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THE CHARTER LAW FIRM

August 17, 2021

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VIA EMAIL ONLY

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**Re: Factfinding Proceedings Between
St. HOPE Public Schools and Sacramento City Teachers Association;
Charter School Panel Member Separate Concurrence and Dissent
PERB Case NO. SA-IM-3535-E**

Dear Ms. Mayne:

As the Fact-Finding Panel Member appointed by the St. HOPE Public Schools (“SHPS” or the “Charter School”), this correspondence constitutes my separate concurrence and dissent to each of the recommendations made in the Neutral Factfinder Panel Chair Recommendations (“Recommendations” or “Report”) arising from the impasse in negotiations over a first contract between SHPS and the Sacramento City Teachers Association (“SCTA”). Please attach this correspondence to your Recommendations prior to issuance to the parties and to the Public Employment Relations Board.

At the outset it should be noted that the Neutral Chair emailed me her draft Report at 12:09 PM today with a directive to provide this concurrence or dissent by 11:59 PM today. This is an egregious violation of SHPS’ due process rights, and has severely compromised my ability to respond and raise objections to factual and analytical errors in the Report. However, I have done my best to raise my concerns with the Report as best as possible within this timeframe.

Another important concern is that the Neutral Chair did not make any findings with respect to comparable schools (“...employees performing similar services...”) as required by Government Code Section 3548.2(b)(6). Charter schools are different from district schools in a number of significant ways legally and fiscally, as testified by SHPS’s first witness. The Union argued that Sacramento Unified School District and what it called “Sacramento City Unified School District charter schools” should be used as models for comparison, but these schools are “dependent charters” and therefore are not independent charter schools (like SHPS) which operate separately and distinctly from the school district granting agency. The teachers and other staff of dependent charter schools remain employees of their school districts, and there is no independent collective bargaining agreement. Dependent charter schools operated by the traditional school district board are subject to different laws, charter provisions, collective bargaining provisions, have greater economies of scale due to being able to tap into District administration and support services, and

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have access to significantly higher amounts of revenue and access to facilities without having to pay to lease them – making these schools a poor model for comparison to SHPS. SHPS also introduced evidence that the District is not in a good financial position as a result of agreements that it has made with this same union. Even assuming the District and its dependent charter schools are comparable – and they are not -- the Neutral Chair did not analyze in the Report how a much smaller charter school like SHPS could afford the provisions contained in articles proposed by the union when the District, with much greater resources, cannot do so.

SHPS proposed two (2) similar public charter schools for consideration as a proper comparison under the regulations. While SHPS rejected the Union’s attempts to consider dependent charter schools for purposes of analysis under Government Code Section 3548.2(b)(6), it did agree that two (2) of the independent charter schools mentioned by the Union in its opening statement, Education for Change in Oakland and Pacific Collegiate in Santa Cruz, could be considered alongside the two independent charter schools proposed by SHPS for purposes of this analysis. Regrettably, the Neutral Chair’s Recommendation does not include any analysis or findings on how SHPS’ wages, terms, and conditions of employment compare to any of these four comparison schools (the two proposed by SHPS and the two proposed by the union). Thus, the Report is grossly deficient and lacks foundation in the evidence that was presented at the hearing.

An additional concern centers around the Neutral Chair’s attempts to push the panel members into reaching tentative agreements on the articles in question before the finalization of the Report. Contrary to the Neutral Chair’s assertions, the parties did not reach tentative agreement on any of the articles during the factfinding process. While the Neutral Chair’s efforts to push the parties to reach agreement is commendable, in the end the transformation from traditional factfinding to refereed negotiations is not supported by the Educational Employment Relations Act.

