

BACKGROUND

Alameda Unified School District (District, AUSD or Employer) and the Alameda Education Association (Association or AEA), a local affiliate of the California Teachers Association and the National Education Association (CTA/NEA), are the parties in this fact finding matter. The certificated staff in this bargaining unit are members of GTA/CTA/NEA.

The parties began negotiations in January 2011 under the terms of an MOU which they had negotiated in 2010 and signed in March 2010. (District Facts {DF} pgs B-1-20 and Association Facts {AF} Tab 1). This MOU was entered into at that time, as the parties anticipated that a Parcel Tax Measure would be forthcoming to be voted on by the eligible voters of the AUSD. While the initial measure failed in June 2011, a second similar but smaller measure, for twelve (12) million dollars was placed on the March 2012 ballot and did pass. The AEA contended that the MOU should not have been reopened by the District. In their facts both parties cite the difficult negotiations which ensued. (DF 7-73 and AF pgs 1-7).

Complicating these specific negotiations which are transpiring within the terms of the MOU of March, 2010, is the fact that the parties three year Collective Bargaining Agreement from July 1, 2009 through June 30, 2012 is now being negotiated. The AEA "sunshined" their proposals for negotiations in January 2012 and the parties are negotiating for a three- year successor agreement (AF Tab 9). Those negotiations are not before this Panel.

When they could not reach agreement in direct negotiations, the District requested Impasse Determination from PERB on October 18, 2011. Based on AEA's assertion that they were prepared to make another proposal the District withdrew that request from PERB. The parties met November 7, 2011 and when progress was not made, the District re-submitted its Request for Impasses to PERB. PERB assigned State Mediator Don Raczka. He met with the parties and when agreement was not reached, certified them to Fact Finding on or about January 31, 2012 (DF pg 48).

The parties voluntarily continued in mediation with State Supervising Mediator Paul Roose and a Tentative Agreement (TA) was reached on March 22, 2012 (DF pgs 49-68 and AF Tab 10). The March 22, 2012 TA is incorporated into this document by reference. The TA was rejected by the AEA Bargaining Unit Members on March 30, 2012. Subsequently, the District requested fact finding. Chuck King was appointed by AEA as their Panel Member and Ron Bennett was appointed by the District to serve as their Panel Member. They selected Bonnie Prouty Castrey to Chair the Panel. A Fact Finding hearing was held on May 25, 2012 in the CTA Oakland Offices.

Initially the full complement of teachers, on the bargaining team, including the Bargaining Chair, were not in attendance. The Chair ordered that they attend the hearing. This provided a forum for all team members to participate in and to hear the entire presentation in order that following the hearing, the Panel would have full opportunity to explore options for settlement of this

dispute in depth with both parties.

The issues before this Panel are Inability to Pay and Class Size Reduction under the MOU of 2010/ Article 9 of the CBA.

Both parties briefly 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. Unfortunately prior to the Panel having an opportunity to fully explore the options and to prepare a "Panel Chair's Proposal for a Mediated Settlement" for settlement of the dispute, members of the Association team had to leave and therefore this effort was prematurely terminated.

When this occurred the Panel Members studied both parties' entire 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."

ADDITIONAL PERTINENT STATE LAWS

Government Code Section 3547.5

- (a) Before a public school employer enters into a written agreement with an exclusive representative covering matters within the scope of representation, the major provisions of the agreement, including, but not limited to, the costs that would be incurred by the public school employer under the agreement for the current and subsequent fiscal years, shall be disclosed at a public meeting of the public school employer in a format established for this purpose by the Superintendent of Public Instruction.
- (b) The superintendent of the school district and the chief business official shall certify in writing that the costs incurred by the school district under the agreement can be met by the district during the term of the agreement. This certification shall be prepared in a format similar to that of the reports required pursuant to Sections 42130 and 42131 of the Education Code and shall itemize any budget revision necessary to meet the costs of the agreement each year of its term.
- (c) If a school district does not adopt all of the revisions to its budget needed in the current fiscal year to meet the costs of the collective bargaining agreement, the county superintendent of schools shall issue a qualified or negative certification for the district on the next interim report pursuant to Section 42131 of the Education Code.

