Findings and Recommendations Pursuant to California Government Code 3548.2
PERB Case # LA-IM- 4001-E

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In the Matter of an Impasse Between

Los Angeles Unified School District

And

United Teachers Los Angeles

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For the District:	Barrett K. Green, Attorney Littler Mendelson
	John Gray, President School Services of California, Inc.
For the Union:	Jeff Good, Executive Director United Teachers Los Angeles
	Grace Regullano, Strategic Research Director UTLA
	Rose Luna, Negotiations Specialist California Teachers Association

Factfinding Panel

Neutral Chair	David A. Weinberg Arbitration Mediation and Conflict Resolution
Union Member	Vern Gates, Negotiations Specialist California Teachers Association
District Member	Adam Fiss, Attorney Littler Mendelson

PROCEDURAL BACKGROUND

On November 14, 2018 the Public Employment Relations Board (PERB) confirmed my appointment to chair a factfinding panel concerning a dispute between the Los Angeles Unified School District (District) and the United Teachers Los Angeles (UTLA) in the All Certified Less Other Group unit. The panel held hearings on December 3rd and 4th, 2018 in Los Angeles. At these hearings the parties had full opportunity to present testimony and evidence to the panel, and to discuss and argue the issues in dispute. At the conclusion of the hearing the Neutral Panel member attempted to mediate the issues in dispute, which was not successful and therefore the dispute was submitted to the Panel for their recommendations. The parties' agreed to waive the applicable statutory time limits by three days, until December 17, 2018.

RELEVANT STATUTORY PROVISIONS

The Educational Employment Relations Act Government Code section 3548.2, sets forth the procedures and criteria to be used in the factfinding process. Section 3548.2 (b) identifies the criteria to considered.

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

1. *State and federal laws that are applicable to the employer.*
2. *Stipulations of the parties.*
3. *The interests and welfare of the public and the financial ability of the public school employer.*

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

BACKGROUND AND RELEVANT FACTS AND FINDINGS

The Los Angeles Unified School District is the largest public school system in California, and the 2nd largest school district in the United States. The District serves almost 700,000 students and employs almost 60,000 workers, and is the second largest employer in Los Angeles County. The District operates over 1000 schools at the elementary, middle and high school levels. It also operates several hundred early and adult education centers, and special schools. The District authorizes over 200 charter schools.

These schools are spread out over 720 square miles that make up the City of Los Angeles and 31 smaller municipalities in LA County and unincorporated sections of Southern California. The collective bargaining agreement covers almost 30,000 employees including 25,000 certificated teachers and health and human service workers. The District's annual budget is over $7.5 billion.

The District's multiyear projection anticipates a structural deficit through the 2022 fiscal year. The District in their presentation at the factfinding hearing anticipated deficit spending in each yearly cycle of over $300 million dollars each year. The Union disputes these figures and cites an analysis from the Los Angeles County Office of Education which anticipates deficit spending in the amounts of $64.7 million in 2018-19, $82.3 million in 2019-20, and $129.7 million in 2020-21.[1] LACOE attributes these projected deficits to declining enrollment, increasing pension costs, special education encroachment, and facilities maintenance. The District's reserves in the current fiscal year 2017-2018 is approximately $1.8 billion, which has been increasing in the past 5 years from $500 million in 2013-2014 to the current reserve levels. It is anticipated that the reserves in the coming fiscal years will be decreasing due to the anticipated deficit spending. The District's average daily attendance (ADA), which forms a significant percentage of the incoming revenue for the District has been declining in each of the last 4 years, a drop of 8.6% during that time period.

[1] The neutral panel member did not have the ability to reconcile these two approaches to deficit spending accounting at this time.

With respect to comparability, the LAUSD ranks in the middle to low-middle range of other large urban districts and on the low end of surrounding districts when factoring in salaries and benefits. The District's analysis of comparability with other school districts is based on ADA, and this analysis places them on the mid to higher comparable scale for wages and benefits, when applying this structure. LAUSD is one of the few school districts in the State that provide retiree medical benefits.[2]

The District's student population is highly diverse with over 73% Hispanic,10% White, 8% African America, and 4% Asian, populations amongst its students. English learners make up over 27% of total enrollment and the Unduplicated Pupil Percentage was 85.5% in 2017-18. There is a high need for special education services amongst its students, which is acknowledged by all to be highly costly and mandated by law.

The relevant data indicates that CPI will average between 3.5 and 4% for the contractual years that will be covered by the renegotiated CBA.

The parties began bargaining in April of 2017 for a successor agreement to the 2014-2017 CBA, which expired on June 30, 2017. The parties held 22 bargaining sessions prior to July of 2018 when the Union declared impasse. One more bargaining session was held in July of 2018 when impasse was declared

[2] This factfinding report is limited in its financial analysis due to the time constraints imposed of four (4) total days for hearing and report generation. The parties submitted over 2000 pages of data, much of which is detailed fiscal analysis that is impossible to digest in a short time frame. The neutral factfinder is therefore only giving a summary of the fiscal and comparative factors to be considered in the factfinding.

again, and approved by PERB on August 3, 2018. The Union issued a Last, Best, and Final contract offer on July 24, 2018. The parties held 3 mediation sessions subsequent to that offer and prior to this factfinding. During bargaining, approximately 24 new and existing articles were discussed, and tentative agreements and/or withdrawn proposals were reached on three items.

