an hourly schedule used for adjunct instructional/special work; eleven steps & one column

Regular Faculty Schedule (aka **OL**); an hourly schedule used when regular faculty perform work over 100%; 10 steps & three columns depending on the type of work

It is the Panelist's opinion that the salary schedules appear overly complicated and may have resulted from numerous "patches" or agreements over many years. Both Parties stand to benefit from collapsing these schedules into fewer salary schedules that ensure equal-pay-for-equal work and, with the exception of short-term assignments, and are mirrored to the full-time salary schedule.

The inconsistent parity between part-time & overload work as compared to full-time work (in both lecture and lab assignments) as a result of the numerous and convoluted salary schedules is likely a major factor in preventing the District from meeting its 50% Law obligation.

The District claims that faculty salaries are comparable to comparable districts but those comparisons fail to examine the pay of part-time faculty working in various assignments.

Below is a summary of the Union's last proposal (made on 10/3/25) prior to factfinding:

1. Monetary

- a. Raises

- i. 7% in year-1 (AY 25-26) for all salary schedules
 - ii. 6.25% in year-2 (AY 26-27) for all salary schedules
 - iii. 4.75% in year-3 (AY 27-28) for all salary schedules

- b. Additional raise adjustments

- i. 0.75% in year-1 for salary schedules HB, HC, and HI
 - ii. In year-2, convert salary schedules HC and OL to pay-by-load mirroring schedule-80 at 83% of full-time rate
 - iii. In year-3, adjust new salary schedules HC and OL to 85% of full-time rate (full parity – equal pay for equal work)

- c. Health Benefits

- i. District will increase their contribution from 88% to 92% of the Kaiser 2+ plan towards health premiums

- ii. District will increase dental plan such that the annual benefit maximum will increase from \$2000/year to \$4000/year
- iii. District will increase salary continuation insurance from \$5000/month to \$8500/month.

2. Nonmonetary

- a. Allow counselors to schedule the advising of mental health student clubs towards professional responsibilities such that advising such clubs is paid work
- b. Define program coordination to be ancillary work for adjunct faculty such that program coordination does not count towards the 67% load maximum
- c. Insert Academic Freedom article into CBA
- d. Increase the number of allowed personal necessity days by two days
- e. Increase personal necessity leave not requiring prior approval from three to five days
- f. Require that the District provide 20 days of paid parental leave.
- g. Set English Composition course load to 125% of lecture rate regardless of how many sections of English Composition is taught by an instructor
- h. Reduce class size to 26 students for Calc I and Calc II (Math 251/252)
- i. Adjust some laboratory loads so that faculty who teach labs do not have an excessive unpaid workload.

Below is a summary of proposals where the District is the charging party:

- 1. Propose ground rules that would restrict negotiations to members of the Union's Bargaining Team
- 2. Change full-time professional responsibilities from 2.5 hours per week to be a minimum of 2.5 hours per week
- 3. Propose that full-time counselors perform their weekly eight hours of professional duties on-campus and during scheduled times
- 4. Propose a joint study group to review matters concerning the conversion from hourly pay to pay-by-load

II. Factfinding Requirements

When weighing the input from each party, factfinders are to consider:

1. **State and federal laws that are applicable to the employer.**
2. Stipulations of the parties.
3. **The interests and welfare of the public and the financial ability of the public school employer.**
4. Comparison of the wages, hours, and conditions of employment of the employees involved in the factfinding proceeding with the wages, hours, and conditions of employment of other employees performing similar services and with other employees generally in public school employment in comparable communities.
5. The consumer price index for goods and services, known as the cost of living.
6. The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays, and other excused time, insurance and pensions, medical and hospitalization benefits; the continuity and stability of employment; and all other benefits received.
7. Any other facts, not confined to specified in paragraphs (1) to (6), inclusive, which are normally or traditionally taken into consideration in making the findings and recommendations.

III. Introduction

Fact finding occurred on **July 13-14, 2026** at the San Mateo Community College District Office.

The Panelist dissents with the following statement of the Factfinder:

“The Union estimated a period of 3.5 to 4 hours for their presentation, and it used more than that time in their presentation.”

The Union was supposed to receive 3.5 to 4 hours for their presentations however the Union was not provided 3.5 to 4 hours to present. In fact, the Union was provided only two hours on Day 1 to present its case. The Union had a faculty witness at the ready on Day 1, prepared to present specifically on Lab Parity. After the Panel requested the Union to cut its presentation short in order to facilitate negotiations, the Union agreed. As a result, the Union's faculty witness left without being given the opportunity to testify on Lab Parity. The faculty witness was unavailable on Day 2.

