

The Matter of the Impasse Between

Alpine Union School District)
AND RECOMMENDED)
TERMS OF SETTLEMENT)

and)

Alpine Teachers' Association)
CTA)

PERB CASE #LA-IM-3762-E

Exclusive Representative)

REPORT ISSUED
November 15, 2013

Hearing Held on November 5th 6th and 12th 2013
COMPOSITION OF THE FACTFINDING PANEL

Impartial Chairperson: John G. Moseley
Fact-finder
36835 Lexington Avenue
Madera, CA 93636-8212

District Member: John Rajcic, Esq., Partner
aalrr A Professional Law Corporation
Cerritos Office
12800Center Court Drive
Suite 300
Cerritos, CA 90703

ATA/CTA Member: Alva Rivera, Regional Uniserv Staff
Negotiations & Organizational Development
California Teachers' Association
1535 Grand AV, suite A
San Marcos, CA 92078-2465

MAKING PRESENTATIONS TO THE FACTFINDING PANEL:

For the District: **John Grey, President**
School Services of California INC
1121 L Street, Suite 1060
Sacramento, CA 95814

For the Union: **Theresa Horton,**
Chapter Services Consultant
California Teachers' Association
5333 Mission Center Road, Suite 200
San Diego, CA 92108

BACKGROUND

The Alpine Union School District was established in 1931, and is located approximately 25 miles east of the city of San Diego. It serves the communities of Alpine and a small portion of the city of El Cajon. The District operates four elementary schools, one middle school, one K-8 Alternative Education School, and one Community Day School. It serves a population of approximately 1,775 students.

HISTORY OF NEGOTIATIONS

The Alpine Union School District, (District), proposal was sunshined in September 2012, and the Alpine Teachers' Association, (ATA/CTA), sunshined their proposal in October 2012. There were negotiations conducted on November 14, 2012; December 12, 2012; January 31, 2013; February 22, 2013, March 14, 2013. Impasse was approved by PERB on April 5, 2013.

Mediation occurred on May 17, 2013; July 31, 2013; August 2, 2013; and August 22, 2013. The District and ATA were placed into fact-finding by the Mediator on August 28, 2013.

On October 7, 2013, I was assigned as the Fact-finder for PERB Case # LA-IM-3762-E Alpine Union School District vs. Alpine Teachers' Association.

RELEVANT FACTORS

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

(b) In arriving at their findings and recommendations, the factfinders 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 employees involved in the factfinding proceeding with the wages, hours, and conditions of employment of other employees performing similar services and with other employees generally in public school employment in comparable communities.
- (5) The consumer price index for goods and services, commonly known as the cost of living.
- (6) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays, and other excused time, insurance and pensions, medical and hospitalization benefits; the continuity and stability of employment; and all other benefits received.
- (7) 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 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 in 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 a 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.

Agreed to Stipulations

Agreed to Stipulations: The District proposed the following stipulations as joint stipulations by the Alpine Teachers' Association, (ATA), and the Alpine Union School District, (District), and there were no objections.

1. The District is a public school employer within the meaning of Section 3540.1(j) of the Educational Employment Relations Act.
2. The ATA is recognized employee organization within the meaning of Section 3540.1(l) of the Educational Employment Relations Act and has been duly recognized as the representative of the certificated bargaining unit of the District.
3. The parties to this fact-finding have complied with the public notice provisions of Government code section 3547 (EERA, "Sunshining" requirement).
4. The parties have complied with the EERA with regard to the selection of the fact-finding panel and are timely and properly before the panel.
5. The parties have complied with all of the requirements for selection of the fact-finding panel and have met or waived the statutory time limitations applicable to the proceeding.
6. The contract issues which are appropriately before the fact-finding panel are as follows, all other matters were agreed upon by the parties during the course of negotiations:

Article 5 Wages and Article 6 Hours

Article 7 Health Benefits

Article 11 Class Size

Article 13 Peer Assistance and Review

Article 18 Contract Sharing

Article 19 Retirement

Article 20 Attendance Incentive

Article 22 Term of Agreement

7. An impasse in bargaining was declared by the Public Employment Relations Board, (PERB). The mediation process proceeded as scheduled, and the parties continued to meet with the mediator in an effort to reach agreement until August 2013, at which point the mediator certified the matter to fact-finding.

