

# **PACE**

## **POLICY ANALYSIS FOR CALIFORNIA EDUCATION**

**PC87-6-8-PERB**

**PERB Factfinding Reviewed:  
Results of a PACE Survey**

**Gerald C. Hayward, Jude Lamare**

**June 1987**

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The authors wish to acknowledge the helpful criticisms and assistance of William Gerritz, James Guthrie, John Evans, Jacob Adams, and Linda Humphrey.

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## *Executive Summary*

This study reports the results of a survey carried out by Policy Analysis for California Education (PACE) for the Public Employment Relations Board (PERB). The purpose of the survey was to assess the effectiveness of the factfinding mechanism for resolving disputes affecting California's public school employees.

First among the findings, and most important, the overwhelming view of respondents was that the factfinding process assisted parties in reaching a settlement. This finding held across roles of participants, by geographic region, size of district, and every other dimension surveyed. Not only was the entire factfinding process viewed as playing a positive role in the collective bargaining process, but each of the components of factfinding—the hearing, executive session, and issuance of a final report—were all seen by respondents as improving chances for reaching agreement and serving purposes intended by the act. Few respondents reported that factfinding impeded chances for settlement. Another indicator of the perception of the role of factfinding was the relatively small number of respondents who offered recommendations for altering the current process. There is little indication that these participants in the factfinding process believe that it should be altered, and even less indication that there is consensus about which alterations, if any, would be appropriate. However, *a sufficient proportion of respondents cited time delays as a problem to warrant additional review by PERB.*

Second, in response to the question regarding the reasons factfinding was initiated in their respective cases, neutrals, employees, and employers all rated characteristics of the parties involved as the number one reason. These characteristics included intransigence, distrust, bad faith, incompetence, personality conflicts, and interpersonal relations. In addition, when listing major obstacles to factfinding, respondents cited the approach of the parties as the number one obstacle. It is obvious that the parties, especially the neutrals, perceived party attitudinal problems as a major problem in arriving at a mutually acceptable settlement. This finding is not surprising given the fact that factfinding is a process utilized by parties who have exhausted other alternatives. *PERB may wish to consider disseminating information to participants regarding examples of districts in which parties have taken positive steps to mitigate negative behavior.*

The third major finding relates to the roles of the participants involved in the process. Neutrals tended to rate other participants as effective; very few neutrals assigned low ratings to the employee/employer participants. However, while the parties also generally rated neutrals positively, one in four rated them as relatively ineffective. In addition, "problems with the neutral" was mentioned by several respondents as an obstacle faced in the factfinding process. *These findings suggest that the quality of neutrals deserves attention by PERB and that PERB should consider ways in which the effectiveness of the neutral chairpersons could be improved.*

Generally, it is good administrative policy to require ongoing evaluations of existing processes. PERB may wish to consider requiring that parties engaged in factfinding evaluate the process along the lines pursued by this survey *immediately* following the completion of each factfinding case. PERB should review and evaluate the findings periodically. It would be a relatively simple and inexpensive way to monitor the process and identify methods and approaches to improve it.

Finally, although the mediation process appears to have been successful in most cases where it was invoked, there were enough participants in the factfinding process who cited prior problems with mediation to warrant further review.

In summary, although this survey did identify several potential problems with the current factfinding process as an impasse resolution procedure under California's collective bargaining law, the most important finding is that factfinding is functioning as intended—as an effective method to resolve differences and lead to settlement.

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## *Policy Analysis for California Education*

Policy Analysis for California Education, PACE, is a university-based research center focusing on issues of state educational policy and practice. PACE is located in the Schools of Education at the University of California, Berkeley and Stanford University. It is funded by the William and Flora Hewlett Foundation and directed jointly by James W. Guthrie and Michael W. Kirst. PACE operates satellite centers in Sacramento and Southern California. These are directed by Gerald C. Hayward (Sacramento) and Allan R. Odden (University of Southern California).

PACE efforts center on five tasks: (1) collecting and distributing objective information about the conditions of education in California, (2) analyzing state educational policy issues and the policy environment, (3) evaluating school reforms and state educational practices, (4) providing technical support to policy makers, and (5) facilitating discussion of educational issues.

The PACE research agenda is developed in consultation with public officials and staff. In this way, PACE endeavors to address policy issues of immediate concern and to fill the short-term needs of decision makers for information and analysis.

PACE publications include Policy Papers, which report research findings; the Policy Forum, which presents views of notable individuals; and Update, an annotated list of all PACE papers completed and in progress.

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# ***PERB Factfinding Reviewed: Results of a PACE Survey***

## **Background**

The Public Employment Relations Board (PERB), formerly the Education Employment Relations Board (EERB), was created in 1976 under the provisions of Senate Bill 160 (Rodda). This bill granted collective bargaining rights to California's public school employees (kindergarten through grade twelve and community colleges). Subsequent legislation expanded collective bargaining rights to state employees (1978) and to higher education employees (1979). Over 700,000 public employees are covered by the provisions of EERA and HEERA. The act covers over 2,100 bargaining units in more than 1,200 public agencies. PERB is a quasi-judicial agency established to supervise and regulate these collective bargaining activities. Among PERB's many responsibilities is *impasse resolution*. Impasse resolution procedures typically rely heavily upon mediation. If PERB agrees with either party that an impasse exists, it appoints a mediator within five days. Despite high levels of bargaining unit activities, relatively few impasses occur—about 500 cases go to mediation each year and even fewer persist to the point of factfinding. In the first 10 years of the act, settlement was reached during the mediation stage in approximately 85 percent of all disputes.

In those cases in which mediation failed as alleged by either party and confirmed by the mediator, PERB is required to certify the dispute to a factfinding panel. In the five most recent years, the number of cases proceeding to factfinding has averaged 63. Under provisions of the act, each party (representative) selects one additional member to serve on the panel. Parties then agree on the selection of a neutral chairperson from a list provided by PERB. The panel is ceded broad subpoena and investigatory authority. If a dispute is not settled during the factfinding process, the panel is required to make findings of fact and recommend terms of settlement which are advisory only. If the factfinding process fails to produce an agreement, the mediation process can resume. In those cases in which the factfinder is selected and a hearing held, approximately one-third of the cases are settled prior to the issuance of a factfinding report.

## **Methodology**

In an effort to improve the California collective bargaining process, PERB contracted with Policy Analysis for California Education (PACE) to conduct a survey of participants in those cases involving school districts, community college districts, or the California State University which engaged in factfinding between July 1984 and February 1986.