On Day 2, the Union was given 45 minutes to specifically respond to the District's presentation from Day 1, not to continue and finish its originally-planned presentation. In short, the Union did not underestimate its presentation time. They were not given their full presentation time by the Panel.

The Panelist dissents with the following statement of the Factfinder that suggests the Union Representatives believed they had sufficient time to make their case:

“ . . . at no time during the proceedings of July 13 and July 14 did the Union make a request or motion for a third day of hearings.”

While this statement is true, the Union was cut short by the Panel on Day 1. It's unclear why the Union would request additional time when the Union was not even allowed the time it was initially allotted. It was the Panel, not the Union, that primarily dictated how much time each side had to present over the two days. The Panel did this by curtailing presentations and requesting that the Parties attempt to negotiate.

The evidence to support Lab Parity was never presented by the Union because the Union was not given the time for presentation that they requested in response to the Fact Finder's letter dated July 7, 2026.

By the Panel not requesting a third day, the Panel had to rely solely on materials in the Parties' binders to make a recommendation concerning Lab Parity. (See discussion of Lab Parity in section below.)

IV. Issues in Dispute

A. Ground Rules

The Panelist concurs with the Factfinder's statements:

“I believe that the negotiations . . . are for the parties themselves and they are each to have representatives of their own choosing.”

“ . . . the Union may want to call in experts on particular subject matter and they, as well as the District, should be able to do so as well under my Recommendation.”

Given the numerous comments made in the Introduction of the Factfinder's report citing the need for better relations between the Parties, refraining from a debate of whether or not someone on either side should be there would serve to create a more harmonious process.

More importantly, both sides should assign a chief negotiator who has the authority to negotiate and make concessions, and with deep knowledge of the issues so that real constraints are presented in a credible manner that fosters mutual understanding.

B. Monetary Compensation and Benefits

The Union proposed an 18% increase over three years to all salary schedules. The Union cites three primary reasons to support their proposal:

1. The fact that the District consistently fails to meet the 50% Law by large margins. (CA Education Code Section 84362);
2. The high cost of living in San Mateo County, exceeding the cost of living in comparable districts;
3. Comparable Districts indicating higher salaries in most pay scales.

The District costed-out the Union's proposed salary increase and claimed the following as rationale for refusing to agree to the Union's increases, that:

1. The Union's salary proposal are unaffordable for the District, given the District's many non-instructional priorities, including its capital improvement efforts;
2. The District has non-instructional initiatives that require the funds that the Union claims could support the Union's monetary proposals, including funds that are needed at the end of the fiscal year that are not budgeted for these non-instructional priorities;
3. It is not in the public's interest to allocate the funds to support the Union's salary proposal;
4. The District received an one-year exemption from the 50% Law;
5. The District would suffer additional hardship due to "me too" clause(s) with other bargaining units.
6. The full-time Faculty salaries are commensurate with comparable districts.

The Panelist dissents with the following statement of the Factfinder regarding the District's noncompliance with the 50% Law (CA Ed Code Section 84362):

"One difficulty with any assessment of the Union's argument that funds are being transferred out of the General Fund improperly and, that less is expended than in other districts for salaries, is that the comparisons with other districts do not establish that each of them has the same wage burden i.e., a comparable number of employees who possess similar education and experience which would make the wage bill of other districts truly comparable. But, even if they are for the purpose of this analysis, a second problem with this general line of argument is that it involves this Panel in an assessment of the uses to which non-compensation allocations are put and therefore requires us to act as a kind of mini-legislative monitor of the Districts expenditures."

The purpose of the 50% Law is to ensure that taxpayer money goes primarily toward teaching rather than overhead. The law was enacted to curb administrative expenses while maintaining academic standards by ensuring reasonable class sizes. The law was enacted by the California Legislature in 1961 and as such it reflects the people's will by keeping all community colleges focused on their core education mission. In requiring a District to put at least 50% of its educational expenses into instructional services the law does not dictate details concerning allocations on each side of the calculation.

