

**IN THE MATTER OF THE FACTFINDING BETWEEN**

**GROSSMONT-CUYAMACA COMMUNITY  
COLLEGE DISTRICT**

**PUBLIC EMPLOYER**

**AND**

**GROSSMONT-CUYAMACA COMMUNITY  
COLLEGE DISTRICT ADMINISTRATORS  
ASSOCIATION**

**EMPLOYEE ORGANIZATION**

**RECOMMENDATIONS OF FACTFINDING  
PANEL**

**PERB CASE NO. LA-IM-3446E  
(S-M-1719)**

**RONALD HOH, NEUTRAL FACTFINDING  
PANEL CHAIRPERSON**

**ROBERT EYGENHUYSEN  
DISTRICT PANEL MEMBER**

**MEL AMOV, ASSOCIATION  
PANEL MEMBER**

**APPEARANCES**

For the District:

Timothy Garfield, Attorney

For the Association:

Jerry Buckley, Vice-President

**AUTHORITY**

This proceeding arises pursuant to the provisions of the Educational Employment Relations Act, California Government Code 3540, et seq. (hereinafter EERA). Grossmont-Cuyamaca Community College District (hereinafter District) and Grossmont-Cuyamaca Community College District Administrators Association (hereinafter Association) have been unable to agree upon the terms of their collective bargaining agreement for the 2006-07 and 2007-08 fiscal years through their negotiations and mediation. Pursuant to Section 3548.1 of the EERA, they therefore jointly chose the undersigned factfinding panel to make "findings of fact and recommended terms of settlement" in accordance with Section 3548.3 of the EERA.

A hearing was held before the factfinding panel on April 30, 2007 in El Cajon, California. During the hearing, all parties were afforded the opportunity to submit documentary and oral testimony and argument in support of their respective positions. Subsequent to completion of the hearing, the parties requested and were granted the opportunity to file post-hearing summary briefs and argument. Those briefs were received by the panel on May 12, 2008.

Subsequent to the receipt of the briefs, the factfinding panel met in executive session via telephone in May 22, 2008 to discuss the outstanding issues. This unanimous panel report is issued in accordance with the panel's determinations at that executive session.

At the hearing, the parties initially submitted three issues for recommendation by the panel: 1) salary level for the 2006-07 school year; 2) salary level for the 2007-08 school year; and 3) the performance evaluation system for unit members. During the hearing, and with the assistance of the factfinding panel chairperson in a mediatory capacity, the parties reached the following agreement concerning salaries for the 2007-08 school year:

For the 2007-2008 year, the District and the Administrators' Association agree to a 3% on-schedule salary adjustment effective July 1, 2007, pro-rated for Association-represented employees who have discontinued District employment. The District will fund increased costs of health and welfare benefits. Column and longevity movement for 2007-2008 will be based on current schedule.

They also at that time reached the following agreement concerning future negotiations over performance evaluation procedures:

The parties agree to bargain performance evaluation procedures immediately upon resolution of salary adjustment for 2006-2007, with the intent of completing those negotiations no later than November 1, 2008.

During the hearing itself, the parties presented evidence concerning both the District's ability to pay and the proper salary level for bargaining unit members for the 2006-07 school year.

## **STATUTORY CRITERIA**

Section 3548.2 of the EERA concerns the criteria to be followed by the factfinding panel. It provides as follows:

In arriving at their findings and recommendations the factfinding panel 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 employee-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 and with other employees generally in public school employment in comparable communities.
- (5) The consumer price index for goods 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) Such other facts, not confined to those specified in paragraphs (1) to (6), inclusive, which are normally or traditionally taken into consideration in making such findings and recommendations.

The panel's recommendations herein have been made with due regard to the above statutory criteria.

## **FINDINGS OF FACT**

### **BACKGROUND**

The District is a public community college that serves the East San Diego County area. It employs about 2380 employees, including about 1360 full and part-time faculty, 49

administrators/managers and 37 supervisors and confidential employees. It serves each semester approximately 18,000 full-time students at Grossmont campus and 9,000 full-time students at the Cuyamaca campus.

The Association functions as the exclusive bargaining representative for the District's classified managers and supervisors. There are twenty-three active management/supervisory job titles and nine active classified management/supervisory job titles represented by the Association. The Association is also the "meet and confer" representative of District vice-presidents, deans, assistant and associate deans. The latter group is awaiting a PERB appeal decision regarding the bargaining unit status of these employees.