Eighty-five factfindings were completed in the 19-month period examined. Of these, 50 cases resulted in a report, 20 were settled, and 15 were withdrawn. Sixty-seven cases involved certificated employees, and 18 involved classified employees.

The survey questionnaire was designed with the assistance of the Factfinding Subcommittee of the PERB Advisory Committee, composed of labor relations practitioners representative of the variety of parties within PERB's jurisdiction. The survey questionnaire was pre-tested and revised before administration. The questionnaire (Appendix A) was designed to elicit responses on the following issues:

1. Reasons for initiation of factfinding.
2. Effectiveness of the components of the process (hearing, executive session, report).
3. Effectiveness of factfinding generally.
4. Effectiveness of the participants.
5. Purposes of factfinding.
6. Obstacles encountered in the current process and suggested improvements.

Questionnaires were mailed to 370 participants, and 252 were returned, a response rate of 68 percent. Cases were coded by geographic region, size of district, number of unresolved issues, employee bargaining unit involved (certificated or classified), and outcome (withdrawn, settled, or report issued).

### **Important Note on Mode of Analysis**

Analyses for this study often involved small numbers of respondents, and even smaller numbers of cases, and differences reach acceptable levels of statistical significance only when they are very large. Accordingly, we have chosen not to carry out tests of statistical significance but to ignore small differences and treat even the larger ones as suggestive of differences and trends worthy of policy attention.

**Report Description**

The first section of this report provides a detailed question-by-question analysis of responses to the questionnaire. Section two provides a case-by-case analysis on such dimensions as party agreement on role of factfinding and ratings of neutrals. Section three contains conclusions and recommendations. Additional tables are included in Appendix B.

## *Section I*

### *Question Analysis*

#### **QUESTION 1 (open ended question)**

*In your view what was the primary reason for the initiation of factfinding in this case?*

The most frequently mentioned category of reasons for proceeding to factfinding was *Characteristics of the Parties Involved* (41%) including intransigence, distrust, bad faith, inexperience, incompetence, personality conflicts, or interpersonal relations. This was true not only in general but held across roles (i.e., neutrals, employees,<sup>1</sup> and employers, although neutrals and employees were more likely to mention this category than were employers, Table 1). *Factual Differences* (26%) relating to salaries/benefits and other issues was the second most frequently mentioned reason and was seen by employers as a more important factor than for neutrals and employees. *Failure of Mediation* (24%) was the third most frequently mentioned reason. There was little or no difference in order of importance between employees and employers on this dimension, and it was more likely to have been given as a reason by neutrals. *Political Needs and Tactical Strategies* (9%) were cited less often and were more often listed by employers than by either the neutral or the employees (Figure 1).

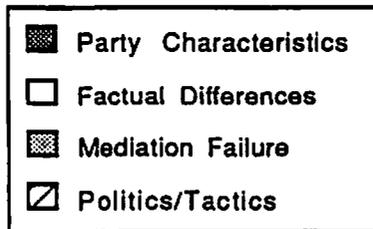
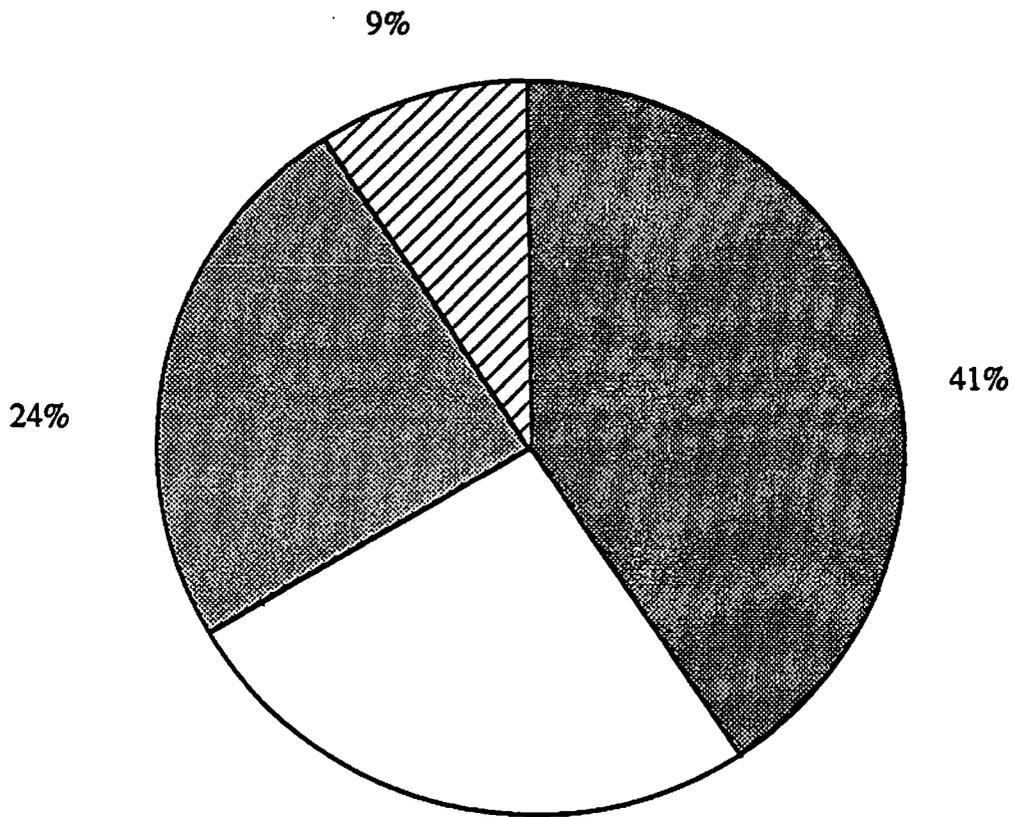
In sum:

- Participants, irrespective of role, listed factors relating to party characteristics as the main reason for initiating factfinding.
- Neutrals and employees were more likely to identify party characteristics than employers.
- Neutrals were more likely to cite failure of mediation than either of the other groups.

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<sup>1</sup> For the sake of clarity and brevity, references throughout this report to "employees" and "employers" represent both panelists and representatives of the respective parties involved in the factfinding process.