Given the number of issues in dispute, the magnitude of the issues in dispute, and the complexity of issues relating to how these provisions in a collective bargaining agreement would impact student achievement for low-income students of color in Sacramento, we asked for two to three weeks to present our case. We were denied this request and only permitted a day and a half to present our case. However, we were assured by the Neutral Chair that she would read every document we would provide. This prejudiced our case, because it is now evident that the Neutral Chair did not read and take into consideration the written evidence that we introduced into the record, especially the four independent charter school collective bargaining agreements. These agreements demonstrate that SHPS’ proposals for all articles are reasonable in every respect for an independent charter school collective bargaining agreement. The fact that none of these bargaining agreement provisions are even mentioned in the Report, and instead the Neutral Chair



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just cites to statute without any evidentiary foundation, is a reflection of additional significant due process concerns.

Most concerning is an apparent bias that seemed to impact the Neutral Chair's decisions. For example, SHPS presented evidence that it is the most successful school in the State with a predominantly African-American enrollment. Specifically, Sacramento Charter High School consistently has between 92%-96% of its graduating seniors accepted into four year universities. Just this past year, in the midst of a global pandemic, 93% of SCHS's graduating seniors were accepted into a four year university. Furthermore, SCHS has 100% of its graduating scholars with disabilities accepted into a four year university compared to 15% in Sac City and 12% in the state of California. The charter school graduates close to 100% of its students. All of these accomplishments would be remarkable for any school, but all the more so for a school enrolling almost exclusively low-income students of color.. Yet these achievements were dismissed by the Neutral Chair with unfounded and unsupported accusations that the charter school must have implemented expulsions to reach the commendable results. Such suppositions are an insult to the SHPS scholars who have worked hard to achieve and the efforts of the teachers. The Neutral Chair also fails to consider how the proposals she is advancing will harm the education of these students. She focuses solely on the interest of the employees, at the expense of the community and students served by SHPS.

The fact is that SHPS is a high achieving school in a community that otherwise has been poorly served by the traditional public/district schools, and adopting the union's proposals would simply make SHPS replicate the poor student performance of traditional district schools. The fact is that the district school board voted to have SHPS take over Sacramento High School because the latter was a failing school which was facing state sanctions. The fact is that under the leadership of SHPS, Sacramento High School has been a model of achievement due in no small part to its educational model -- which includes an extended school year with additional professional development, longer school days, performance-based pay, and no tenure protections among other key elements of its instructional design. Regrettably, most of these elements were rejected by and omitted from the Recommendations. However, SHPS took great pains to introduce evidence about the much higher performance of students in SHPS versus the neighborhood school and the school district they would otherwise attend because there is a direct link between the bargaining agreement articles proposed by both sides and the performance of students in those respective schools. It is notable that there is zero evidence of the Neutral Chair analyzing any of this as is required by Government Code Section 3548.2(b)(3). This section requires that the panel consider the "interests and welfare of the public..."

Although the Neutral Chair has a lot of experience in negotiations, it was evident that she had no sympathy or concern for the plight of African American communities that SHPS serves.



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There is no evidence in the Report that she considered the community's need to have public schools that actually meet the needs of African American students or that enable them to meet state educational standards. This is a reflection, perhaps, of the privilege that white people have not to care about the performance of students of color in underperforming traditional schools that serve them. The failure to consider this need and balance it against the interests of employees is evidence of the systemic racism that SHPS was established to combat. Moreover, it is a failure to follow Government Code Section 3548.2(b)(3), which requires that the interest of the general public be considered.

Additionally, the Neutral Chair evidenced clear bias on several occasions during and following the hearing. First, during a private panel meeting before the second day of the two-day hearing when most of the SHPS evidence and testimony was introduced, she told the other panel members that there was clear evidence of "union avoidance" by the employer, based solely on the Union panel member's statement that typical negotiations sessions were one and one-half to two hours in duration. But at this point she had not even heard the bulk of the SHPS case about why its proposals were reasonable. This prejudging of the case was disconcerting and raises significant due process concerns.

