

FACT FINDING DISCUSSION AND RECOMMENDATIONS

Between )  
 )  
Denair Unified )  
School District )  
 )  
and )  
 )  
Denair Unified Teachers )  
Association/CTA/NEA )  
 )

Re: Case No. SA-IM-3264-E

Impartial Chair

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

District Panel Member

Ron Bennett, CEO  
School Services of California, Inc.  
1121 L Street, Suite 1060  
Sacramento, CA 95814

Association Panel Member

Daniel Koen, NODD Specialist  
CTA Representative  
4100 Truxel Road  
Sacramento, CA 95834

Hearing Held

December 2, 2013  
Denair Unified School District  
Conference Rooms  
3460 Lester Road  
Denair, CA 95316

## BACKGROUND

The Denair Unified School District (DUSD or District) and the Denair Unified Teachers Association (Association or DUTA), 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 DUTA/CTA/NEA. In 2009, there were about 84 members in this bargaining unit and as of the date of this hearing, there were 68 members. The District currently serves about 1463 students in elementary sites, one (1) middle school, one (1) comprehensive high school, and two charter schools. The District has experienced declining enrollment for the past several years due to the growth of District charter schools, overall loss of Average Daily Attendance (ADA) and projected continued loss of enrollment and ADA. From the 2007-08 school year through the 2012-13 school year, the District ADA decreased by 382 for just over a 33% decline (District Facts {DF} tabs 4-6, pages 22-30 and Association Facts {AF} tab 1). Moreover, the District projects a further decline in students in all schools including the charters of 12.8% or 171 students through school year 2016-17, with the decline coming from non-charter schools and charter schools enrollment increasing and P2 ADA remaining flat (DF Tab 7, pg 31).

The parties CBA was signed in 2012 for a one year term till June 30, 2013, unless they mutually agreed to reopen the CBA (DF CBA pgs 357,363). Subsequently, Stanislaus County Office of

Education (SCOE) sent a strong warning to the District that their continued deficit spending and inflated revenue projections were causing the District to move to a "negative interim status" and on August 31, 2013 the SCOE again warned the District of its dire fiscal position. The SCOE further warned of the potential insolvency of the District if the "trigger cuts", proposed by the Governor, went into effect, if Proposition 30 failed to pass in November (DF pgs 7, 186-218).

Following this, the District "sunshined" proposals for bargaining. The District proposals specified that if Proposition 30 failed to pass (DF 220-221), that additional concessions, which included negotiating additional furlough days, up to 10 days in each of 2 years, a reduction in force and the elimination of class size reduction were proposed (DF pg 40-41). In the mean time on October 15, 2012, the SCOE determined that it needed to appoint a Fiscal Advisor to review the District's finances and to intervene in the District, in order to prevent the District from going into bankruptcy (DF pg 7 and pgs 223-226). Although Proposition 30 passed, when Fiscal Advisor, Theresa Ryland issued her analysis, she determined that immediate action was necessary in order to address the District's "dramatic, structural budget deficit" which would not be cured with the funding from Proposition 30. Further, in her report, she points out that the SCOE has been communicating its concerns to the District "over the last couple of years indicating concern over the district's assumptions and advising

caution and conservatism in budgeting." Among the concerns, she cited, were the district's assumptions of enrollment growth in 2013-14, which was not supported by evidence. In fact the decline in enrollment continued and she points out that staffing adjustments were not made, which created further, severe fiscal problems (DF pg 7, Ex 1 complete report pgs 186-218). The negotiations between these parties commenced on or about December 18, 2012 following the public hearings of the District's proposal to reopen for salaries and the bell schedule and the Association's proposals for the re-opener of an additional five Articles of the CBA (4,7,10,11 and Appendix E-1) of the 2012-2013 Collective Bargaining Agreement (CBA or Agreement) (AF Tab 3 pgs 1-7 and DF pg 7 and CBA in DF). The parties met on three occasions and when progress was not made, the District asked PERB to declare impasse on February 15, 2013. The District then submitted impasse proceedings with PERB which were denied by PERB on February 25, 2013. As the deficit spending worsened, the District, on May 13, 2013, withdrew all prior proposals and proposed a set of reductions including an 11.05% overall salary reduction (DF pg 8). The failure to reach agreement during negotiation meetings in May caused the District to again ask PERB to declare an Impasse, which they did on June 18, 2013. They assigned Mediator Steve Pearl to assist the parties in reaching a mediated agreement. He met with the parties on August 22 and October 21, 2013 at which time, he determined that he would certify the parties to Fact Finding (DF pg

9 and AF Tab 2).

The District selected Ron Bennett as its Panel Member and the Association selected Daniel Koen as their Panel Member. They selected Bonnie Prouty Castrey to Chair the Panel and PERB appointed her on November 6, 2013 (Chair's file of Appointment letter).