**FIGURE 1**  
**Reasons for Factfinding**



## QUESTIONS 2, 3, and 4

*For the hearing (question 2), the executive session (question 3), and the report (question 4), which of the following statements is more accurate in this case?*

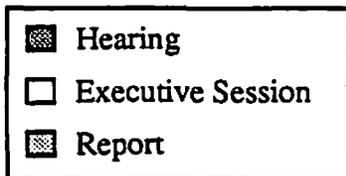
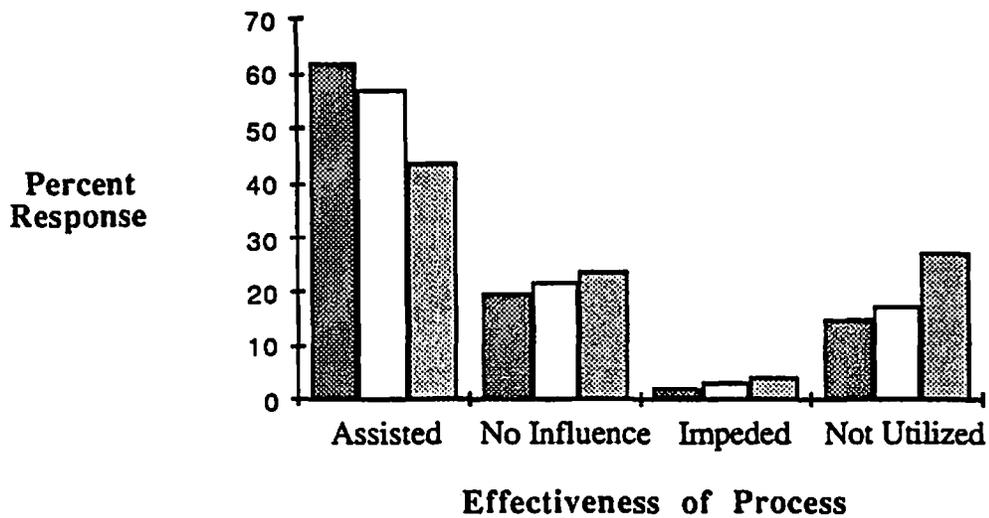
*Respondents were to choose between (1) assisted, (2) did not influence, and (3) impeded the achievement of a final settlement. Respondents were also to report if any of these processes were not utilized in the case in question.*

In those cases in which the respective procedures were utilized, a large preponderance of respondents reported that they assisted in achieving settlement. Few reported that the procedures in question had impeded a settlement. The *Hearing* (73 percent of respondents in cases in which a hearing was held), *Executive Session* (69 percent of respondents in cases in which an executive session was conducted), and *Report* (61 percent of respondents in cases in which a report was written) were given high marks by respondents, irrespective of their roles in the process. In addition, for the hearing (3%), executive session (4%), and report (6%), few reported that the processes had a negative impact and impeded settlement. This was true for all parties (Figure 2).

In sum:

- Respondents, irrespective of role, rated the hearings, executive session, and final report as assisting in the achievement of a settlement.
- Few respondents (6 percent or less) reported a negative impact.

**FIGURE 2**  
**Influence of Factfinding Components on Final Settlement**



## QUESTION 5

*For the entire factfinding process in this case, which of the following statements is most accurate?*

*Respondents were asked to report if factfinding (1) assisted, (2) did not influence, or (3) impeded settlement.*

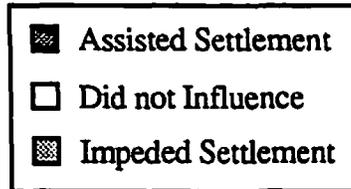
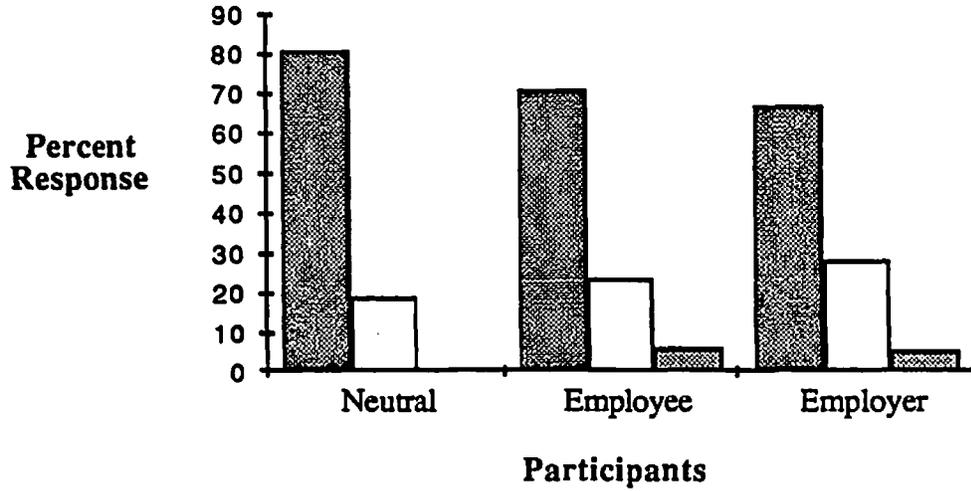
Respondents overwhelmingly reported that factfinding *assisted* (72%) in reaching a settlement. Only 4 percent reported that factfinding had a *negative* impact. Neutrals tended to view factfinding more positively (81 percent reported a positive impact), but both employees and employers rated the process as having a positive impact. Only a small number of employees and employers evaluated factfinding as having a negative impact. None of the neutrals reported a negative impact (Figure 3).

Figure 4 compares each of the factfinding components with the factfinding process generally.