Second, the Neutral Chair criticized the Charter School administration for not making itself available for more than two (2) hours for negotiations sessions, which is not uncommon for charter schools in which the administrative leader (in this case, the Chief of Schools) is directly responsible for the day-to-day operations of the school and cannot take off for an entire day, unlike the superintendent of a district who has several highly paid and experienced deputies and assistants who have an area of responsibility. In a charter school, the leader is responsible for observing and evaluating teachers, addressing teacher complaints, overseeing student discipline, overseeing employee discipline, meeting with parents to address concerns, meeting with law enforcement when they come to speak to a student, answering calls from the granting agency, addressing facilities issues, ensuring compliance with applicable laws and the charter petitions, and so on.

Third, the Neutral Chair at one point during the hearing made a statement about charter school academic performance being lower than traditional schools. There was absolutely zero testimony about this during the hearing. In fact, state assessment data demonstrates that this school's African American students are far outperforming all of the neighborhood and district schools that these students would otherwise attend. This judgement without any consideration of the actual facts and evidence introduced during the hearing is evidence of arbitrary and capricious behavior by the Neutral Chair.

Fourth, the Neutral Chairs Recommendations falsely claim that SHPS was represented by three (3) attorneys in the factfinding. In truth, three (3) attorneys attended the preliminary meeting



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because the Neutral Chair provided a limited timeline for the hearing, and the attorneys in our firm had conflicts that limited who would be available at given times.

Fifth, the Recommendations claim that the parties were in mediation for four (4) months, when there was no mediation of the contract articles, because the Union refused to offer or even consider any proposals other than the package it presented prior to impasse. The mediation that lasted for months concerned negotiations of proposals to implement distance learning during the COVID pandemic and then the subsequent return to in-person instruction and were completely unrelated to contract negotiations.

Sixth, the Neutral Chair's Recommendations inaccurately represent that "Following mediation, the parties had an agreement in concept for two articles, yet they were never signed by the parties." Again, the Union did not participate in the mediation and, as a result, no agreements in principle were reached during mediation.

Finally, the Neutral Chair and the Union panel member's concurrence both erroneously refer to tentative agreements reached following the closure of the factfinding hearing. The fact is that while the panel members had discussions over the preliminary recommendations, no tentative agreements were reached, and the parties remained far apart on the issues, as evidenced by the following analysis.

I now turn to each of the proposed articles.

I. Recognition Article

The dispute here centered around SHPS's objections to day-to-day substitutes not being specifically excluded from the unit consistent with PERB Order Ad-472. I concur with the recommendation of the Neutral Chair only to the extent it provides for this exclusion.

Except for this exclusion, the Recommendation supports the Union's proposal. One objectionable component is Section 4 which includes the statement that certificated duties and work be performed only by unit members and shall not be contracted out. Many certificated services have been and continue to be contracted out, and the people performing those duties were not permitted to sign recognition cards or otherwise counted for purposes of the calculation of whether the Union had majority support. Accordingly, I dissent with respect to this Section.

II. Association Rights Article



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The Neutral Chair recommends the Union’s proposal with modification. I can concur with some of the provisions, including Sections 2.1 (Meetings, Facilities, and Equipment), 2.2 (Information), 2.4 (Payroll/Dues Deduction), 2.8 (Meeting with the Chief of Schools), and 2.8 (No Reprisals).

Other sections are more problematic. With respect to Section 2.3 (Release Time) I concur with the Recommendation to limit the release for purposes of meeting and negotiating with SHPS to three (3) representatives. This number is far more reasonable than the six (6) requested by the Union which would negatively impact the instructional program as it constitutes more than ten percent (10%) of the bargaining unit. While I can concur with the provision that permits a total of up to ten (10) full workdays each year for the Union to select its members to attend Union training, I must dissent from the provision which requires SHPS to pay for salaries of the released unit members and their substitutes. As written, this provision would require SHPS to pay for releases for employees to have union training at taxpayer expense. This would force SHPS to redirect resources outside the classrooms that serve some of the city’s neediest residents for this purpose. The Union should have the right to release members for training, but at the very least it should reimburse the Charter School for the cost of the substitute. The testimony at the hearing demonstrated that the Union proposal relating to paying for union training is adverse to the “interest and welfare of the public”, which is a required consideration for factfinding under Government Code Section 3548.2(b)(3).

