

FACT FINDING DISCUSSION AND RECOMMENDATIONS

Between)
)
Long Beach Unified)
School District)
)
and)
Teachers Association)
Long Beach, TALB/CTA/NEA)
)

Re: Case No. LA-IM-3686-E

Impartial Chair

Bonnie Prouty Castrey
Post Office Box 5007
Huntington Beach, California 92615

District Panel Member

John Gray, Executive Vice President
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Association Panel Member

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Hearing Held

August 28,29, 2012
Long Beach Unified School District
Conference Room
1515 Hughes Way
Long Beach, CA 90810-1839

BACKGROUND

The Long Beach Unified School District (LBUSD or District) and the Teachers Association Long Beach (Association or TALB), 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 TALB/CTA/NEA.

This District was founded in 1885 and currently serves 83,000 students in over 80 public schools. This includes 43 elementary sites, 27 K-8 schools and middle schools, 6 comprehensive high schools, 2 small themed high schools, 3 secondary alternative education sites, 1 K-12 school and 2 charter schools. The District is the third largest school district in the state of California (District Facts page 2).

The negotiations between these parties commenced when the District's and Association's proposals for the 2011-2012 Collective Bargaining Agreement (CBA or Agreement) were sunshined by the District on March 1, 2011 (District Facts {DF} 13-16 and amended DF 17). The parties met through out 2011 and on February 12, 2012, they had an informal mediation session with Mediator Don Raczka. When no agreement was reached, the District submitted impasse proceedings to PERB. The PERB assigned Don Raczka, a Mediator with the California State Mediation and Conciliation Service. They met in a formal mediation session on April 20, 2012. When they were unable to reach agreement, PERB certified this dispute to fact

finding.

The District selected John Gray as its Panel Member and the Association selected Felice Strauss as their Panel Member. They selected Bonnie Prouty Castrey to Chair the Panel.

The issues before this Panel are Inability to Pay, Article VI Compensation Health Benefits (K-12 and CDC/Health Start); Article VI Head Start Work Year (CDC/Head Start); Article V Adjunct Duty (K-12); School Site Collaboration framework (K-12).

Both parties briefly presented their documentation and facts regarding the issues before the Panel. The Panel Members then worked in joint, separate and off the record confidential sessions in an attempt to assist the parties in reaching a Tentative Agreement. When this effort was not successful, 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 LBUSD AND TALB

1. The District is a public school employer within the meaning of Section 3540.1(k) of the Educational Employment Relations Act.
2. TALB 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 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 VI Compensation Health Benefits (K-12 and CDC/Head Start)

Article V Head Start Work year (CDC/Head Start)

Article V Adjunct Duty (K-12)

School Site Collaboration Framework (K-12)
7. An impasse in 2011-12 bargaining was declared by the Public Employment Relations Board on February 16, 2012. The mediation process proceeded as scheduled, and the parties met with the mediator in an effort to reach an agreement on April 20, 2012. The mediator certified the matter to factfinding on April 26, 2012.
8. The factfinding chairperson, Ms. Bonnie Castrey, was notified of her assignment on or about May 29, 2012.

COMPARISON DISTRICTS

The District used the comparison districts of unified districts, in Los Angeles County, where they compete for teachers in this geographic commuting area.

They are :

ABC Unified

Alhambra Unified
Baldwin Park Unified
Baldwin Park Unified
Burbank Unified
Compton Unified
Downey Unified
Glendale Unified
Hacienda La Puente Unified
Inglewood Unified
Los Angeles Unified
Lynwood Unified
Montebello Unified
Norwalk-La Mirada Unified
Pasadena Unified
Pomona Unified
Rowland Unified
Santa Monica-Malibu Unified
Torrance Unified
Walnut Valley Unified

As the third largest district in the State of California, the District also included data for the ten largest districts in the state (Big Ten).

Capistrano Unified
Corona-Norco Unified
Elk Grove Unified
Fresno Unified
Los Angeles Unified
San Bernardino City Unified
San Diego Unified
San Francisco Unified
Santa Ana Unified

(District Facts {DF} page 4)

The Association submitted five (5) comparison districts as follows which represent districts statewide with 50,000 to 125,000

ADA:

San Diego
Fresno
Santa Ana
Elk Grove
Corona-Norco

(Association Facts {AF} page 38)

As the Association's comparison districts are within the "Big Ten" identified by the District and they also use, in some comparisons, the LA County Unified Districts, the Chair will consider both sets of comparisons in this analysis.