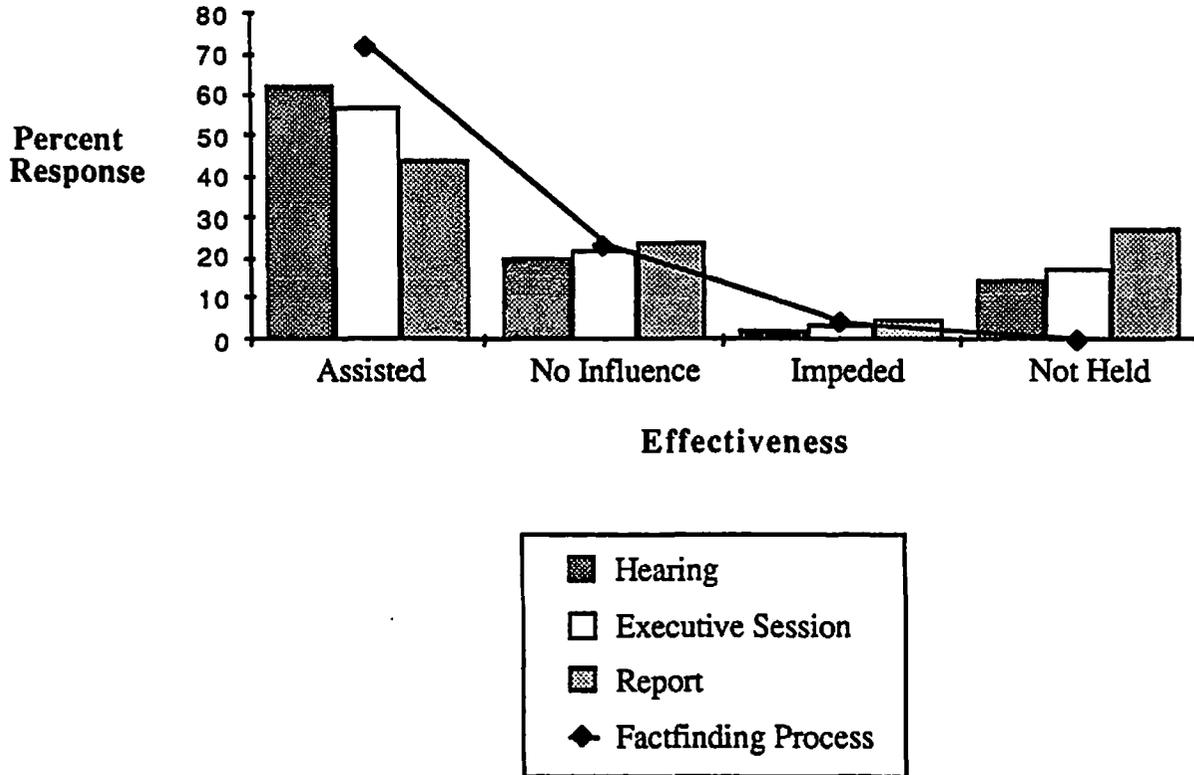
In sum:

- Factfinding was given high marks by participants, irrespective of role.
- Employee and employer ratings were quite similar.
- The factfinding process as a whole was rated slightly higher than any of the specific components.

**FIGURE 3**  
**Effect of Factfinding on Settlement,**  
**by Participant**



**FIGURE 4**  
**Factfinding Components and Process Compared**



Note: The columns represent components of the factfinding process; the line represents the total factfinding process.

**QUESTION 6**

*Which of the following statements most accurately describes the relationship between the factfinding panel's majority recommendation on the issues in the factfinding report and the final settlement in this case?*

*Respondents were then asked to select from (1) very close, (2) somewhat close, (3) not close, and (4) no report.*

In those cases in which a report was written, a large percentage of respondents rated the report as being *very close* (55%) to the final settlement. Differences between responses from the various roles were quite small, although neutrals were slightly more positive and employers slightly more negative in their assessments. Importantly, almost nine of ten respondents reported that the final report was either *very close* or *somewhat close* to the final settlement (Figure 5).

In sum:

- Respondents overwhelmingly rated the similarity between the report and the final settlement as either very close or somewhat close.
- Respondents did not differ substantially on this dimension.

**FIGURE 5**  
**Closeness of Report**  
**to Settlement**



**QUESTIONS 7 and 8**

*Question 7 asked the neutral factfinder to rate the overall effectiveness of all parties, considered as a group, in carrying out all aspects of the factfinding process. Ratings were to be on a scale of 1 to 5 with 1 being "not effective" and 5 being "very effective." In question 8, the parties representing employees and employers were asked to rate the effectiveness (using the same 1-5 scale) of the neutral chairperson in carrying out all aspects of the factfinding assignment.*

Neutrals gave high marks to the parties, with more than two-thirds (68%) rating parties as either a four or a five. Only about one in ten rated parties as either a one or a two.

Parties rated neutrals quite highly as well, with 54 percent rating them as a four or five. On the other hand, over a quarter (27%) of respondents rated neutrals as a one or two (Figure 6).

Employees tended to rate neutrals higher (more 4's and 5's) than their employer counterparts (62% v. 55%), while employers rated neutrals lower (more 1's and 2's) than did employees (33% v. 24%).

In sum:

- Neutrals rated parties as being effective (a rating of 4 or 5) in over two-thirds of the responses.
- Neutrals rated parties as being ineffective (a rating of 1 or 2) in about one in ten responses.
- Parties rated neutrals highly (assigning 4's and 5's) in 54 percent of responses, while neutrals rated parties highly in 68 percent of responses.
- A substantial percentage of respondents (27%) rated neutrals as not very effective (a rating of 1 or 2).
- Employees tended to rate neutrals higher than did employers, but still 54 percent of respondents, regardless of role, rated neutrals as effective (a rating of 4 or 5).



**QUESTION 9 (open ended)**

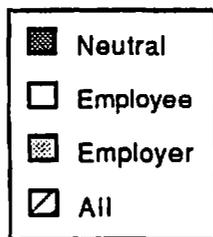
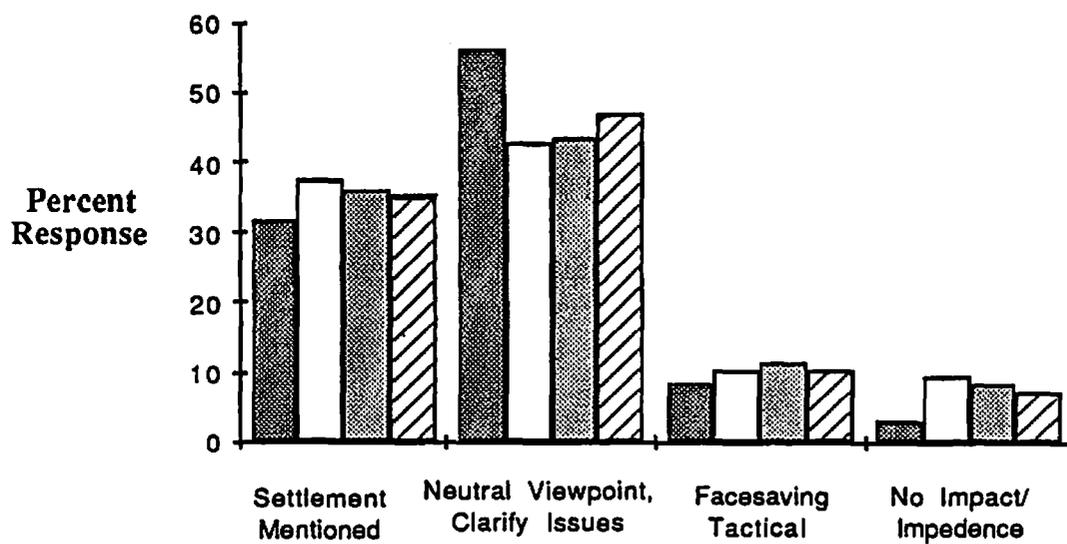
*What purposes did factfinding serve in this case?*

About a third (35%) of the respondents specifically cited that factfinding served to *move, pressure, assist, or persuade the parties to settle*. An additional 47 percent viewed factfinding as serving related purposes such as *readjusting priorities; informing the public; bringing in a neutral third party; increasing communication; reducing expectations; cooling off; or clarifying, narrowing, and focusing issues*. One in ten (10%) viewed factfinding as serving other purposes such as *facesaving, posturing, tactical, or strategic*. Fewer than one in thirteen (7%) viewed the process as accomplishing *little or nothing*. Importantly, more than four in five (82%) saw factfinding as moving parties toward settlement or other closely related purpose. There were no important differences across roles.