ISSUES PRESENTED TO THE PANEL

The parties have twenty-one remaining Articles that are presented to this factfinding panel, most of which contain multiple issues that remain in dispute and unresolved. The following items were presented to the Panel: *Article IV-UTLA Rights; Article IX- Hours, Duties and Work Year; Article IX-A-Assignments; Article IX-B- Professional Development; Article X-Evaluation; Article X-A-Discipline; Article XI-Transfers; Article XI-B-Master Plan; Article XII-Leaves of Absence; Article XVIII-Class Size; Article XIV-Salaries; Article XIX-Substitute Employees; Article XX-Summer/Winter Session; Article XXI-Adult Education; Article XXIII-Early Education; Article XXIV-Student Discipline; Article XXV Academic Freedom and Responsibility; Article XXVII-Shared Decision Making; Article XXXI-Miscellaneous; New Article-Special Education; New Article-School Accountability*

RECOMMENDATIONS

The Neutral Panel member chosen by the parties believes that the statute under which this factfinding takes place is best viewed as an extension of the collective bargaining process. The best outcome of this factfinding process would

be a negotiated agreement between the parties. The intent of these recommendations is to provide a framework for the parties to settle their dispute and the statute lays out a set of criteria that are to guide the panel in making their findings.

The factfinding panel in this impasse is facing a particularly difficult set of circumstances to navigate. While the parties have been negotiating a successor agreement for over a year, and while they conducted over 20 bargaining sessions and three mediations, they have only been able to come to an agreement on two or three minor items. There remains in dispute over 21 Articles, which have multiple issues within them. From the information provided to the Neutral Panel member regarding this bargaining history, there seems to have been almost no progress made on any issue, which normally would be reflected in multiple counter offers being exchanged by each side that reduces the issues between the parties. This makes it particularly difficult for the Neutral Panel member to advance a recommendation on each of the open Articles to provide a final recommendation for settlement of the dispute. In addition, this dispute which covers almost 30,000 bargaining unit members serving over 600,000 students, and a District budget of over 7 billion dollars, is only allotted a total of 4 days, including hearing and writing for the entire factfinding process.

Given these conditions and constraints, I will still offer a recommended settlement framework, which the parties can use to advance the bargaining towards final agreement. While some of these recommended settlement proposals are more general than I would like, I still believe they can provide the

framework for a settlement, hopefully without the need for a strike or imposition of contractual provisions. While there are 21 Articles open for resolution and all of them are important, it is clear to this Panel Member that two of the issues are key to contract resolution; Salaries and Class Size. I will be offering the most specific recommendations on these two items in the belief that they are key to the resolution of this contract:

Article XIV-Salaries: The parties are not very far apart on this issue. I am recommending the adoption of the District's offer of 3% effective July 1, 2017 and 3% July 1, 2018, without the provision for an additional 12 hours of professional development. I agree with the Union's argument that the bargaining unit deserves to be higher ranked in comparison to other jurisdiction given the combination of a higher cost of living in the LA metro area, and the difficulty in teaching a population of students with so many needs and challenges. While all teachers face obstacles in their successful teaching, the Los Angeles Unified School District has more than most, and recruiting and retaining them with high salaries and benefits should be a priority. However, the District does have financial limitations that must be balanced with these needs, and in this round of bargaining the Union has additionally made it a priority to reduce class sizes, which involves the expenditure of significant amounts of money. Therefore, the adoption of the Districts salary proposal should be looked at in conjunction with my recommendation on money for class size reduction. While I recognize that the District's proposal for 12 additional hours from the staff in professional development has benefits to the District, they are not compelling enough to

warrant this requirement, and this part of their salary proposal should be dropped. The District offer of a 6% increase is warranted based on the comparative position of the bargaining unit in wages and benefits, the current settlements involving other school districts and internal bargaining units, and the cost of living increases that are faced by the unit members in Los Angeles. As part of the District's wage offer I also recommend their proposal for new teachers to fall under the Rule of 87 for retiree health benefits. Retiree health is a great benefit and definitely helps in the recruitment and retention of LAUSD teachers. It is also very expensive and represents an ongoing balance sheet problem for the District. Making some adjustment for future teachers is warranted and may help in the future to free up more money for salaries as opposed to diverting so much money to retiree health benefits.

Article XVIII-Class Size: In concert with the proposal on salaries, class size represents a key demand of the Union and is essential to the resolution of this dispute. I agree with the Union argument that lower class sizes are one of the best predictors of successful teaching and student success. I also agree that lowering class size may be one of the keys to increasing ADA, and maintaining and recruiting students to LAUSD, which remains a joint goal of the parties. Unfortunately, the parties are not in agreement as to how to calculate class size. The District in this factfinding asserts that the LAUSD class size averages are some of the lowest in the State, and the Union disputes these figures. Given the limited time for the factfinding I cannot make any recommendations or findings regarding this disagreement, but I do believe the parties will need to develop a

shared understanding as to how to calculate this figure. The parties should dedicate a few key individuals to immediately work together with shared data to come to common understandings as to how to calculate average class size.

There is no doubt that the Union's demands at this point are expensive and the parties are not in agreement on how to cost this item, which will be key to its resolution. My recommendation for settlement involves the dedication of a percentage of money to be used for the employment of teachers and other staff to reduce class size and provide additional student access to the services of librarians, nurses and other professional staff. The Neutral Panel Chair also recommends the adoption of the Union proposal to Eliminate Section 1.5 from the CBA. This will allow teachers who believe they are facing excessive class size, to have redress through the grievance procedure, which was available but significantly limited by Section 1.5. Along with the elimination of 1.5, the parties will need to agree upon new MOU class size maximums/averages to replace the current Appendix H, with a future goal of reaching the current CBA numbers. I believe it will be impossible for financial reasons, to return and implement the CBA numbers in one year, but it should be the goal to do so within a couple of years. Therefore, the parties will need to agree on new maximum/averages numbers for the next year that are a reduction from Appendix H, and that can be met based on financial resources.