The Association was newly certified by PERB as the exclusive bargaining representative in the late spring of 2006. Since bargaining began on July 13, 2006 there have been a total of thirty-one bargaining sessions, plus one mediation session with the state mediator on December 8, 2007. Those prior bargaining sessions failed to produce full contract agreement between the parties and lead to the instant factfinding proceeding.

**COMPARABILITY**

The parties agreed at the hearing that the following California community college districts constitute the appropriate comparability group for purposes of Section 3548.2(b)(4) of the EERA:

DISTRICT	TOTAL HEADCOUNT ENROLLMENT (2006-07)
San Diego	134,502
State Center	49,531
Los Rios	119,607
Coast	71,512
West Valley-Mission	38,661
Southwestern	31,092
Foothill-DeAnza	73,250
North Orange	91,553
West Hills	10,800
Kern	38,087
Chabot-Las Positas	32,826
Contra Costa	58,541
Rancho Santiago	114,063
San Bernardino	27,959
San Mateo	41,960
South Orange	55,836
Grossmont-Cuyamaca	43,486

## **ABILITY TO PAY**

Initially in this proceeding, the District claims that it does not have the ability to pay the difference between its proposal for the 2006-07 school year and that of the Association. Because inability to pay is considered a separate issue in PERB proceedings, it is appropriate to address it both separately and initially in this case.

In support of its inability to pay contention, the District argues that its 2006-07 budgeted year end balance of \$3,691,026, as well as its projected \$4,780,317 ending balance for 2007-08 are slightly below its Board policy-required 5% of its total budget, and that such an amount does not reflect the recent \$1.3 million state dollar budget reduction projected in the governor's statewide budget cuts. It asserts that the evidence shows that nearly all the funds allocated in the budget for 2006-07 compensation improvements and additional faculty positions were actually spent in those areas, leaving only about \$29,000 unspent – an amount which would not fund even a 1% additional salary increase in this unit. It argues that, contrary to the Association's contentions, the \$868,412 net ending balance shown in the 2006-07 data has been allocated for specific purposes and is thus not available for salary increases. It claims that the state has additionally announced for fiscal 2008-09 both a 0% cost of living adjustment (hereinafter COLA) and that the state will fund only 1% student growth, despite the 3% student population increase projected by the College. It further points to a proposed 3% reduction in all areas which the District will soon take to its Board in response to the state aid budget cuts.

The District further contends that in contrast to some of the comparable districts, it funds retiree health insurance through age 65, and that the District's obligation through 2005 in that area is projected at \$19.5 million – a large portion of which is currently unfunded. It argues that its existing Supplemental Employees Retirement Plan (hereinafter SERP) will cost

more than \$6 million between 2004 and 2010 across the District, is a benefit offered by virtually none of the comparable districts, and must be funded at the expense of the hire of more necessary full-time faculty members. It asserts that its real ending balance after subtracting the necessary reserve and other special programs will be only \$868,412 – less than 1% of the entire District budget – and that a real ending balance is necessary because current state aid can be adjusted downward during a budget year, as it was last year in the amount of about \$137,000. Finally, it claims that the Association's proposal cannot be viewed in isolation, particularly in view of the contractual "me-too" clause contained in the District's contract with the California School Employees Association (hereinafter CSEA) covering classified employees.

The Association contends that the District does not have an inability to pay, but that instead this dispute is fundamentally about priorities and where the District chooses to allocate its funds. In support of that position, the Association initially points out that the difference between its salary proposal for 2006-07 and that of the District is less than \$100,000 – an amount less than one tenth of 1% of the total District budget. It claims that even taking the worst view of the District's budget and even assuming a non-required 5% contingency amount, the District still has \$868,412 recurring money available in the budget – an amount which can easily absorb the less than \$100,000 difference in the parties' proposals here. It argues that District documents show an ending balance of \$12,667,742 for the end of the 2006-07 fiscal year prior to the Board policy-required 5% ending balance and other commitments set forth on that document – many of which are clearly discretionary. It claims that the actual expenditures for prior fiscal years show significant savings over the adoption budget in dollar amounts that ultimately are not spent by the District in those budget years. Finally, it asserts that the District's projected student growth, the basis of much of the aid

provided by the State, is 3% for the 2008-09 school year and will result in additional state aid over that received in recent fiscal years.

