



## INTRODUCTION

After a lengthy course of failed and contentious bargaining to replace their 2005-2008 Collective Bargaining Agreement (“CBA”), the parties to this dispute, the Oakland Unified School District (“OUSD”) and the Oakland Education Association (“OEA” or “Union”), in a milieu of steadily eroding financial news and declining State aid, reached impasse in December of 2009. CHRISTOPHER D. BURDICK was appointed by the Public Employee Relations Board (“PERB”) to serve as Impartial Chair of the Factfinding Panel. RON BENNETT of School Services of California, Inc., was appointed to the Panel by the District, while OEA/CTA appointed its Emeritus Executive Director, WARD ROUNTREE, III. Hearings totaling almost 20 hours were held at CTA’s offices in Oakland on February 22 and 23, 2010, followed by an 8-hour executive session meeting of the Panel on March 5, 2010.

JOHN GRAY of School Services of California appeared for the District. GERRY FONG, School Finance Specialist, and CHUCK KING, Regional Uniserv Staff, both of CTA/NEA, appeared for OEA. The time limits and deadlines set forth in Cal. Govt. Code Sections 3548.2 and 3548.3 were inadvertently, but understandably and acceptably, waived due to the scheduling difficulties of the parties, the Panel and the Chair. The parties were afforded full opportunity to make opening statements and present witnesses and make showings and arguments on each of the items in dispute.

### I

## GENERAL DISTRICT DESCRIPTION

In school year 2008-09, the OUSD served 38,658 K-12 students and is one of the largest urban school district in California, with 60 elementary schools, 20 middle schools, 16 small or traditional high schools, 11 alternative school sites, one special education program sites (down from 5 in 2004-05), 4 adult education program sites (serving 25,000 students), and 32 charter schools (up from 20 in 2004-05). The District employs a total of 2837 non-administrative certificated employees represented by the OEA/CTA in a unit that also includes nurses, counselors, librarians, psychologists, substitutes, speech pathologists, and contracted Adult Education (“Adult Ed”) teachers.

The 2008-09 CBEDS enrollment data for elementary, middle, and high schools indicate that 41.3% of the total student population is African American, 34.3% is Hispanic, 14.9% is Asian, and 6% is Caucasian, with the remainder representing other ethnic groups. Most of the student body is economically distressed. Many of the District's students (particularly those living in the "flatlands" as opposed to the "hills") struggle with the inequities characteristic of an inner-city urban district, including crisis-level gang related crime, homelessness, high unemployment rates, teen pregnancies, drug and alcohol abuse, and the extensive need for health related services.

In the spring of 2003, the District became insolvent and received a State loan under SB 39 of \$100,000,000 (One-Hundred-Million Dollars), the largest single bailout loan of any school district in California history. The State Superintendent of Public Instruction appointed a State Administrator who, under law, assumed full legal and operations authority for the District, with the elected District Board holding only advisory powers. In 2009, the State returned control to the elected Board but installed a State Trustee who continues to maintain "stay and rescind" powers over the District, under SB 39. In July of 2009, a new Superintendent was hired.

The voters of the District have shown their support for higher salaries and smaller classes, by passing Measure E in 2004 and then made that \$195.00 tax permanent with the passage of Measure G in 2008. Measure G generates almost \$20 million per year in additional revenues beyond those provided by the State. Measure G was approved with the stated "purposes" to ". . . attract and retain highly qualified teachers, [and to] keep classes small . . ."

The District faces a long-standing, well-publicized myriad of challenges, including chronic declining enrollment; a sustained structural operating deficit exacerbated by State revenue declines; an over 18% cumulative reduction in base revenue limit funding beginning in year 2008-09 to the present; a dizzying, ever-changing regulatory environment; high turnover of first- and second-year teachers; difficult recruitment and retention of quality teachers; and the proliferation of small charter schools which compete for students and revenues.

The District has given each "site" far greater control over its own budget to allow schools to allocate and spend based on school based educational needs, opening new (usually small) schools and encouraging effective ones, formally separating the administrative and financial functions of the District while making OUSD services available to the sites on a "fee for service"

model, creating, the OUSD believes, a shared responsibility between schools, families, the District, and the communities.

Since 2004 the District has made academic achievements measured by the Statewide STAR test results for every ethnic group and grade level in English Language Arts and Mathematics, a result, in part, of, during State administration, a redesign and overhaul of the District’s operations with the goal of improving instruction and improving the academic outcomes for students.

OEA/NEA/CTA is the recognized employee organization for the District’s certificated non-administrative professional employees. There are approximately 2,837 full-time equivalents (“FTEs”) in the OEA unit, down from 3,195 certificated teachers in 2004-05.

## II ISSUES

At the conclusion of mediation, eleven (11) issues remained unresolved and were submitted to the Panel for hearing and recommendation, as follows:<sup>1</sup>

CBA Article	OUSD Proposal	OEA Proposal
<u>Article 1 Term of Agreement</u>	A. 2008-09: Closed contract B. 2009-12: Three-year term C. Impact legislation open each year D. 2009-10: Current health benefits E: 2010-12: Health benefits reopener pursuant to HEIC negotiations	A. 2008-09 Closed contract B. 2009-12 Three-year term C. Health care reopeners subject to Health Benefits Improved Committee (HBIC) negotiations for 2010-11 and 2011-12
<u>Article 9 Academic Freedom</u>	Current contract (CCL)	New provision 9.3 re Course Pacing Guides: . . . to allow teacher flexibility and initiative in sequencing . . . . . . to limit number of benchmarks assessments . . . to 1 per course per semester.

<sup>1</sup> “CCL” indicates a desire for “Current Contract Language”.