**In sum:**

- A large majority (82%) of respondents saw factfinding as moving parties closer to settlement or achieving a related purpose.
- Very few (7%) viewed factfinding as serving little or no purpose.
- There was substantial agreement across roles in identifying the purposes served by factfinding (Figure 7).

**FIGURE 7**  
**Purposes Served by Factfinding**



**QUESTION 10 (open ended)*****What obstacles occurred in the factfinding process in this case?***

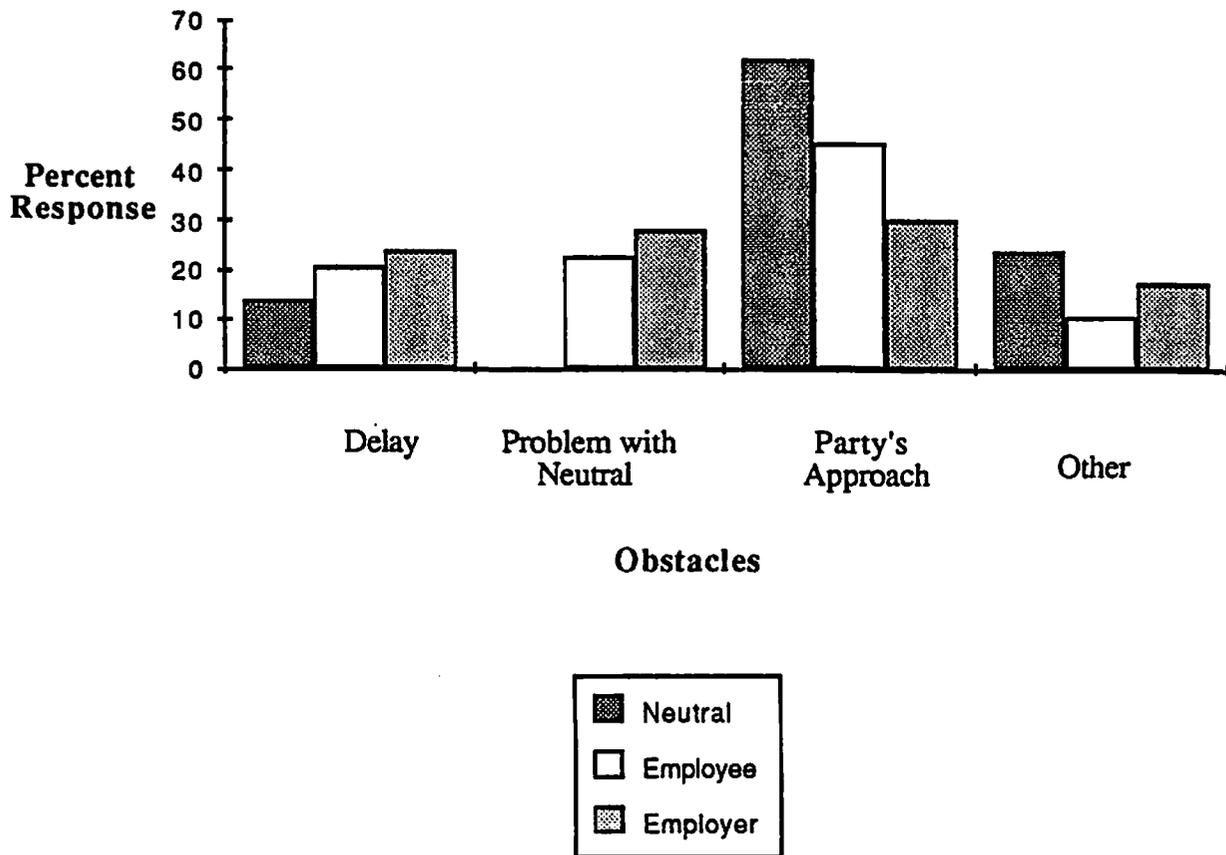
The most significant finding related to this question was the fact that almost half the respondents did not answer the question or responded that there were no obstacles. Of those who identified obstacles, the *approach of one or more of the parties* was cited by almost half. *Delay* (20%), or *problem with the neutral* (18%), were the next most frequent responses.

Respondents from each role rated the approach of parties as the number one obstacle. Neutrals and employees were more likely than employers to identify the approach of the parties, while employers were slightly more likely than employees to identify problems with the neutral (Figure 8).

**In sum:**

- Almost half the respondents did not answer this question or responded that there were no obstacles.
- All roles identified the approach of the parties as the number one obstacle to factfinding.
- Both employees and employers listed problems with the neutral as the second most frequent obstacle.
- Delay was a problem cited by about one in five respondents.

**FIGURE 8  
Obstacles to Factfinding**



**Note:** This chart reflects only those respondents who answered the question with a specific obstacle. Almost half the respondents either said none or chose not to answer.

**QUESTION 11**

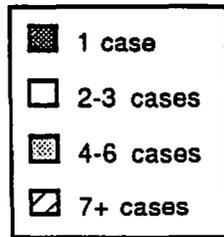
***How many factfinding cases have you participated in under EERA and HEERA?***

As might be expected, neutrals are the most experienced, followed by panelists and then employee representatives. There is little difference between the experience of employees and employers. The major distinction is within role, i.e., the difference in experience between the representative and the panelist, with panelists generally having more experience (Figure 9).

In sum:

- The bulk of factfinding is done by persons experienced in the process. It is to be expected that the employee and employer representatives would be least experienced, but over 75 percent of cases include neutrals or panelists with experience in at least four cases.

**FIGURE 9**  
**Factfinding Experience by Role**



**QUESTION 12 (open ended)**

*Are there any changes in the conduct of the factfinding process which could have significantly improved its use in this case?*

The most significant finding on this question is that *over half (55%) of those questioned did not suggest any changes*. Binding factfinding, or last-best-offer bargaining, were mentioned by a small number of neutrals and employees. A small number of employers mentioned improving neutrals' qualifications.