8. The Fact-finding Chairperson, John G. Moseley, was notified of his assignment by PERB on or about October 7, 2013.

STIPULATIONS (cont.):

3540.1. Definitions

(k) "Public school employer" or "employer" means the governing board of a school district, a school district, a county board of education, a county superintendent of schools, a charter school that has declared itself a public school employer pursuant to subdivision (b) of Section 47611.5 of the Education Code.

(l) "Recognized organization" or "recognized employee organization" means an employee organization that has been recognized by an employer as the exclusive representative pursuant to Article 5 (commencing with Section 3544).

3547 Proposal relating to representation; informing public; adoption of proposals and regulations

(a) All initial proposals of exclusive representatives and of public school employers, which relate to matters within the scope of representation, shall be presented at a public meeting of the public school employer and thereafter shall be public records.

(b) Meeting and negotiating shall not take place on any proposal until a reasonable time has elapsed after the submission of the proposal to enable the public to become informed and the public has the opportunity to express itself regarding the proposal at a meeting of the public school employer.

(c) After the public has had the opportunity to express itself, the public school employer shall, at a meeting which is open to the public, adopt its initial proposal.

(d) New subjects of meeting and negotiating arising after the presentation of initial proposals shall be made public within 24 hours. If a vote is taken on such subject by the public school employer, the vote thereon by each member voting shall also be made public within 24 hours.

(e) The board may adopt regulations for the purpose of implementing this section, which are consistent with the intent of the section; namely that the public be informed of the issues that are being negotiated upon and have full opportunity to express their

RELAVENT FACTS FROM THE HEARING

After receiving my appointment to the Fact-finding Panel by PERB on October 7, 2013, I had both phone conversations and e-mail conversations with panel members, John Rajcic, Representative for the District, and Theresa Horton, Representative for ATA/CTA. We discussed the issues and how the hearing itself,

would be conducted. We set November 4th, 5th, and 6th, for my arrival in Alpine and for the fact-finding hearing.

On November 5th, 2013 at 9:30AM, the formal fact-finding hearing was conducted in what appeared to be the Board Room for the District. John Grey, from School Services of California INC., was the presenter for the Alpine Union School District. Theresa Horton was the presenter for the ATA/CTA. The Fact-finding Panel consisted of John Rajcic for the District, Alva Rivera for ATA/CTA, and John Moseley as the Panel Chairperson.

The District, being the moving party for fact-finding, presented their case first. The District position was that it had an inability to pay, which is why the District was proposing a decrease in the 2013 salary schedule by 3%, or a reduction of the 2013-2014 salary schedule by 7.588%, and a hard cap of \$8000 paid by the District toward employee and family health care costs, (District binder; *Summary of District and Association Positions, District document page 78, attached*). According to Mr. Grey and Mr. Rajcic, the average premium that the District is now paying on behalf of each employee is approximately \$13,700 per unit member.

John Grey further pointed out that, the School District had been suffering from declining enrollment from the 2006-2007 school year, of approximately 434 ADA, which equated to a loss, which the District asserts, equals an on-going loss of \$2,175,208. When I asked if ATA/CTA disputed these numbers, Ms. Horton replied, "No."

Additionally, Mr. Grey pointed out that the District had a debt service schedule for a loan payment on a *Certificate of Participation Loan*, which it had taken out for improvements to District facilities, in the amount of \$349,715.00, in payments on 11/1/2013, and 5/1/2014; and \$369,714.00 on 11/1/2014, and 5/1/2015, (*tab 6, page 105 of "The District is obligated to make significant payments for a Certificate of Participation Loan," attached*).

