

FACT FINDING DISCUSSION AND RECOMMENDATIONS

Between)
)
Hesperia)
Unified School District)
)
 and)
Hesperia Teachers)
Association)
CTA NEA)
)

Re: Case No. LA-IM-3574-E

2010 JUL 19 PM 2:01
 HEADQUARTERS OFFICE
 RELATIONS BOARD
 PUBLIC EMPLOYMENT

Impartial Chair

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Hearings Held

June 14, 2010
Hesperia Unified School District Offices
15576 Main Street
Hesperia, CA 92345-3482

BACKGROUND

Hesperia Unified School District (District or Employer) and the Hesperia Teachers' Association (Association or HTA), an affiliate of the California Teachers Association (CTA) and National Educators' Association (NEA), are the parties in this fact finding matter. The 838 certificated staff in this bargaining unit are members of HTA.

From the history provided to the Panel at the Hearing and in the voluminous, well prepared binders from both parties, it is clear that these parties negotiations have been very stormy and made significantly more difficult as the District's options for saving ongoing monies into future budget years were diminished when the Board of Trustees, following RIF hearings on April 27, called a Special Board Meeting on May 7, 2010 and rescinded all the layoff notices.

The issues before this Panel are Salary, including freezing all step and column movement; Health and Welfare including a \$500 reduction in the cap per teacher; work year changes to include furlough days, reducing the current work year for up to nine workdays with a corresponding pay reduction; class size changes; early retirement; bereavement leave; transfers and reassignments and the term of this agreement. The District has argued "inability to pay" based on the significant decrease in funding to this District and all school districts throughout the State. School funding from the State of California has been significantly reduced

due to the State's budget crisis.

The parties commenced bargaining on January 26, 2010 and on March 16, 2010 the District filed a request for Certification of Impasse with PERB. The parties met in mediation in April and on May 7, 2010, when no progress was made to settle this matter, the parties were certified to Fact Finding by the Mediator. Subsequently, the parties proceeded to Fact Finding.

The District selected Ron Bennett, the President and CEO of School Services of California as the District Panel Member and the Association selected Angela Su from CTA to be their Panel Member. The Panel Members then selected Bonnie Prouty Castrey as the Impartial Chair and so notified PERB.

The Panel met in conference to determine the process for the day of hearing and then held a hearing with the parties on June 14, 2010. Both parties presented their documentation and facts regarding the issues before the Panel. The Panel Members then attempted to help the parties to reach a mediated settlement in Fact finding. When that effort was not fruitful, the Members studied both parties submissions thoroughly and the Chair drafted this Report and Recommendations.

In this matter, the Panel is guided by the California Government Code Section 3548.2 of the EERA which states in pertinent part:

In arriving at their findings and recommendation, the Fact Finders 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 employers involved in the fact finding 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. 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."

STIPULATIONS OF HUSD AND HTA

1. The Hesperia Unified School District is a "public school employer" within the meaning of Section 3540.1(j) of the Educational Employment Relations Act.
2. The Hesperia Teachers' Association is a "recognized employee organization" within the meaning of Section 3540.1(I) of the Educational Employment Relations Act and has been duly recognized as the representative of this bargaining unit of the Hesperia Unified School District.
3. The parties to this factfinding have complied with the public notice provisions of the Government Code section 3547 (EERA, "Sunshining" requirement)

4. The parties have complied with the Educational Employment Relations Act with regard to the selection of the Factfinding Panel and are timely and properly before the Panel.
5. The parties have complied with all the requirements for selection of the Factfinding Panel and have met or waived the statutory time limitations applicable to this proceeding.
6. The contract issues which are appropriately before the Factfinding Panel are as follows:

Article 9: Salary
Article 10: Health and Welfare
Article 13: Work Year
Article 14: Class Size
Article 23: Early Retirement
7. An impasse in bargaining was declared by the District on March 24, 2010. The informal mediation process proceeded as scheduled, and the parties continued to meet with the mediator in an effort to reach agreement until May 5, 2010. The Public Employment Relations Board certified the matter to factfinding.
8. The factfinding chairperson, Ms. Bonnie Castrey was notified of her assignment on or about May 20, 2010.

ISSUES AND RECOMMENDATIONS

The following is a discussion of the outstanding issues with recommendations following the analysis.

DISCUSSION AND RECOMMENDATION

The first issue is the question of inability to pay.

When a district asserts inability to pay they have the burden of proving that they cannot afford to continue paying at the level they are and/or that they cannot afford to negotiate increases in compensation. Assuming that the district prevails in its proof on the inability to pay issue, they have an even heavier burden of

proving that the amount of the proposed loss of compensation for a bargaining unit member to suffer is appropriate and further that they, the district, have maximized their options for savings in all aspects of the budget and have taken all appropriate actions to keep their options open in order to balance their budget in the future years as required by law.