<u>Article 10 Work Year</u>	10.5.1 Preparation periods for elementary teachers: OUSD proposal 12/07/09	A. 10.5.1 CCL B. New provision: No mandatory work on Saturdays or Sundays. C. 10.6.5.1 (new) Travel Time: An assignment that requires a UM to teach . . . 2 or more classes at the same or at different sites with 2 or more hours between assignments shall be considered a split assignment . . . ½ hour duty time for travel and set up . . .
<u>Article 11 Leaves</u>	CCL	11.16 OEA proposal re Personal Leave 11/02/09: . . . shall be granted; . . . may be extended beyond one day only with consent in advance of the principal . . .
<u>Article 12 Assignment/Transfer/Vacancy/Consolidation</u>	CCL	A. New provision to give priority for assignment to UMs assigned to split-shift assignments B. 12.11.10.1: CCL, except amend to correct Adult and <b>Career</b> Education name.
<u>Article 12 Assignment and Adult Education Program</u>	Eliminate minimum FTE of adult education teachers, currently at 64.	CCL
<u>Article 15 Class Size</u>	A. Align CSR with state law and regulations, including penalty provisions. (Article 15.5) B. Suspend adult education class size maximum for contract duration. (Article 15.7)	A. K-3: Decile 1 and 2 schools—range 18-20 students to 1 teacher per class B. K-3: All other schools—20:1, flexibility to not exceed 24:1 C. There shall be no elementary combination classes. D. 9 <sup>th</sup> grade classes of English, Algebra, and Math Intervention 24:1 E. AE—CCL F. Spec Ed CS maximums as specified in OEA proposal 11/02-09.
<u>Article 21 Special Services and Specialized Assignments</u>	CCL	A. Nurses' caseloads: 750:1 B. Counselors' caseloads: 500:1; . . . a counselor at every secondary school campus . . .
<u>Article 22 Early Childhood Education Centers</u>	CCL	A. No mandatory work on Saturdays and Sundays. B. Staff development as outlined in agreement between the parties dated 12/15/09.

<u>Article 24 Compensation</u>	2009-10 No change 2010-11 Reopener 2011-12 Reopener	A. 2008-09 = 0% B. 2009-10 = 5% C. 2010-11 = 5% D. 2011-12 = 5% E. Same % increases for all rates and stipends. F. New Professional Duty Rate defined as “per diem hourly rate.” G. Substitute Salary increases as proposed 11/02/09. H. Health Care: 2009-10: CCL 2010-11: HBIC 2011-12: HBIC
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The Chair doubts that some of the Issues should be before the Panel at all—why the parties could not reach an agreement on, for example, “priority for assignments to UMs assigned to split-shift assignments,” or “staff development” in Early Childhood Education Centers,” or days of personal leave is a mystery. The Factfinding process is not well-suited to resolving a multitude of such small-scope, fact-intensive issues, particularly where the Panel is led by a Chair who has 41 years of experience in public employment but little exposure to the K-12 setting and for whom “getting up to speed” on these issues involves as much (if not more) time than he needs to grasp significant, broad-picture issues.

The parties’ voluminous hearing binders covered each of these disputed issues and provided, to a greater or lesser degree, data, information and arguments supporting their contentions and positions.<sup>2</sup>

### III STATUTORY CRITERIA

Gov. Code Sec.3548.2 (b) mandates that the Panel consider and apply the following criteria in making its findings and recommendations:

- (1) State and federal laws that are applicable to the employer.
- (2) Stipulations of the parties.

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<sup>2</sup> Readers will note the absence of health and welfare/health care and insurance issues from this Report. The parties are engaged in a multi-union effort to work out these matters with the OUSD in a separate forum, and so the Panel is relieved of the burden of dealing with such problems here.

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

#### IV

#### **HISTORY OF NEGOTIATIONS**

On January 30, 2008, the OEA “sunshined” its initial proposals for a successor agreement with the District, set to expire on June 30, 2008. On January 30, 2008, the District “sunshined” its initial proposal for a successor Agreement. The parties then participated in 37 negotiating sessions beginning on February 21, 2008.

During negotiations, the parties exchanged many proposals addressing CBA language in many different articles, as well as proposals on salary and benefits. During negotiations, the District dropped some of the changes it sought to the CBA, withdrawing many proposals that were initially sunshined. OEA also narrowed its proposals.

On June 24, 2009, after over 165 hours of bargaining over 15 months, impasse was declared. On June 29, 2009, PERB confirmed the impasse. Thereafter, the parties participated in 9 mediation sessions. No substantive tentative agreements were reached through negotiations or

through mediation. The parties reached tentative agreements on two minor issues, one a name change of a department and the other incorporating a previously agreed upon memorandum of understanding.

On salary and benefits, the District had initially sought a 3% salary reduction, while OEA requested a 20% salary increase over 3 years. In mediation, the District proposed zero percent salary increase for FY 2008-09 and FY 2009-10, with OEA then seeking a 15% increase over FY years 2009-10 through 2011-12. No substantive tentative agreements were reached during negotiations.

On December 9, 2009, the mediator released the parties to Factfinding and on December 28, PERB provided the parties with a list of neutrals. On January 28, 2010, PERB appointed the Neutral, Christopher D. Burdick, an attorney-at-law and self-employed neutral, as Chair of the Factfinding panel.

## V

### **THE DISTRICT'S FINANCIAL STATE AND ITS "ABILITY TO PAY"**

Because the dispute deals almost entirely with OEA proposals to alter, and OUSD demands to maintain, the financial *status quo*, and because the District claims a massive financial shortfall of crisis proportion, we review the District's financial state as of the date of the hearing. The District asserts an "inability to pay" the demands of the Association, and so, under Gov. Code Sec. 3548.2 (b) (3), the Panel is required to consider "[t]he interests and welfare of the public and the financial ability of the public school employer."

The District claims an inability to meet the Association's demands and asserts that the interests and welfare of the public would be severely damaged by the expenditures and reductions required to fund the Association's demand. A one percent (1%) increase in wages ("step and column," as the educational vernacular goes) costs the OUSD approximately One Million, Six-Hundred Thousand Dollars (\$1,600,000.00). The OEA's demand of wage increases of 5%/5%/5% would cost (before compounding) a total of \$24,454,050.00 over three years (and perhaps as high as \$50,000,000.00 after compounding at the end of the third year).

The District blames its financial woes (a projected \$38,966,164.00 General Fund Reduction needed to meet the Governor's proposed cuts) on a myriad of sources, including the

State Budget crisis (school districts are dependent on the state for most of their revenues); its obligation to repay the State loan of \$100 million, the largest in state history; the legacy of certain imprudent decisions of the State Administrator; chronic declining enrollment limiting the District's financial flexibility because of the significant per-ADA loss of unrestricted revenue limit funding; the District's significant cuts to its budget and its need to make more significant cuts in the future; unavoidable deficit spending in FY 2009-10, spending that will continue into the future. Absent significant budget reductions, the District may end the current year (and 2010-11 and 2011-12), insolvent; the OUSD's state unrestricted base revenue limit funding is below the statewide average; and the increased and unavoidable costs of 2010-11 health and welfare benefits and increased "step and column movement" costs are high.