Mr. Grey further argued that the District was suffering loss of revenue from the previous years' deficit funding of the State of California COLA, that had resulted in the District only receiving \$.77 of each new dollar that it would have received in additional funding, had the full COLA been paid.

Mr. Grey pointed to tab 15 in the District's binder and presented a document titled *Reason 6*: which states in a letter dated August 13, 2013, to the Superintendent of Alpine School District;

“San Diego County Office of Education stated:

‘The District is in danger of not meeting its required reserve obligations in 2013-14 and will be unable to meet its financial obligations in subsequent fiscal year and beyond.’(*District binder tab 15, Reason 6: attached*).

Mr. Grey also stated that the District had informed the San Diego County Office of Education that it was putting itself in a “Qualified Status”; (“Qualified Status” means that the District is in danger of not meeting its required reserve obligations, and may be unable to meet its financial obligations in subsequent years. Under the law, while the District is in a “Qualified Status”, the School District Board of Trustees maintains its authority, but may have its compensation withheld).

Further, Mr. Grey pointed me to tab 15, a Power Point presentation by the San Diego County Office of Education regarding the Alpine Union School District's budget, which contained an overview and some recommendations. On page 9 of the Power Point presentation, is a recommendation that the District work on a plan to cut \$3.7 million over the two year period of the 2014-15 and 2015-16 fiscal years, (*District binder tab 15, page 9 of Power Point, attached*).

On October 11th 2013, the San Diego County Office of Education, informed the District by letter, that it had approved its 2013-14 budget, but that it was concerned that it would not be able to meet its 3% reserve requirement, and that the County had reinstated its “Qualified Status”, and that it was at risk of being placed into a negative certification, and a fiscal advisor appointed, (*tab 15, District Binder pages 13-14, attached*). Additionally, Mr. Grey pointed out that 1% was the equivalent of \$69,502 for the members of the bargaining unit, and that a furlough day was \$37,569 for all members of the bargaining unit.

Mr. Grey said the District's positions on the other issues in fact-finding are as outlined in their “Issues for Fact-finding Statement”, (*District binder pages 78-79, attached*). The District then concluded its presentation.

Theresa Horton was the presenter for the Alpine Teachers' Association, (ATA/CTA). She stated that ATA/CTA had filed an unfair labor practice charge alleging that the District had failed to provide ATA/CTA with a full and complete

budget in a timely manner with data that was honest, unbiased and un-manipulated. As such, ATA/CTA could not do a complete analysis of the District budget. She further stated that the District budget was predicated on no new monies from the State of California, including no additional monies from the new funding formula, Local Control Funding Formula, (LCFF), and that ATA/CTA wanted a one year recommendation from the Fact-finder for the year 2013-14, not a multi-year recommendation as had been requested by the District.

Ms. Horton repeated her belief that additional funding would be coming from the State of California under the new LCFF Act in April of 2014, as well as in the 2014-'15, and 2015-'16 school years. When I asked her if she had a specific amount that she was anticipating, she said, "No."

The District's Representatives, Mr. John Rajcic and Mr. John Grey agreed that there would be additional funding under the new formula, but were unable to provide a percentage or dollar amount, and stated that it may not be as much as they had hoped for because of the new formula, but that there would be some additional funds for the 2014-'15, and 2015-'16 school years and possibly in April of 2014 for the 2013-'14 school year.

Ms. Horton stated ATA/CTA opposed to any cuts in wages. They wanted the work days restored to 185, with a limit of staff meeting days not to exceed 7.5 hours, and not to exceed a maximum of 10 staff meetings, with no meetings on the last duty day. ATA/CTA wanted the calendar to be bargained prior to approval by the School Board, and no cap to be placed on benefits. Additionally, ATA/CTA wanted new language for transfers so that involuntary and voluntary transfers are treated equally. They wanted to keep the status-quo for the PAR program, and wanted language on contract sharing, as well as language regarding qualifying for retirement for people working ½ years. ATA/CTA wanted to keep the attendance incentive, and they wanted a formula for class size reduction. Ms. Horton referred the side-by-side comparison in the ATA/CTA binder, tab 7, (*attached*). Ms. Horton then concluded her presentation.