State law requires that school districts must maintain a positive ending balance in the current and two successive school years. While the parties commenced negotiations in the 2009-2010 school year, by failing to complete the process, the District is now in the 2010-2011 school year. In other words, the budget for fiscal year/school year (FY) 2010-2011, which commenced July 1, 2010 and ends June 30, 2011, must have a positive ending balance and a minimum three percent reserve (3%) and FY 2011-2012 and FY 2012-2013 must also be able to show a positive ending balance of 3% reserve for economic uncertainties.

Schools in California are dependent on the State of California for their revenue. The State is and has been in fiscal "meltdown" for several years. As a result of their budget shortfall, due to decreased sales tax, income tax, and other revenues, the State has unceremoniously cut school districts' unrestricted and categorical (restricted) funding by billions of dollars statewide. The significant cuts to the districts' budgets commenced in FY 2007-2008 and have continued to present.

For this District this amounts to more than a twenty percent

(20%) decrease in unrestricted funding and about twenty percent (20%) in restricted funding. Had the State not cut its unrestricted funding, also referred to as Base Revenue Limit (BRL), HUSD would have received in the 2009-2010 FY, \$6,365.00 for each student attending class each day (Average Daily Attendance or ADA). With the State decreasing its funding of the BRL, the District will receive only \$4,943.00, a difference of \$1,422.00 equal to 22%. In FY 2010-2011, the HUSD should receive \$6,340.00, however according to current budget projections, the State will only fund the BRL at \$4,932.00 per ADA, which represents a \$1,408.00 deficit equal to 22%. So, for every one dollar this District should receive for each student, it is only receiving about 78 cents! (District Facts [DF] Inability to Pay, tab 16)

There is no question that these are huge losses in unrestricted revenues. The District asserts that it is deficit spending (DF Tab 18). The County Office of Education certified the HUSD as qualified at the second interim reporting period of the 2009-2010 school year (DF tab 25). Further, as stated above, the District is already in the 2010-2011 school/fiscal year and unless the District makes substantial additional cuts, including cuts in this bargaining unit, their ending balance in the two successive years through the 2012-2013 school/fiscal year, they will not meet the minimum reserve for economic uncertainty as required by law.

Additionally, under State law, the Education Code at section 3547.5 provides that the superintendent of the district and the

chief business official must sign that a collective bargaining agreement can be implemented and is affordable for the term of that agreement. The District asserts that they cannot continue to afford to pay the total compensation at the level in the current Collective Bargaining Agreement (CBA) and meet the requirements of the law.

Based on the foregoing the Chair finds that the District clearly demonstrated that it has an inability to pay at the status quo current total compensation and therefore, has met its heavy burden of proof.

Having concluded that, the next question is whether the 8.4 million dollars from this bargaining unit, that the District is demanding, which amounts to about a 14% decrease in remuneration for each teacher is reasonable and attainable?

The salient and compelling evidence presented by both parties clearly shows that other comparable districts have not demanded nearly as much in salary reductions as this District has demanded. Nor have other districts been able to eliminate the need for layoffs or class size increases as part of a balanced plan to reduce expenditures. So while there is no doubt that the massive revenue losses from the State dictate a need to reduce costs, perhaps by the \$8.4 million dollars as the District asserts, the Panel does not believe that an approximately 14% reduction in individual compensation is comparable to what other districts have achieved.

Based on a careful analysis of all the comparable districts cited by both parties the Panel concludes that it does not necessarily agree with the manner in which the District proposes to achieve the savings as other cited districts have not required what amounts to a 14% cut in compensation. That deep a compensation cut would cause this bargaining units' compensation to be uncompetitive with its comparable districts. Therefore, the Panel is compelled to recommend that the District allocate the cost savings more heavily to reduction in reserves and perhaps to staffing reductions in the out years of the budget through 2013.

The Chair points out that this is about twice the percentage of cuts in teachers pay, on average, throughout the state. This Panel has a responsibility to look at comparability as we recommend reductions to the parties. Moreover, the District demand that it be a permanent cut is not comparable to other districts that the parties have compared to, nor to unified districts throughout the state. In these very difficult budgetary times, districts and unions are working together to make cuts so that districts can stay within the laws and meet the requirements of solvency as well as the educational needs of students. In recognition of the fact, that employees are making and taking huge concessions and suffering devastating economic losses, districts and unions in the comparable districts and throughout the state are bargaining language which restores those concessionary losses, as the districts' budgets are restored.