#### DISCUSSION

The District's claim of an inability to pay in this proceeding is based largely upon projected state aid cuts in the 2007-08 school year, and the absence of COLA plus the projected state per student aid of only 1% for fiscal 2008-09, combined with a projected actual student increase of 3% for that year. While these are certainly legitimate concerns, the budgetary data shows a significant amount of discretionary "commitments" in the fiscal 2006-07 year end budget, including more than \$2.5 million in facilities improvements and augmentations. The evidence further shows that, with the possible exception of the District's SERP payments to retirees District-wide, and higher than average District costs for employee health insurance, the impact of state aid budget cuts and projected low or non-existent COLA payments from the state will impact the District in a similar manner to the impact of such elements upon comparable employers.

In addition, even without consideration of potentially available dollars currently budgeted for facilities improvements and augmentation, the District's own data contained in its annual Financial and Budget Report 311 shows a General Fund actual ending balance more than \$8 million larger than the budgeted ending balance for fiscal 2006-07. It is apparent given these figures that the District, like many districts, over-budgets payroll expenses in order to provide at least some cushion against unexpected expenses in other areas.

Given all of these circumstances, it is the panel's view that the District can afford the additional approximately \$118,000 difference between its proposal in salaries for the 2006-07 school year, and the proposal in this area made by the Association. This is particularly so

where that amount is less than one-tenth of 1% of the \$114 million total income contained in the general fund alone for that school year. The panel therefore finds that the District has not met its burden of showing that it has the inability to fund the Association's proposal, and rather that it indeed does have the ability to pay the small added cost of that proposal.

### **THE 2006-07 FISCAL YEAR SALARY INCREASE**

The remaining issue before the panel concerns its recommendation regarding the appropriate salary increase for bargaining unit employees for the 2006-07 fiscal year. As set forth above, the parties at the hearing agreed to a 3% on schedule salary adjustment for the 2007-08 fiscal year, effective July 1, 2007.

For fiscal year 2006-07, the parties have agreed that a 4% cost of living adjustment should be added to the salary schedule for bargaining unit employees. The District also proposes an unknown amount of "ranking dollars" for bargaining unit positions below the 50th percentile among comparable employers per a district salary study using total compensation, contingent upon available dollars. The major difference in their proposals here is the Association's proposal for an additional 2.5% on schedule increase, which it believes is necessary to bring District salaries closer to those paid in comparable districts.

In support of that proposal for an additional 2.5% salary increase, the Association asserts that it is essentially undisputed that the District Board is committed to bringing bargaining unit salaries as close as possible to the 50th percentile level among comparable districts, and that indeed such a District Board goal is contained in the District's materials presented to the panel here. It argues that survey data contained on the California Community College Chancellor's website reveals that Association-represented employees are paid less than similar employees in comparable districts and in San Diego and Imperial County districts, and that such employees continued to lose ground in such comparisons between

2005 and 2007. It claims that a joint salary survey conducted by the District and the Association showed that classified supervisors are paid 9.44% less than the average of benchmarked positions among comparable employers. It rejects the District's characterization of the results of the salary survey as "erroneous;" points out that such data was used by the District Board to grant a 6.5% salary increase to the "meet and confer" unit of deans and vice-presidents informally represented by the Association, and contends that the concept of total compensation now claimed by the District as the basis for denial of the salary survey results was never discussed in negotiations or agreed to by the parties as a proper basis for comparison. It argues that the Association's proposal is further supported by cost of living data which shows that such costs in San Diego County are greater than both the U.S. city average and that of the country's Western region. It argues finally that, as set forth above in the Association's contentions in the area of ability to pay, the District has more than adequate monetary resources to fund the relatively minor \$98,858 cost of the Association's proposal.

The District proposes the agreed-upon 4% COLA for 2006-07, plus provision of "ranking dollars" to bargaining unit positions below the 50th percentile among comparable employers per the District study using total compensation, contingent upon available dollars. It rejects the Association's demand for the additional across-the-board 2.5% salary adjustment.