To accomplish the aims of this Article, I recommend the District commit an additional amount of money, from 1%-3% in order to recruit additional teachers and staff to reduce class size and increase access to other professional services.

The parties will need to come to an agreement on how to cost this additional staff, depending on whether they are teachers, nurses, counselors or librarians. The parties will also have to agree jointly, which classifications should be hired with this additional money (teachers, librarians, etc.)

The parties have not made any proposals beyond the 2018-2019 year, which means the parties would have to immediately begin bargaining a successor agreement by the time this contract is agreed upon. I recommend the parties discuss an additional year or two to the contract, with a re-opener on salaries and class size, and maybe one or two other items. The parties need to have time to evaluate and assess the impact of these changes to the contract, which are significant. In addition, it may allow the parties to add financial triggers into the CBA, so as to allow the parties to reach agreements that would be conditioned upon certain financial conditions being present. I believe that these economic settlement proposals advanced by the Neutral Panel Chair would not place the District into insolvency and are affordable at this time given the current reserve levels and anticipated deficit spending in the coming years. I also recommend that in the future the District and the Union should develop a joint fundraising plan, which could include agreements to promote a parcel tax and other possible initiatives that would focus on raising teacher salaries to make them more competitive to the surrounding school districts and communities that have more resources available to them.

The following represents my recommendation on the remaining items. Many of these proposals, which are advanced by the Union, represent a

significant departure from prior practices and represent an attempt towards a model of greater shared governance. This approach to the basic functioning of public education has many positive attributes, but it relies upon a level of trust between labor and management which is not present at this time. I believe one way to begin to build this trust is to translate some of the Union proposals into pilot projects, which can provide the opportunity for the parties to work together and develop common support for these contract proposals that can then be made part of the fabric of the contract and governance when that trust has been developed. I also believe that some of the proposals advanced by both parties should be withdrawn at this time. It is traditional in collective bargaining to agree that when too many proposals remain towards the conclusion of bargaining, it is best to withdraw some of them, with the understanding that these matters can be raised again in the next round of bargaining. The Panel Chair makes the following recommendations on the remaining items with the understanding that certain elements of these proposals may have been already tentatively agreed upon by the parties and should be converted into contract language and adopted.

Article IV-UTLA Rights: Agree to expand the number of chapter chairs for itinerant members. Agree to expand scope of union representation beyond discipline. Drop the remaining changes and maintain status quo on all other proposals.

Article IX-Hours, Duties and Work Year: Accept LAUSD proposal of one hour per week. Drop the remaining changes.

Article IX-A-Assignments and IX-B- Professional Development: Agree to posting of seniority lists. Agree to set up a Pilot project involving a limited but appropriate number of schools, and/or facilities at each level, to pilot the changes proposed by the Union, with sunset provisions to build support for these permanent changes in the next contract.

Article X-Evaluation: Agree to Pilot the parties suggested changes to the evaluation process at an appropriate number of schools at each level, total of 5-10.

Article X-A-Discipline: The District should drop this proposal as they have not made a convincing argument for these changes, and this is not common in most unionized school districts.

Article XI-Transfers: Place previously agreed upon items in the CBA. Agree to use seniority in displacements if skills and abilities are comparable. Drop the remaining proposals for this round of bargaining.

Article XI-B-Master Plan: Drop both parties proposals for this bargaining term.

Article XII-Leaves of Absence: Drop both parties proposals.

Article XIX-Substitute Employees: Place agreed upon changes in CBA (one hour window for lateness, comp for late cancellation). Agree to information provided regarding substitute assignments. Agree to increase continuity rate proposal of UTLA. Drop the remaining proposals.

Article XX-Summer/Winter Session: Drop this proposal, maintain status quo.

Article XXI-Adult Education: Add the agreed upon items to CBA ("M basis", provide classification codes to Union) Drop the remaining proposals as too costly given other monies agreed to for hiring additional staff under the class size proposal.

Article XXII-Early Education: Agree to create Task Force. Drop the remaining proposals.

Article XXIV-Student Discipline: Agree to Pilot project this proposal at appropriate number of schools.

Article XXV-Academic Freedom and Responsibilities: Pilot project this proposal for teacher determination of testing (beyond mandatory), at appropriate number of schools at each level.

Article XXVII-Shared Decision Making: Drop this proposal. While the Union has made reasonable arguments regarding shared decision making, it is unlikely to convince the District at this time to develop a shared decision making model given the lack of trust between the parties.

Article XXXI-Miscellaneous- Agree to the Union proposal based on space availability at each site and agree to set up a committee to discuss itinerant employee working conditions.

New Article- Special Education- Agree to this new article, and finalize an agreement on caseloads. Given the cost of special education, the changes to caseloads requested by the Union are quite expensive and can probably be only

slightly reduced by the additional class size reduction money proposed. Other contractual proposals should be dropped after agreement on reduced caseloads reached. Consider a re-opener on this issue if additional money can be found in coming years to support special education funding.

New Article-School Accountability: Agree to the Union proposal with an agreed upon later date by the end of the calendar year. Agree to the other proposals without the annual stipend.

The Neutral Member of this Panel agrees that these recommendations are in accord with California Government Code Section 3548.2, and endorses these recommendations.