In sum:

- There is clearly no burning consensus to change the factfinding process..

## ***Section II***

### ***Additional Implications of the Survey Results***

Analysis of participants' reports on their experience in factfinding provides valuable evaluative information. It does not, however, convey the proportion of *cases* in which factfinding went well. Nor does it permit us to assess whether success occurred in specific kinds of cases and failure in other kinds. Therefore a *case analysis* was performed. The purpose was to see whether there are types of cases for which the factfinding process may be more or less effective than in others.

Two measures of success were used to evaluate cases. The first was satisfaction by participants that factfinding assisted final settlement. The second was how effective the neutral was rated in doing his or her job.

There were two ways to examine the pattern of response by case. First, each case was reviewed in terms of whether respondents agreed on what happened in that particular case. Only cases for which questionnaires were completed by participants from both sides were considered. Cases where respondents agreed were compared to cases where they did not agree. A second analysis compared each respondent's record with characteristics of the case in which the respondent was a participant. Then survey information was analyzed by type of case.

#### **Satisfaction that Factfinding Assisted Settlement, by Case**

The satisfaction of both parties that factfinding helped is a primary indicator in evaluating how well the process is working. The response used to measure satisfaction was the affirmation that factfinding assisted settlement.

In 46 of the 85 cases studied, both parties responded to the questionnaire. In over half of these cases (54%), both parties said that factfinding assisted settlement. In 33 percent of these cases the parties could not agree whether factfinding assisted in settlement, and in 13 percent of these cases, the parties agreed that factfinding did not influence settlement. In *no* case did both parties agree that factfinding impeded final settlement.

The number of cases in which both parties responded is limited and probably not representative of the 85 cases studied. Still, leaving aside the questions of representativeness and statistical significance in these small samples, the data suggest variations in satisfaction with factfinding that merit further examination. There appear to be some differences in satisfaction of both parties with factfinding between certificated and classified cases, large and small districts, and north and south.

**TABLE 1**  
**Satisfaction that Factfinding Assisted Settlement, by Case**

Types of Cases	Both Parties Satisfied that Factfinding Assisted Settlement	One or Both Parties Not Satisfied that Factfinding Assisted Settlement
Classified	36%	64%
Certificated	66%	34%
Large (ADA>5,000+)	72%	28%
Small (ADA<5,000)	33%	67%
North	46%	54%
South	65%	35%

To further explore a possible relationship between types of cases and participants' satisfaction that factfinding assisted, responses of all partisan respondents were analyzed. The three variables (type of case, region, and district size) identified as potentially affecting attitudes toward factfinding are themselves interrelated, and the relationships are complex. For example, larger districts tend to be in the south and smaller districts in the north. Classified cases were slightly more likely to be in the south.

Again, keeping the small sample sizes in mind, differences were found in satisfaction between employers in cases involving certificated and classified employment, and in cases in different sized districts. Geographic region seems also to have an impact. There was a slight tendency for northern employee respondents to be less satisfied and for southern employer respondents to be less satisfied.

Interestingly, the highest levels of dissatisfaction with factfinding appeared to be among employee respondents in the smallest districts (80 percent of which are located in the north). Only 55 percent of this group agreed that factfinding assisted settlement, compared with 76 percent, 74 percent, and 83 percent of employee respondents in the three categories of larger school districts. On the employer side, employer respondents in districts of between 1,801 and 5,100 in average daily attendance (ADA) had the lowest level of satisfaction with factfinding (50 percent vs. 71 percent, 76 percent, and 68 percent in the other categories). Employer dissatisfaction in this category seems to be unrelated to other systemic factors—this category does not overrepresent classified or southern cases.

Only a small number of cases (18 cases or 21 percent) involved classified employee organizations. In this small group, employers were less likely to agree that factfinding assisted settlement. In only 54 percent of the cases did employers see the process as assisting settlement, while in 70 percent of the certificated cases, employers judged the process as assisting in settlement.

In sum, there is suggestive evidence that systemic factors are at work which affect how respondents evaluate the factfinding process. Regardless of partisan role, over two-thirds of all respondents in districts with more than 5,000 ADA judged factfinding as assisting in final settlement. In smaller districts, there are some deviations from the generally positive evaluative pattern. These deviations may merely be random, or may be linked to some ongoing difficulties.

### **Rating of Neutrals, by Case**

The survey questionnaire offered every partisan participant an opportunity to rate the effectiveness of the neutral in conducting the factfinding process. In 44 percent of cases, both parties agreed on the neutral's effectiveness (where agreement is measured as identical or adjacent scores on a five-point scale). In 30 percent of cases, parties disagreed about effectiveness. In 26 percent of cases, one or more did not rate the neutral. In less than 10 percent of cases did the parties agree that the neutral was ineffective, whereas in 20 percent of cases, the parties agreed that the neutral had done an effective job (4's and 5's) on a five-point scale.

### **Ratings of Neutrals, Correlates**

To explore any relation between types of cases and partisan participants' rating of the neutral, cross tabulations were performed. There were no important differences in ratings by region, size of district, or certificated vs. classified cases. The data suggest some interesting differences between ratings for neutrals with different levels of experience with factfinding under HEERA and EERA. Neutrals with more experience tended to get higher ratings.

**TABLE 2**  
**Ratings of Neutrals, by Experience**

Experience Of Neutral	Rating			
	Low	Medium	High	Not Rated
Some (below median)	30% (24)	14% (11)	36% (29)	20% (16)
Much (median plus)	16% (14)	15% (13)	52% (46)	16% (14)

Neutrals with less than 12 cases under HEERA or EERA were more likely to get a low rating (30% vs. 16%), and those with 12 or more cases generally received higher ratings (52% vs. 36%). Of the neutrals who were rated highly ("4" or "5" on a five-point scale), 61 percent (46 of 75) were neutrals with more experience (at or above the median of 12 cases under HEERA or EERA).

In sum:

- In over half the individual cases, parties from both sides agreed that factfinding assisted settlement. In no case did both parties agree that factfinding impeded settlement.
- There is no evidence that lack of satisfaction with the factfinding process could be linked to some combination of systemic factors, such as size of district, region, or type of employment. There is no direct relationship between dissatisfaction with factfinding and a single variable.