In support of that proposal, the District argues that its 4% proposal, together with step and column and benefit cost increases, would amount to a total compensation increase for bargaining unit employees of 7.88%, in a year when the state-provided COLA was 5.92% and the Consumer Price Index was only 2.3%. It contends that, among the agreed-upon comparable districts surveyed in the District's salary survey, the District's rank in total compensation is at or above the comparability group average in all surveyed classifications

except custodial supervisor, payroll supervisor, and college and community relations manager, and that the other thirteen surveyed classes are thus not eligible for an equity adjustment under the survey of the agreed-upon comparable districts. It claims that, based upon the results of that salary survey, the District's offer here would accomplish its goal that unit members be paid at or about the median salary level among comparable districts. It claims that the Association's data concerning both comparability and the real costs of the District's proposal is neither reliable nor meaningful, in large part because such data does not include the District's costs for both salary schedule step and column increases or the District's contributions toward employee health insurance.

The District further argues that, even if it has the ability to fund the Association's proposal, that amount is not justified either by the data or by budgetary concerns. It claims that the Association has not shown where the District would obtain the \$118,021 additional cost of its proposal, and that such amount if adopted would raise the salary base by whatever increases were granted in future years, including the 3% across-the-board increase agreed upon by the parties for fiscal year 2007-08. It points out that, if the Association's proposal is awarded, that amount would trigger the "me-too" provision contained in the District's contract with CSEA, making such a total increased amount even more difficult to fund given the scarce economic resources of the District.

The District further points to the existing unfunded District liability for both retiree health benefits and the SERP program as real, non-contingent liabilities which the District must fund in future years, and argues that such unfunded amounts plus the declining state budget require a substantial reserve, rather than spending additional dollars on unjustifiable salary increases for Association-represented employees.

Finally, the District argues that its offer is the maximum that can be made without

impairment of a minimally adequate reserve, and that any additional amount would reduce the reserve to a point where service reductions, including layoffs, would become a consideration. It asserts that this is particularly so given that there is no state COLA scheduled to be provided to community colleges like the District next year.

#### DISCUSSION

Initially in this proceeding, the panel believes it necessary to address what appears to be the major comparability element of the parties' inability to reach voluntary contract agreement – whether such comparability, including the salary survey, should examine only comparable salaries, as the Association argues, or should examine total employee compensation, as the District claims. This disagreement as to the intent of the mutually agreed-upon salary survey and comparable employers has led to widely differing comparability data, with the Association among other things contending that the average salary difference for 2005-06 for District classified supervisors is 9.44% below the median, and the District countering that in total compensation, only three of the sixteen surveyed classifications are below the median total compensation amount among comparable employers.

Irrespective of the specifics of the parties' agreement concerning the salary survey in these circumstances, Section 3548.2(6) of the EERA requires the panel to consider, weigh and be guided by "...the overall compensation presently received by the employees, including direct wage compensation, ....insurance and pensions, medical and hospitalization benefits, ....and all other benefits received." It is apparent from the clear terms of this EERA section that the panel is to look beyond salary only comparisons, and must take into account for comparison purposes the total compensation received by the subject employees.

When these areas are examined, it is apparent initially that the District is one of only

four of the sixteen comparable employers in which there is no out-of-pocket employee expense for "medical and hospitalization benefits." When such a subject group is extended to comparable employers for whom the subject district pays 100% of the least expensive medical plan, the District is one of only six such comparable employers . According to District data, employees of certain comparable districts pay out-of-pocket monthly health insurance amounts which constitute significant reductions in their take home pay – amounts which are not a factor for Association-represented employees in this case. The evidence shows that the District's yearly per participant cost for health insurance is \$10,312 per year.

The evidence further shows that, in contrast to virtually all comparable employers, the District additionally has an obligation to pay more than \$6 million between 2004 and 2010 across the District for the supplemental retirement SERP plan. When these significant elements of total compensation are considered under the above-described "total compensation" element of the factors for panel consideration set forth in Section 3548.2 of the EERA, it is apparent that the data warrants a less than average comparability group salary increase for bargaining unit employees.