As stated above, the District vigorously asserted its need for savings from this bargaining unit of \$8.4 million dollars per year with no restoration language. That amount would equate to roughly a 14% reduction in the cost of the entire bargaining unit. Other districts that have requested large reductions and have used a variety of strategies to achieve the savings including staffing reductions through attrition, early retirement incentives and reductions in force; class size increases, shortening the instructional year and use of reserves were all cited by both parties as strategies that have been used for reductions.

When Hesperia Unified School District decided to issue layoff notices, it apparently anticipated that staffing reductions and increased class sizes would result. The District's decision to rescind the layoff notices, at the special Board Meeting in May, prior to settling the contract was unilateral, and presumably reflects the priorities of the governing board. The panel will not argue with the board's prerogative to establish priorities. However, the presumption that the full weight of the board's decision not to reduce staff should be transferred to the employees is within the purview of the Panel.

Therefore, while the Panel recommends significant reductions in employee compensation, they are not at the level the District requests. Had the District implemented even a portion of the layoffs that it proposed in March, the reduction to individual employee compensation would have been in the 7-8 percent range and

that is the percentage the Panel now recommends in our discussion and recommendations below.

By agreeing to a combination of an actual salary reduction, postponement of step increases for a portion of each year and changing the work year to 175 days and agreeing to nine (9) furlough days with corresponding decrease in salary, the District achieves substantial savings over a three year period. Therefore after weighing and giving careful consideration to all the evidence and being guided by all the criteria established in law the Panel recommends:

A Memorandum of Understanding from July 1, 2010 to June 30, 2013.

Article 9:

Salary

Beginning in the 2010-11 fiscal year, reduce the teacher salary schedule by 1% for three years, the duration of the MOU.

Step and Column

Defer all Step increases in the salary schedule for three-fourths (3/4) of the work year in each of the three years of the MOU. The Step increase would be effective approximately April 1 of 2011, 2012 and 2013.

Column increases will be paid according to current contract language.

Elementary Class Splitting and Secondary Period Subbing

Compensation (Article 9, Section C.5.)

Current contract language for payment for Elementary class

splitting and secondary period subbing shall be suspended for the duration of the MOU.

Article 13:

Work Year

The work year shall be reduced by 9 days, with a commensurate decrease in salary of 4.86%, for each year of the MOU. This is in addition to the 1% salary reduction included in Article 9, Salary above, and may be reduced per the restoration language below. Each day represents 0.54%.

Restoration Language

In order to attain the reduction in salary that is needed in this urgent fiscal time and to remain competitive with comparable districts now and in the future, the parties will agree to restore all the salary and work year cuts, with their commensurate salary reductions as the State restores funding for ADA through the Base Revenue Limit (BRL). We therefore recommend this specific restoration language:

During the duration of this agreement, if the funding provided to the District by the State increases above the level anticipated in the District's three-year multi-year projection (MYP), submitted with the adopted budget for 2010-11, salary restorations shall be made. Any salary restoration made under these provisions shall be on-going.

a. For each year of the agreement, the actual funded base revenue limit (BRL) per unit of ADA provided by the state (at second

interim, to be retroactive to the beginning of that fiscal year) shall be compared to the amount projected for that year in the 2010-11 MYP for that year.

Hesperia USD estimate @ 2010-11 Adopted Budget

YEAR	2010-11	2011-12	2012-13
COLA Estimate	-0.39%	2.10%	2.4%
FUNDED BRL/ADA	\$4,931.93	\$5,034.71	\$5,155.54

b. If there is an increase of at least thirty-five dollars (\$35) in the funded BRL per unit of ADA, restoration of the 1% salary reduction shall be the first priority. Fifty percent (0.50%) shall be added back to the salary schedule for the first increase of thirty-five dollars (\$35) and an additional fifty percent (0.50%) for the next increment of thirty-five dollars (\$35).

c. Following the full restoration of the salary reduction of the schedule, the next priority is to restore furlough days and the commensurate salary for those days. If, after restoration of the 1% salary schedule reduction, there is a further increase of at least \$35 in funded BRL per unit of ADA, 0.54% shall be added back to the salary schedule and one workday shall be added back to the work year. An additional 0.54% shall be added for each \$35 increment above the amount of funded BRL per unit of ADA planned for that year and additional days shall be added back at the rate of one day per each 0.54% salary restoration.

d. After restoration of the salary reduction and furlough days, the next priority is to restore step increases. Therefore, if, after restoration of the 1% salary schedule reduction and all 9 furlough days, there is a further increase of at least \$35 in funded BRL per unit of ADA, the three-fourths (3/4) of the year, of step increases shall be restored to those bargaining unit members whose step increases were delayed until approximately April 1st.

e. To avoid "double-counting", if in any year a salary restoration is made using the provisions of paragraph b. above, the funded BRL planned for each subsequent year and used as a baseline for restoration shall be increased by the dollar amount already used to provide salary restoration.