The issues before this Panel per the District are: Inability to Pay, Article 4 Leaves of Absence (4.18, 4.19), Article 7 Reassignment, Article 10 Professional Hours, 10.1.2 Full-Day Kindergarten, Article 11 Provisions of work Day and Work Year-Work Year, Preparation Period, Article 14 Salaries and Extra Duty Stipend Schedule. The Association asserts that only seven issues are open for renegotiation including: Other Leaves of Absence, Reassignment, Professional Hours, Provisions of the Work Day and Work Year, Bell Schedule, Salaries and Extra Duty Stipends (AF Tab 4, Pg 5). This dispute of issues properly in negotiations is the subject of an Unfair Labor Practice (ULP) before PERB (AF Tab 4).

The Association appeared at this proceeding under protest (AF Tab 1). The hearing before the Panel was held at the District Offices in Denair on December 2, 2013. Both parties briefly presented their voluminous documentation and facts regarding the issues before the Panel and had time for clarifying questions. Following the hearing, the Panel met in Executive Session to discuss potential options for settlement. The Panel Members then worked in joint, separate and off the record confidential sessions

with the parties in an attempt to assist these parties in reaching a Tentative Agreement that night.

When this effort was not successful, the Panel Members studied both parties entire submissions thoroughly, held conference calls to discuss the issues and the Chair drafted this Report and Recommendations. The Panel Members met with the parties with the confidential draft Report and Recommendations in a further effort to assist them in reaching an agreement on January 6 and 7, 2014.

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 DUSD AND DUTA

- 1. The Denair Unified School District is a public school employer within the meaning of Section 3540.1(j) of the Educational Employment Relations Act.
- 2. The Denair Unified 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 exclusive representative of the non-management bargaining unit of the District.
- 3. 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.
- 4. An impasse in bargaining was declared by the Public Employment Relations Board. The mediation process proceeded as scheduled, and the parties continued to meet with the mediator in an effort to reach settlement until October 21, 2013, at which point the mediator certified the matter to factfinding.
- 5. The factfinding chairperson, Bonnie Prouty Castrey was notified of her assignment on or about November 6, 2013 (DF pg 5).

## COMPARISON DISTRICTS

The District selected for use in comparison districts

statewide and geographic location and district type. They selected twenty districts. See page 2 of District Facts.

The Association submitted 21 comparison districts in Stanislaus County (AF Tab 7 pg 1).

These parties are so far apart that they did not agree on a single district to compare Denair USD with, which makes it nearly impossible for the Panel to effectively do comparisons. Furthermore, a true comparison may not be possible as this matter is so unique.

## 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) 2013-2014, which commenced July 1, 2013 and ends June 30, 2014, must have a positive ending balance and this district is required to maintain a minimum three (3) percent reserve for economic uncertainties, including all appropriate funds. In

addition, FY 2014-2015 and FY 2015-2016 must also be able to show a positive ending balance with at least the 3% reserve for economic uncertainty.

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 has been in fiscal crises for several years since at least 2007 with billions of dollars in deficit budgets and has "borrowed" some 22 billion dollars from the school funding under Proposition 98. 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 10-15, pg 51-86). They only received approximately 77-78 cents for every dollar they should be funded and about 80 cents for categorically funded programs through June 2013. The District has had a County appointed Fiscal Advisor since 2012 because of their qualified and then negative status.

Stanislaus County Office of Education (SCOE) has loaned the

District some \$1.3 million dollars, in order for the District to end the 2012-13 year with a positive cash flow. They project a negative cash flow every month, (except December) through the end of the 2013-14 fiscal year resulting in a negative cash balance of \$1.38 million! (DF Tab 21, pg 103-104).

In addition, since 2007-08, this District has sustained a loss of Average Daily Attendance (ADA) of some 382 students for an ongoing revenue loss of \$2,106,703 and they project continued losses through 2016-17 of 170 ADA (DF Tab 6 and 7, pgs 30-31). It is noteworthy that the loss from DUSD is largely due to the establishment of two District Charter Schools. DUSD Non-charter schools lost 380 students since 2007-08 and the Charters under DUSD gained 310 students, a difference of minus 70 students. Therefore, in total enrollment of the Charter and Non-charter, the change is a loss of 70 students or -4.33% (DF Tab 4, pg 22). This is a significant factor in making recommendations to the parties for settlement of this dispute.

Next, had the State not cut its unrestricted funding, also referred to as the Base Revenue Limit (BRL) over the past several years, DUSD would have received in the 2012-2013 FY, \$7,095.00 for each student attending class each day (ADA). With the State decreasing its funding of the BRL, the District received only \$5,515.00, in 2012-13 a difference of \$1,580.00 equal to 22.3%. The 2007-08 school year is the last year in which the District received it's fully funded BRL at \$6,174.00 (DF Tab 15, pg 86).

