

FACTFINDING REPORT AND RECOMMENDATION

In a Matter Between,

FREMONT UNIFIED DISTRICT TEACHERS
ASSOCIATION, CTA/NEA,

And

FREMONT UNIFIED SCHOOL DISTRICT,

Case No.: SF-IM-3443-E

HEARING DATE: APRIL 7, 2025

FACTFINDING PANEL

CHERYL A. STEVENS, IMPARTIAL CHAIRPERSON

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HEARING DATE: APRIL 7, 2025 - 1

Appearances By:

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PROCEDURAL BACKGROUND

The parties began negotiating their successor agreement in 2024 and bargained until impasse after twenty-seven bargaining session. During the twenty-seven bargaining sessions, the parties were able to reach tentative agreements on fourteen articles and jointly declared impasse on November 15, 2024. Thereafter, during mediation the parties reached agreement on three additional articles on February 10, 2025.

At the conclusion of the mediation sessions there were still four (4) articles in dispute including no agreement on salary increases. The mediator referred the parties to Fact Finding and on March 13, 2025, PERB notified the District and the Association that Cheryl A. Stevens had been appointed as the neutral chair for the Fact Finding Panel. The Factfinding hearing was held on April 7, 2025.

ISSUE

The parties presented the following issues to the Factfinding Panel:

1. Article 12 Class Size – Should the FUSD impose hard caps on the secondary class size and a maximum class size for kindergarten? If so, what should those maximum caps be?

2. Article 23 Fringe Benefits- Should FUSD pay the first \$1000 towards the health insurance premiums paid by those employees who secure their health insurance through the District? If so, for what period of time?
3. Article 24 Salary – Should there be a wage increase for the next two years and if so, at what rate?
4. Article 36 – How many psychologists should be assigned to Special Education and is that number exclusive or inclusive of psychologist serving special categories of students?

STATUTORY CRITERIA

California Government Code Section 3548.2 sets forth the criteria that factfinders must consider in matters such as this one:

1. State and Federal laws that are applicable to the Employer.
2. Stipulation of the parties.
3. The interests and welfare of the public and the financial ability of the public schools.
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 good 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

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

4 **FACTUAL BACKGROUND**

5 The Fremont Unified School District (“FUSD” or “District”) is located in the City of
6 Fremont, California and serves nearly 33,000 students and employs more than 3,000 teachers and
7 staff in 43 schools consisting of 29 elementary schools, 5 middle schools, 5 comprehensive high
8 schools, 1 alternative school and 1 Continuation High School in addition to preschool programs
9 and an Adult School. The FUSD is a high performing district with a 93.5% graduation rate
10 which is well above the California average. Fremont, California draws students from a diverse
11 socio economic, ethnic and linguistic background. The City has once again been voted as the
12 happiest city in the United States and the average years of service for teachers in the District is
13 ten years.
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16 The District is a public school employer within the meaning of Section 3540.1(k) of the
17 Educational Employment Relations Act (“EERA”). The Fremont Unified District Teachers
18 Association (“FUDTA” or “Association”) is the recognized employee organization within the
19 meaning of Section 3540.1 of the EERA and has been the duly recognized representative of
20 2,273 certificated non-management members of the bargaining unit of which 442 certificated
21 members use District healthcare.
22

23 The parties’ efforts to negotiate a successor collective bargaining agreement ended in
24 impasse after twenty-seven negotiating sessions. Even though the parties were able to reach
25 agreement on fourteen articles, there were still four significant articles that remained in dispute
26 and unresolved when the parties jointly declared impasse on November 15, 2024. The parties
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1 were unable to reach agreement of any kind on wages. At the beginning of the fact finding the
2 parties were far apart. The District was prepared to pay an increase of 1.5% effective July 1,
3 2024 and a one time pay increase of 3.5%, while the Association sought a 5% ongoing increase
4 for three consecutive years effective July 1, 2024, July 1, 2025 and July 1, 2026 in addition to
5 fringe benefits for dental and health insurance.
6