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.

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 as this is a large district, they are required to maintain a minimum two (2%) percent reserve 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 2% reserve

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 revenues from sales tax, income tax, and other revenues, the State has unceremoniously cut school districts' unrestricted and categorical (restricted) funding by literally billions of dollars and has not maintained the Proposition 98 floor of funding.

For this District this decreased funding amounts to more than a twenty two percent (22%) decrease in unrestricted funding and about twenty percent (20%) in restricted/categorical funding from what would be required by statute (DF tab 15-16, pg 132-178). Further, the District lost an additional \$55.00 per ADA, mid year in the 2011-12 school year, as a result of State wide trigger cuts. This amounted to another 4,350,995 dollars in lost revenue (DF tab 17, pg 179).

When compared to the "Big 10", the District receives \$11.71 per ADA less than the average of the comparison districts and are placed 9th in that ten group comparison. When compared to the Los Angeles County Districts average, they receive \$46.76 per ADA less than the comparison group average and \$57.51 less than the state average for all unified districts. This means that in LA County, LBUSD places 18th out of 21 unified districts (DF Tab 18, pg 181).

Had the State not cut its unrestricted funding, also referred

to as Base Revenue Limit (BRL) over the past five (5) years, LBUSD would have received in the 2011-2012 FY, \$6,486.00 for each student attending class each day (ADA). With the State decreasing its funding of the BRL, the District received only \$5,150.00 a difference of \$1,336.00 equal to 20.6%. Further in 2012, they should be receiving \$6,698.00 per ADA but at this point are receiving \$5206.00 equivalent to 22.3% decrease (DF Tab 24 pg 202). Therefore, instead of receiving 100 cents on every dollar, they are receiving about 78 cents on each dollar.

This entire funding picture is further in jeopardy if Governor Brown's tax initiative fails on the November 6, 2012 ballot. Assuming it passes, the District will have relatively flat funding at about 78 cents on each dollar, however, if it fails, the Base Revenue Limit will sustain an "automatic trigger cut", mid-year about January 1, 2013 of an additional \$438.00 per ADA. At that point rather than receiving only 78 cents on a dollar, the District would receive a \$28.8% cut and therefore receive only 71 cents on each dollar (DF Tab 24, pg 202-203).

Moreover, the District shows that whether the tax initiative passes or fails, they will have spent down their reserves and cannot meet the third year projection, which by state law, they must do. If the measure passes, the District is projecting spending down its reserves this year by 32.9 million dollars, next year by 44.5 million dollars, which will cause it to start borrowing money externally. And, by year three (FY 14-15), they

will be deficit spending by 54.9 million dollars. This level of deficit spending is simply not sustainable. If the tax initiative fails to pass, the picture is clearly much more dire and by year three, the District is deficit spending by 88.5 million dollars.

To make matters even worse for school districts, including LBUSD, the State has deferred payments of monies to school districts which has caused a serious cash flow issue for districts. If the deferrals continue, this District may have to borrow externally and pay high interest rates on the borrowed money in order to pay its bills including salaries and benefits (DF Tab 20, pg 186-191 and Tab 22 pg 194-199). Salaries and benefits are 95.31% of LBUSD's budget (DF Tab 23 pg 200-201).

With the District spending over 95% of the unrestricted dollars on personnel, including salaries and benefits, there is simply not enough money in the remaining 4.7% of monies to absorb the deep cuts the state has imposed by failing to adequately fund schools.

The Association countered this argument by the District utilizing a program that evaluates the District's validity in their Multi-Year Projections of both Unrestricted and Restricted funds over a five year period. The Association provided 2 different time spans, 2007-08 through 2011-12 and 2006-07 through 2010-11, with similar results. Utilizing the most current five year time frame, the Associations document shows the District underestimating their Revenue, Beginning Balance, and Ending Balance by as little as

\$380,000 and as much as \$72.4 million. Additionally, the District over this same timeframe, consistently overestimated their total expenditures by a minimum average of \$10.9 million to \$420.5 million for the third (3rd) year projection (AF Tab 9, pgs 232-239). The Association contends that future cuts in health and welfare benefits should not be based on the District projections of revenues and expenditures because of their lack of validity in these past projections.