Dated December 17, 2018 

David A. Weinberg: Neutral Chair Factfinding Panel

Concurring and Dissenting report of Panel Member Gates

PERB Case # LA-IM- 4001-E

Between Los Angeles Unified School District and United Teachers Los Angeles

Gates, Panel Member, concurring in part and dissenting in part:

I understand Chair Weinberg's frustration at the amount of material presented coupled with the short time frame to review and make a recommended settlement. Given those constraints, Chair Weinberg's report is understandable. However, having spent three days in mediation with UTLA and LAUSD, and considerably more time to review the material of both parties, I must note additional findings and recommendations.

Much has been made in the media of the phrase that this is a group of adults fighting with kids put in the middle. There is some truth to two groups of adults fighting; however, this is a case of one groups of adults – the UTLA members – standing in front of the kids, fighting to protect their right to a free and appropriate education from the adults who would take that away from them.

Who are these adults that are attempting to defund the LAUSD and deprive students of the education they deserve? The formerly four-member majority (when including now disgraced former LAUSD Board Member Ref Rodriguez) pro-charter school block of the LAUSD Board of Education and the pro-privatization Superintendent Austin Beutner. These combined forces would prefer an LAUSD that is made up of a majority privately managed charter schools.

These facts are not unknown to the media and public at-large. One only need look at the amount of money from outside groups in recent LAUSD school board elections as well as the recent Superintendent of Public Instruction race. It was no coincidence that Ref Rodriguez refused to resign from the LAUSD Board, even when under indictment, until Austin Beutner was hired as Superintendent. Why, however, would someone with no experience in schools or school districts take a job running the second largest school district in the country?

LAUSD is an investment bankers dream. A profitable entity with a dedicated stream of revenue (over $7B in state tax money), over a thousand pieces to break up and sell off, no debt, and a huge cash balance ($1.86B). We know that Beutner plans to break the district up into 32 separate entities – like the portfolio model used in Newark, New Orleans, and Indianapolis – because someone in his office leaked the plan to the media. Couple this with the pro-charter school proponents on the school board and it is easy to see why LAUSD rejects UTLA proposals that would improve local schools – *they do not want improvement.*

Throughout 18 months of negotiations and mediation, one party and one party only has consistently advanced proposals that benefit students and conditions of teaching and learning first – UTLA. The record demonstrates this time and again, including proposals developed with various community groups that UTLA was forced to withdraw under threat of litigation from the District.

As UTLA noted several times in their presentation, of the two parties to this dispute, UTLA is the only one to advance proposals that benefit students. UTLA has consistently provided evidence in the form of research, parent testimonial, and detailed analysis to support the benefit of its' proposals. I note that the District presentation, despite having more than double the pages of the UTLA presentation, frequently simply repeats the same status quo statements without any supporting evidence.

For example, the District in tab 63, page 477, asserts that this proposal "...is not in the best interest or welfare of the public and school community...." That's all. Not a shred of material that supports this bland assertion. This does not stand alone. The District in tab 91, page 606, and tab 92, page 607 assert the District cannot financially afford the Union proposal. The District provides a dollar amount as the cost of the UTLA proposal without any supporting documentation, calculations, or source data. The vast majority of the District's presentation contain similar unsupported assertions, seek to make no meaningful change for students, and maintain the status quo of unchallenged power.

The District's most frequent reason for arguing the panel should reject the UTLA proposals is "The Union is the moving party, and as such, has a heavy burden of proof to persuade the panel to support a change from the status quo." To the contrary, the burden of proof is not "heavy" in the sense of an evidentiary standard. There is no requirement to 'prove beyond a reasonable doubt.' Rather, any standard here is similar to the standard in a grievance; the moving party has the burden to affirmatively prove facts in dispute. That burden is far from heavy, despite the physical weight of the District's presentation binders. That burden is met by the party that presents meaningful material in support of reasoned arguments, not the party that makes unsupported assertions.

UTLA's position that they are the only party to this dispute who has made proposals to benefit students is most succinctly demonstrated in the District's Last, Best, and Final offer to UTLA. In its three successive LBF offers, the District seemed to believe that it could get UTLA to sell out the parents, students, and community. The final LAUSD offer of October 30, 2018, contains 5 elements – salary, rule of 87 for retiree benefits, an immaterial change to class size that maintains the District's ability to violate it at will, a request for a "plain language" contract, and a change to how UTLA members advance across the salary schedule. The District rejects the remaining UTLA proposals which all directly improve student's conditions of teaching and learning.

For these reasons, I concur in part and dissent in part, as discussed below.

Article XIV – Salaries

I concur with Chair Weinberg's recommendation regarding the District's salary proposal with respect to the compensation increase of 3% for 2017-18 and 3% for 2018-19.

I dissent with respect to Chair Weinberg's recommendation to adopt the rule of 87 for retiree medical benefits. During the 18 months of bargaining, the District came to agreement with the Health Benefits Committee (HBC) regarding funding and plan design. The HBC is comprised of eight different bargaining units and the District. During the 22 bargaining sessions between the District and UTLA, the District never proposed a change to the current rule of 85. The first proposal from the District that included the rule of 87 was in the District's Last, Best, and Final offer which was provided, first to the Los Angeles Times newspaper and then later to UTLA on September 25th, 2018.