I must also dissent from the recommendation that SHPS recognize a “faculty advisor to the Board” since this a non-bargainable governance issue. Similarly, school personnel should not have to provide minutes of committee meetings and school bulletins when the unit members can forward these documents on their own to their off-site Union President. Neither Education for Change nor Pacific Collegiate, the two charter schools identified by the Union for comparison purposes, require minutes, agendas, or school bulletins. Finally, since Board agendas are posted physically and on school websites where any member of the public including union officials can review them, there is no compelling reason that school personnel need to email them to the off-campus Union President.

III. Hours of Work Article

There are three (3) issues in dispute. The first is the extended work year, which the Recommendations support. I therefore concur with this part of the Recommendations relating to the extended work year.



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A second issue is the length of the school day. The longer school day, in which teachers work eight (8) hour days, has been a critical component of SHPS's success serving low-income students of color. SHPS provided uncontroverted evidence of this at the hearing. In light of the demonstrated learning loss which has impacted all California students including SHPS scholars, it is even more critical that the teacher work day not be shortened from eight (8) to slightly more than six (6) hours as proposed by the Union and recommended by the Neutral Chair. This is insufficient to meet the needs of SHPS scholars – who need and deserve more time than the minimum amount of instructional minutes set by the State in order to stay safe and achieve grade level proficiency as evidenced by the testimony provided at the hearing. The testimony at the hearing demonstrated that the Union proposal is adverse to the “interest and welfare of the public”, which is a required consideration for factfinding under Government Code Section 3548.2(b)(3). It is improper and unlawful for the Panel not to consider this issue pursuant to this provision of law. As such, I dissent from the Report's recommendation on work day.

A third issue is the current requirement that teachers participate in three (3) parent-student activities of their choice in addition to orientation, back to school night, open house, and graduation/promotion. The Neutral Chair supports the Union argument, based on the practice in traditional district schools, that teachers must not be compelled to join other activities unless they volunteer and are paid. This recommendation is one of many examples where the Neutral Chair fails to recognize that charter schools are different from school district schools. Indeed, as schools of choice (for parents and students) it is incumbent on them to show that the staff is interested in the welfare of the families and in being part of the community. Uncontroverted evidence provided through testimony at the hearing demonstrated that these activities help build trusting relationships between families and teachers that are necessary to achieve the incredible results at the school. The testimony at the hearing demonstrated that the Union proposal is adverse to the “interest and welfare of the public”, which is a required consideration for factfinding under Government Code Section 3548.2(b)(3). It is improper and unlawful for the Panel not to consider this issue pursuant to this provision of law. Accordingly, I dissent from this part of the Recommendations relating to required activities.

IV. Management Rights Article

I concur with the Neutral Chair's recommendation with one exception, the deletion of Section 23.3 saying the article is not subject to grievance. Clearly, this article is the source of the employer's rights, not the rights of employees or their union. Accordingly, neither the union nor one of its members should be able to file a grievance. As such, I concur in



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part with the recommendation but dissent from that one provision within the recommendation.