In analyzing all of this information, the Chair must consider the tremendous volatility of the economy during this entire timeframe which is known as the "Great Recession". Both the state and nation have experienced dreadful issues and the state, as discussed above, has cut school districts revenues by over 22 billion dollars in this timeframe. Additionally, the one time Federal Stimulus monies came to the District and helped to save jobs, but also made budgeting extraordinarily challenging and most districts in the state which remained positive did grow their ending balances. The State also made a payment on the last day of the year, which had to be "booked" for the year ending. All these factors makes budgeting during these challenging times very difficult.

The District has already made severe cuts including eliminating some 800 teaching positions in this bargaining unit over the last two years, with the most recent on May 17, 2012, when 245 certificated positions, mostly teachers were eliminated.

Additionally, members of this bargaining unit have suffered a reduction in pay in the 2010-11 school year as they had five (5) furlough days and class sizes were increased in K-3, when class size reduction was eliminated. The cost of one furlough day, including all statutory benefits is \$1,659,224.00 for this unit (DF tab 2, pg 110). This means that teachers salaries were reduced by five days of pay and students has five fewer days of class time and learning. They have also reduced expenditures by capping benefit costs for other employees (AF Tab 3 pg 40).

From the Chair's study of the budget documents, it is a fact that the District is projected to continue spending down its reserves and thus will be continuing to deficit spend in the current fiscal year and for the foreseeable future. This is a major concern particularly considering the volatility of the State's structural deficit and budgeting processes including additional mid-year trigger cuts to education if the Governor's tax initiative fails.

As the Association shows, the LBUSD is currently receiving a positive certification as of April 16, 2012 (AF Tab 9, pgs 226-229). That certification, by the LA County Department of Education, also advises the District of its concerns regarding their ongoing projected deficit spending, declining enrollment issues, continued reduced state funding, and 2012-13 possible mid-year trigger cuts. The County also noted that the large projected deficits are due to the loss of federal, one time allocations and declining enrollment.

As discussed above, the reductions in this bargaining unit have been substantial. Those reductions helped to fund the ending balance and the ongoing reductions of teacher layoffs and elimination of class size reduction were major contributions in keeping the District's positive certification, however as discussed above, whether the tax initiative passes or fails, without further reductions in spending, the District cannot meet its ending balance requirements through 2014-15, as required by law.

In Sum, with the lack of a fully funded BRL and the real possibility of additional 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 the salaries and health and welfare benefits at the current level is not sustainable. This will put the District into a "Qualified" and/or Negative budget status unless they make additional sustained reductions.

The Chair therefore concludes that the District meets its heavy burden of proof and does have an inability to continue to pay personnel costs including salaries and benefits at the current levels.

The following is a discussion of the contract issues before this Panel for analysis and recommendations for settlement.

ISSUES

Article VI Compensation and Health Benefits

DISCUSSION AND RECOMMENDATION:

Since this Panel can only recommend savings that can be

implemented now, rather than over several years, we must look to a recommendation which generates the most savings in the shortest time, in order to meet the requirements of state law in AB 1200 and Government Code Section 3547.5.

While the parties are able to agree to a longer term agreement, the fact finding panel can only recommend settlement for the year, 2011-2012 with terms which carry forward until different terms are negotiated. And, by law, we must recommend terms which leave the District solvent through June 30, 2015.

The District calculated 1% to be \$3,020,505.00 for this bargaining unit (DF Tab 1, pg 109).

HEALTH AND WELFARE BENEFITS

The major issue in this fact finding is that of health and welfare benefits. The District wants to cap the benefits going forward at 95% of the cost of premiums for the 2012 benefit year. The new structure of 95/5 would commence in January 2013 when the new benefit year commences. The Association is opposed to a hard cap and wants to reduce the costs of the plans by restructuring benefits.

The five districts identified above by the Association do not have capped health benefit plans (AF tab 8, pg 200). In the Statewide comparison of the largest unified districts, there are fourteen districts. Nine of the 14, including LBUSD, do not have capped benefits as of the 2010-11 school year. Two have soft caps and three have hard caps (AF Tab 8, pg 201).

When LA County Unified Districts are compared, the total

compensation ranks LBUSD 2nd for beginning teachers, 4th at mid career and 3rd at maximum career on the schedule (DF pg 226-228). In terms of benefits alone, LBUSD pays the second highest percentage of the "Big 10" unified school districts. The District notes that Elk Grove, which places first has just made significant modifications to their plan which will likely reduce their percentage of total expenses (DF Tab 27 pg. 229).