7 **A. Financial Data**

8 The evidence presented by the parties is in dispute as to whether the District has the
9 financial means to pay the Association's proposed wage increase. The Association contends that
10 the LCCF revenues have been steadily increasing since 2019-2021 (FUDTA Exh. 13) and that
11 there has also been a constant increase in the ADA which directly impact the revenue the District
12 receives. These sources of income have historically resulted in a surplus according to the
13 Unaudited Actuals compared to the projections which according to the Association should
14 provide the District with sufficient resources to fund wage increases.
15

16 Furthermore, the Association maintains the District spends significantly more on books
17 and supplies than other districts and many of these resources can and should be reallocated to
18 prioritize the students and the Association as a way of demonstrating their support for a
19 competitive school district that is beneficial to the entire community. The Association insists the
20 District is not operating in the red; but rather ended 2023-2024 with a very healthy Unrestricted
21 Total Reserve of \$75.4 million enough to adopt the Association's wage demand. (FUDTA Exh.
22 14) The Association insists the Unaudited Actuals are the best indicator of the District's
23 financial ability to pay the wage increase as proposed by the Association.
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25 Alternatively, the District explained that a 15% or even an 8% salary increase in General
26 Fund expenditures is considerably more than the District can manage based on the declining
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1 enrollment; the low reserve balance; the end of the one-time state and federal pandemic related
2 funding; the \$500 million in operating expenses in 2023-2024 and the cost any increase will have
3 s approximately \$17,000 and the fact that any wage increase is augmented due to compliance
4 with the “me too” commitment to other bargaining units. (District Exhs. 1, 5, 6, 7, 8, 12 and 15)
5 Furthermore, based on the declining enrollment and attendance, the reduced funding the District
6 will receive from the State, and the amount of the District’s unrestricted revenue significantly
7 limits the District’s ability to engage in deficit financing to its detriment. The District therefore
8 believes it has offered a fair and equitable wage consistent with the EERA guidelines.
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10 **B. Wage and Benefit Comparison**

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12 Another statutory criteria to consider is a comparison of the wages, hours and conditions
13 of employment of the employees involved in this Factfinding compared to the wages, hours and
14 conditions of employment of employees working in comparable positions and comparable
15 communities. FUDTA presented exhibits that compared their wages with ten other unified
16 school districts in the Bay Area. Based on FUDTA’s comparison charts, their members are at
17 the low end of the fringe benefits and salary charts. (FUDTA Exhs. 12B and C) The District on
18 the other hand relied on twenty districts including five of the same school districts in the
19 Association’s list of comparable districts; however not all of the districts included in the
20 District’s list were unified school districts and as a result the District finished at the top of the
21 rankings on wages and fringe benefits compared to the placement when viewed beside the
22 smaller list of unified school districts. (District Exhs. 28 and 29) Accordingly, I think the
23 Association’s reliance on the ten unified school districts for comparison purposes is a more
24 accurate and appropriate comparison.
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1 **C. Non-Wage Related Issues**

2 During the presentation the parties spent a considerable amount of time discussing class
3 size and changes to Special Education. While the Association maintains the collective
4 bargaining agreement should be modified to reflect class size maximums or caps instead of
5 goals, the District maintains that such a change would actually have an economic impact and
6 could force the District to make significant changes to campus environments to avoid exceeding
7 the proposed caps. Although there was some negotiation that occurred on this issue during
8 Factfinding, for the most part the District stood firm on its position to retain status quo as to
9 goals instead of caps at the secondary school level and there was some agreement to adjustments
10 to class size at the kindergarten and primary school levels. Accordingly, the Panel recommends
11 a maximum of 24 students for transitional kindergarten (TK) at 24 and maximum of 30 in
12 kindergarten to fifth grade while retaining the concept of goals and no caps at the secondary
13 school level. There simply was not sufficient evidence presented at the Factfinding to justify a
14 shift from goals to maximums at the secondary school level or in the Special Education classes.
15 Perhaps this is a topic that can be explored further during the contract reopener.