V. Employment Rights Article

Needless to say, this was one of the most contentious articles during negotiations and factfinding. The Union pressed for a traditional model, as set forth in the Education Code, for a two-year probation followed by “just cause” status with respect to employment decisions. The problem is that this standard is what has contributed to the failure of many urban schools (including the predecessor to SHPS). SHPS’s proposal preserves the flexibility of “at-will” status. California is an “at-will” state and most charter schools in California have “at-will” employment. At-will employment is a term of both SHPS Charters and is therefore a requirement of each school’s contract with their authorizer and ultimately the State. SHPS is an at-will employer because teachers are professionals and should be treated and accountable like other professionals. SHPS students are typically not at grade level when they enter the school, so they cannot receive substandard instruction for even one year. SHPS simply cannot allow these students to continue to be failed by the public education system because this would create lifelong harm for these students and the public welfare. Maintaining a policy of employment at-will ensures that the Charter School remains focused on what is best for the scholars. SHPS believes that this policy is also in the best interest of employees because it prevents a situation where an employee is creating more work for other employees due to their failure to do their part to achieve academic achievement goals for SHPS students.

The testimony at the hearing demonstrated that the Union proposal is adverse to the “interest and welfare of the public”, which is a required consideration for factfinding under Government Code Section 3548.2(b)(3). Further, the Panel must consider, “State and federal laws that are applicable to the employer” under Government Code 3548.2(b)(1). As demonstrated during testimony at the hearing, a failure to comply with a charter provision allows the charter authorizer to close a charter school pursuant to Education Code 47607. Thus, a charter school is legally mandated to comply with its charter under penalty of school closure. It is improper and unlawful for the Panel not to consider this issue pursuant to both of these provisions of law.

Accordingly, I dissent from the recommendation on this Article.

VI. Reductions in Force Article



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The Neutral Chair recommended the Union's proposal with one modification: deleting the prohibition on layoffs during the school year. I concur with this part of the recommendation in this Article. Layoffs, when they occur, are tragic to the employee, the students, and the instructional program. At times, however, they are necessary when a school is faced with unexpected losses of enrollment or revenue.

I dissent from the portion of the Recommendations for layoffs based solely on seniority contained in this Article. This was one of many instances where the Neutral Chair based her decision on the practice in district schools, thus apparently ignoring the evidence that charter schools are required to show student performance gains in order to be renewed every five (5) years. As such, SHPS must keep the highest performing teachers irrespective of the number of years of service or seniority. A system in which SHPS would be forced to release some highly effective teachers and retain less effective employees solely on the basis of seniority would threaten its continued existence and is not in the best interest of students or the public welfare – a required consideration under Government Code Section 3548.2(b)(3).

An additional issue is the thirty-nine (39) month rehire list, which is far too long for a small charter school. Twelve (12) months or even fifteen (15) months would be more reasonable and is consistent with many other charter school collective bargaining agreements. Accordingly, I dissent from this part of the Recommendations contained in this Article.

VII. Class Size Article

The Neutral Chair recommended the Union's proposal, which had class sizes that are not operationally or financially feasible as demonstrated by the evidence that was submitted to the panel by SHPS. SHPS operates in limited space and is not able to open new classrooms let alone new campuses. It is in the interest of both teachers and students that the school enroll additional students to the extent it does not harm student outcomes because this increases the economies of scale of the school and will allow it to dedicate additional funding toward teacher salaries and the educational program.

To be specific, the difference in revenue between what SHPS proposed and what the Union proposed was \$1,216,019 for PS7 and the difference in revenue was \$453,644 for Sacramento High School.

The revenue from these class sizes allows SHPS to operate SHPS' inclusion model which allows for scholars with disabilities to receive additional support inside the general education learning environment. This model requires a lot more staff than the traditional



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Special Day Class model but is best for SHPS scholars and best for creating a culture of inclusivity. As mentioned in the testimony of Ms. Wehrly at the hearing, SHPS is able to achieve much greater results with its scholars with disabilities because of SHPS' staffing model that allows SHPS to operate an inclusion model. These additional staff members also must be taken into consideration as you compare the SHPS model to that of any comparison schools, which was not done by the Neutral Chair.

It should also be noted that the pupil/teacher ratios proposed by SHPS are class maximums, not averages. SHPS has to account for attrition that will occur throughout the school year. SHPS has to start with larger class sizes at the beginning of the year so that it is financially stable as the school year progresses and scholars matriculate elsewhere.