The 50% Law indirectly measures wage burden as most of the General Fund (Fund 1) expenses of colleges are salaries and benefits. E.g. The SMCCD annual budget for 2025-26 indicates that over 73% of Fund 1 expenses are for employee salaries and benefits. Any district's CCFS-311 report (50% Law calculation provided to the State) provides information about wage burdens as well as the relative cost of instructional vs. non-instructional expenses. Most importantly, the 50% Law applies to all community college districts in California and it is straightforward to compare districts on their ratio of instructional vs. non-instructional expenses using their CCFS-311 reports. In fact, the Union provided comparisons on Day 1

What the District's decade-long noncompliance with the law indicates plainly is that SMCCD has overextended itself into non-instructional initiatives and programs at the expense of not adequately funding the core education mission. Recommending that the District comply with the 50% Law, when it can afford to do so, simply reasserts what the legislature and public demand and deserve.

The Factfinding Panel has a requirement to consider State laws as well as interests and the welfare of the public. If the Factfinding Panel were to claim that the 50% Law were not before it, for whatever reason, then the Panel would be discounting the 50% Law which goes against the requirement to consider State law and the interests of the public. The Panel should not act quasi-legislatively by picking and choosing which applicable laws the employer should follow.

This Panelist believes that SMCCD should make a concerted effort to immediately comply with the 50% Law. By agreeing to the Union's monetary proposals of 10/3/25, the District would come much closer to complying with the 50% Law.

In Dr. Melissa Moreno's letter regarding the 50% Law Exemption Request (as included in the Union's binder, section E), Dr. Moreno makes four points worth highlighting and rebutting:

1. SMCCD does not qualify for an exemption under Title V, 59204(e).

Panelist's Rebuttal:

Under Title V, 59204(e), a district with below average faculty compensation, as compared to their cohort of comparable districts, is prevented from using salaries as a defense for falling short of the 50% Law. Therefore the State recognized that SMCCD does in fact have below average faculty compensation compared to its cohort.

While it is true that there are a few cells on the SMCCD full-time salary schedule that offer salaries at the top of the Bay-10 districts, the majority of full-time faculty at SMCCD are in columns four and five, as was presented by the District on Day 2. There are more SMCCD faculty in column 4 (MA + 60 units), step 25 than in any other step and column.

That step and column compares as follows in the last academic year:

- \$156,756 (SMCCD)
- \$166,092 (San Jose – Evergreen) ← 6% higher
- \$186,544 (West Valley – Mission) ← 19% higher

The next most common step and column at SMCCD is column 5, step 25. That step and column compares as follows in the last academic year:

- \$164,472 (SMCCD)
- \$170,322 (San Jose – Evergreen) ← 3.56% higher
- \$200,797 (West Valley – Mission) ← 22% higher

It is important to not just rank schools but to examine actual salaries. In many cases, SMCCD is a distant third in its ranking, falling far behind West Valley - Mission.

2. SMCCD provides other benefits to instructional employees such as discounted memberships to athletic centers and professional development opportunities.

Panelist's Rebuttal:

These benefits do not pay for basic needs such as rent/mortgage nor are the benefits pension creditable compensation. Such benefits if given in lieu of increases to wages and medical premiums and/or improvements to work load are immaterial to faculty basic needs.

3. SMCCCD has implemented a variety of initiatives such as free parking, free tuition, subsidized child care, and free food, etc.

Panelist's Rebuttal:

While these initiatives may be very critical to some students' success in college, it is not in the students' interests for the District to divest from education and core services to fund these initiatives, particularly when the District has the means to invest in both core services and student success initiatives given the excess monies that are transferred out of Fund 1 annually above and beyond what is budgeted (see below).