The first mediation session between the parties was September 27th, 2018. The District had ample opportunity between April 2017 when bargaining commenced and July 2018 when impasse was declared to make a proposal regarding health benefits. The District knew UTLA was contemplating declaring impasse because the District opposed an initial declaration of impasse and held a bargaining session with UTLA between the first and second declarations of impasse. Adding an issue, particularly something as contentious as health benefits, after impasse has been declared is at least an indicia of bad faith bargaining and certainly a recipe to prevent a settlement.

I would not recommend the rule of 87 as part of a settlement as it was never proposed in bargaining.

Article XVIII – Class Size & Staffing (Counselors, Librarians, Nurses)

I concur with Chair Weinberg's recommendation to eliminate section 1.5.

I also concur that the parties should agree on a costing method, however, given the material presented by both parties I would recommend the union's method over the District's. The District has given various large round figure costs to the proposal to staff at the contractual averages and maximums as high as $275m. During the hearing, the District indicated that it was costing positions at the maximum possible liability whereas UTLA was costing the positions at the average new hire cost – calculated by taking the last two years of hiring data and taking the average cost of all new hires in teaching positions. Of these two methods, UTLA's is the more accurate measure.

Additionally, UTLA presented data – provided by the District and analyzed by UTLA – that demonstrates that the District currently has over 2,000 teachers assigned to out of classroom positions that hold various categories of teaching credentials. Less than 2,000 additional teachers would need to be hired to reduce class size to the contractual standards, demonstrating UTLA's proposal to be cost neutral. Faced with this data, Mr. Gray of School Services conceded on behalf of the District that at least 640 of these positions could be used to lower class size. At a minimum, this concession by the District substantially reduces the District projected cost associated with the UTLA proposal.

Similarly, UTLA provided data – again provided by the District – for counselor, nurse, and librarian ratios along with cost data. The UTLA data demonstrates that there are currently enough counselors District-wide to staff counselors at the UTLA proposed ratio, meaning there is no cost. The District does not have enough Librarians to staff at the UTLA proposed ratio and UTLA estimates the cost to hire additional Librarians to be $10,007,443. The District also does not have enough nurses to staff at the proposed ratio, with UTLA's estimating the additional cost as $25,357,843.

The District estimates the cost to lower class size (between $200m and $275m depending on the document), increase counselors ($9m), nurses ($72m), and librarians ($10m) are vague round numbers with little or no detail as to methodology. For example, pages 499 through 510 of the District presentation purport to show that the District has lower class sizes than other District's. The slides are nearly illegible, without legend or even axes formats, and no source data.

The data presented by UTLA is considerably more detailed and creditable. UTLA has shown a total cost of a little more than $35m for their proposal for counselor, nurses, and librarian staffing ratios, less than the cost of a 1% salary increase for the UTLA bargaining unit. To the extent that $35m is less than the cost of 1%, I concur with Chair Weinberg's recommendation that an additional 1% to 3% be allocated to staffing ratios. The 3% level should be more than enough to reach the UTLA proposed staffing levels regardless of costing methodology.

Article XXVII – Shared Decision Making

Chair Weinberg accurately points out the lack of trust between the District and UTLA. In most cases of factfinding, I would agree with his recommendation. In this case, however, the District has earned the mistrust of UTLA, the parents, and the students, from years of false predictions of financial disaster and failure to invest in LAUSD classrooms.

The District claims to be a proponent of local control. Since the days of former Superintendent John Deasy, the LAUSD claims to put local decisions in the hands of the local schools in terms of allocating funding and resources. What this really means is that school Principals make dictatorial decisions based on marching orders from the District office. An example of this is LAUSD's explanation of their ending balance. The District claims that the large ending balance is mostly carryover funds that are unspent at local school sites. Yet the ending balance has grown each year for the past 5 years, as Chair Weinberg notes. It is inconceivable that most local school sites, if given the choice, would refuse to spend money allocated to them to increase resources – unless, they were also told not to spend the money, their choices on what to spend the money were too limited, or the choices were resources the schools already had.

UTLA's proposals seek to change the decision-making paradigm from one person – the Principal – to a committee. Not simply shared decision making between the Union and the District, but shared decision making that includes elected parents, students, community members, and school staff as well as the Principal. This is similar to the School Site Council model that already has a proven track record with Federal Title I funds (School Site Councils are legally required).

Local School Leadership Councils already exist at some LAUSD sites and function well. The UTLA proposal would increase the LSLC's work to include student discipline and school climate plans, professional development, and school-based funding. It is both common sense and research supported that the two people who know what a child needs are the child's teacher and parents. The only reasons to exclude these two groups of people in deciding how best to serve students are an unholy allegiance to singular power and/or an agenda to slowly cripple schools to the point of failure for privatization purposes.

Although I agree with Chair Weinberg that there exists insufficient trust between the District and UTLA, there is an exceptional degree of trust between parent groups, parents in general, students, and UTLA to make this model work. I would recommend the parties adopt the UTLA proposal on Local School Leadership Councils.

<u>New Article – School Accountability</u>

I concur with Chair Weinberg's recommendation to agree to the UTLA proposal on school accountability.

UTLA presented significant evidence of widespread problems with co-located charter schools, including testimonials from parents and teachers. Problems of co-located charters include noise complaints from charters convening a dance class next to an academic classroom which disrupts learning, security issues from failure to follow the visitor policy, and use of the LAUSD facilities and resources that are not part of the charter school such as custodians and restrooms. Other examples include the District calling a computer lab an empty classroom when the lab is in fact used intermittently and Principals not giving teachers copies of the shared use agreement. In the past there were co-location coordinators, who were paid a stipend, but LAUSD unilaterally removed these positions.

