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### BACKGROUND AND PROCEDURAL HISTORY

Inglewood Unified School District (District) educates approximately 14,000 students in grades kindergarten through twelve. The District also provides educational opportunities for 6,000-8,000 adult students at one primary adult school facility and various leased sites. The latter students are taught by teachers in an adult education bargaining unit exclusively represented by Inglewood Federation of Teachers/CFT/AFT (Union). At the present time there are approximately 15 teachers in that bargaining unit.

Following the statutorily required sunshining of initial proposals, prior to end of the 2005-2006 school year, the District and the Union commenced negotiations on a successor collective bargaining agreement. Notwithstanding progress made during about a dozen bargaining sessions, on or about February 15, 2006, the parties reached an impasse. Pursuant to provisions of Government Code section 3548, the state Public Employment Relations Board (PERB) then assigned a mediator to assist them in breaking that impasse. During a second session with the mediator on or about June 6, 2006, a tentative agreement was reached. However, that tentative agreement was not ratified by the Union's membership. Although the parties' bargaining representatives then agreed to an additional session with the mediator in December, they were unable to modify the prior tentative agreement in a manner acceptable their constituents. With the mediator's approval, they therefore invoked the provisions of Government Code sections 3548.1 through 3548.3 and a factfinding panel composed of an impartial chairman and a representative of each party was created.

Robert Bergeson was chosen by the parties and appointed by PERB to serve as the neutral chairman of the factfinding panel. The District and Union designated Ronald Bennett of School Services of California and Gregory Eddy of California Federation of Teachers to serve as their

respective members of the panel. On behalf of their principals, Mssrs. Bennett and Eddy then waived statutory time limits for the holding of a hearing and the panel's issuance of this report.

The panel is statutorily authorized to meet with representatives of the parties through investigation and/or hearing and, if an agreement settling all issues cannot be reached, to make factual findings based on the evidence presented and to recommend terms of settlement. To initiate those quasi-legislative responsibilities a hearing was held on June 20, 2007, during which the District and the Union were given full opportunity to present evidence on the outstanding issues. With the concurrence of the parties, the members of the panel thereafter engaged in mediation efforts, however, a final resolution to the impasse could not be achieved. The panel chairman then prepared a draft of the instant report and recommendations and the panel met via private telephone conversation on August 18, 2007 for purposes of review and amendment of that draft. The chairman then prepared the final copy of this report and recommendations, which was provided to the partisan panel members for their official signature.

#### RELEVANT FACTORS

Government Code subsection 3548.2(b) states as follows:

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

- (1) State and federal laws that are applicable to the employer.
- (2) Stipulations of the parties.
- (3) The interests and welfare of the public and the financial ability of the public school employer.
- (4) Comparison of the wages, hours, and conditions of employment of the employees involved in the factfinding proceeding with the wages, hours and conditions of employment of other employees performing similar services in comparable communities.
- (5) The consumer price index for good and services, commonly known as the cost of living.
- (6) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays, and other excused time, insurance and pensions, medical and hospitalization benefits; the continuity and stability of employment; and all other benefits received.

- (7) Any other facts, not confined to those specified in paragraphs (1) to (6) inclusive, which are normally or traditionally taken into consideration in making the findings and recommendations.

Any criterion which has not been relied upon by the parties has not been considered in arriving at the findings and recommendations made herein.

### ISSUES

Consistent with the fact the parties' negotiating teams have previously reached a tentative agreement on all issues, the extent of disagreement between the District and the Union is narrow at this point. Nevertheless, as exemplified by the failure of the Union's membership to ratify that tentative agreement, problems remain. The need to resolve all issues on a package basis in order to finalize a saleable successor contract compels the panel to strongly recommend that the parties adopt the following recommendations in total.

1. SALARY INCREASE FOR 2005-06 AND 2006-07

#### UNION POSITION

The 2% and 4% increases to the salary schedule now offered by the District may be consistent with settlements reached with other bargaining units as the District asserts. However, that offer ignores the fact that contrary to such other employees, in school years 2002-03 and 2003-04, adult education instructors received not salary increases applied to the salary schedule so as to be ongoing but rather one-time bonuses. Accordingly, in the school years preceding the present dispute, adult education teachers lost ground in comparison to their District counterparts.

Granting to adult education teachers the maximum possible increase is particularly important considering the extent to which they lag behind their counterparts in comparable districts. In that regard, as shown in data the Union has supplied to the factfinding panel, bargaining unit members would need an increase of a sizeable 27-28% in order to bring them to the average of comparable districts with regard to hourly wage. When longevity factors provided at many districts which are unavailable to Union-represented employees are considered, the discrepancy rises to about a

whopping 40%. Adult education teachers should therefore receive a 2005-06 raise of the same 2% tentatively agreed to previously but applied to the salary schedule. Further, because K-12 teachers have received not just the 4% agreed to by classified employees but an additional 1% above the former figure, the adult school teachers salary schedule should be increased by not just an additional 4% for 2006-07, but by that same 5%. Both increases should be fully retroactive to the July 1 date of the beginning of the relevant school year.