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19 Another non-wage related issue that was the subject of considerable discussion involved
20 Article 36 Special Education. Although the parties seemed to have resolved many issues before
21 Factfinding there were still unresolved issues regarding Article 36.10.2.1. Although the parties
22 agreed on an increase from 38.5 FTE budgeted Special Education positions to 41 FTEs there
23 remained a dispute as to whether the increased in positions should include any qualifying
24 language. In as much as the article refers to a minimum of 41 positions, the Association's
25 request for the additional qualifying language does not seem outline as it merely states that other
26 psychologists could be hired and that the 41 positions do not reflect a maximum number of
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1 psychologists supporting the Special Education department. In light of the unique issues
2 associated with this population of students, it seems appropriate to allow room to augment the
3 number of psychologists should the conditions require additional support.

4 **DISCUSSION AND RECOMMENDATION**

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6 It is the role of the Panel to apply the relevant factors set forth in EERA, to the facts
7 underlying the impasse presented, and render its best recommendation considering those factors.
8 The factors that apply are discussed herein.

9 10 **A. The Interests and Welfare of the Public and the Financial Ability of the Public** 11 **School**

12 The parties disagree on whether the Association's proposed wage increase is in the
13 best interest and welfare for the community. The Association argues that the current and District
14 proposed wages are not competitive; and when compared to the other ten neighboring districts,
15 FUDTA members are the third lowest paid educators in terms of wages and the second lowest in
16 terms of benefits. The Association insists that there are available unrestricted reserves to fund
17 the wage increase and the District can reallocate resources to finance the proposed wage increase
18 because the teachers are struggling to support their families on their current salaries. The
19 Association maintains that the District can retain talented educators and make them feel valued
20 by adequately and competitively compensating them in a way that demonstrates the District is
21 committed to investing in their teaching staff.

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24 The District insists it does not have the financial luxury to offer the Association the
25 increased wages that were demanded during the Factfinding for several reasons. First, the
26 District insists enrollment is declining, and even the District's offer a 4% wage increase over the
27 course of two years will cost the District \$3,481,00 per 1% increase for all employees. Based on

1 the additional expense of funding a wage increase for the other bargaining units pursuant the
2 existing “me too” provisions, at this time in the current questionable financial environment, the
3 District can only fund a 2% increase effective July 1, 2024 and another 2% increase effective
4 January 1, 2026. The District maintains that employee compensation increases have historically
5 exceeded both COLA and CPI. Furthermore, based on the declining enrollment, the District
6 receives less funding per student; yet the operating expenses continue to increase, and the
7 District has limited reserves available to fund the Association’s requested wage increase and
8 fund the related “me too” wages the other unions are entitled to receive. According to the twenty
9 comparable school districts relied on by the District, the District is in fact competitive as shown
10 by the evidence that the District ranks third with regard to a ten-year earnings calculation.
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13 While there is certainly merit to each side’s claims, the proposed ongoing 8% increase
14 exceeds the COLA and CPI and places FUDTA members well above the average. Additionally,
15 even though the comparables relied on by the District are broader and thus not a true
16 comparable, the Union has not met its burden of proof that the District has more non restricted
17 resources to fund the increase as requested.
18

19 The District maintains that it does expect to receive new ongoing revenue from the State
20 and that it will not be able to meet its financial obligations if they accept the Association’s
21 demand of an 11.48% wage increase.¹ (District Exh. 31) The Association’s demand far exceeds
22 the statutory COLA of 1.07% and is simply not an option. (District Exh. 30) Although the
23 Association’s demand of an 11% wage increase or even an 8% increase not including benefits
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28 ¹ The Association had amended its demand to an 8% wage increase by the end of the FactFinding session.
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1 would cause the District to operate at a deficit over the next two years, the Association should
2 receive more than a 1.5% increase in order to keep the District's educators competitive and to
3 help them keep up with the rising costs of living in the Bay Area. (FUDTA Exh. 12C)
4
5 Therefore, based on the financial data introduced during Factfinding and the Association's
6 inability to challenge the District's claims of significantly reduced revenue, a wage increase of
7 2% effective July 1, 2024 and another increase of 1% effective July 1, 2025 and a final increase
8 of 2% effective January 1, 2026 seems appropriate.