Given these differences in the comparability data, the panel believes that a more accurate comparison is produced by examining compensation paid among comparable employers which, like the District, do not require any employee contribution toward health insurance, or at minimum require no employee contribution for the least expensive health insurance plan offered by the pertinent district. Among such comparable districts – North Orange, West Valley-Mission, San Diego, South Orange and San Bernardino – the average pay increase for the 2006-07 year is 5.37% when the District's offer is not included and 5.14% when the District's offer is included, not counting the unknown amount of "ranking dollars" included in the District proposal here. In that subgroup, the District's salary offer in this

proceeding is the lowest among the six districts, and is well over 1% less than the average within those districts. These elements clearly justify a salary recommendation above that contained in the District's proposal.<sup>1</sup>

In view of all of these elements, the panel believes that the proper wage recommendation should be an amount greater than the District's offer that approaches the average salary settlement in those similarly situated districts which, like the District, pay the entire costs of at minimum the least expensive plan offered for employee health insurance, and that such amount should have limited impact on other elements of the District's budget and the District's relationship with other District bargaining groups. It is therefore our recommendation that, in addition to the District's offer here, the District should also increase bargaining unit salaries across the board by 1%, effective on and retroactive to May 1, 2007.

Such an amount would produce a settlement of slightly above a 5% salary increase, when the unknown amount for "ranking dollars" for the three unit classifications below their comparability median is factored in. That amount remains slightly below the average salary settlement for that fully-paid health insurance comparability group, in order to account for the District's SERP contributions, which apparently are not required in any other district in the comparability group. In conjunction with the limited "ranking dollars" already contained in the District's proposal, such an amount likely retains the District's relative position in salaries when compared to similarly-situated employers in this subgroup. Finally, given the effective date of the additional salary increase, the additional cost to the District for 2006-07 would be only about \$6000 total over and above the current District offer. In addition,

---

<sup>1</sup> The District's data in this area lists only the total compensation cost for its proposal here. In the absence of any definitive data, the panel believes it likely that a total compensation amount similar to that listed in the data for the District also exists in the other districts where the employer pays the full cost of employee health insurance.

because the .2% cost of this recommendation is less than the .3% cost that would trigger the "me-too" clause in the CSEA contract, it would appear that such an amount would not be required as payment to CSEA bargaining unit members under that clause, although the specifics of that "me-too" clause in that contract were not contained in the evidence presented to the panel.

RECOMMENDATION

In addition to the District's proposal here, the District shall, for the 2006-07 fiscal year increase bargaining unit employees' salaries by 1% effective on and retroactive to May 1, 2007.

CONCLUSIONS OF LAW

In accordance with the requirements of Section 3548.3 of the EERA, the duly authorized factfinding panel makes the following recommendations for resolution of a new collective bargaining agreement between the above parties.

1. The District has the ability to pay for the proposal here of the Association.
2. The District shall increase all bargaining unit salaries by 1% effective on and retroactive to May 1, 2007, over and above its 4% proposal effective July 1, 2006 and the unknown amount of "ranking dollars" already contained in the District's proposal.

May 23, 2008

  
 RONALD HOH  
 Factfinding Panel Chairperson

Concur       Dissent

Concur       Dissent

MEL AMOV  
 Association Panel Member

  
 ROBERT EYGENHUYSEN  
 District Panel member

because the .2% cost of this recommendation is less than the .3% cost that would trigger the "me-too" clause in the CSEA contract, it would appear that such an amount would not be required as payment to CSEA bargaining unit members under that clause, although the specifics of that "me-too" clause in that contract were not contained in the evidence presented to the panel.

RECOMMENDATION

In addition to the District's proposal here, the District shall, for the 2006-07 fiscal year increase bargaining unit employees' salaries by 1% effective on and retroactive to May 1, 2007.

CONCLUSIONS OF LAW

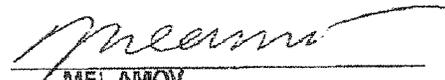
In accordance with the requirements of Section 3548.3 of the EERA, the duly authorized factfinding panel makes the following recommendations for resolution of a new collective bargaining agreement between the above parties.

1. The District has the ability to pay for the proposal here of the Association.
2. The District shall increase all bargaining unit salaries by 1% effective on and retroactive to May 1, 2007, over and above its 4% proposal effective July 1, 2006 and the unknown amount of "ranking dollars" already contained in the District's proposal.

May 23, 2008

  
RONALD HOH  
Factfinding Panel Chairperson

Concur       Dissent

  
MEL AMOV  
Association Panel Member

Concur       Dissent

\_\_\_\_\_  
ROBERT EYGENHUYSEN  
District Panel member