While the tax initiative, Proposition 30, meant to stabilize education funding, was passed by the voters in the November 2012 election and funding for school districts is now by a new funding formula called the Local Control Funding Formula (LCFF), DUSD remains in fiscal crisis. This formula increases funding for DUSD over an eight year period and the District accounted for the 2013-14 increase in the budget and in the two out years (DF Tab 25 pg 88). Even with that increased funding, the District budget at First Interim continues to show severe deficit spending. In 2013-14 the combined deficit is minus \$379,760; in 2014-15, it is minus \$46,359 and 2015-16, minus \$217,400 (DF Tab 17, pg 89).

Over the last six years, the State has deferred payments of monies to school districts which has caused a serious cash flow issue for districts and certainly has severely impacted DUSD's cash flow. SCOE has loaned this District money as discussed above.

The Association charges that the District's budgeting and their choices of priorities is not in the best interest of the public, given the Governor's optimistic budget LCFF for education, following the passage of Proposition 30 and further, they assert that the District has not taken the early advice of the County and its Appointed Fiscal Advisor (AF Tab 6). Further, they argue that the District initially was negotiating for 7.5% and that is what the classified unit settled for, however in May, the District increased its demands from this bargaining unit to 11.05%. While, over the past years, this bargaining unit has recognized the

District's fiscal problems and agreed to take furlough days, they do not believe that 11.05% is necessary, nor fair, from their bargaining unit. Moreover, teachers are leaving the District for positions in other districts, thereby saving this district dollars. The District proposed a salary decrease of 11.05% for this bargaining unit and shows that even with that decrease, the district non-charter will continue to deficit spend in 2013-14 by \$663,408; 2014-15 by \$223,408 and 2015-16 by \$44.808 (DF Tab 19 pg 93). As discussed above the district created these dependent Charters and nearly all the students who were lost to DUSD were gained in the Charters (DF Tab 19 pgs 96-99).

From the Chair's study of the budget documents, it is a fact that even with the new monies from LCFF, the District is projected to continue deficit spending and will likely need another loan from the SCOE and must make severe budget cuts to start on the path to solvency. The District has a revenue problem, caused mainly by the States' budget cuts and declining enrollment. Among other reasons, the Chair finds that these fiscal problems were exacerbated by the District's failure, over the past several years, to decrease staff commensurate with the decline in enrollment; and that they did not heed the SCOE advice, since at least 2012, to budget conservatively and to use realistic assumptions, especially in enrollment and to make appropriate staffing adjustments. The Fiscal Advisor's report is replete with examples of prior administrations' failures to utilize all legal options to save and/or recover monies, such as

transportation fees permanently lost to the district by using Federal Stimulus monies in the 2009-10 year and failing to fully spend the state transportation allocation, they permanently lost some \$25,000 of "unspent" allocation from the State (DF pg 192).

Having found an inability to pay, the major questions to be answered are how deep those cuts must be in this bargaining unit to begin to regain solvency and how the cuts should be implemented in this bargaining unit, in order to avoid a State takeover of the District. The Chair thinks that the parties agree that a State takeover is not beneficial to any party and does not meet the public interest or the needs of students, the bargaining unit and district as a whole. For all these reasons, the Chair 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. To bring down that 11.05% which the District is seeking to a more reasonable amount that this bargaining unit will bear will be the challenge in the recommendations which will be discussed below.

#### **FINDINGS AND RECOMMENDATIONS**

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

Although the Chair and Panel Members are well aware that the issues before us are for one year, it is clear that to address the

long term structural issues of the District and to meet the County's expectation that the recommendations will bring about fiscal solvency, therefore, the Chair is making recommendations for a long term agreement. A one year agreement would, in her opinion, bring about egregious and draconian cuts that are not possible and would escalate an already very contentious situation rather than helping the parties to find a reasonable solution to this dispute. A long term recommendation also provides a time for repairing the labor management relationship which has benefits to the community at large as well as the staff and students. Therefore, following careful consideration of all the documentation provided by the parties and the explanations of each party the Chair offers the following findings and recommendations for the parties consideration in reaching a long term agreement:

As stated above, the Chair concluded that the District has met its burden of proof and has an inability to pay the status quo. Having found that conclusion, the Chair also reiterates that the problem was not only caused by the state cuts in education and the loss of student enrollment from DUSD, but in significant part by the District's past failure to promptly respond to these losses with appropriate reductions in expenditures and staffing. Also, the District's current fiscal difficulty is due in part to its need to pay off past debts. Therefore, future restoration of this bargaining unit's compensation is urged and highly recommended.