STIPULATIONS OF AUSD AND AEA

1. The Alameda Unified School District is a public school employer within the meaning of Section 3540.1(k) of the Educational Employment Relations Act.
2. The Alameda Education 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 the certificated non-management bargaining unit of the Alameda 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 properly and timely 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, all other matters were agreed upon by the parties during the course of the negotiations:

Article 9 Class Size

7. An impasse in bargaining was declared by the Public Employment Relations Board on or about November 17, 2011. The mediation process proceeded as scheduled, and the parties continued to meet with the mediator in an effort to reach an agreement until January 31, 2012 at which point the mediator certified the matter to factfinding.
8. In subsequent voluntary mediation, the parties reached a tentative agreement with the assistance of mediator Roose.
9. On or about March 30, 2012 AEA notified the district that the AEA membership failed to ratify the tentative agreement.
10. The parties notified PERB that the Panel Member for AUSD would be Ron Bennett and Panel Member for AEA would be Chuck King.
11. The parties have mutually agreed to have Ms. Bonnie Prouty Castrey serve as Panel Chairperson and she was notified of her assignment on or about May 2, 2012.
12. No timelines are waived, except for the date for commencement of the hearing on May 25, 2012.

COMPARISON DISTRICTS

The District used the comparison districts of unified districts serving K-12 students where they compete for teachers in this geographic commuting area and districts of similar or larger size and did not include small districts such as Emery.

They are :

Berkeley USD
Castro Valley USD
Dublin USD
Fremont USD
Hayward USD
Newark USD
Oakland USD
Pleasanton USD
San Leandro USD
San Lorenzo USD

The Association compared with districts in the County. In addition to the ten districts the District identified, the following are considered by the AEA:

Alameda COE
Mountain House Elem
Sunol Glen USD
Emery USD
Piedmont City USD
Livermore Valley Joint USD
Albany City USD
New Haven USD

The Chair studied all of the comparisons provided by both parties very carefully, however, considering the recommendations she is making, she will not engage in an extensive analysis of the various comparisons.

The following is a discussion of the issue of the District's claim of Inability to Pay and finding.

ISSUES

INABILITY TO PAY

DISCUSSION AND FINDING

The first issue is the question of inability to pay.

When a district asserts inability to pay, they have the heavy burden of proving that they cannot afford to continue paying salary and benefits at the level they currently are obligated to pay and/or that they cannot afford to negotiate increases in compensation. In this particular matter it would be a matter of increasing their teaching staff numbers in order to decrease class size, hence increasing total costs of salary and benefits for this certificated bargaining unit and instructional costs per classroom.

State law requires that school districts must maintain a positive ending balance in the current year and two successive school years. In other words, the budget for fiscal year/school year (FY) 2012-2013, which commences July 1, 2012 and ends June 30, 2013, must have a positive ending balance and a minimum three percent reserve (3%) for economic uncertainties. In addition, FY 2013-2014 and FY 2014-2015 must also be able to show a positive ending balance with at least the 3% reserve. In this matter, the Chair notes for discussion purposes that FY 2011-12 is nearly history, and the District staffed Kindergarten through third grade classrooms (Hereafter K-3) at 25:1.

In considering this entire argument, it is a fact that schools in California are dependent on The State of California for their

revenue. Furthermore, the State is and has been in fiscal crises for several years since at least 2007 with billions of dollars in deficit budgets. Some economists have described California's budget as being in "free fall". As a result of the State 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 literally billions of dollars. For this District this amounts to more than a twenty percent (20%) decrease in unrestricted funding and about twenty percent (20%) in restricted funding from what would be required by statute. Had the State not cut its unrestricted funding, also referred to as Base Revenue Limit (BRL) over the past five (5) years, AUSD would have received in the 2011-2012 FY, \$6,486.00 for each student attending class each day (Average Daily Attendance or ADA). With the State decreasing its funding of the BRL, the District received only \$5,150 a difference of \$1,336.00 equal to 20.6% (DF Tab 14 pg 204). Complicating this FY, 2011-12, is the fact that State revenues did not materialize as projected and the "Trigger Cuts" were implemented by the State. This District had to absorb an additional \$55.00 per ADA temporary cut at mid-year. This amounted to about a total of \$487,000 (DF 9 pg 186). This has caused the District to project spending down its reserves and therefore to project that it is deficit spending. Additionally, the State has deferred payments of monies to school districts which has caused a cash flow issue for districts. If the

deferrals continue, the District may have to borrow externally and pay interest on the borrowed money in order to pay its bills including salaries and benefits (DF Tab 12 pg 156).

In FY 2012-2013 the AUSD should receive \$6,693.00 per ADA, however, according to current State budget projections, the State will only fund the BRL at \$5206.00 per ADA, which represents a \$1,487.00 deficit, equal to 22.2%. So, for every one dollar this District should receive for each student, it is only receiving about 78 cents! (DF Tab 14 pg 201). Moreover, there are continuing threats to the District's funding from the State as the November ballot likely will have two competing tax initiatives for the voters of California to consider. The District shows that if the initiative, supported by the Governor, passes, they will be flat funded for FY 2012-2013. If it fails to pass, and they have class sizes of 20:1, they deficit spend immediately and by year three, FY 2014-2015, they are deficit spending substantially (DF tab 10 pgs 189-193A).