4. SMCCCD requests an exemption to the 50% Law to avoid financial hardship under Title V, 59213.

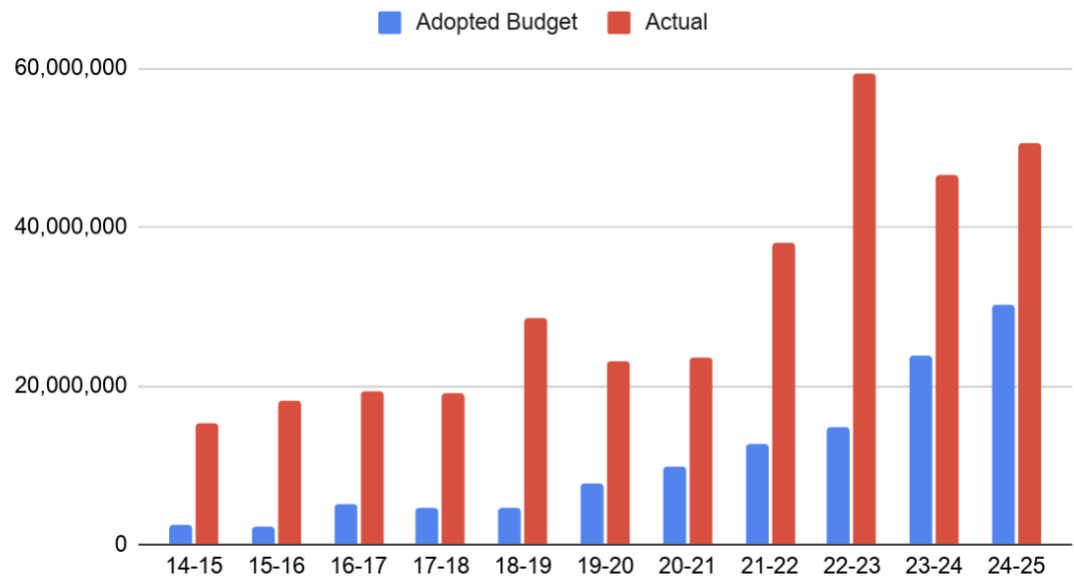
Panelist's Rebuttal:

The District claims that complying with the 50% Law would cause the District financial hardship. Similarly, during Factfinding, the District spent the bulk of their rebuttal showing cost-outs of the various proposals. At one point, the Chancellor, Melissa Moreno, testified that "We [the District] cannot afford it [the Union's proposals]. Thus the District claimed that it would be financially burdened if it agreed to the Union's proposals. When an employer asserts inability to pay, the employer has the burden of proving that inability. SMCCCD did not prove an inability to pay. To the contrary, the Union showed large sums, well above what was budgeted to be transferred out of Fund 1, transferred into other funds/initiatives over the past 11 years. This was provided as a table and chart by the Union:

Transfers Out of Fund 1

	Adopted Budget	Actual	Difference		
14-15	2,515,561	15,294,035	12,778,474		
15-16	\$2,243,234	18,222,547	15,979,313		
16-17	\$5,075,819	19,189,241	14,113,422		
17-18	\$4,683,407	18,984,962	14,301,555		
18-19	4,634,552	28,518,716	23,884,164		
19-20	7,616,427	22,979,330	15,362,903		
20-21	9,907,199	23,458,622	13,551,423		
21-22	12,611,549	38,049,768	25,438,219		
22-23	14,734,168	59,322,830	44,588,662		
23-24	23,891,904	46,608,382	22,716,478		
24-25	30,207,848	50,545,712	20,337,864		

Adopted Budget and Actual



Panelist dissents with the following recommendation of the Factfinder regarding the one-time stipend:

“The Union proposed a stipend of \$3500 for full time employees and \$2500 for part timers. . . I recommend a revision of the District’s stipend offer so that full time employees will receive \$2500 and part-time \$1250”

Other full-time bargaining unit members in the District received \$3500. There is no compelling reason to offer full-time faculty less than \$3500. Part-time employees in other bargaining units received a proportion of \$3500 equal to the their workload. Therefore part-time faculty should receive a stipend approximately equal to the proportion that they are allowed to work, i.e. 67%. Therefore the Union’s proposal of \$3500 to full-time faculty and \$2500 to part-time faculty is reasonable for the District to implement without having to compute each and every part-timer’s load over the past year. Such stipend should be pension-creditable.

C. Part Time Pay Parity: Instructional PT (HC Schedule)

Panelist concurs with the following recommendation of the Factfinder regarding Part-time Pay Parity but questions what justification is there for excluding lab faculty and other faculty classifications where current parity averages under 85%:

That part-time faculty should receive 4.75% in year 1 and 4.75% in year 2 while in year 3 the part-time instructional salary schedule (HC) will be adjusted such that 100% of the cells will be 85% of the full-time salary schedule (80).

It is a milestone that part-time lecture faculty will finally be earning equal-pay-for-equal work (85% of the full-time rate) but given the fairness of equal-pay-for-equal-work one must ask, what rationale is made to not extend equitable pay to faculty who instruct labs or perform non-instructional work?

For example, under the recommendation above, part-time lab faculty will continue to have their work discounted in two ways: 1) A discount due to the work performed by a part-timer (PT Parity); and 2) a discount due to the work being a laboratory assignment rather than a lecture assignment (Lab Parity). This double whammy drives down the pay rate of part-time faculty who instruct labs.

Panelist wishes to clarify the following recommendation of the Factfinder regarding Part-time Pay Parity:

“I recommend that the above described District’s position coupled with their promise not to reduce any employee’s pay as a result of the pay parity process be incorporated into the Agreement.”