The testimony at the hearing demonstrated that the Union proposal is adverse to the "interest and welfare of the public", which is a required consideration for factfinding under Government Code Section 3548.2(b)(3). Accordingly, I dissent from the Recommendations on this Article.

VIII. Assignments and Vacancies Article

I concur with the Recommendations on this Article.

IX. Compensation Article

SHPS presented its unique performance-based compensation schedule in which teachers who earn higher performance ratings are rewarded with salary increases – which is directly aligned with the academic performance goals of the schools. SHPS also presented evidence that its teachers receive higher compensation than their counterparts in the Sacramento City Unified School District ("SCUSD"). The Neutral Chair rejected this form of compensation without any evidence, stating performance pay is not the standard in education and that teachers are not motivated to a better job by the prospect of higher pay. Specifically, she stated that in her opinion the "good" teachers will be continue to be good and will work harder regardless of their level of compensation, so there is no reason to compensate higher performing teachers at higher rates. Neither the Union nor the Neutral Chair offered any evidence to support this claim, while in contrast SHPS provided uncontroverted testimony from a charter school employee indicating that it was a motivating factor for better performance and attracted her to move from out of state to accept employment with the Charter School.



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Once again, charter schools are expected to be different and innovative. SHPS should not be punished for doing what the legislature intended.

More importantly, the SHPS model has proven itself with demonstrated student performance gains that rival even schools in wealthier communities. Forcing SHPS to conform to the “norm” of district schools would undermine all of the performance gains achieved by its scholars – and run contrary to the intent of the school district in approving this charter school to reform the failing high school of the district. The system has proven itself and should not be sacrificed in the name of conformity.

The SHPS performance-based compensation system recognizes that the teacher is a professional who directly impacts scholars each and every day, that it is the teacher who brings the SHPS mission to life, and that the teacher should be compensated accordingly. In every other profession, compensation is based directly on performance, not just on years of service. In the SHPS system, teachers receive increased compensation year after year, and achieve even greater increases as they develop their craft and become effective and then highly effective. The system works: Scholars benefit from the improved performance, and the teacher receives higher compensation.

Conversely, the testimony at the hearing demonstrated that the Union proposal is adverse to the “interest and welfare of the public”, which is a required consideration for factfinding under Government Code Section 3548.2(b)(3). I therefore dissent from the Recommendations on this Article.

X. Employee Benefits Article

I dissent from the Recommendations that SHPS pay the equivalent of one hundred percent (100%) of the medical premium for Kaiser for all employees and their families, and one hundred percent (100%) of dental and vision premiums for employees and their families. As demonstrated during the hearing, providing such expensive benefits is placing districts including SCUSD in financial jeopardy – and the financial ability of the public school employer must be taken into consideration pursuant to Government Code Section 3548.2(b)(3) It is improper and unlawful for the Panel not to consider this issue pursuant to this provision of law. This issue was one of many in which the Neutral Chair based her Recommendations on the practice in Sacramento City Unified School District rather than charter schools – the latter of which has significantly less revenue and significant more expenses per student. As a charter school, SHPS operates with less revenue and more expenses and currently operating on a tight budget.



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Additionally, as referenced in testimony at the hearing, providing the educational program required by its charter requires SHPS to maintain a staffing model that is more costly than the Sacramento City Unified School District and many other charter schools. The Panel must consider, “State and federal laws that are applicable to the employer” under Government Code 3548.2(b)(1). As demonstrated during testimony at the hearing, a failure to comply with a charter provision allows the charter authorizer to close a charter school pursuant to Education Code 47607. Thus, a charter school is legally mandated to comply with its charter under penalty of school closure. It is improper and unlawful for the Panel not to consider this issue pursuant to this provision of law.