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10 While the parties were able to reach agreement on the increase of the employer's
11 contribution to cover dental premiums, an additional contribution from the District for those
12 Association members who have health insurance benefits through the District must be added to
13 the Salary and Fringe Benefit package. After reviewing the information regarding the
14 comparables, and considering the impact the full package would have on the District's ongoing
15 financial obligations and the other bargaining units, a \$1000 District contribution towards the
16 health insurance premiums for those FUDA members who have health insurance effective July 1,
17 2025 with no additional increases in 2026 is appropriate. (FUDTA Exh. 12B)

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19 **B. Comparison of the Wages, Hours, and Conditions of Employment of the**
20 **Employees with other Employees in Public School Employment in Comparable**
21 **Communities.**

22 Depending on which comparisons you accept FUDTA members are either at the bottom
23 of the heap (FUDTA Exhs. 12B and C) or somewhere near the top of a large list of comparable
24 school districts. (District Exhs. 28 and 29) Regardless of which list of comparable districts one
25 considers, there is no dispute the Association members are entitled to a wage increase at least to
26 keep in lock step with CPI.
27

1 Although the District insists it cannot sustain more than a 4 % increase over the course of
2 two years, the recommended additional 1% wage increase effective July 1, 2025 seems
3 reasonable under the circumstances based on the financial data we have at this time. While the
4 Association's demand for a total of an 8% wage increase over the course of two years in
5 addition to the demands on class size and contributions to health insurance premiums is not
6 completely supported by the evidence. Furthermore, the Association was unable to provide
7 adequate challenges to the District's financial analysis. The burden rests with the Association
8 and there was not enough information presented during the Factfinding to challenge the
9 District's claims of certain deficit spending and negative certification. (District Exh. 31)
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12 **C. The Consumer Price Index.**

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14 The data submitted by the District shows a CPI for the State of 2.40% for 2020-21,
15 6.60% for 2021-2022, 5.69% for 2022-2023 and 3.36% for 2023-2024. (Exh. 4) The District
16 intentionally excluded data for 2024-2025 because the average compensation was not available.
17 However, District's chart did compare the average teacher total compensation increases to the
18 COLA and CPI for the same time period. (*Id.*) According to this chart, with the exception of
19 2020-2021, the District has kept up with COLA in terms of the wage increases applied and
20 actually doubled State CPI in 2023-2024.² Furthermore, the projected COLA estimates for
21 2025-2026 is 2.26% with a total projection for the three-year period of 2024-2027 to fall
22 somewhere around 7%. (District Exh. 27) Therefore, the recommended wage increases of 2%
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28 ² The average total compensation increase in 2022-2023 and 2023-2024 were in fact less than the COLA for the same years although more than the State CPI. (District Exh. 4)

1 effective July 1, 2024, 1% effective July 1 2025, and 2% effective January 1 2026 should allow
2 the District to remain in line with both COLA and CPI and thus provide wages that will be able
3 to meet the high cost of living in the Bay Area.
4

5 **D. Any Other Factors Relevant to Factfinding.**

6 This catchall category considered in factfinding, includes factors which go to the
7 equities of each party's respective position. Here, there appeared to be a disconnect during the
8 Factfinding process, possibly as a result of the District's failure to respond to the Association's
9 last demand during mediation. Unfortunately, this apparent slight affected and hampered the
10 Factfinding process and instead of starting with a clean slate from the position where the parties
11 left off during mediation, the negotiations during Factfinding reverted back to an earlier demand.
12 While the Association disagrees, this bargaining strategy overshadowed the Factfinding process
13 and negatively impacted the Panel's ability to facilitate a solution or consensus on the
14 outstanding issues despite an early acknowledgment of the parties' respective positions and
15 desire for resolution during Factfinding. The Panel raises this issue here as a cautionary tale and
16 reminder to the parties to consider for their future bargaining relationship. The original
17 perceived slight and the subsequent reaction to the Association's response based on the
18 perceived slight contributed and in fact interfered with the Panel's efforts to resolve this dispute
19 during the course of a seventeen hour Factfinding.
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24 Going forward the parties should make every effort to preserve and promote good
25 labor/management relations.
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1 CONCLUSION

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3 Given the record as a whole, and the factors considered in making this evaluation and

4 recommendation, the Panel adopts the recommendations set forth herein as its recommendations.