At the end of Ms. Horton's presentation, there were several facts that both parties agreed upon:

1. The District has been in declining enrollment, and it is unclear if the declining enrollment will continue, although both sides believed that they had probably reached an end to students leaving the District.
2. The District had put itself in a "Qualified Status", and that the numbers were the District's numbers, not numbers that were put together by the State of

California, School Services of California INC., or another outside agency independent of the District.

3. Under the new funding formula, the District would be receiving some additional funding in April of 2014, and in the 2014-'15; 2015-'16 school years, however neither party provided me with any specific dollar amounts or percentages.

The District and ATA/CTA agreed to enter into additional mediation with myself acting as the mediator. We mediated upon November 5th and 6th, 2013, but while we were close, we were unsuccessful in achieving an agreement. Both the District and ATA/CTA asked to continue mediation on the 12th of November, which we did. Unfortunately, we were unable to achieve an agreement. It was clear that both parties and their representatives worked hard to find common ground. However having failed to achieve an agreement, as the Fact-finding Chairperson, I am submitting my recommendation for settlement in the case of Alpine Union School District vs. Alpine Teachers' Association.

CONCLUSION

I am convinced that the Alpine Union School District has a history of declining enrollment and that this is a major issue not only for the budget of the District but for the District's future survival. The District needs to look at ways to attract and retain students. The bargaining unit, ATA/CTA will need to come to the understanding that some sacrifices will have to be made until enrollment not only stabilizes, but begins to grow.

The record shows that for the 2013-'14 school year, the District, while in a "Qualified Status", can meet its fiscal obligations. However, it does not have sufficient funds to meet its 3% reserve requirements, (*District binder tab 15 Power Point, pg. 4*).

Additionally, based on the information submitted to the San Diego County Office of Education by the Alpine Union School District, the District may not have sufficient funds to meet its obligations in 2014-2015 and beyond; as per the letter from the San Diego County Office of Education dated October 11, 2013, (*see District binder tab 14, Reason 5, and tab 15, Reason 6; attached*).

While I am convinced, based on the information available, that the District will be facing fiscal issues in the years 2014-'15 and 2015'16, the task of making

recommended changes to the District's collective bargaining agreement with ATA/CTA is made difficult because neither party was able to present fiscal projections on what future funding from the State of California under the new Local Control Funding Formula, would be in the 2014-'15, 2015-'16 school years.

The temporary reduction to the Certificated Salary Schedule for the 2013-2014 fiscal year, and the ongoing savings from the Cap on health and welfare premiums recommended in this decision, should provide the District with more savings than it needs to meet its 3% reserve recommendation.

AUSD Savings for 2013-2014

SALARY REDUCTION:

4.73% salary reduction January 1, 2014 based on District information that 1% = \$69,502.

$\$69,502 \times 4.73 = \$328,744$ salary savings per annum

$\$328,744 / 2 = \$164,372$ in savings between 1/1/2014 and 6/30/2014

HEALTH AND WELFARE CAP savings in 2013-2014:

$\$13,700$ (aver. dist. contribution) - $\$12,000$ (new Cap) = $\$1700$ per unit member

$\$1,700 \times 87$ employees = $147,900 / 2 = \$73,950$ savings from Cap

Total saving from Salary and Cap = $\$238,322$

The budget information on future increases in funding of Schools under the LCFF was left vague by both the ATA and the District. The California Department of Education is projecting increased funding for the next eight years.

I believe any continued or further reduction to the Certificated Salary Schedule needs to be negotiated. If ATA/CTA and the District can find funding numbers that they are confident in, and negotiate in good faith, coupled with retirements, lay-offs, and increased funding under the LCFF Act, they should be able to find sufficient revenues to achieve a positive certification by, or before the 2015-2016 fiscal year.