But even charter school collective bargaining agreements that the union suggested it could live with as a basis for an agreement (Education for Change and Pacific Collegiate) do not pay one hundred percent (100%) of premium costs, making the Neutral Chair’s recommendation unsupported by the evidence even the Union presented and is thus inconsistent with the required comparison under Government Code Section 3548.2(b)(4). It is improper and unlawful for the Panel not to consider this issue pursuant to this provision of law.

XI. Discipline and Discharge Article

I concur with the Recommendations except for Section H.b: Disciplinary documents should be maintained in the Personnel File for four (4) years, not merely three (3) years, consistent with education industry practice and Commission on Teacher Credentialing standards. See Education Code Section 44944. The Panel must consider, “State and federal laws that are applicable to the employer” under Government Code 3548.2(b)(1). It is improper and unlawful for the Panel not to consider this issue pursuant to this provision of law.

XII. Discrimination Article

I concur with the Recommendations.

XIII. Evaluation Article

As discussed above, SHPS has a unique performance-based compensation program which is critical to its success and long-term survival. The SHPS evaluation system is designed to support and coach teachers to allow them to realize their potential and develop into the best teachers they can be and then compensate them as professionals based on their improved performance for the impact they are having on the minds of SHPS scholars.



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The Neutral Chair's Recommendation recognizes the rubric but then proceeds to undermine the system by incorporating the Union's typical district-style evaluation proposal. Again, charter schools are expected to be different, to innovate, and prove themselves with student performance gains every five (5) years. Education Code 47601 provides:

It is the intent of the Legislature, in enacting this part, to provide opportunities for teachers, parents, pupils, and community members to establish and maintain schools that operate independently from the existing school district structure, as a method to accomplish all of the following:

(a) Improve pupil learning.

(b) Increase learning opportunities for all pupils, with special emphasis on expanded learning experiences for pupils who are identified as academically low achieving.

(c) Encourage the use of different and innovative teaching methods.

(d) Create new professional opportunities for teachers, including the opportunity to be responsible for the learning program at the schoolsite.

(e) Provide parents and pupils with expanded choices in the types of educational opportunities that are available within the public school system.

(f) Hold the schools established under this part accountable for meeting measurable pupil outcomes, and provide the schools with a method to change from rule-based to performance-based accountability systems.

(g) Provide vigorous competition within the public school system to stimulate continual improvements in all public schools.

As evidenced in the testimony provided at the hearing, the current evaluation system has proven its effectiveness as it is a critical element in the Charter School's unparalleled success. There was no evidence introduced by the Union that demonstrated that the current performance pay system was ineffective, but SHPS did introduce significant amounts of testimony in support of the plan and its effectiveness in assisting SHPS with achieving its student performance outcomes. It should not be scrapped in the name of conformity with the same traditional schools which previously failed the students who were rescued by SHPS. The Panel is required to consider the evidence on the record that the change proposed by the Union is not in conformity with the interests and welfare of the public (including but not limited to the students) under Government Code Section 3548.2(b)(4) but there is no evidence that the Neutral Chair has done so. It is improper and unlawful for



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the Panel not to consider this issue pursuant to this provision of law. Accordingly, I concur with the decision to retain the SHPS evaluation rubric but otherwise dissent from the Recommendations regarding this article.

XIV. Personnel Files Article

I concur with the Recommendations regarding this article.

XV. Leaves of Absence Article

I concur with the Recommendations regarding this article.

XVI. Safety Article

I concur with the Recommendations regarding this article.

XVII. Grievance Procedure Article

The Neutral Chair recommends the Union proposal with a modification substituting the State Mediation and Conciliation Service for the American Arbitration Association. I concur with this modification. I dissent from the part of the Recommendations regarding the Union's section 17.4.14, which mandates "binding" arbitration and recommend "advisory" arbitration. Since the SHPS Board has fiduciary responsibility over SHPS, it rather than an outside entity should have ultimate authority over employment decisions. Other than Section 17.4.14, I concur with this part of the Recommendations.