Example:

Estimated Funded BRL/ADA for 2011-12 = \$5,034.71 @ 2.10% COLA.

Estimated Funded BRL/ADA for 2012-13 = \$5,155.54 @ 2.40% COLA.

Assume instead, COLA is funded at 3.2% for 2011-12 and Hesperia USD's Funded BRL/ADA is \$5,104.71, or \$70 per ADA greater than estimated. 1% salary would be added back to the salary schedule and the adjusted estimate for 2012-13 would be \$5,225.54 @ 2.4% COLA.

f. In any year in which ADA increases by more than 100 units over the prior year P-2 ADA, 1/3 of the funded base revenue limit for each unit of growth ADA will be allocated to restoration of salary.

g. The District may, at its sole discretion, increase the salary schedule and restore days even further/faster at any time until the salary schedule is restored to 100.0% reflecting the salary

schedule of the 2009-2010 contract.

h. The Association or the District may open the Salary Article following either the enactment of the State budget, or the Federal budget to discuss any additional revenue that may be used for salaries (such as additional Federal Stimulus funding). The Parties may also re-open the salary Article as allowed under the duration Article of this Agreement below.

i. By July 31, 2010, the District will provide the Association with a copy of the three-year multi-year projection (MYP) submitted with the adopted budget for 2010-11. This document will be in the SACS format.

Further, the parties to this agreement recognize that this restoration language anticipates that the State school finance system remains as prescribed in current law. If there is a significant change in state law, the parties agree to re-open this agreement for the purpose of modifying the restoration provisions to ensure that after any statutory changes, the effect on the parties is as anticipated in this agreement.

Article 10:

Health and Welfare

The Opt-Out payments will be eliminated effective with fiscal year 2010-11 and for the duration of the MOU.

Article 12:

Leaves

Bereavement Leave Article 12, Section 6.a.

Under normal circumstances bereavement leave is designed to be taken at the time of the immediate family member's death. When, however, extenuating circumstances occur and with the immediate supervisor's approval, bereavement leave may be taken within six (6) months of the family member's death. The supervisor shall not arbitrarily withhold approval. This change shall remain in effect for the duration of the MOU.

Article 13

Additional Work Year recommendations

Section B. Outside the Normal Workday

Over-contract hours are reduced from 30 hours to 20 hours for the duration of the MOU.

Add Elementary Parent Conferences

Up to five (5) minimum days at elementary schools at the end of the first trimester for the purpose of parent conferences will be allowed provided sufficient minutes are available after meeting state-required annual minimum instructional minutes for the duration of the MOU.

Section D. Work year

The work year shall be 175 instructional days for the duration of the MOU, except if restoration of salary and then furlough days as discussed above occurs. The four (4) non-instruction days shall be restored first, followed by restoration of the five instructional days.

Article 14, Section A

Class Size

The class size limits for core academic classes are listed below.

Staffing Ratios shall be: Class Size Maximums shall be:

K-3	31:1	33
4-6	32:1	34
7-8	31:1	38
9-12	31:1	38

The District will make every reasonable effort to ensure that classes do not exceed the maximums. In the event that, after five (5) weeks of school, a class exceeds the maximum, the teacher, department chair and site administrator will meet to discuss possible remedies.

Article 23

Early Retirement

Status quo.

Term

As discussed above, the MOU will be for three years through June 30, 2013. For 2010-11 and 2011-12 the contract is closed. For the fiscal year 2012-13, each party may re-open Article 9, Salary including the restoration language for Salary and Restoration of Salary commensurate with restoration of furlough days, and one other article.

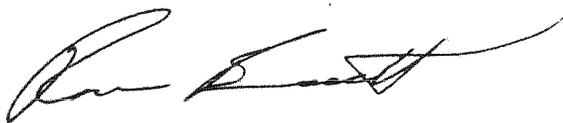
In conclusion, the recommendations outlined above for the three (3) year MOU represent savings to the District from

compensation of this bargaining unit of approximately 6% in the first year, 7.5% in the second year and 7.5% in the third year. They represent decreased compensation which is comparable to other districts and they take into account the total impact on this bargaining unit and its members ability to live and work in this community and the educational needs of the students they teach.

The Panel Members representing the District and Association have met with the Chair in Executive Session by telephone conference call on July 15, 2010 to thoroughly discuss and finalize this Report and Recommendation. Based on the above Recommendations of the Chair they concur as follows:

For the District:

Concur



Ron Bennett
District Panel Member

For the Association:

Concur



Angela Su
Association Panel Member

Issued on July 17, 2010 by



Bonnie Prouty Castrey,
Panel Chair