On the other hand, as an alternative in comparing six unified districts of like size throughout the state, the Association utilizes percent of Total Outgo as the common denominator. The Association asserts that this factor does not get adjusted based on size of districts, or amount of revenues, but rather indicates of all the expenditures these districts make, what percent goes to various costs incurred by all districts. When comparing the percentage of funds going to various categories, the Association notes the District ranks only 4th out of 6 in Certificated Bargaining Unit Salaries, 2nd out of 6 in Administrator Salaries, 4th out of 6 in All Employees Health Care costs and 3rd out of 6 in Total Salary and Benefit Costs (AF Tab 10 pgs241-244).

Depending on which figures are used, the District either compares very favorably or just average with all the comparable districts presented by both the Association and the District.

The problem is in finding a way for the parties to continually work together to reduce costs by selecting new plans or making serious modifications to current plans, on an ongoing basis not just modifications for one year.

The District shows that there is a higher selection of the PPO plan by TALB members at 49.75%. The HMO and Kaiser plans are both less expensive. Of the other 50.25%, 25.19% of TALB members choose the Kaiser plan and 25.05% choose the HMO plan (DF Tab 32 pg 249).

Currently, the District proposal would place a hard cap at 95% of the 2012 average and employees would pay 5%. The District believes that this would also encourage employees to be smart consumers as they would be sharing increased costs. On the other hand the Association opposes a hard cap, as all ongoing increases would be borne by the employees, unless the parties negotiate a higher cap in future years. The Association is willing to negotiate plan changes to decrease the District's fees. Those changes would likely be accomplished by some increases to employees using the various benefits.

Assuming that the District is looking to save 5% of the increased cost of the health benefit plan; for the short term, the Chair recommends that TALB and the LBUSD agree to plan changes in existing plans. These benefit changes must bring the plan cost for TALB Members down to the same or less dollar amount than the District is paying for other employees. In other words TALB's 5% payment would be made in plan changes.

For the longer term, the Chair believes that the District cannot continue to cover all future cost increase in benefits and remain at or near the top in salaries. The Chair therefore recommends that the parties meet as soon as the PPO plan increases are known each year, determine the dollar amount of

savings which must be realized in order to maintain the district contribution at 100% of the prior year district contribution per employee and negotiate methods by which TALB members may reduce the cost of the plan to that level. The TALB contribution could include benefit modifications, bidding new plans, etcetera. Once the parties have negotiated reductions, the Chair recommends that TALB members, who choose the PPO plan, and the District share 50/50, any amount of PPO plan cost increase per employee above the district contribution, for the prior year, which the parties do not achieve through agreed upon savings generated by negotiated plan changes.

Further, the Chair recommends that the parties establish a functioning joint labor management health committee and engage in an educational program which teaches the parties about health care benefits and how to work together effectively in this whole changing area of health care benefits.

ARTICLE V DAYS AND HOURS OF EMPLOYMENT

DISCUSSION AND RECOMMENDATION

HEAD START WORK YEAR

This is a Federally funded program for which the District receives a specific amount from the federal government. The program currently encroaches on the District general fund. Currently the program serves children 193 days per ten month year. The District has proposed bringing this program in line with the regular school year of 182 days. As the District would receive the same dollar amount, this reduction of the Head Start school year to

align with the regular school year would save the District \$250,000 or more in those general fund dollars encroaching.

Programs must operate four or five days a week and from 128 to 160 days per year, depending on whether they are four or five day programs.

This is an important program as it helps children from disadvantaged settings to get an early start in school and gain necessary skills for their future educational years.

The Board of LBUSD has determined that it will have to eliminate programs which encroach on the general fund.

They assure that the program can be provided in the 182 day school year and that eliminating 11 days is not detrimental to the program (DF Tabs 36-41, pg 254-267) (AF Tab 6 pg 1-134).

In order to provide the community who will be impacted by this change and employees an opportunity to adjust their time and personal budgets, the Chair recommends that this 11 day school year reduction be implemented over two years by decreasing the first year to 188 days and the second year to 182 days. This reduction would allow the District over time to reduce the encroachment and to provide this important program within the allocation from the Federal government as opposed to terminating the program.

ADJUNCT DUTIES

This relates to duties which the parties have agreed need to be completed such as sponsoring student activities, supervision and participation in school events.

The Association is desirous of having the 24 hour maximum for

assignment of duties eliminated as "most teachers are working many hours more than anyway and this would be additional recognition of how hard they are working" (Chair's notes).