XVIII. Personal and Academic Freedom Article

The Neutral Chair recommended the SHPS proposal with modifications, including adding three (3) sections from the Union's proposal. I concur with this part of the Recommendations.

XIX. Additional Rights Not Specified Article

This article is an outlier relative to other charter school agreements. The intent of the Union's proposal is to require adherence to the Education Code in regard to all employment matters, which is preempted by Education Code 47610 that exempts charter schools from nearly all laws governing school districts including the employment laws in question and contrary to the legislative intent regarding the purpose of charter schools, which were given



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Charter School Panel Member Separate Concurrence and Dissent

PERB Case NO. SA-IM-3535-E

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flexibility from the bloated and antiquated statutes controlling traditional public schools in return for being held accountable to producing increased academic outcomes.

The Neutral Chair recommends amending the Union’s proposal to require SHPS grant to its teachers “All rights afforded to regular public charter school employees” [emphasis in original], which is a step in the right direction but is essentially meaningless because there is no definition in law for a “regular” public charter school employee. Indeed, the very intent was for charter schools to be unique and different and the more than 1,100 charter schools in California have differing employment practices based upon the needs of each school and the types of programs it operates. The Panel is required to consider the evidence on the record that the change proposed by the Union is not in conformity with the interests and welfare of the public (including but not limited to the students) under Government Code Section 3548.2(b)(4), but there is no evidence that the Neutral Chair has done so. Additionally, the Panel must consider, “State and federal laws that are applicable to the employer” under Government Code 3548.2(b)(1). It is improper and unlawful for the Panel not to consider this issue pursuant to these provisions of law.

Accordingly, I dissent from the Recommendations relating to this Article.

XX. Assignability Article

The Union’s proposal on assignability does not take into consideration the fact that charters are granted by an authorizer to a particular nonprofit entity to operate.

Accordingly, I dissent from this part of the Recommendations.

XXI. Maintenance of Standards Article

The Neutral Chair recommends the Union’s proposal. I generally concur with this part of the Recommendations, but dissent with respect to Section 1, which is vague and ambiguous with respect to the use of “benefits and professional advantages.” The ambiguity here will likely lead to endless disputes, and I cannot support it.

XXII. Negotiations Procedures Article

I concur with the Recommendations for this Article.

XXIII. Term of Agreement Article



Renée Mayne

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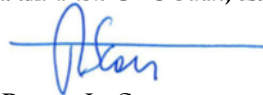
I dissent from the Neutral Chair's recommendation that the Agreement be effective through June 30, 2023. In light of the numerous conflicts between the parties, it is likely that there will be a need to revisit many of the articles following implementation. Accordingly, I recommend a one-year Agreement.

Conclusion

The Neutral Chair's Recommendations suffer from an over-adherence to the traditional structures of traditional schools, ignoring that the very purpose of charter schools is to challenge the status quo which has not been advantageous to many students, particularly low-income students of color. SHPS is living up to its vision, which is "To create one of the finest urban TK-12 public school systems in America." The SHPS scholars are achieving far beyond their contemporaries at traditional schools because the SHPS model is different and works. In a time in which students all over the State (and nation) are suffering from learning loss and other social-emotional issues, this is not the time to deprive the scholars of the superior education they deserve. The traditional model failed the students at Sacramento High School. The SHPS model, which includes an extended school year, longer school day, performance-based compensation, and a rejection of tenure principles is critical to the SHPS mission: "To graduate self-motivated, industrious and critical thinking leaders who are committed to serving others, passionate about lifelong learning and prepared to earn a degree from a four-year college."

All of the gains made by the SHPS scholars will be lost and all of the efforts of the SHPS teachers will have been in vain with a return to the traditional model. Indeed, implementation of the Neutral Chairs' recommendation would likely lead to the eventual revocation or nonrenewal of the schools.

Sincerely,
LAW OFFICES OF YOUNG,
MINNEY & CORR, LLP



Roger L. Scott
ATTORNEY AT LAW