

PERB Fact Finding FAQs

Q: What is fact finding?

A: Following a Declaration of Impasse, PERB will appoint a fact finder to assist in the resolution of a Collective Bargaining Agreement, typically following mediation sessions. The fact-finder is appointed through PERB. If either party, or both, feels that further mediation efforts will not bring about an agreement, the party/parties may so inform the Director of Conciliation, in writing, and request the assignment of a fact finder.

The fact-finder, after designated and appointed by PERB, inquires into the causes and circumstances of the impasse, along with the positions being advanced by the parties on the disputed issues, through oral and/or written testimony, exhibits, briefs, etc. The fact finder may hold a hearing to receive such evidence. The fact finder may also conduct a limited amount of mediation.

Q: Is fact finding binding?

A: No. The fact finder is empowered only to make public recommendations for resolving the impasse. Either party is free to accept or reject the fact finder's report and recommendations, in whole or in part. The report and recommendations are made public five days after their transmission to the parties.

Q: Can a Mediator order fact finding?

A: No. The Mediator may suggest that fact finding is an appropriate next step when the parties are at impasse, but fact finding typically follows the request of one or both parties. PERB's Director of Conciliation makes the determination regarding the assignment of a fact finder, following the request by one or both parties, and will likely consult with the mediator when making a determination whether or not the assignment of a fact finder is appropriate.

Q: Can one side refuse?

A: There is no clear precedent on this issue, as far as we can determine.

Once a fact finder is assigned, the fact finder is empowered to issue a public report. If one party refuses to participate, the fact finder could issue a report reflecting that one side refused to participate, likely siding with the other side that decides to participate.

In addition, should one side refuse or otherwise fail to act in good faith in negotiations at any point in time, including during fact finding, that could be considered an improper practice for bad faith bargaining.

Q: Is there a time frame?

A: No. The fact finder has discretion on how to proceed, and the timeline can vary significantly based on a variety of factors. The fact finder may hold mediation meetings or proceed to a hearing to issue a report, which may include testimony and/or written submissions and briefs. The statutory framework encourages further mediation before issuing a report. Once the fact finder has received the facts and arguments from both sides, the fact finder will issue a non-binding written report.