The District claims it is not subsidizing charter schools, yet the District not only allows the UTLA cited conditions to continue but the District does not even collect the legally authorized 3% oversight fee from charter schools. The District claims at every turn to be nearly bankrupt yet fails to collect appropriate fees from co-located charter schools.

The bargaining history demonstrates that UTLA made proposals to increase green space for students by removing unused and often in disrepair bungalows. The District cites declining enrollment, with students moving to independent charter schools, for its disingenuously asserted

pending financial collapse. If the District really were going bankrupt because students were leaving for charter schools, if the District really wanted to retain students, and if there weren't a pro-charter school and privatization school board block with an investment banker Superintendent, wouldn't the District remove those bungalows and return the grass that was taken from the children? Unsurprisingly, the District threatened to file legal action against UTLA unless they removed this proposal prior to declaring impasse.

LAUSD knows exactly what it is doing with its current policy. It is subsidizing small independent charter schools that could not otherwise exist. This is confirmed by the LACOE. The letter from LACOE on page 334 of the District presentation notes that LAUSD is required to monitor the fiscal solvency of charter schools it has authorized. Over the course of the 17-18 and 18-19 years, as many as 27 charter schools the District is required to monitor have negative ending balances, totaling a net negative $20.9m to negative $26.9m.

The UTLA proposal requires logical solutions for an illogical construct. Timely notice from the District to UTLA, a co-location coordinator to work with the site administration in mitigating problems at co-located schools, involvement of parents and educators at school sites in the development of shared use agreements, and an advisory committee to ensure on-going parent and teacher input. The cost for this is de minimis with untold benefits to improved co-location issues.

Article XXV – Academic Freedom

I concur with Chair Weinberg's recommendation to reduce testing; however, I would fully accept the UTLA proposal rather than implement a pilot project.

As any parent or mature student can tell you, students take too many needless exams. We have created a condition in this country where we take tests in order improve how we take other tests in order to achieve perfection on state and/or federal mandated standardized tests. The purpose of testing has become subverted from a tool to increase learning to an unreliable indicator of success.

UTLA asked LAUSD for the number, type, time spent, loss of instructional time, and cost of every test it required students to take. Most of the data supplied by LAUSD showed that the District itself does not know how long it takes to administer or interpret the tests and cannot quantify the loss of instructional time.

Let that sink in. The administration of LAUSD claims all these tests are necessary and will tell us something, yet they can't even tell us how long each test takes? Any fully credentialed teacher in an appropriately sized class will be able to tell you where her students are excelling, where they need additional support, and what kind of assessment tools will be effective with her students.

Despite LAUSD's inability to produce any meaningful data, we know one thing with absolute certainty. Every hour spent on a needless District required test is an hour that could have been spent on instruction.

I concur with Chair Weinberg's recommendation regarding this proposal but do not see the benefit of a pilot project. UTLA's proposal provides for teacher discretion, so individual teachers, or grade levels, could choose to use existing District offered non-mandatory tests and assessments. Nothing precludes this. A pilot project is normally used to trial and error a new program and I do not see any benefit to doing this with regards to the testing issue.

New Article – Special Education

I concur with Chair Weinberg that this new article should be included in any recommended settlement. I differ in what should be included in the new article.

Currently, there is a shortage of Special Education teachers making it more difficult for a new Special Education teacher to adjust. Assigning a mentor to new Special Education teachers seems a common-sense approach to providing the necessary guidance that new teachers need.

Special Education teachers are drowning in paperwork. IEP's take a considerable amount of time and Special Education teachers frequently find themselves in extended meetings, stuck in the middle between parents who want as much support as possible for their child and administrators who want to provide as little resources as possible. A few days release time to ensure compliance with required reporting is reasonable.

I concur with Chair Weinberg on reducing Special Education class size. UTLA presented three different options for reducing class size on page 343 of the UTLA presentation. Of these three proposals, Option C deals with direct class size reduction and has three levels of reduction. The most expensive level would cap class size at 6 and cost an additional $90.5m, however, capping class size at 8 or 10, would have no additional staffing cost. I would recommend adopting the UTLA proposal because it offers a reduction in current Special Education class size but leaves the discretion to the District of how far and at what cost to cap Special Education classes.

Article XI – Transfers

I concur in part and dissent in part with Chair Weinberg's recommendation. Obviously, I concur with respect to Chair Weinberg's recommendation for those areas that the parties have reached agreement and I concur with his recommendation on seniority.

However, the real crux of this proposal deals with LAUSD unilaterally converting neighborhood schools into magnet schools and displacing both students and teachers. This does not improve attendance or attract students, rather this process tends to segregate students much like charter schools have consistently been shown to do. As the parties agree, the majority of LAUSD students are impoverished. While a flashy magnet school might bring in some students from another neighborhood, whose parents have the ability to take them and pick them up from school each day, District resources are better spent on ensuring the basic needs of children who live in the area of their neighborhood school are met, particularly with impoverished students whose parents likely work two or more jobs.

This isn't to say that there shouldn't be magnet schools or a process to convert a neighborhood school into a magnet school. UTLA is not opposed to magnet schools in general. The UTLA proposal seeks to place the decision to convert a neighborhood school into a magnet school at the local school site, something the purportedly local control friendly LAUSD should agree with.

UTLA proposal would require that a super-majority (60%) of teachers vote for a school conversion. This proposal is consistent with language in comparable nearby school districts, Santa Monica for example that requires a 66% super-majority (pages 74-75 of their CBA), that is either contained in an explicit school conversion process, consultation procedures, or in the ability of the local school site to vote to waive certain portions of the CBA. UTLA would also

prohibit the District from requiring teachers to reapply to teach at the school they have been assigned to, in some cases, for their entire teaching career.