There is no question that these are huge losses in unrestricted revenues. Further, the District is projecting to spend down its reserves and thus is deficit spending in the current fiscal year.

The District has had an ongoing Parcel Tax amounting to 7 million dollars which was set to expire and in March 2010, the community passed a new Parcel Tax for 12 million dollars. To date, these parcel taxes have helped the District to increase its

reserves and maintain class sizes at 25:1 in K-3.

The Association points out that the teachers took 8 Furlough days amounting to 4.5% of salary in the 2010-11 school year which also helps to increase the ending balance. Those days and salary were restored in 2011-12 following the passage of the Parcel Tax in March of 2011 and the collection of the tax (Chair's notes). Their exhibit shows that the District's ending balance has increased from 2.55% in 2006-07 to 21.08% in 2010-11. These are the total unrestricted ending balances in Funds 01 and 17 in the unaudited actuals for those years (AF Tab 12A).

From the Chair's study of the budget documents, it is a fact that the District is projected to spend down its reserves and thus will be in deficit spending in the current fiscal year, which is a major concern particularly considering the volatility of the State's structural deficit and budgeting processes including additional midyear trigger cuts to education if the Governor's tax initiative fails. To make the District's budgetary woes even worse, they are experiencing a decline in enrollment and ADA, which definitely exacerbates their funding issues. Since the 2001-2002 school year the decline in ADA has been about 1300 ADA (DF Tab 9 as clarified pg 92). Since districts are funded based on the number of students actually attending school, the loss of ADA combined with the lack of a fully funded BRL and mid-year trigger cuts combined with the uncertainty of the passage of an initiative, which only gives schools flat funding, the District's ability to

continue to pay or increase its expenditures by hiring more certificated staff is severely hampered, even though this community has supported parcel taxes. The Chair therefore concludes that the District meets its burden of proof and does have an inability to pay if class sizes are reduced to 20:1.

CLASS SIZE

DISCUSSION AND RECOMMENDATION:

That brings us to the issue of the Article 9 and MOU Class Size matter in K-3. While all factfinding proceedings are challenging in these horrific budgetary times, this matter presents the additional challenge of the parties having reached a tentative agreement which was rejected by the AEA membership. Moreover, they are currently engaged in bargaining not only the class size issue as delineated in the MOU but also all of Article 9, Class Size in those successor contract negotiations.

Both parties have made salient points in their facts for their respective positions. The Association argues that returning to class size reduction as outlined in the law would provide revenue for the District (AF 12D) and the District shows their declining revenues even with the Parcel Tax because of the continuing deterioration of the State monies and the potential, once again, for substantial mid year cuts to the education budget, if the Governor's tax initiative fails in November.

It is clear to the Chair that they need to have resolution, at least a temporary one at this time, as the planning for the 2012-13

school year is upon them.

Considering that this matter comes to this Panel via the proposals sunshined under the language of the MOU of March, 2010 and that MOU expires on June 30, 2012, the Chair strongly recommends that the parties extend the class size relief provided in the current MOU through the conclusion of negotiations for a successor agreement.

The Panel Members representing the District and Association have met in Executive Session by email to complete this Report and Recommendations. Based on the above Recommendations of the Chair they concur or dissent as follows:

For the District:

For the Association:

Concur
 Dissent
 Concur in part
 Dissent in part

Concur
 Dissent
 Concur in part
 Dissent in part

Report attached None

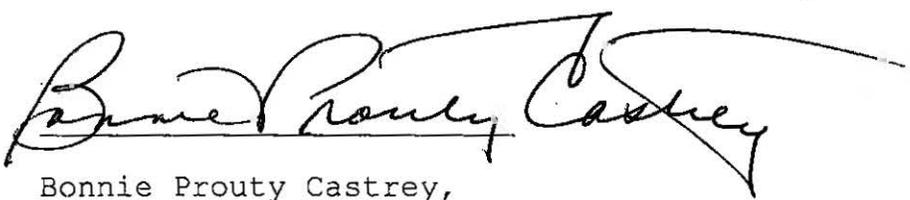
Report attached None



Ron Bennett
District Panel Member

Chuck King
Association Panel Member

Issued with attachment on June 6, 2012 by



Bonnie Prouty Castrey,
Panel Chair