5 Specifically, the recommendation of a 2% increase retroactive to July 1, 2024, an additional 1%

6 increase effective July 1, 2025 and another 2% increase effective January 1, 2026 for a total of

7 5 % wage increase over a two-year period plus a \$1000 contribution to health insurance

8 premiums for those affected employees, effective July 1, 2025. As for the non-economic

9 recommended changes to the successor agreement, the Panel proposes: no caps on class size for

10 secondary school or Special Education classes and a maximum of 24 students in TK and a

11 maximum of 30 students in K-5th grade.

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14 Additionally, the Panel recognizes the parties' prior agreement to increasing the number

15 of Special Education psychologists identified in Article 36 from 38.5 FTEs to 41.5 FTEs (Article

16 36.10.2) and supports the Association's request that the contract language allowing for but not

17 mandating additional psychologists for special categories of students to remain undisturbed. The

18 Panel further supports the following language changes to reflect the additional agreements

19 reached.

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22 □ Article 36.8.1:

23 o Unit members shall be offered training when instructional and/or

24 assessment models are modified, or a new adoption of curriculum is

25 implemented.

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☐ Article 36.9.1.5: (Program Specialists)

o The District will maintain no fewer than four (4) positions budgeted for special education services.

☐ Article 36.12.12: (Speech Language Pathologists)

o Case loads shall not exceed an average of fifty-five (55), up to a maximum of sixty (60) students with direct services, pro-rated for part-time Speech Language Pathologists.

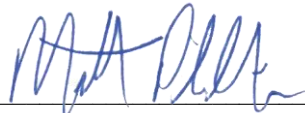
We conclude these recommendations are fair and equitable and consistent with the EERA guidelines.

Date: April 15, 2025



CHERYL A. STEVENS, Neutral Chairperson

CONCUR



MATT PHILLIPS, Associate Vice President

CONCUR

DARYL HEMENWAY, FUDTA/CTA

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1
2 ☐ Article 36.9.1.5: (Program Specialists)

3 o The District will maintain no fewer than four (4) positions
4 budgeted for special education services.

5
6 ☐ Article 36.12.12: (Speech Language Pathologists)

7 o Case loads shall not exceed an average of fifty-five (55), up to a maximum
8 of sixty (60) students with direct services, pro-rated for part-time Speech
9 Language Pathologists.

10
11 We conclude these recommendations are fair and equitable and consistent with the EERA
12 guidelines.

13
14 Date: April 15, 2025



15 CHERYL A. STEVENS, Neutral Chairperson

16
17
18 CONCUR

19 MATT PHILLIPS, Associate Vice President

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21
22 CONCUR



23 DARYL HEMENWAY, FUDTA/CTA
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PROOF OF SERVICE

I am over the age of eighteen years and not a party to the within action. My business address is 6114 LaSalle Ave. #612, Oakland, California 94611.

On April 17, 2025, I served the documents named below on the parties in this action as follows:

FACTFINDING REPORT AND RECOMMENDATION

	BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses noted below and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Lafayette & Kumagai LLP's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.
	BY OVERNIGHT DELIVERY: I enclosed the document(s) in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses noted below. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.
X	BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent from e-mail address bfuller@lkclaw.com to the persons at the e-mail addresses noted below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.
	BY PERSONAL SERVICE: I caused to be personally served a copy of the document(s) listed above on the parties at the addresses noted below.

MATT PHILLIPS, Associate Vice President, Management Consulting
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DARYL HEMENWAY
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
Executed on April 17, 2025 at Oakland, CA.



CHERYL A. STEVENS

HEARING DATE: APRIL 7, 2025 - 16