The District has been deficit spending for some time—in 2009-10 it deficit-spent to the tune of \$25 million dollars and anticipates an increase of such spending to about \$46 million in 2011-12, **unless** it makes substantial reductions in its budget. The District anticipates ending FY 2010-11 with a negative fund balance of about \$22 million, and unless it slashes spending it will carry forward an ongoing structural deficit of almost \$68 million at the end of FY 2011-12. To grapple with these stark numbers, the new Superintendent (subject to the approval by the State Trustee) first plans a General Fund Reduction of \$38,966,164, with cuts of \$13 million proposed in school site funding (including layoffs/RIFs of 125 teacher FTEs and based on a projected lower enrollment) and \$25 million proposed in Central Services/Non School Site Funding (including layoffs/RIFs of 86.8 Central Office FTEs).

OEA vigorously disputes these dire financial projections, pointing out that OUSD ending balances continue to grow and that, historically, OUSD projections for future expenditures rarely make sense; that OUSD total revenues are higher than most comparable districts, with the highest total revenue/ADA or the total revenue limit/ADA in the statewide comparison and one of the highest in the county; that the OUSD's trumpeted and touted "results based budgeting" ("RBB") and small school sites have not been a boon to students but has perversely created an environment where the District has abdicated its responsibility to ensure money is spent appropriately in the classroom and, instead, have encouraged the "flavor-of-the-month" contracts between the sites and an army of multitudinous small and inefficient (but well-connected) vendors, essentially privatizing education; that RBB's charges to each site for bargaining unit

salaries has not yielded positive results; and that compared to other districts OUSD budgeting priorities and choices are “out of line”.

Boiled down to their essence, the OEA’s arguments are that (1) the OUSD has been historically inaccurate and unreliable in its financial projections, with a wide discrepancy always manifest in the “actuals,” to the detriment of the workers; (2) the OUSD’s priorities are skewed toward chronic overspending on administration and (too many) administrators, a proclivity exacerbated by the recent growth of many decentralized small schools, each needing a principal and staff; (3) the District overspends on high-priced consultants who do work (at inflated rates) that could and should be done by regular District employees, at substantial cost savings; and (4) the OUSD is simply unreliable and inaccurate when it comes to financial projections of this type and the Panel should look with a jaundiced eye at the OUSD data and claims because, historically, the OUSD has almost always overstated its deficits and understated its revenues. There is a chasm of teacher mistrust and skepticism, which the Board and the new Superintendent must bridge (or at least narrow) if any labor peace and stability is to be achieved. The OEA and its membership simply distrust the OUSD, give little credence to its announced plans and aspirations, and exhibit a desire to grab now and hold on to a little bit of something, because they simply do not trust the Board to spend its future moneys in a prudent manner.

In fact, the OEA is able, with relative ease, to go through the OUSD budget and projections and pick out areas where simple cuts or reductions in central office administration, staff, consultants and their fatty contracts would free up several million dollars that could then be used for wage increases. But all of this amounts only, at the end, to several million dollars in possible savings, and the Chair is convinced the OUSD needs to cut well over \$35 million, plus having to pay down its loan. That the OUSD’s financial state, now and into the short-term future, is woeful is almost beyond dispute. The State has essentially abandoned its K-12 schools and, to balance its own budget, it has robbed local schools by reducing COLAs and other Revenue Limit Adjustments, shifting the burden (here) to the OUSD to fund these shortfalls, something the OUSD lacks the ability to do. It is true that some of these State reductions must be repaid in the future (e.g., COLA cuts), but the State has complete control over the timing and amounts of those repayments. So, for example, the OUSD projects a decline in its Actual Revenue Funding Limit for ADA from \$6356.00 per student in 2007-08, to \$4988.00 in 2009-10, a loss of \$1368 per student and a loss of \$1424.00 to \$4932.00 per ADA in 2010-11.

## VI

### POSITION AND ARGUMENTS OF THE PARTIES

The positions of the parties, and their arguments and rationales on the disputed issues are as follows:

District – The District is fixated upon, and looks only at, its “ability to pay,” pointing to the unique and massive State loan; argues that it has been deficit spending for several years; and claims that meeting each OEA demand (all of which involve money, directly or indirectly) requires the expenditure of more money *in futuro* than the OUSD is spending now, be it on wages or reduced class size or more teachers/counselors/nurses, etc. The District simply owes the State millions and millions of dollars, has a huge debt load, is bleeding enrollment, ADA and state aid; simply cannot spend beyond its budget; and that any “found money” that might appear should be used to pay down the deficit and not incur more future debt.

OEA – The Union insists that OUSD cannot continue to make choices that negatively affect students but must act in the public welfare by re-prioritizing its spending, to attract and retain teachers and insure that the bargaining unit is fairly compensated; OUSD has an abysmal record for compensating teachers and has failed to meet the agreement with the Community which passed parcel taxes for schools by Measures E and G to attract and retain teachers; OUSD doesn’t compensate bargaining unit members fairly, while it has compensated its superintendents more than fairly, and because OUSD compensates teachers poorly there is a constant high turnover rate when all studies show that a more experienced and stable teaching force gets better results in student performance but OUSD has an increasing percentage of new teachers every year, due to low salaries; OUSD bargaining unit salaries have not kept pace with CPI and Average Salary Step and Column costs for the bargaining unit are minimal and actually a savings to the District if calculated with the district scattergrams; OUSD must ensure small class sizes and continue providing Adult Ed services of the quality and availability the community has come to expect; and OUSD must allow teachers to direct their own prep-time, have a 5-day work week, and should respect their employees enough to allow them to determine if they have pressing personal business, to provide relief for the ever increasing numbers of split assignments and to allow teachers the flexibility to use testing and pacing guides where appropriate; OUSD

needs to provide an appropriate number of Adult Ed teachers, nurses and counselors to meet the needs of the students and the community; OEA members expect the district provide split assignment relief and to not require a work week longer than 5 days and be accorded the respect to be flexible in pacing and not be required to over-test students.

## VII

### THE CHAIR'S FACTUAL DISCUSSION AND ANALYSIS

Term and Compensation are inextricably interlinked here.<sup>3</sup> FY 2008-09 passed without an agreement, and the parties' proposals essentially forego any change in the status quo ante for that year. Technically, the Panel's jurisdiction is limited to the impasse year FY 2009-10—but the proposals of both parties and their presentations to the Panel urge the adoption of a new contract (and Panel findings supporting such a contract) through the 2011-12 school year.

OUSD proposes no wage increase for FY 2009-10 but does propose “reopeners” on wages for the next two years, with no guarantees whatsoever except the prospect of more talks (and the very real possibility of salary reductions if no agreement can be reached). The OEA proposes a 5% across-the-board salary increase (for a total of 15% before compounding) for the years 2009-10, 2010-11, and 2011-12.