As the District moves to 85% pay parity for part-time faculty (schedule HC), no part-time faculty member should experience a reduction in their pay rate from one year to the next. If it is determined that a part-timer’s pay rate shows a reduction, that part-timer should advance to the next step where there is no rate reduction.

D. Pay By Load

Panelist concurs with Factfinder’s recommendation to move to pay-by-load in Fall 2028 and is hopeful that impacts and effects will be limited to those impacts and effects on faculty and not include impacts and costs on the District associated with operationalizing pay-by-load.

E. Overload (OL Schedule)

Panelist concurs with Factfinder’s recommendation:

“There will be a move to per load pay in Fall 2028 with a goal of reaching 85% [of the full-time salary schedule 80] adoption in the successor bargaining agreement in the Fall of 2028. I recommend acceptance of this arrangement. I recommend acceptance of the District proposal that for the 3 year term, the OL Schedule will get the general raises (4, 4, and 5%) and additionally for year 3, plus 2.5%, . . . total 7.5% [in year 3].”

It is illogical for part-time faculty to earn a different pay rate than full-time faculty working overload assignments. Therefore moving OL to 85% parity (to align with schedule HC) in Fall 2028 should be adopted now through a memorandum of understanding of the parties documenting this mutual roadmap.

F. Appendix F

1. Class Size

Panelist concurs with Factfinder’s recommendation to reduce class size to 31 students in Math 251 and Math 252.

2. Lab Pay Increases

Panelist dissents with Factfinder's statements claiming the Union erred in not requesting more time to present testimony supporting its proposal on Lab Parity.

The Union requested 3.5 - 4 hours for their presentation in response to the inquiry from the Factfinder in his letter of July 7, 2026. On day 1, after the first hour of presentation, the Union team was told to limit their presentation to 2 hours. With only one hour left for the presentation, but 3 hours of material to be presented, the Union had to drastically cut much of the planned presentation on Lab Parity. The Union brought a subject matter expert to testify on Lab Parity on day 1 of Factfinding however this subject matter expert was unable to testify.

The Union requested another day of Factfinding in order to present testimony from content experts on the issue of Lab Parity. The District refused to meet for a third day. In lieu of a meeting, the Factfinder requested that the parties submit briefs on the matter. The Union submitted their brief on July 27th and the District submitted their brief, including their rebuttals to the Union, on July 28th.

Lab Parity is paramount to the quality of lab-intensive disciplines. The District does not debate the impacts to instructional quality when lab faculty have a manageable workload. Instead the District discounts the Union's data as unverifiable. The question one must ask is who if not for the lab faculty who teach the labs would the District trust to provide credible testimony about lab workload? The Union accurately relayed the additional workload involved in lab instruction from some of its members who teach labs and yet the District claims the data is unverified or is new testimony.

The briefs have been admitted into the record therefore the Union's data must be considered by the panel.

In 2022 a committee was formed to study Lab Parity. That committee had no authority or budget to make changes to Lab FLCs. As stated in Dr. Melissa Moreno's July 28th brief, one of the committee's conclusions was that there is an economic consequence to adjusting FLC for labs and determining exact costs would require further study. That conclusion in no way indicates that the committee thought adjustments to Lab FLCs were not needed.

The most appropriate place to address Lab Parity is in negotiations, precisely because there is a cost to implementing changes to Lab FLCs. If more time was needed by the Panel to study the matter, then the Panel should have requested more time rather than recommending a deferral of the matter to another day.

3. Summer Employment Compensation

Panelist concurs with Factfinder's recommendation that both full-time faculty and part-time faculty must be compensated for office hours during summer employment.

4. Counselor Pay for "Mental Health Clubs"

Panelist dissents with Factfinder's statement that there is insufficient evidence in the record to warrant a recommendation.

A Personal Counselor from College of San Mateo presented on the benefits of group counseling and support as documented through faculty work with the mental health clubs at Skyline College and College of San Mateo.

The District contends that allowing a Personal Counselor to convert one 1:1 counseling hour per week to one group counseling hour (via the club) will harm students in need. This logic seems contrary to what is in the interest of students because serving 20 to 40 students as opposed to one student in the course of an hour represents an effective approach to scaling up services at no cost to the District.