The Association is the moving party regarding changing this language, but did not provide evidence that was a major problem.

On the other hand, when we look at the comparable districts provided by the District, while all of the districts require participation in adjunct duties, the majority of districts do not have a specified number of hours (AF Tab 5, pg 89-91; DF Tabs 42-48 pg 268-278).

Considering that the language in this article seeks volunteers before assigning up to 24 hours per semester and this hour specification is only for secondary teachers and the range of hours for those districts which do specify hours is a range of 16 hours to 80 hours per year, 24 for each semester is reasonable.

Therefore, the Chair recommends that at this time, the language in the current CBA remain the same.

NEW ARTICLE

SHARED DECISION MAKING FRAMEWORK

DISCUSSION AND RECOMMENDATION

The District and the Association have apparently been involved in shared decision making for a number of years, however, the Association is concerned that the process is not institutionalized and rather depends on the principal at each site. As a result, it is dependent on personalities rather than on an agreed upon

structure.

This is a very complex issue which requires careful thought, a plan for a process and implementation as well as education of all of the participants for both the District and Association, therefore the Chair recommends that the parties establish a joint District-Association committee to assess the current processes, analyze the strengths and concerns at the various sites, explore other models and then make recommendations for improving their current practices and committees.

The Panel Members representing the District and Association have met in Executive Session by conference calls on October 22 and 23, 2012 to finalize this Report and Recommendation. Based on the above Recommendations of the Chair they concur or dissent as follows:

For the District:

Concur

Dissent

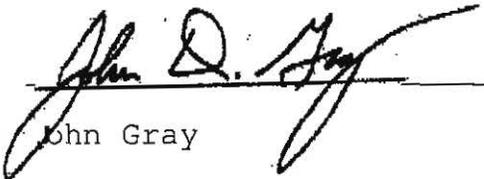
For the Association:

Concur

Dissent

Report attached No

Report attached YES



John Gray

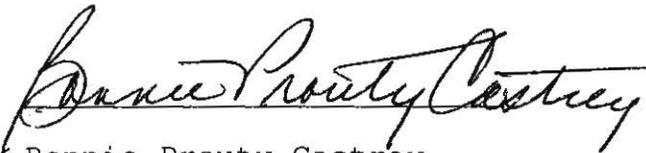
District Panel Member



Felice Strauss

Association Panel Member

Issued with attachment on October 23, 2012 by



Bonnie Prouty Castrey,

Panel Chair

I dissent to the fact-finding report, case no. LA-IM-3686-E based on the following:

1. **Adjunct Duty:** Because of the increased workload on TALB members due to a loss of 800 certificated staff, the members in Long Beach need some relief from extra duties beyond their regular duties. With less members to share the work, those still in the district have more duties to pick up. This report does not make any recommendation for adjunct duty.
2. **Head Start:** Although the Association is open to discussing reducing the work year, the impact of the loss of 11 days pay for members is too substantial. Also, the cost of encroachment has changed from \$800,000 to \$250,000 and the District might not still need the entire 11-day cut from the year.
3. **Shared Decision-making:** The recommendation of a committee does not go far enough for a program that has been in policy since the 1980's. TALB's concern is without it being in the contract, it is dependent on individual administrators' philosophy. After over 25 years, and a policy book that may be used as guidance, the parties should be able to negotiate the terms of this process without another committee being formed, as recommended in this report.
4. **Health Care:** This is the area of most concern. TALB has offered substantial cost containment which is permanent and accumulates each year once it is implemented in January, 2013. The District wanted an equivalent amount of cuts that it made with CSEA. TALB has done this with their cost containment. This report goes one major step further and mandates using a floating cap or shared costs, however one wants to interpret the process, for future years. This goes beyond what is **needed** and gets into what is wanted by the district. The district has a positive certification from LACOE. The savings in health care cost containment increases their ending balance each year, as does the millions of dollars in savings from the entire health benefit costs no longer incurred from the 800 RIF'd members. The past changes in revenues and expenditures show how inaccurate the District's Multi Year Projections are and should not be used as a basis for making ongoing, substantial cuts in health benefits. The district spends less on health benefits as a percent of Total Outgo than three (3) of the six (6) large unified districts. The Association has done its share of cost savings through cost containment and should not have a permanent hammer over their head that requires them to open up negotiations every year.

Respectfully submitted by Felice Strauss,
CTA Representative