## *Section III*

### *Summary and Conclusions*

First among the findings, and most important, the overwhelming view of respondents was that the factfinding process assisted parties in reaching a settlement. This finding held across roles of participants, by geographic region, size of district, and every other dimension surveyed. Not only was the entire factfinding process viewed as playing a positive role in the collective bargaining process, but each of the components of factfinding—the hearing, executive session, and issuance of a final report—were all seen by respondents as improving chances for reaching agreement and serving purposes intended by the act. Few respondents reported that factfinding impeded chances for settlement. Another indicator of the perception of the role of factfinding was the relatively small number of respondents who offered recommendations for altering the current process. There is little indication that these participants in the factfinding process believe that it should be altered, and even less indication that there is consensus about which alterations, if any, would be appropriate. However, *a sufficient proportion of respondents cited time delays as a problem to warrant additional review by PERB.*

Second, in response to the question regarding the reasons factfinding was initiated in their respective cases, neutrals, employees, and employers all rated characteristics of the parties involved as the number one reason. These characteristics included intransigence, distrust, bad faith, incompetence, personality conflicts, and interpersonal relations. In addition, when listing major obstacles to factfinding, respondents cited the approach of the parties as the number one obstacle. It is obvious that the parties, especially the neutrals, perceived party attitudinal problems as a major problem in arriving at a mutually acceptable settlement. This finding is not surprising given the fact that factfinding is a process utilized by parties who have exhausted other alternatives. *PERB may wish to consider disseminating information to participants regarding examples of districts in which parties have taken positive steps to mitigate negative behavior.*

The third major finding relates to the roles of the participants involved in the process. Neutrals tended to rate other participants as effective; very few neutrals assigned low ratings to the employee/employer participants. However, while the parties also generally rated neutrals positively, one in four rated them as relatively ineffective. In addition, "problems with the neutral" was mentioned by several respondents as an obstacle faced in the factfinding process. *These findings suggest that the quality of neutrals deserves attention by PERB and that PERB should consider ways in which the effectiveness of the neutral chairpersons could be improved.*

Generally, it is good administrative policy to require ongoing evaluations of existing processes. PERB may wish to consider requiring that parties engaged in factfinding evaluate the process along the lines pursued by this survey *immediately* following the completion of each factfinding case. PERB should review and evaluate the findings

periodically. It would be a relatively simple and inexpensive way to monitor the process and identify methods and approaches to improve it.

Finally, although the mediation process appears to have been successful in most cases where it was invoked, there were enough participants in the factfinding process who cited prior problems with mediation to warrant further review.

In summary, although this survey did identify several potential problems with the current factfinding process as an impasse resolution procedure under California's collective bargaining law, the most important finding is that factfinding is functioning as intended—as an effective method to resolve differences and lead to settlement.

**APPENDIX A**  
***Factfinding Questionnaire, 1986***

1. In your view what was the primary reason for the initiation of factfinding in this case?

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**Please answer the following questions on the various components of the factfinding process in this case.**

2. For the hearing in this case, which of the following statements is more accurate?  
(Check the appropriate box.)

- The holding of a hearing assisted in the achievement of a final settlement in this case.
- The holding of a hearing did not influence achievement of a final settlement in this case.
- The holding of a hearing impeded achievement of a final settlement in this case.
- There was no hearing.

3. For the executive session or sessions portion of the factfinding process in this case, which of the following statements is more accurate?

- The executive session(s) assisted achievement of a final settlement in this case.
- The executive session(s) did not influence achievement of a final settlement in this case.
- The executive session(s) impeded achievement of a final settlement in this case.
- There was no executive session.

4. For the factfinding report in this case, which of the following statements is more accurate?
- The factfinding report assisted achievement of a final settlement in this case.
  - The factfinding report did not influence achievement of a final settlement in this case.
  - The factfinding report impeded achievement of a final settlement in this case.
  - No factfinding report was issued.
5. Regarding the entire factfinding case, which of the following statements is more accurate?
- The factfinding process assisted achievement of a final settlement in this case.
  - The factfinding process did not influence achievement of a final settlement in this case.
  - The factfinding process impeded achievement of a final settlement in this case.
6. Which of the following statements most accurately describes the relationship between the factfinding panel's majority recommendation on the issues in the factfinding report and the final settlement in this case?
- The settlement was very close to the panel's recommendations.
  - The settlement was somewhat close to the panel's recommendations.
  - The settlement was not close to the panel's recommendations.
  - No report was written.

The following question is to be answered by the NEUTRAL FACTFINDER only:

- 7. On a scale of 1 to 5 (1 = not effective and 5 = very effective), please rate the overall effectiveness of all the parties, including advocate panelists, considered as a group, in carrying out all aspects of the factfinding process: **circle one number below.**

not effective    1        2        3        4        5    very effective

(If you wish to make additional comments or suggestions, please note them in spaces provided in Questions 10 and 12.)

The following question is to be answered by the PARTIES' REPRESENTATIVES (INCLUDING ADVOCATE PANELISTS):

- 8. On a scale of 1 to 5 (1 = not effective and 5 = very effective), please rate the overall effectiveness of the neutral chairperson in carrying out all aspects of the factfinding assignment: **circle one number below.**

not effective    1        2        3        4        5    very effective

(If you wish to make additional comments or suggestions, please note them in spaces provided in Questions 10 and 12.)

The following questions are to be answered by ALL PARTICIPANTS IN THE FACTFINDING PROCESS:

- 9. What purposes did factfinding serve in this case?

a. \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

b. \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

c. \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

d. \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

10. What obstacles occurred in the factfinding process in this case?

- a. \_\_\_\_\_  
\_\_\_\_\_
- b. \_\_\_\_\_  
\_\_\_\_\_
- c. \_\_\_\_\_  
\_\_\_\_\_
- d. \_\_\_\_\_  
\_\_\_\_\_

11. How many factfinding cases have you participated in under the Educational Employment Relations Act and the Higher Education Employer-Employee Relations Act? \_\_\_\_\_

12. Are there any changes in the conduct of the factfinding process which could have significantly improved its use in this case? (You may include statutory, regulatory, and/or changes in the practices of the individual factfinder or the parties.) If so, list below.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## **APPENDIX B**

### **Additional Tables**

**TABLE 3**  
**Question 1: Reasons for Initiation of Factfinding**  
 (percent response)

	Party Characteristics	Failure of Mediation	Factual Differences	Politics/ Tactics
All Responses	41	24	26	9
Employees/Employers				
<i>Employees</i>	51	23	22	4
<i>Employers</i>	34	21	33	12

**TABLE 4**  
**Question 2: Specific Impacts on Impasse Resolution, Hearing**  
 (percent response)

	Positive	No Influence	Negative	No Hearing
All Responses	62	20	3	15

**TABLE 5**  
**Question 3: Specific Impacts on Impasse Resolution, Executive Session**  
 (percent response)

	Positive	No Influence	Negative	No Executive Session
All Responses	57	22	4	18

**TABLE 6**  
**Question 4: Specific Impacts on Impasse Resolution, Report**  
 (percent response)

	Positive	No Influence	Negative	No Executive Session
<b>All Responses</b>	44	24	5	27