Calculations using the Districts' numbers, (*District binder tab 26 page 238*), show the average annual compensation for a teacher is \$81,058. Should the District reduce its Teaching Staff by 10 teachers through retirement, voluntary resignations, or lay-offs, the District would save \$810,580 annually. This, plus the Health and Welfare Cap savings, equals nearly \$1million. Additional savings could be achieved through negotiations, savings from other bargaining units, and receipt of anticipated new funding revenues, which will help to achieve and maintain positive certification.

The San Diego County Office of Education requested savings of \$1.3 million in 2014-2015; and \$1.8 million in 2015-2016. While both parties agree that additional funding is to be provided above its current level by the State of California under the LCFF, insufficient data was provided to make recommendations on what, if any additional cuts to the budget, and/or what concessions from the employees would be necessary to achieve positive certification for the 2014-2015 and 2015-2016 fiscal years. The projected 1.3million shortfall for 2014-2015; and the 1.8 million shortfall in 2015-2016 should be able to be closed by good faith negotiations continuing throughout the 2013-2014 school year, through receipt of new funds under LCFF, and by implementing my recommendations as a framework for a settlement.

RECOMMENDATIONS

This is a one year recommended settlement for the 2013-2014 fiscal year.

1. My primary recommendation is that both parties need to continue to engage in negotiations and mediation.
2. I recommend implementation of a temporary 4.73% reduction to the current certificated salary schedule effective January 1, 2014 thru June 30th 2014. The reduction should be implemented through “furlough days” to the extent possible and practicable.
3. I recommend the implementation of a \$12,000.00 maximum contribution per eligible unit member toward the actual cost of health benefits, (including vision, dental, life and disability insurance), effective January 1, 2014 no matter the plans or “tier of coverage” selected. Premium costs that exceed the maximum contribution shall be paid through individual monthly payroll deductions.
4. I recommend the following CLASS SIZES
 - 28:1 school site average in grades K-3. The parties shall meet annually to determine progress, if any, toward 24 to 1. It is the intention of the parties to take advantage of the collective bargaining exemption contained in the 2013-2014 Budget Act and associated trailer bills.
 - 31:1 District wide average in grades 4-5.
 - 32:1 District wide average in grades 6-8.
5. For PAR, I recommend:

If the Panel is convened, Panel Members shall be paid 50% of the rates set forth in the CBA.
6. Unit members on “shared contracts” shall receive service credit toward eligibility for the District’s early retirement benefits at the rate of ½ a year for each year of service in a “shared contract” (*i.e. two years of service in a “shared contract” equals one year of credit toward eligibility for District retirement benefits*).

7. Unit members who change classrooms because of voluntary or involuntary transfers shall receive three days of release time.

The District needs to be prepared to implement certificated layoffs (in March 2014 for the 2014-2015 school year) in order to achieve the expenditure reductions that may be necessary above and beyond the reductions itemized above. The lay-off notices need to be issued as soon as possible, to give individuals facing lay-off, time to seek employment elsewhere, look at retirement options, and begin to adjust their family expenses.

ATTACHMENTS

- ATA/CTA Binder Tab 7 side-by-side comparison
- District Binder page 78-79
- District Binder Tab 6, page 105
- District Binder Tab 14, Reason 5
- District Binder Tab 15, Power Point, Reason 6:
- District Binder Tab 15, Power Point, page 9
- District Binder Tab 15, Power Point, pages 13-14
- District Binder Tab 26, page 238
- Local Control Funding Formula

SIGNATURE PAGE

Association Panel Member
Concur _____ Dissent _____

_____ Attached Statement

District Panel Member
Concur _____ Dissent _____

_____ Attached Statement

John Rajcic, Esq., Partner
aallr A Professional Law Corporation

Alva Rivera
Regional Uniserv Staff
CA. Teachers' Association

Panel Chair

John G. Moseley
Fact-finder