A three year agreement is necessary for the above stated reasons and because a three year recovery plan, that meets the legal requirements of AB 1200 and is acceptable to the SCOE, meets the public interest and that of the parties to not have a State takeover.

The Chair strongly urges that **all** available funds, including those held in Fund 9 for its dependent charter schools, be used to minimize the level of concessions sought from the Association. The Chair believes that the use of all these available funds would decrease the amount which the District needs to meet the legal requirements to about 8%.

Recognizing that the salaries, as reported in both the District's comparison group and the Association's are below average and that the above recommendation takes them even lower, the Chair urges that the parties reach an agreement for restoration of competitive salaries as soon as possible and absolutely no later than the end of negotiated CBA. It is not in the public interest, nor does it show maintenance of effort on the District's part, to not have full restoration of the salaries and a competitive salary schedule going forward.

The Chair further recommends that the Association and the District agree to reach agreement on the other outstanding issues as follows:

All of the previously agreed to Articles, which were agreed to on March 7, 2013 in that Tentative Agreement (TA), should be incorporated into the final agreement (AF Tab 3).

**Article 10 Professional Hours/Bell Schedule**

Commencing the 2014-2015 school year, the bell schedule for the middle school and the high school should be revised to provide a more effective instructional program. The panel believes the parties were very close to agreement when they met in subcommittee at the December 2, 2013 hearing. The Chair recommends that minutes should be added to the Middle School schedule to match those of the High School schedule. The minutes should be matched but not extended beyond that at either site. This matching of Middle School minutes to the High School minutes is projected to save the District more than two Full Time Equivalents (FTE's).

Further, the Chair recommends that the parties agree to the implementation of a full-day kindergarten commencing in the 2013-14, with the caveat, that they bargain for its continuation into 2014-15 and future school years and/or bargain the effects of the full-day kindergarten.

**Article 11 Provisions of the Work Day and Work Year**

In considering this recommendation, a fund which has not been discussed, to this point in time is the Common Core money, which the state has allocated to each district for implementation of the Common Core Standards for a limited two year period commencing in 2013-14. This money can only be used for the implementation of

Common Core, which includes teacher training. Therefore, the Chair recommends that the parties give serious consideration to an agreement including paying teachers for two days of education on Common Core, when they attend the educational programs. This would help to mitigate the salary loss by members of this bargaining unit.

**Article 11.5.2 is preparation time for K-5.**

The District unilaterally implemented the elimination of this preparation time and hence, this is the subject of an Unfair Labor Practice (ULP). The Chair recommends that the parties agree to this elimination for the 2013-14 school year only, as the monies are already accounted for, in the budget. This recommendation is made with the caveat that the parties seriously bargain over its continued elimination for 2014-15 and into the future, and to the value of restoring it in the 2014-15 school year or near future.

**Article 14 Salaries**

The Chair recommends that the 2013-14 salary schedule be reduced by 8%, until further salary increases are negotiated, and/or subject to restoration language that is mutually agreed to by the parties in a long term agreement. The Chair notes that both parties' panel members are very experienced negotiators in drafting appropriate restoration language.

It is the strong recommendation of this Chair that the partisan panel members assist the parties in drafting language

which ensures full restoration of salary by the end of the recommended three year agreement. Moreover, if the financial conditions of the District improve earlier, the Chair recommends that the restoration language provides for earlier relief.

It is in the public's interest to have teachers paid competitively, so that the District can attract and retain teachers. And, this further supports the District's future maintenance of effort. A stable workforce will also likely help to stop the decline in enrollment and bring overall stability to this District and the labor management relationship.

#### Unfair Labor Practice Charges

Both Parties acknowledged the high cost of alleged unfair labor practices and litigation pending between the parties. While it is beyond the scope of the panel to attempt to adjudicate these matters, the Chair strongly recommends that resolution of all pending disputes be included as part of any settlement. In a small district, like this one, legal costs can escalate quickly to the point that further budget reductions are necessary.

The Panel Members representing the District and Association have met in Executive Session, by conference calls on December 17, 2013 and January 5 and 7, 2014 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

Report attached No

For the Association:

Concur

Dissent

Report attached No



Ron Bennett

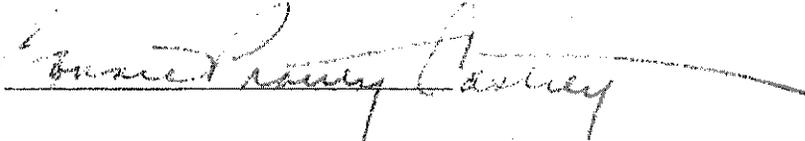
District Panel Member



Daniel Koen

Association Panel Member

Issued on January 8, 2014 by



Bonnie Prouty Castrey,

Panel Chair