A) Comparability and Overall Compensation (Gov. Code Secs. 3548.2 (b) (4) and (6)—no extended discussion of the comparable wages and fringe benefits in the school districts claimed to be comparable (or not) is here required—the OUSD directly concedes that it is woefully behind on its wages and total compensation with any (or all) of the districts traditionally deemed comparable to Oakland, a circumstance and result of financial distress brought about by years of fiscal mismanagement, wasteful spending, the 2002-2008 State takeover<sup>4</sup>, poor decisions by the State Administrator, competition from charter schools, loss of ADA, and a number of other factors beyond the control of the OUSD, including the dismal

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<sup>3</sup> As are, to a lesser extent, the OEA class size and case load demands, all of which would require the OUSD to hire more staff/teachers (or bring on more temps, contract workers or substitutes, something the OEA would surely view with aversion) to reach the desired class sizes or caseloads. All of this is, simply, money and how it should be spent. The District, of course, claims that it presently has no money, just mounds of pressing debt.

<sup>4</sup> The OUSD is still partly in the clutches and warm embrace of the State, in the person of a State Trustee who possesses, as did the State Administrator, the power to veto any CBA entered into between the OUSD and the OEA.

2008-2010 general economy and the State's apparent abandonment of its K-12 systems to the economic dogs.

OEA argues, and provides some supporting data in its fulsome binder that: (1) Oakland is last in Alameda County and among similar districts statewide in average salary comparisons (J-90 Reports); (2) Oakland teachers have the lowest maximum compensation in Alameda County (EdData and J-90 Reports); (3) after adjusting for each district's contribution to health benefit premiums, Oakland's compensation is the lowest in almost every cell on the salary schedule, when comparing with Alameda County or with similar districts statewide (J-90 Reports); (4) Oakland is last in comparisons of career earnings at every 5 year benchmark from 5 years to 30 years of service (J-90 Reports); (5) those retiring after a 25-year career in Oakland are last in monthly retirement income when compared with Alameda County, or with similar statewide districts; (6) those retiring after a 32-year career in Oakland are last in monthly retirement income when compared with Alameda County, or with similar statewide districts; (7) after accounting for health care contributions Oakland's "Total Compensation" is lowest whether based on average salaries or maximum salaries (J-90 Reports); (8).Oakland is near the top in only one compensation category—Superintendent Salary<sup>5</sup>—where it ranks a dubious second in both Alameda County, and among similar districts statewide; (9) the District spends a smaller proportion of its expenses on teacher salaries than comparable districts in Alameda County and among similar districts statewide (Unaudited Actual Reports); (10) the proportion of district expenses spent on teacher salaries declined from 2002 to 2007 (Unaudited Actual Reports). At the same time the OUSD found funds to hire a new Superintendent, at a higher salary than his predecessor and then shortly thereafter in his contract gave the new Superintendent substantial benefit and salary increases.

B) CPI – (Gov. Code Sec. 3548.2 (b) (5). Since the last time the unit got an overall, across-the-board increase in wages in 2007, the CPI has gone up over 6%, and so those members (a minority of the unit) at the top step of the columns have seen their purchasing power eroded by at least that amount [although the District has continued to handsomely fund most of the

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<sup>5</sup> When OUSD's new Superintendent was hired in July 2009, he was given a 6% salary increase, making his salary higher than that of any other Alameda County superintendent but one. (EdData). This was not a politically prudent decision for the Board or the Superintendent to make—did they really expect the unions not to notice?

steadily increasing costs of health benefits] and those (the majority of the unit) not at top step have gotten step-and-column advancement of up to 5% per year on the salary schedule.

C) Ability To Pay – (Gov. Code Sec. 35482 (b) (3)). It appears the OUSD would actually be thrilled to be in the financial position where it could grant its teachers (and, by the inevitable, civil service upwards ripple effect, its administrators and principals) a 15% pay increase. But the OUSD points to its “inability to pay” (described at length, *supra*) and claims that if it gets any unrestricted funds or moneys, reaps unanticipated windfalls or overflows or finds returns of unexpended funds from prior years, those funds should be swept into the General Fund and then either reserved or used to pay down the anticipated deficit (or even pay down the State Loan, which carries a hefty annual interest rate).

D). Interest and Welfare of the Public and Other Criteria Usually Considered – (Gov. Code Secs. 3548.2 (b) (3) and (7)). It is not in the best interest of the students and the community for the OUSD teaching staff to slide further behind its peers in the County and statewide. It is true as OUSD points out, that its salary offer may not increase but does not decrease compensation while many other comparable school districts are actually cutting salaries and benefits, so that by simply maintaining the *status quo* we could watch OUSD advance by inertia as others slide back in its direction.

The Chair believes it neither reasonable nor practical to ask the OEA membership to pass up 2008-09 and then take nothing for the next three years while simultaneously agreeing to an open-ended “reopener” that would allow the OUSD to force it back to the table for needed pay decreases or other concessions. There comes a point beyond which we cannot expect workers to go. As will be seen from our discussion of other items which cost money *infra*, the Chair sympathizes with OEA and many of its positions thereon (e.g., Adult Ed, combined classes, class size, etc.) but believes that available OUSD resources, choices, and options should primarily be put to achieving gains in total compensation by (1) shortening the work year (and thereby raising the actual daily rate of pay) and by (2) a few, modest across-the-board wage increases.

The Chair finds most appropriate and therefore recommends a CBA expiring on June 30, 2012, with reopeners only on: (1) those needed to address “impact legislation,” and then only as to those areas addressed in that legislation (that is, if a bill is passed dealing with Adult Ed and that has an “impact,” the OUSD can reopen the Adult Ed section of the CBA, but no others); and two (2) reopeners on any subject **except** Compensation. There will be no reopeners on general

Compensation, so whatever OEA members are being paid they would continue to get, without threat of reduction or diminution.

See Art. 24, *infra*, re: Compensation.

Article 9 Academic Freedom OEA proposes a change in the current contract to add language restricting the use of “pacing guides” and to limit the number of “benchmark assessments” to 1 per semester per course. “Pacing guides” are presently mandatory and used to assist the sequencing and pacing of classroom instruction. “Benchmark assessments” are made in most courses, including core academic courses, during each semester to ensure that teachers obtain data indicating the educational progress of each student, showing where a student is deficient and might need intervention or where the student is ready for acceleration. OUSD concedes there would likely be no economic cost but insists this is a management right and prerogative under the final sentence of Gov. Code Sec. 3543.2 (a). The OUSD points to the improved academic achievement of District students over the past five years and argues that benchmark assessment pacing guides have contributed to these achievement gains.