Continuity is important to children. Students know not only their own teacher(s) but those that they are likely to have the following year. Parents likewise (at least at the elementary and middle school level), know their child's teacher and the teachers for the next school year. Continuity increases confidence and keeps students and parents comfortable. Unquestioningly, teachers and parents are the closest people to students and understand their needs, not the Principal or District office.

Requiring a 60% vote to convert a school to a magnet school provides for a greater cross section of opinions than currently exists and ensures greater buy-in from the staff. This can only benefit the students and community.

I would recommend that the UTLA proposal be agreed to in addition to those items previously mentioned in which I concur with Chair Weinberg.

Article X – Evaluation

I concur with Chair Weinberg's recommendation to accept the parties' proposed change from the Teaching and Learning Framework (TLF) to the California Standards for the Teaching Profession (CSTP). I do not agree that the change should be in a pilot project for several reasons.

As shown by the UTLA presentation, LAUSD is the only entity that uses the TLF. UTLA notes that the TLF is loosely created based on the work of Charlotte Danielson, who has since repudiated the TLF as an evaluation tool (page 238, 239 et seq). The District of course, relies on unsubstantiated assertions as mentioned previously without any supporting data. The CSTP evaluation instrument, however, is used by all but one of the comparable Districts. The CSTP is the industry standard for evaluation of California teachers.

The TLF has been the subject of considerably dispute between the parties going back two Superintendents. I seriously doubt either party would disagree that a pilot project would simply cause additional internal friction. Rather, I would recommend that the parties begin using the CSTP for evaluation beginning with the 2019-2020 school year.

Article XI-B – Master Plan

I dissent from Chair Weinberg's recommendation that both parties drop this proposal. In many factfinding hearings, particularly with over 20 issues pending, I would concur, however, LAUSD and UTLA will face difficulties complying with the recently passed Proposition 58 if the parties do not come to some agreement in this area.

Prop 58 not only removed restrictions from bilingual education but also provided an avenue for parents to demand their local schools to offer bilingual, biliterate, and immersion programs. On page 257 and 258 of the UTLA presentation, UTLA demonstrated significantly high numbers of students who speak a language other than English. This should surprise no one. What is surprising is UTLA's proposal to expand the availability of bilingual stipends actually saves the District $1m annually by reducing the stipend slightly.

The District repeats the same unsubstantiated assertions about heavy burden of proof and excessive cost on pages 483 – 485 of its' presentation. The District claims the proposal would cost $89m without any supporting data. UTLA, in stark contrast, demonstrates cost savings by calculating the number of teachers with appropriate bilingual credentialing, from data provided by LAUSD in October 2018.

Given the legal requirements of Prop 58, the extraordinary need for bilingual educators in Los Angeles, and UTLA's actual cost calculation which results in a slight cost reduction, I would recommend adoption of the UTLA proposal.

Article XXI – Adult Education

I concur in part and dissent in part with Chair Weinberg's recommendation on Adult Education. I concur that the agreed upon items should be included as a recommendation for settlement.

In addition, I would recommend that the District provide accurate information on adult education assignments, manageable class sizes, and a more consistent salary schedule. Neither party provided any detailed cost proposals, with UTLA proposing a salary schedule that is different from the status quo but cost neutral and the District claiming the cost at $23m. Adult education teachers, like any employee, deserve to have a consistent and predictable paycheck. The parties should agree upon a cost to implement this part of the proposal. Additionally, Adult Education teachers should be treated similarly to their K-12 peers and have a voice in their assignments through participation in an annual matrix process for their assignments.

Article XXII – Early Education

Chair Weinberg recommends the parties create an early education task force, which both UTLA and LAUSD have agreed to do. I concur.

I dissent, however, from the recommendation to drop all other proposals. Early education is commonly known to provide a solid foundation for success in elementary school. UTLA provided research demonstrating this on pages 266-276 of their presentation. With a large impoverished student population, LAUSD needs to invest in this area, and provide resources to struggling families who cannot provide the same resources wealthier parents can.

Currently, LAUSD early educators who have a bachelor's degree and teaching credential are paid on a lower salary schedule that their peers who teach kindergarten with the same level of education. LAUSD, again without a shred of data or evidence, claims the cost of this proposal to be $24m. UTLA, again using data provided by LAUSD, demonstrates on page 278 of their presentation that only 11 teachers would currently qualify to be placed on the same salary schedule as regular classroom teachers. The total cost for this, including the UTLA proposed salary increase of 6.5%, would be $17,237. Seventeen thousand dollars. LAUSD is simply stingy to reject this proposal. I doubt that there is a line-item in LAUSD's budget less than $20,000.

Early educators currently do not have a duty-free lunch break inclusive with an 8-hour work day, in stark contrast with 14 comparable districts that do provide a duty-free lunch break inclusive of an 8-hour work day. The District's unsubstantiated argument against this proposal on page 628 of their presentation, is essentially, early educators don't work as hard as regular teachers. I doubt the early educators, or anyone who has dropped their children off at an early ed center, would agree.

Early educators have more than one work schedule. UTLA proposes to place the UTLA representative for early education on the early schedule so that the representative can attend union meetings, which occur in the late afternoon. The District rejects this proposal, arguing on page 630, that it would show deference to one employee over another and cause strife. This is such a disingenuous remark that I would have more respect for LAUSD and its' presenter Mr. Green, if they had simply said they don't want employees represented by a union. It would at least be honest.