#### DISTRICT POSITION

The bargaining unit's negotiating team has already agreed that a 2% increase is appropriate for 2005-06. The District therefore has no objection to continuing to offer that amount. However, what the Union is asking for 2006-07 is excessive.

First, although unit members may be receiving slightly less money per hour than in comparable districts, as shown in the District's data, the difference is nowhere near what the Union asserts it is. Further, although K-12 teachers have been provided 1% more in salary for 2006-07 than classified employees received, the rationale for that additional 1% was the retirement of enough unit members that salary savings could be realized through their replacement by less senior teachers. Also, even assuming for purposes of argument that District adult school teachers are somewhat underpaid in comparison to similar districts, the amount now offered by the District is reasonable in the circumstances.

The 2% and 4% increases the District has offered are consistent with settlements reached with unions representing the District's police officers and miscellaneous classified employees. Moreover, over the last eight years improvements to the adult education salary schedule have exceeded the Consumer Price Index. Also, the District must be prudent in the expenditure of its finite financial resources.

The adult school does not receive increased funding based upon average daily attendance and since approximately 1986, adult school funding has been capped at 1,496 units of ADA. In any event, the adult school has suffered from chronic declining enrollment. Further, in 2001, the District purchased to use as classrooms a building formerly leased to office tenants. While in so doing the District saved money over the cost of constructing an entirely new facility, the building was in need of renovation even then and has gotten worse for wear since. The estimated cost of modernizing the

facility just to bring it up to code is in excess of \$2,500,000. Therefore, while the District's adult school budget is fully solvent, excess expenditures on teachers salaries would have a negative impact on that fiscal solvency.

#### ANALYSIS AND RECOMMENDATION

The factfinding panel believes there to be merit to the arguments made by both parties. With regard to the Union's position, the District's own data tend to confirm that its adult education teachers are underpaid compared to comparable districts. The panel's findings are consistent with that District data.

As is so often the case in these proceedings, the parties do not agree upon comparable districts. However, they do agree on five districts, with which the panel will accordingly compare salaries. Those five districts are Azusa Unified School District, Centinela Valley Union High School District, Mountain View-Los Altos Unified School District, Redondo Beach Unified School District and Ventura Unified School District. Notwithstanding such nominal agreement, the parties nevertheless very much disagree as to the salaries paid in such districts. For the following reasons, the panel finds the Union's data to be the more accurate.

The District has provided no documentary evidence in support of the salary figures it has given the panel. In contrast, the Union has given the panel copies of adult school salary schedules obtained from the comparable districts. Extrapolating from the Union's figures, it is very clear that even with the percentage increases sought by the Union, the beginning and maximum salaries that would be paid to unit members would be quite low on a relative basis.

Because all five comparable districts had settled with their respective employee organizations for 2006-07, the \$24.66 entry rate and \$28.46 highest rate paid by the District can be compared to them for that school year. With regard to the flat rate at Azusa and the lowest rate at the other four districts, the mean average in 2005-06 was \$30.58, or 24% higher than the District's \$24.66 amount. The difference between the median \$30.85 of those comparable districts and the District's \$24.66 figure was 25%. With regard to the highest achievable hourly rate, the mean of the five comparable districts was \$36.87, or a difference of 29.5% from the District rate of \$28.46. Even using the median and thereby controlling for the fact the \$47.06 highest rate at Centinela Valley skews the mean of comparable districts, the average highest hourly rate of those comparable districts was still

\$33.83, or 11% higher than the District's highest rate.

Although increasing the hourly wage of unit members at the highest step by a total of 6% will still render them five percentage points behind the median of comparable districts, the panel believes such an increase to be reasonable in the circumstances. First, for the reasons cited by the District as summarized above, although its adult school budget is seemingly in good shape, the need to devote a significant portion thereof to renovation of the acquired physical facility must be considered with regard to any increase. Further, the panel is cognizant that through the present negotiating cycle the Union has been successful for the first time in getting District agreement to eligibility for medical and dental insurance for unit members, a benefit which it is beyond question is of great value. Indeed, if the District's argument is accurate, granting full health and welfare benefits to unit members is a benefit equal to 8% in salary.

To conclude, the panel therefore recommends that the adult education salary schedule be increased by 2% effective July 1, 2005 and then by an additional 4% effective July 1, 2006, with unit members receiving retroactive payment accordingly.

## 2. HEALTH AND WELFARE BENEFITS

Because the parties have largely reached agreement on what was originally a major issue, the panel will focus its efforts solely on the remaining issue with respect to this subject of negotiations.