Group counseling is an effective way of early intervention while serving many students who feel stigma with one-on-one counseling. Given that the Union's proposal would require Dean approval of this one-hour/week schedule change for one personal counselor at each college, the proposal presents little risk at no cost. Requiring more evidence when the testimony provided by the Union was on its face a clear benefit to students seems unreasonable.

5. Leaves of Absence

Panelist concurs with Factfinder's recommendation that the Parties implement their agreement on Leaves of Absence.

6. Load for English Composition

The Panelist notes that the Factfinder did not offer any recommendation on FLCs for English Composition. Many community college (e.g. West Valley – Mission,) equate four semester-length English composition classes to a full teaching load.

7. Other matters brought to the Panel (see pages 2-3)

Other matters were brought to the panel and no findings or recommendations were made by the Factfinder.

G. Academic Freedom

Panelist concurs with Factfinder's recommendation that Academic Freedom provisions should be included in the Collective Bargaining Agreement.

V. Union Panelist's Conclusion

While the SMCCD faculty have some full-time salaries that are commensurate with the Bay-10, the SMCCD salaries are in most cases lower than the two most comparable districts: West Valley Mission Community College District (WVMCCD) and San Jose Evergreen Community College District (SJECCD). Like SMCCD, WVMCCD and SJECCD are in high cost areas and funded through local property tax. All three districts are basic aid funded, i.e. each receives revenue through property tax in excess of what they would receive from the State if funded by enrollment/FTES. When SMCCD faculty salaries are normalized (or adjusted) to the cost of living of San Mateo County, the SMCCD salaries appear far less attractive. The disparity between SMCCD and WVMCCD grows towards the higher pay scales, to the point that there is a nearly \$44,000/year difference between faculty members at WVMCCD and SMCCD who possess a PhD/doctorate with 30 years of experience.

When making comparisons of wages of faculty in SMCCD to that of the two most comparable districts (WVMCCD and SJECCD) the data indicate that SMCCD underpays their faculty.

The District claimed that the Union's wage proposal is unaffordable, and yet the District has over \$361 million in reserves across all funds as indicated in the approved AY25-26 budget (page 45). Furthermore, the District has shown a pattern of transferring large sums out of the unrestricted fund (the fund used for instruction and core services) to other funds. Over the last 11 years, the District budgeted approximately \$118 million in total transfer-outs to other funds. However over those 11 years, the District instead transferred out of Fund 1 approximately \$341 million.

If the other funds (non Fund-1) had operated in accordance with their approved budgets over the last 11 years, the unrestricted fund would have an ending balance that is approx. \$223 million higher than the current balance of \$53 million. Based on the District's own cost-out of the Union's proposals at an additional \$12 million each year over the contract, SMCCD can easily afford the Union's proposal with just the excess above what it budgets for in transfer-outs. As a further example indicating the robust financial state of the District, if SMCCD were not basic aid funded, it would have received approx. \$107 million less in 2024-25 (section F(a) of Union binder, 3rd paragraph). Thus the data prove that the cost of the Union's proposal are affordable to the District.

The District claims that the Union's monetary proposals are not in the public's interest. However the District did not provide any cost-benefit analysis defending where Fund-1 money is being spent. The District reported that they received an exemption to the 50% Law and therefore it was not imperative for them to meet the law. This exemption however is for one year while these negotiations apply to a three year contract.

The Chancellor stated that the District aims to meet the 50% Law by 2030. Providing raises to faculty could help the District come closer to meeting the law. (This District would still fail to meet the 50% threshold even if it did agree to the Union's proposals.) Instead the Chancellor said the District aims to meet the 50% Law by shrinking non-instructional expenditures.

The 50% Law is in California Education Code. The District's position is that following the 50% Law by increasing its instructional programs and services would not materially benefit the public. This sentiment conveys an opinion that the law is irrelevant to the public's interest and that laws can be ignored.

After reviewing the Parties materials and testimony and the District's budgets, the Union Panelist concludes that SMCCCD funds a multitude of non-instructional initiatives at the expense of underspending on instruction. In doing so, the District is not following Education Code (50% Law), is not serving the interests of the public and its students, and is not paying salaries that are commensurate to other similar high cost-of-living districts. These are the criteria that the Panel must consider when making findings.

The Union Panelist urges the parties to quickly come to an agreement that will end this impasse and bring SMCCCD into compliance with the 50% Law by funding the Union's monetary proposals as well as other proposals where there is mutual agreement or a clear benefit to students.

Sincerely,

A handwritten signature in black ink, appearing to read "K Disney", with a long, sweeping flourish extending to the right.

Kate Disney, Union Panelist