The OEA put on an impassioned case during the hearing on this issue, insisting that these two practices are simply politically correct and academically unsupported and does nothing more than interfere with the teachers in their daily instructional tasks, removing their discretion and use of sound judgment in dealing with individual students.

While the Chair found the OEA arguments persuasive, he does believe that these proposals “abridge managerial prerogatives” in a fundamental area of managerial discretion: [see, e.g., Anaheim USD, PERB No. 177, San Mateo SD vs. PERB, (1983) 33 Cal 3<sup>rd</sup> 850, Berkeley POA vs. City of Berkeley, (1977) 76 Cal App 3<sup>rd</sup> 931 (decision to implement civilian review of police officer conduct not in scope), and San Jose POA v City of San Jose, (1978) 78 Cal App 3<sup>rd</sup> 935 (deadly force policy outside scope)] and so concludes the present contract language should remain unchanged.

Article 10 Work Year Presently the school year consists of 180 instructional days each year and 6 non-instructional days. Because it is difficult to find available extra money to support a recommendation of immediate across-the-board increases in salary, the Chair believes it is appropriate, based on the testimony and the exhibits and the arguments of the parties, to achieve increases in the daily rate of pay by shortening the work year. So, the Chair recommends maintenance of the same 180 day instructional year but (1) a TEMPORARY REDUCTION

(sunsetting on June 30, 2012) of two (2) days in the **non-instructional** year in 2010-11 and 2011-12, and (2) a PERMANENT REDUCTION of two (2) days in the **non instructional** year, effective July 1, 2010 and continuing *sine die*. Thus, non-instructional days would drop from 6 to 2, while Compensation shall not be reduced. The net effect of each two-day reduction is an effective 1.1% increase in net salary, or 2.2% in total.

Articles 10 and 22 Saturday and Sunday Work OEA requests a contractual guarantee that no teacher shall be required to work on a Saturday or a Sunday. Such rare work in the past has primarily been for training or staff development and not hands-on instruction of pupils. OEA argues that this guarantee is needed to “. . . create a comparable work schedule of Monday through Friday for all OEA bargaining unit members,” and to align OEA bargaining unit members with surrounding school districts who do not require mandatory work on Saturdays or Sundays, thereby also saving OUSD money by not utilizing school facilities, heating and lighting, and other associated costs. Saliently, OEA fears that the OUSD’s “voluntary K-12 weekend retreats” will become mandatory.

The Chair recommends recognition and continuation of the *status quo*, namely that training and professional development, in the ECE shall be done at night and not on the weekends.

Article 10 Elementary School Prep Periods The parties advise they reached a TA on a language change during the post hearing time period.

Article 10 Travel Time As in the case of Saturday/Sunday work, the Chair recommends that the parties affirm, memorialize and then continue the present practice (in Adult Education), which is to track and honor all travel time hours worked and then allow the employee to use these hours to reduce the employee’s work year (i.e., an employee with 30 hours of recorded travel time may end her work year one week early).

Article 11 Leaves CCL (Art. 11.16) makes the granting of five days of personal leave discretionary with the site principal. OEA proposes to make the granting of all five days mandatory.<sup>6</sup> The Association’s testimony here was primarily based on the stress of teaching in Oakland and the resulting need to take time off to decompress, as well as take care of personal

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<sup>6</sup> Cynics may ask why employees who are only required to be at the jobsite about 186 days a year need to get, as a matter of right, five “personal” leave days at all. Most non-educational system employees in the public sector are **required** to be at the jobsite between 220 and 250 working days (of 8, not 6, hours daily) a year, depending on their seniority and vacation entitlements

business. One OEA witness even testified that if this proposal was not granted teachers would simply call in sick when they are not, thus getting the desired leave by indirection.

Personal leave (unlike sick or vacation) is not a statutory entitlement and exists only by virtue of the collective bargaining agreement. This proposal might incur associated substitute costs flowing from increases in personal leave usage. The OUSD (overestimates and exaggerates) the estimated additional cost of this proposal for site teachers at \$1,300,000 and does not estimate the costs of including others in the unit.

The Chair recommends holding the days at five (5) but that the OUSD should allow two (2) of the five (5) Personal Leave Days as “no tell/no reason days,” effective July 1, 2010, and thereafter, as supported by the evidence and the arguments set forth in the parties’ binders.

Article 12 Assignment/Transfers/Vacancy/Consolidation Based on the testimony and arguments, the Chair recommends that for UM’s such full-time assignments shall normally be made for those qualified to receive them first by (1) credential and then by (2) seniority, unless “special circumstances” exist.

Article 12 and 15 Adult Education Class Size and FTE’s The District proposes to (1) eliminate the contract current minimum number of 64 FTE’s in the Adult Education program (Art. 12.11.10.1), and (2) to suspend the Adult Ed class size maximums (Art. 15.7), whereas OEA understandably seeks to maintain those numbers. OUSD estimates that eliminating these 64 positions would free up \$4.1 million dollars. Since 2008-09, the Legislature (as part of its looting of the K-12 systems) has provided local boards statutory flexibility over Adult Education revenue, a “Tier 3” categorical program whose funds can now be used for unrestricted purposes until 2012-13. OUSD wants “to have maximum flexibility to operate the program with reduced costs, yet provide services” but the reality is that the OUSD wants the ability to move \$4.1 million to the General Fund.

The OEA raises a large number of cogent, persuasive and compelling arguments as to why the Adult Ed program should go on untouched. Chief among these are the unique nature of the Oakland community and the persons who so desperately need these Adult Ed services, including parolees and probationers, immigrants (documented or illegal) in need of ESL-type services, GED-seekers, and those who simply need vocational services to help them get back into the job market. The Director of the Adult Ed program is a tenacious protector of her program and

she has submitted to the Board a budget with the sums necessary to continue the program into 2010-11 without any significant changes.

The Chair is hugely conflicted about the District proposal. On the one hand, it seems the height of folly to downsize or cut entirely this program and all its outreach and services in these troubled economic times when the need for such services is so high. On the other hand, the District is no longer chaffing under the control of Dr Ward and is now back in the hands of its elected Board and its appointed Superintendent. If this elected Board, upon the advice of its new Superintendent, thinks it necessary or prudent to downsize or abolish this program, it could be argued that this is a fundamental, discretionary decision, which the Board has been elected to make.