### UNION AND DISTRICT POSITIONS

The parties agree that all unit members teaching full time should be eligible for full health and welfare benefit payments. However, the Union disagrees with the District's proposal that teachers working at least 20 hours per week should receive a 50% contribution from the District and those teaching less than that amount of hours should continue to be entirely ineligible for health and welfare benefits. In contrast, asserts the Union, part-timers should receive a prorata District contribution to medical and dental benefits according to the exact number of hours they teach per week.

### ANALYSIS AND RECOMMENDATION

While the panel does not agree entirely with the District, neither can it accept the Union's position of precise hourly proration because so doing would potentially be a nightmare for the

District to administer. The panel therefore believes that the parties should adopt a less gradual proration than advocated by the Union. The District's existing agreement with Cal-Pro, the union which represents classified employees, is a good example to follow.

That District-CalPro agreement sets forth a prorated formula for health and welfare premiums to be paid by the District. The formula sets a certain minimum number of hours worked for 100% District coverage, and a minimum amount of hours for 50% District coverage. From that formula the panel recommends that unit members teaching at least 30 hours per week have 100% of health and welfare benefits paid by the District, that the District pay 75% of the premiums for unit members teaching at least 25 hours but less than 30 hours per week, and those teaching at least 20 hours but less than 25 shall be covered at 50%.

Finally, we suggest that the following language be added to the current contract under Health and Welfare Benefits: "In order to avoid duplicate coverage each unit member shall be entitled to combined benefits earned from service in more than one district assignment to a maximum of 100% benefit entitlement."

### 3. DISCIPLINE SHORT OF DISCHARGE

#### UNION POSITION

The contractual prohibition against the District suspending unit members should be retained. The District has advanced no compelling reason for changing the present system and has therefore failed to meet its burden of persuasion on this point.

#### DISTRICT POSITION

As with all other employees, adult school teachers sometimes engage in misconduct. However, contrary to other employees, suspension is not currently available as a means of progressive discipline. The absence of that form of discipline is both inconvenient for the District and potentially burdensome to unit members since teachers who might otherwise simply be suspended may have to be terminated if their infraction is too serious to address merely through a written reprimand. In comparable districts adult school teachers may be suspended for misconduct so the relevant section of the Government Code suggests the same should be true under the District-Union contract.

### ANALYSIS AND RECOMMENDATION

While, as the Union says, the District may not have cited any specific unit members it believes have warranted suspension, the panel is nevertheless persuaded of the propriety of the District's position on a philosophical basis. Indeed, as exemplified by the fact that comparable districts are privileged to suspend adult school teachers when so doing may be appropriate, it defies logic to limit the District to a potential choice of either writing a unit member up for malfeasance or firing him or her. As this is the parties' initial foray into the realm of suspension as an alternative form of discipline, the panel nevertheless believes the proposition should be approached very cautiously.

The panel therefore believes the parties should agree a system similar to that in place in West Covina Unified School District, language from whose collective bargaining agreement the District has placed in evidence. Parenthetically, it should be pointed out that neither party has cited West Covina as a comparable district with respect to hourly wages. Nevertheless, the panel believes West Covina's contract language to be a sound basis for adding a suspension provision to the present collective agreement. The panel members spent considerable time reviewing the language in the West Covina contract and have crafted from it the following language that is recommended to the parties:

#### DUE PROCESS PROCEDURES FOR SERIOUS MISCONDUCT

1. The Federation and the District recognize the obligations of unit members to demonstrate professionalism in the course of their day-to-day activities.
2. It is also important to establish procedures for the administration of constructive and progressive discipline under this Article and to provide unit members with due process.
3. This Article is separate and independent from, and does not affect the evaluation provisions of this Agreement, state law, statutory suspension, mandatory leaves, paid administrative leave, non reelection, notice of unsatisfactory performance and unprofessional conduct or dismissal proceedings. Suspension under this Article shall not be regarded as a precondition for a statutory suspension or dismissal.
4. The unit member will be given timely notice when required to attend a meeting

called by the District that may lead to discipline, and has the right to be represented by the Federation in such meetings.

5. Action taken under this Article shall be corrective and progressive, and reasonably related to the seriousness of the misconduct and the number and frequency of verifiable prior incidents of misconduct by the unit member.

6. Prior to imposing suspension, the District will utilize the progressive corrective actions outlined in Steps 1-3 below. Progressive discipline shall be utilized upon the recurrence of the same or similar offenses.

#### Step 1. Verbal Warning

A verbal warning may be given to unit members for actions omissions, or infractions that require remediation and shall state the administrator's expectation/resolution. The administrator may make a summary notation of the meeting.