**TABLE 7**  
**Question 5: Factfinding Impact on Impasse Resolution**  
 (percent response)

	Positive	No Influence	Negative
<b>All Responses</b>	72	24	4
<b>By Role</b>			
<i>Neutral</i>	81	19	0
<i>Employee Representative</i>	69	24	8
<i>Employee Panelist</i>	74	23	3
<i>Employer Representative</i>	65	30	5
<i>Employer Panelist</i>	69	26	6
<b>Employees/Employers</b>			
<i>Employees</i>	71	23	6
<i>Employers</i>	67	28	5

**TABLE 8**  
**Question 6: Closeness of Report to Settlement**  
 (percent response)

	Very Close	Somewhat Close	Not Close
All Responses	55	33	12
By Role			
<i>Neutral</i>	67	27	7
<i>Employee Representative</i>	50	36	14
<i>Employee Panelist</i>	67	25	8
<i>Employer Representative</i>	42	50	8
<i>Employer Panelist</i>	48	30	22
Employees/Employers			
<i>Employees</i>	57	32	12
<i>Employers</i>	45	39	16

**TABLE 9**  
**Question 7: Rating of Parties by Neutrals**  
 (percent response)

Scaled Score: 1 = not effective ... 5 = very effective					
	1	2	3	4	5
Neutral Raters	4	6	22	24	44

**TABLE 10**  
**Question 8: Ratings of Neutrals by Parties**  
 (percent response)

Scaled Score: 1 = Not effective ...5 = very effective					
	1	2	3	4	5
All Responses	13	14	18	24	30
Employees/Employers					
<i>Employees</i>	13	11	15	26	36
<i>Employers</i>	14	19	22	22	23

**TABLE 11**  
**Question 9: Purposes Served by Factfinding**  
 (percent response)

Purposes	Neutral	Employee	Employer	All
Settlement	32	37	36	35
Clarifying Issues	56	43	44	47
Tactical/Strategic	9	10	12	10
Nothing Accomplished	3	10	9	7

**TABLE 12**  
**Question 9: Purposes Served by Factfinding,**  
**Total Multiple Responses, Detail**

Purposes	Number	Percent
1. Moved, pressured, assisted, persuaded parties to settle.	118	32
2. Clarified, narrowed, focused the issues.	50	14
3. Served specific other purposes of one or both parties, such as facesaving, posturing, scapegoating, delaying negotiations.	41	11
4. Served specific other purposes such as readjusting priorities, informing the public, increasing communications, reducing expectations, cooling off.	64	18
5. Involving the neutral, objective point of view—bringing in different parties.	36	10
6. Legal purpose—to meet legal obligations.	9	2
7. Other.	21	6
8. Little or no valid purpose/Counterproductive.	24	7
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<b>Total of All Responses</b>	<b>363</b>	<b>100</b>

**TABLE 13**  
**Question 10: Obstacles to Factfinding**  
 (percent response)

Obstacles	Neutral	Employees	Employers	All
<i>Delay</i>	14	21	24	20
<i>Problem with Neutral Party's Approach</i>	0	23	28	18
<i>Other</i>	62	46	31	45
	24	11	17	17

**TABLE 14**  
**Question 11: Experience of Participants**  
 (percent response)

Experience	1 Case	2-3 Cases	4-5 Cases	7+ Cases
Neutral	8	10	19	63
Employee Representative	33	26	26	16
Employee Panelist	6	16	31	47
Employer Representative	28	22	31	19
Employer Panelist	9	27	27	36

**TABLE 15**  
**Distribution of Districts by Size, Geographic Region**  
 (number cases, percent cases)

District Size in ADA	North	South	Total
Less than 1,800	33 (80%)	8 (20%)	41 (25%)
1,800 - 5,100	23 (56%)	18 (44%)	41 (25%)
5,101 - 14,100	3 (10%)	28 (90%)	31 (19%)
14,100 - 108,000	23 (46%)	27 (54%)	50 (31%)

**TABLE 16**  
**Distribution of Cases by Type of Employment and Region**  
 (number cases, percent cases)

Type of Employment	North	South	Total
Certificated	68 (51%)	64 (49%)	132 (80%)
Classified	14 (42%)	19 (58%)	33 (20%)

**TABLE 17**  
**Employer Satisfaction by Type of Employment**  
 (number cases, percent cases)

Satisfaction with Factfinding	Certificated	Classified	Total
Factfinding Assisted	42 (70%)	7 (54%)	49 (67%)
Factfinding Did Not Influence	14 (23%)	6 (46%)	20 (27%)
Factfinding Impeded	4 (07%)	0 (00%)	4 (05%)

**TABLE 18**  
**Employer Satisfaction by Size of District**  
 (number cases, percent cases)

District Size in ADA	Assisted Settlement	No Influence on Settlement	Impeded Settlement	Total
Less than 1,800	12 (71%)	5 (29%)	0 (00%)	17 (24%)
1,800 - 5,100	9 (50%)	8 (44%)	1 (06%)	18 (25%)
5,101 - 14,100	13 (76%)	3 (18%)	1 (06%)	17 (24%)
14,100 - 108,000	13 (68%)	4 (21%)	2 (11%)	19 (27%)

**TABLE 19**  
**Employee Organization Satisfaction by Size of District**  
 (number cases, percent cases)

District Size in ADA	Assisted Settlement	No Influence on Settlement	Impeded Settlement	Total
Less than 1,800	11 (55%)	8 (40%)	1 (05%)	20 (24%)
1,800 - 5,100	16 (76%)	4 (19%)	1 (05%)	21 (25%)
5,101 - 14,100	19 (83%)	3 (13%)	1 (04%)	23 (28%)
14,100 - 108,000	14 (74%)	3 (16%)	2 (10%)	19 (23%)

**TABLE 20**  
**Satisfaction by Region**  
 (number cases, percent cases)

Satisfaction	Employees	Employers	All
Assisted Settlement			
<i>North</i>	28 (68%)	27 (71%)	55
<i>South</i>	33 (75%)	23 (62%)	56
Did Not Influence Settlement			
<i>North</i>	10 (24%)	9 (24%)	19
<i>South</i>	9 (20%)	12 (32%)	21
Impeded Settlement			
<i>North</i>	3 (07%)	2 (05%)	5
<i>South</i>	2 (05%)	2 (05%)	4