So, from a purely personal, subjective point of view, the Chair would be thrilled to order/recommend the maintenance of the *status quo*, both as to class size and as to 64 FTEs. But personal predilection, emotion and subjectivity are not among the statutory criteria listed in Sec. 3548.2 (b) (1-7). “The interests and welfare of the public” do not stand alone, in their own, separate subsection—they are coupled to, and must be considered along with, “the financial ability of the public school employer.” It is surely not in the “public interest” to close this program, and we assume that staff and the Board share that opinion.

But the OUSD substantially undercut its argument here when it issued only nine (9) layoff notices for 2010-11 to Adult Ed teachers, meaning that the District is required to maintain 55 FTEs for that year. If the District was serious about this proposal, we assume the OUSD would have issued notices to all 64 teachers, rather than just 14% of them. Performance and actions here speak louder than words. The Chair recommends that the FTE minimum for 2010-11 be set at 55 and for 2011-12 at 50.

Article 15 K-3 Class Size The District proposes to “align” (a wonderful euphemism) the District’s class size contract language to new, existing State law (Article 15.4 and 15.5). Current contract language provides that class sizes “shall not exceed” 20 for K-3 under the “Class Size Reduction Program.” In 2008-09, State law changed, modifying State regulations that imposed penalties for exceeding the 20:1 ratio. The new regulations significantly reduces penalties under the CSR program, up to 24.95:1, and for classes over 24:95 there is now no permanent loss of CSR funding, as there was under prior law. OEA proposes three changes to elementary class size:

- 1) K-3 class size of 18-20:1 for Decile 1 or 2 schools, respectively, at a cost OUSD estimates to be about \$2.3 million;
- 2) All other elementary schools (which now in non CSR elementary schools) have maximums of 30:1 in grades 1-3, 31:1 in grades 4-6, and 27:1 in Kindergarten) adopt a 20:1 ratio, with District flexibility up to 24:1. OUSD estimates this additional cost to be as high as \$4.88 million (almost 3% of a total new package);
- 3) Lastly, the Association proposes class maxima in 9<sup>th</sup> grade English, Algebra and Math Intervention classes of 24:1, which OUSD costs out at about \$1 million dollars, assuming that half of all OUSD 9<sup>th</sup> graders take these classes.

OEA argues that smaller classes are good for student achievement and school climate and, help recruit and retain qualified teachers; that the K-3 reduction program has been a popular program for 12 years and no great expenditure would be here required because OUSD is still receiving money from the state for class size reduction in K-3; the Panel should discourage and not resort to the new state guidelines for class size, where there is no increasing penalty for classes above 25 and so the OUSD would have a financial incentive to increase class size; any District's "savings" from increased class size will cost students with inequalities across and within sites; Measures E and G were passed to maintain smaller class sizes; Decile 1 and 2 schools focus on some of the most needy students; there are special needs for relief in 9<sup>th</sup> grade in English, Algebra and Math intervention classes; for SPED programs, those students enrolled in Special Day Classes are those with the greatest needs but have no contractual or State Education Code protections on class size and several large districts in Alameda County have contractual class size limits for SDC classes; increasing class size for SDC teachers results in SDC classes at the secondary level that often exceed 20 students, degrading the level of service that special education students receive; and, lastly, OUSD has difficulty recruiting and retaining special education teachers and contractual caseload limits would improve retention rates for these valuable teachers.

The Chair accepts almost all of OEA's class size arguments. But this all costs money—lots and lots of money—and the Chair is convinced that, past finagling and OUSD mistakes,

incompetence and errors notwithstanding, the present economic situation is bad and so only minor modifications to class size standards can be funded. The Chair recommends that:

- 1) for Decile 1 and 2 schools, the K-3 class size ratio shall be 18:1 with flexibility to 20:1. All other K-3 class sizes shall be 20:1 with the OUSD to have flexibility to go up to but not to exceed 26:1;
- 2) for Combination Classes, CCL;
- 3) for Special Ed classes, the District shall promptly report to the OEA an actual 2009-10 audit of these classes, by class type, and once this data is provided Special Ed class size shall normally not exceed the 2009-10 averages by more than 20%; and if OUSD feels that it has to go over 20% it shall, before doing so, advise OEA and meet with OEA to resolve any disputes over the higher number before it does so;
- 4) The OEA proposal re 9th grade classes should be dropped, and so the Chair recommends CCL.

Article 15 Elementary Combination Classes A “combination class” puts two classes of students into a single schoolroom, to be taught by the same teacher at the same time. Thus, a third and fourth grade class would be combined and taught by one teacher. The Association proposes the elimination of all K-5 combination classes, a step which the OUSD contends (without any real contradiction) would impose additional, but difficult to quantify, costs. OEA estimates that this would cost about \$3,425,313.00 (47 new teachers at \$72k each).

OEA argues, and OUSD tacitly seems to concede, that no student benefits from a combined class—two distinct lesson plans are required, two different age groups are involved, and the teacher often has to “teach down” to third graders and “up” to his fourth graders, all at the same time.<sup>7</sup> These classes are combined for only one reason—to save money by having fewer teachers. The proliferation of smaller schools has exacerbated the problem, and the stark reality is that there are going to be more of these classes in the OUSD future rather than fewer.

In a perfect world, and with pots of money, this OEA proposal would make perfect sense—indeed, it makes sense in our presently imperfect world except for its costs. The \$3.4 million price tag is a tad over a 2% pay increase for the whole unit, and the Chair thinks that any money that can be found should be spent on salary for the whole unit.

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<sup>7</sup> The Chair was in a combined 2/3 and a combined 3/4 class and loved both of them (and the teacher, Miss Scott), but that was 55 years ago.

Article 21 Specialized Assignments – Caseloads for Nurses and Counselors The Association proposes to reduce the caseload for District Nurses, from 1,350:1 to 750:1, or about 50%. If fully implemented at each site, the OUSD would need to hire approximately 23 new nurses, at a cost estimated by the OUSD at \$1.3 million per annum. The Association also proposes to decrease the caseload of Counselors from 700:1 to 500:1 and also require that for secondary schools there must be at least one counselor. The OUSD estimates this would require the hiring of 11 new counselors, at an estimated additional cost of \$700,000. The District seeks to maintain current contract language in each of these areas.

On its face, and like our discussion of Adult Ed staffing and class size, to the Chair this would, at first blush, appear to be a “no brainer.” How can anyone expect a nurse to effectively deal with a “patient load” of 1,350 pupils, much less one of 750? And what level and quality of “counseling” can a student reasonably expect when she is one of 700 counselees assigned to a single counselor? The only hard evidence produced during the hearing for counselors was an OEA survey of a sample of Alameda County districts for counselors, showing a range of a low of 325 (Albany secondary schools) to a high of 600 (Albany middle schools), with most hovering around 400-500. If money was not a barrier, the Chair would strongly recommend the OEA position but money is here an overriding issue and so the Chair reluctantly recommends maintenance of the *status quo*.