#### Step 2. Written Warning

Written warnings will not be used unless the unit member has been verbally warned about a separate action, infraction or omission within the last eighteen (18) months of service exclusive of unassigned time. A unit member who is to receive a written warning shall be provided an opportunity for a personal conference to orally respond to the alleged infraction before a written warning may be issued. The written warning and any response by the unit member will not be placed in the unit member's personnel file at the time; however, in the event that a suspension is initiated, the member will be notified of the placement of such document in his/her personnel file.

#### Step 3. Written Reprimand

Written reprimands will not be used unless the unit member has received a written warning about a separate action, infraction or omission within the last eighteen (18) months of service exclusive of unassigned time. A unit member who is to receive a written reprimand shall be provided an opportunity for a personal conference where facts related to such notice shall be presented. The unit member will sign the reprimand to acknowledge receipt and a copy may be placed in the unit member's personnel file. A signature does not imply agreement. The unit member has a right to attach a written response within ten (10) days or receipt of the written reprimand.

#### Step 4. Suspension

Suspension without pay will not be used unless the unit member has within the last

eighteen (18) months of service been disciplined as provided in this Article.

No suspension without pay shall exceed two (2) working days.

#### 7. Notice of Suspension

The Superintendent or designee shall give written notice to the unit member of the District's intent to suspend. This notification shall be served in person or be certified mail. A copy will be provided to the Federation President.

The notice of recommendation for suspension will provide due process for the unit member as follows:

- A. A statement of the specific acts or omissions upon which the action is based;
- B. A statement of the cause(s) for which the suspension is recommended;
- C. Copies of any documentary evidence upon which the District relies in support of the suspension;
- D. Where applicable, the Education Code section, District policy, rule, regulation, or directive violated;
- E. The penalty proposed and the date(s) on which the suspension shall take place;
- F. A statement that informs the unit member of his or her rights to appeal the suspension under this Article;
- G. A statement of the unit member's right to submit a written response to the notice of suspension for inclusion in the personnel file within 10 days.

8. The unit member shall have an opportunity to meet with the Assistant Superintendent, Personnel Services concerning the recommended suspension, and the right to be represented by the Federation in such meeting and in all meetings of such subsequent steps of the process.

9. In the meeting, the unit member shall have an opportunity to provide his or her version of the events and any reasons why he or she believes that this suspension should not be implemented.

10. Suspensions are appealable to the Superintendent within 10 days of receipt of the written notice. The Superintendent may uphold or reduce the discipline. The Superintendent's decision shall be in writing and shall be subject to the grievance procedure as outlined below.

11. The proposed suspension shall be final by: (a) the failure of the Federation (or the unit member if not represented by the Federation) to file a written appeal to the Superintendent within 10 working days of the receipt of the written notice of suspension; (b) within 10 working days of a meeting of the employee, the Federation, if requested by the employee, and the Superintendent to discuss the proposed suspension; or (c) by decision of the arbitrator to whom the proposed suspension is appealed.

Within five (5) working days of receipt of the Superintendent's decision to suspend, the Federation (or the employee if not represented by the Federation) must notify the District in writing if the matter is to be appealed. If the suspension is appealed, the matter will be referred to the Grievance Article at level 4.

12. Suspension under this Article shall not deprive the unit member of seniority, health and welfare benefits, or the right to reimburse the District for any payroll deduction from the member's paycheck, including but not limited to, organization dues, credit union payments, charitable contributions, tax sheltered annuities, or insurance premiums.

13. Except as otherwise required by law, the parties will maintain as confidential all charges, evidence, and decisions that result from the application of this Article.

It is the further recommendation of the panel that the parties agree that the language above is to be effective only through June 30, 2009. Based upon their experience with the language, the parties may then opt to continue to include it verbatim in their collective bargaining agreement, to modify it or to delete it in its entirety.

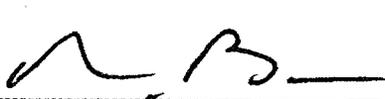
#### 4. OTHER ARTICLES

Neither party disputes the language negotiated regarding Holidays and Duration, and therefore we affirm the language that the parties agreed to in their tentative agreement. With regard to Holidays, we recommend that retroactivity for the two paid holidays begin with the 2006-07 school year.

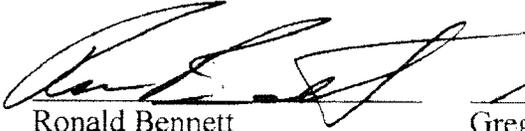
CONCLUSION

Having so opined, that concludes the factfinding panel's involvement with the parties' dispute.

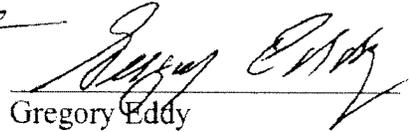
Respectfully submitted . . .



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