For these reasons, I would recommend the parties accept the UTLA proposals on Early Education.

Article IV – UTLA Rights

I concur with Chair Weinberg's recommendation on this issue, however, Mr. Green for the District made several arguments during the hearing about release time which I promised to respond to.

Specifically, Mr. Green made a lengthy argument about reimbursement for release time, arguing it was unlawful for the District to agree to anything except the entire cost for the employee to be released including statutory costs. In short, Mr. Green is wrong. There are three types of time off work under the EERA, the statute that controls K-12 collective bargaining in California. There is release time for the purposes of negotiations and grievance processing that the District must provide at no cost to UTLA. There is a statutory right for elected officers of the union to a leave of absence under Education Code section 44987, which does require the union to reimburse the District. The third type of time off work is negotiated release time. Release time (other than that granted by the EERA), and reimbursement – if any - is a mandatory subject of bargaining recognized by the Public Employment Relations Board. (See *Centinela Valley Secondary Union High School District,* PERB Dec. No. 2378-E, (2014))

Remaining Issues

I concur with Chair Weinberg's recommendations as to the remaining issues, except as I have noted otherwise above.

In conclusion, I would emphasize Mr. Good's opening statement to the hearing panel that UTLA does not have honest bargaining partner that acts with integrity in the current makeup of the LAUSD. If LAUSD had acted with integrity, there would have been explicit counter-proposals which would have helped the panel narrow the issues down to achieve a rational settlement. If LAUSD really wanted to invest in its schools, it would have agreed to a pilot program for community schools and adopted many of UTLA's proposals which benefit students. If LAUSD were truly concerned about a pending insolvency, LAUSD would call for a moratorium on charter schools to stem declining enrollment. Rather than simply complain in the press about a lack of adequate funding and do nothing, LAUSD could partner with UTLA for a 2020 funding initiative. Unfortunately, LAUSD does none of these.

In my seventeen years working with labor unions, I have been called on to help settle countless bargaining disputes in mediation and sat on many factfinding panels. I have never seen an employer that was intent on its own demise. The students of LAUSD deserve better and the LAUSD should agree to the UTLA proposals which promise the schools LA students deserve.

Dated December 16, 2018 _____

Vern Gates: Union Panel Member

Findings and Recommendations Pursuant to California Government Code section 3548.2
PERB Case # LA-IM-4001-E
****

In the Matter of an Impasse Between
Los Angeles Unified School District
United Teachers Los Angeles
****

Concurrence Of Panelist Adam Fiss:

I concur wholeheartedly with the vast majority of the Neutral Factfinder's Findings and Recommendations. I write separately only to clarify a few facts and highlight a few areas of elaboration or disagreement.

With respect to class size, while I appreciate that the Neutral had limited time to verify the numbers on class size averages, the official California Department of Education figures are accurate and reflect that of the 10 largest school districts in the State, LAUSD is second only to San Francisco Unified in lowest class size averages, as reflected in the following chart:

Rank	School District	Class Size Average
1	San Francisco Unified	25.10
2	***Los Angeles Unified***	***25.94***
3	Fresno Unified	27.31
4	San Diego Unified	28.29
5	Elk Grove Unified	28.56
6	San Bernardino City Unified	28.94
7	Santa Ana Unified	29.33
8	Capistrano Unified	29.66
9	Long Beach Unified	30.04
10	Corona-Norco Unified	30.69

With respect to the deletion of Section 1.5 from the class size article, I want to emphasize that it will be important to negotiate safeguards that allow for deviation from the agreed-upon new re-benchmarked figures to ensure sufficient flexibility during times of economic duress.

I also want to clarify that whether it will be possible to return to averages and maximums from figures that have not been in place for more than 10 years will depend on a tradeoff between class size and compensation. For now, the agreed-upon figures contained in the 2017 LAUSD/UTLA MOU remain the most realistic figures.

With respect to the District's reserves, I want to clarify that some of the reserve sums mentioned are not unrestricted because they include funds that are allocated to the local school cites to expend consistent with the Local Control Accountability (LCAP).

With respect to expanding the scope of union representation beyond discipline, this is a subject of bargaining that is nonmandatory, should not have been insisted to impasse, and cannot be recommended.

With respect to the few items that call for limiting District discretion in matters of assignment, testing, or selection, I believe any such limitation should be carefully circumscribed.

I disagree with the recommendations on Article XXXI-Miscellaneous, and on a new School Accountability provision.

With respect to the remaining items, I concur that some pilot programs may be appropriate, but the nature and scope of those pilot programs would need to be carefully targeted. In addition, with respect to the suggested pilot program in Article XXV, Academic Freedom and Responsibilities, allowing teacher determination of testing beyond mandatory testing, I disagree with this recommendation because this matter is not a mandatory subject of bargaining (i.e., only appropriate for consultation). The pilot would also lead to inconsistent (non-uniform) student testing across the District and from classroom to classroom.

Dated: December 17, 2018

Adam J. Fiss

Adam J. Fiss, Panelist

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December 17, 2018

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Re: Factfinding Panel Report Case No. LA-IM-4001-E
LAUSD/UTLA

Dear Parties:

Attached you will find the factfinding panel findings of fact and recommendations for terms of settlement as required under Government Code 3548.3. I hope these findings and recommendations can help the parties achieve a mutually agreeable resolution to this contractual dispute. If I can be of any further help to you please do not hesitate to contact me at any time. It was a pleasure to work with both of you.

Sincerely,

David A. Weinberg