Article 22 Early Childhood Education Centers The two issues here are weekend work (see our discussion of Art. 10, *supra*) and a staff development issue. The parties advise they reached a TA on Staff Development on December 15, 2009, and the Chair recommends formal adoption and memorialization of that TA, and the Chair also makes the same finding on Saturday and Sunday work as discussed above. See the Chair’s recommendation re length of the WORK YEAR, *supra*, which would effectively make this issue moot for all Unit Members.

Article 24 Compensation The OUSD’s economic straits are strained and do not look like they are going to get better in the short term; and (2) the OEA unit has not had an across-the-board raise since 2007-08. OEA has made a persuasive showing that the schedule/grid salaries and total compensation of its certificated members is woefully behind the prevailing rate for like and comparable work in Alameda County (and statewide for large urban districts). The OUSD does not really dispute that showing. The OUSD paints a picture of a horrendous financial state,

including the onus of the annual debt service on the \$100 million state loan and the need to cut about \$39 million from the 2010-11 budget to meet the Governor's Budget.

OUSD needs to improve the economic lot in life (and morale) of its teachers while OEA must recognize the present economic realities. It would be helpful if the District and its Board gave some tangible, real recognition of its need to take a hard cold look at its priorities and its spending—too many needless outside consultants; too many unaffordable, in these economic hard times, small schools; the questionable RBB process; the lack of centralized controls on spending, etc. OEA points to these historical missteps and blames the present “comparability gap” and lack of salary increases, and these errors may, in fact, be partially responsible for the OUSD's present financial distress.

But blaming those who went before us and pointing to their (multitudinous) errors and miscalculations, while surely cathartic, merely condemns us to preoccupy ourselves with the past and to abandon hope for the future and surely does not produce any new revenues. Some (but by no means all) of the OEA's requests could be addressed if the OUSD had prioritized and spent its money more prudently. The Panel must seek to achieve tangible results with limited resources by using indirect (but real) increases in compensation accomplished by work year reductions and pure longevity pay increases which effect only a small number at the start but, over time, will accrue to the benefit of those who make a career at OUSD.

Based on the testimony and evidence, and the OEA's showing of a serious loss of “comparability” counterbalanced by the District showing of financial distress, the Chair recommends a series of steps to remedy this situation while not unduly stressing the OUSD's fiscal state, as follows:

- 1) that the District add an additional longevity step to the salary schedule/grid effective January 1, 2011 of five percent (5%) for those with thirty (30) years of STRS service (as reflected in their placement on the OUSD salary schedule); and that on June 30, 2012 the District add an additional five percent (5%) for those with twenty-eight (28) years of STRS service (as reflected in their placement on the OUSD salary schedule), rippling upwards, so that the schedule would also go up for those with 30 years of service (on and after that date) by 10% on June 30, 2012;
- 2) for each year of the CBA, that sixty percent (60%) of any **ongoing**, unrestricted new state and, to the extent legally permissible, any federal funds eligible for such

purposes (colloquially referred to as “new dollars”) received by OUSD shall be put into a pool to be spent on wages or class size/case loads, as OEA sees fit; and,

3) that the parties agree to mutually develop a plan and a goal of achieving parity in total compensation at the mid-point of other Alameda County districts; and,

4) that should the voters of the District pass a new parcel tax, any sums generated by that tax to be used for additional wages and benefits for the OEA unit shall be spent for those purposes and shall be spent in addition to and not in lieu of, or subtracted from, the higher wages/compensation generated by the provisions of Par. 2, *supra*, of this section; and,

5) that the entire OEA shall unit receive a two percent (2.0%) on-schedule increase effective January 1, 2012, unless the 60% device described in Par (2), *supra*, produces a higher amount.

#### Article 24 Compensation – Rates/Stipends/Substitute Teacher Salaries Professional Duty

Rate OEA seeks increases in compensation for substitutes and revision to the stipends and rates paid to regular teachers for special or “overtime” duties. The OUSD binder failed to address the OEA’s request, and scant attention was paid to these matters during the hearings (not because they are not important but because even 20 hours was not enough time to give full attention to every issue the OEA had out on the table [almost none of which was resolved at the bargaining table before impasse]).

Teachers performing additional duties beyond their contracted work load are presently compensated at a rate of \$23.16 per hour “for additional hours” (with a lower rate of \$15.96 for participation in “approved programs”) and a rate of \$22.99 for curriculum development and \$30.12 for acting as a curriculum development chairperson. OEA argues that the OUSD has increasingly asked teachers to work after school (e.g., with students in need of intervention, to write District exams, to develop curriculum, and related work requiring professional competence beyond the regular 6-hour work day) and that this work should be compensated at a higher hourly rate based on education and experience and not at the existing flat, uniform “extra-duty” rates described above, rates which may be less than half a teacher’s hourly rate (computed by taking the annual salary and dividing by the number of work hours in the teacher’s year).

OEA seeks a new class of compensation, to be called a “Professional Duty Rate,” which would be, boiled down to its essence, calculated by an individual hourly rate for each employee,

based upon that teacher's actual annual rate of pay pared down to an hourly equivalent, an exercise which the OUSD does routinely to comply with the federal Fair Labor Standards Act (FLSA), for its employees who are covered by that Act (e.g., custodians, crafts workers, secretaries, etc.). Teachers are considered "professionals" and are exempt from the overtime provisions of the FLSA and from its California state equivalent.

In regards to substitute teacher pay, OUSD pays \$118 a day for "daily rates," \$138 for work over 15 but less than 30 days, and a "third rate" of \$152 per diem for teaching over 30 days. OEA contends that OUSD's substitute pay rates are lower than those in comparable neighboring districts that compete for substitutes. (See OEA Binder Ex. 9 to its Tab 31 "Compensation").

OUSD's reply to these proposals is simple—they all cost money, and the District has no money, and if it gets any new money over the term of the CBA it wants to spend that money to raise regular salaries (as well as pay down its \$100 million debt to the State and balance its budget).

The Chair declines to recommend the creation of a new "Professional Duty Rate"<sup>8</sup> classification of additional compensation for these teaching "professionals." The present descriptions of compensation are sufficient. Whether those rates are too low or should be calculated on an individualized manner rather than the present flat rates are different questions. In reviewing the data supplied by OEA on comparability I cannot conclude that the OUSD rates for "overtime" or for substitute teachers are markedly below the median, and so I decline to recommend an immediate increase in any of them. However, the Chair believes that over the term of the CBA as the rates of pay on the salary schedules increase (should they actually do so), then the rates for these types of work should be increased by the same percentage as the across-the-board rates for teachers, nurses, counselors, etc., go up.

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<sup>8</sup> The proposed new classification is somewhat of an oxymoron—"professionals" are expected to put in as many hours as are required for their salary, they are not hourly workers, and they generally do not expect to get paid for working "overtime" (and pure "overtime" is all we are really talking about here).

## VIII

### RECOMMENDATIONS

Based upon the general factual background set forth above, the Chair believes that the parties should agree to a new CBA including the following terms and conditions:

- 1) A CBA expiring on June 30, 2012, with reopeners only on: (1) those needed to address “impact legislation,” and then only as to those areas addressed in that legislation (that is, if a bill is passed dealing with Adult Ed and that has an “impact,” the OUSD can reopen the Adult Ed section of the CBA, but no others); and two (2) reopeners on any subject except Wages.
- 2) No change to present Article 9 to include the OEA’s proposed language on “Academic Freedom,” as this proposal is not within the scope of representation;
- 3) Shortening the work year, by maintaining the 180 day instructional year but instituting (1) a temporary reduction (sunsetting on 6/30/12) of two (2) days in the non-instructional year in 2010-11 and 2011-12, and (2) a permanent reduction of two (2) days in the **non-instructional** year, effective 7/1/10 and continuing *sine die.*, thus reducing non-instructional days from 6 to 2 with no reduction in wages.
- 4) In regards to “Saturday and Sunday Work,” the Chair recommends recognition and continuation of the status quo, namely that training and professional development, in the ECE, shall be done at night and not on the weekends. Implementation of the reduction of professional development days in item 3 above, would negate the ECE professional development requirement.
- 5) In regards to “K-3 Class Size,” the Chair recommends that for Decile 1 and 2 schools, the K-3 class size ratio shall be 18:1 with flexibility to 20:1. All other K-3 class sizes shall be 20:1 with the OUSD to have flexibility to go up to but not to exceed 26:1; that for Combination Classes, CCL; and that for Special Ed classes, the District shall promptly report to the OEA an actual 2009-10 audit of these classes, by class type, and once this data is provided Special Ed class size shall normally not exceed the 2009-10 averages by more than 20%; and if OUSD feels that it has to go over 20% it shall, before doing so, advise OEA and meet with OEA to resolve any disputes over the higher number before it does so.

- 6) For caseloads for Nurses and Counselors, CCL.
- 7) For “Leaves,” under CBA Art. 11.16, the Chair recommends maintaining the number of such leave days at 5 and that the OUSD should allow two (2) of the five (5) Personal Leave days as “no tell/no reason days” effective July 1, 2010 and thereafter.
- 8) That for “Travel Time” under Article 10, the Chair recommends that the parties affirm, memorialize and then continue the present practice (in Adult Education), which is to track and honor all travel time hours worked and then allow the employee to use these hours to reduce the employee’s work year (i.e., an employee with have 30 hours of recorded travel time may end his/her work year one week early).
- 9) That in regards to “Assignment/Transfers/Vacancy/Consolidation” under Art. 12, the Chair recommends that full-time assignments for UM’s shall normally be made (for those qualified to receive them) by (1) credential and then by (2) seniority, unless “special circumstances” exist.
- 10) In regards to Adult Education Class Size and FTE’s under Arts. 12 and 15, the Chair recommends that the FTE minimum for 2010-11 be set at 55 FTEs and in 2011-12 at 50 FTEs.
- 11) In regards to “Rates/Stipends/Substitute Teacher Salaries and “Professional Duty Rate,” the Chair declines to recommend creation of a new “Professional Duty Rate” but recommends that over the term of the new CBA as the rates of pay on the salary schedules increase (should they actually do so), then the rates for these types of work should be increased by the same percentage as the across-the-board rates for teachers, nurses, counselors, etc., go up.
- 12) In regards to Art. 24, “Compensation,” the Chair recommends as follows:
  - a) that the District add an additional longevity step to the salary schedule/grid effective January 1, 2011 of five percent (5%) for those with thirty (30) years of STRS service (as reflected in their placement on the OUSD salary schedule); and that on June 30, 2012 the District add an additional (five percent) 5% for those with twenty-eight (28) years of STRS service (as reflected in their placement on the OUSD salary schedule), rippling upwards, so that the schedule would also go up for those with 30 years of service (on and after that date) by 10% on June 30, 2012; and,

- b) that the entire OEA shall unit receive a 2.0% on-schedule increase effective January 1, 2012, unless the 60% device described in Par (c), *infra*, produces a higher amount; and,
- c) that sixty percent (60%) of any **ongoing**, unrestricted new state and, to the extent legally permissible, any federal funds eligible for such purposes (colloquially referred to as “new dollars”) received by OUSD shall be put into a pool in 2010-11 and 2011-12, to be spent on wages or class size/caseloads, as OEA sees fit; and;
- d) that the parties agree to mutually develop a plan and a goal of achieving parity in total compensation at the mid-point of other Alameda County districts; and,
- e) that should the voters of the District pass a new parcel tax, any sums generated by that tax to be used for additional wages and benefits for the OEA unit shall be spent for those purposes and shall be spent in addition to and not in lieu of, or subtracted from, the higher wages/compensation generated by the provisions of Par. 2, *supra*, of this section.

DATED: April 13, 2010 \_\_\_\_\_

Christopher D. Burdick  
Impartial Chair

I agree with the Chair's findings and recommendations and believe it is in the best interests of the parties to adopt the settlement recommended in this Report.

DATED: April 13, 2010 \_\_\_\_\_

Ron Bennett  
District-Appointed Factfinder

Although I do not agree specifically with all of the Chair's findings and recommendations, nor do I support his rationale in all respects, I believe this report and its recommendations provide a solid foundation for the parties to settle this dispute in the best interests of the parties and the students and citizens of Oakland. I have appreciated the leadership and thoughtful direction of Chairman Burdick during this process and have also appreciated the professional discussion, debate and dialogue with Mr. Bennett of School Services/California. I believe the Fact-finding process worked because of their efforts to effectively address the issues outlined in this Report.

DATED: April 13, 2010 \_\_\_\_\_

Ward Rountree  
OEA-Appointed Factfinder