

The Matter of the Impasse Between

Lake Tahoe Community College)	FACTFINDING REPORT
)	AND RECOMMENDED
and)	TERMS OF SETTLEMENT
)	
Classified Employees Union, (CEU))	
)	
)	
)	PERB CASE #SA-IM-3271-E
)	
)	REPORT ISSUED
<u>Exclusive Representative</u>)	February 28, 2014

Hearing Held on January 28th, 29th, 2014
COMPOSITION OF THE FACTFINDING PANEL

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

District Member:

Kindred Murillo, Ed.D.
Superintendent/President
Lake Tahoe Community College
One College Drive
South Lake Tahoe, CA 96150-4500

CEU Member:

Alan J. Frey
Regional UniServ Staff
Community College Association
4100 Truxel Road
Sacramento, CA 95834

MAKING PRESENTATIONS TO THE FACTFINDING PANEL:

For the District: Jeff DeFranco
Vice President of Administrative Services
Lake Tahoe Community College
One College Drive
South Lake Tahoe, CA 96150-4500

For the Union: Alan J. Frey
Regional UniServ Staff
Community College Association
4100 Truxel Road
Sacramento, CA 95834

BACKGROUND

The Lake Tahoe Community College District is located in the city of South Lake Tahoe. The District was formed in 1974 as a two year Community College District. The District averages approximately 2638 students each quarter. The District is one of the 8 smallest community colleges in the California Community College System, serving approximately 1700 full time equivalent students in fiscal year 2013-2014.

HISTORY OF NEGOTIATIONS

The Classified Employees Union was certified by the Public Employees Relations Board on September 8, 2011. The District is a non-merit district and has been negotiating for the past two years in an effort to achieve its initial collective bargaining agreement.

Mediation was attempted in November and December of 2013. Mediation was conducted by State Mediator Seymour Kramer. While several articles were agreed to, the parties were unable to achieve a final collective bargaining agreement and were certified for fact-finding.

On December 23, 2013, I was notified by the Public Employees Relations Board, (PERB), that I was selected as the fact-finder in PERB Case #SA-IM-3271-E. On January 22, 2014, I received a letter confirming that both parties had accepted me as Fact-finding Chair.

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.

Agreed to Stipulations

The District proposed the following stipulations as joint stipulations by the Lake Tahoe Community College District, (the District), and the Classified Employees Association, (CEU), 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 CEU 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:
 - a. Grievance Procedure
 - b. Disciplinary Procedure
 - c. Salary and Compensation
 - d. Health and Welfare Benefits
 - e. No Concerted Activities
 - f. Professional Development/Growth

The "*No Concerted Activities*" and the "*Professional Development /Growth Articles*" will not be included in the Fact-finders' decision as the District withdrew the "*No Concerted Activities Article*" and the District and the Union reached a tentative agreement on the "*Professional Development/Growth Article*" during the fact-finding hearing. All other matters were agreed upon by the parties during the course of negotiations:

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 November 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 December 23, 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 December 23, 2013, and a letter confirming that both parties had accepted me as Fact-finding Chair on January 22, 2014, I had both, phone conversations and e-mail conversations with panel members Kindred Murillo Ed.D., Representative for the District, and Alan J. Frey CEU Representative. We discussed the issues and how the hearing itself, would be conducted. We set January 28, 29, and 30th, 2014 as the dates for the hearing.

Prior to the hearing, both CEU and the District had shipped binders to me that contained briefs outlining each party's position, arguments and data in support of each party's positions on the outstanding six issues.

On January 28, 2014 at 9:30AM, the formal fact-finding hearing was conducted in the District Administration Building. Prior to receiving any information from the parties, CEU proposed, and it had been agreed that I would attempt mediation of the remaining original six issues on the 28th and that if we were unable to reach an agreement, we would hold the formal hearing on the afternoon of January 29th. We were successful in achieving an agreement on the *Professional Development/Growth Article*, and the District withdrew its proposal on *No Concerted Activities Article*.

On January 29th, 2014, both the Union and the District agreed that further mediation would be futile, and I convened the formal fact-finding hearing. As the District was the moving party for fact-finding, the District went first in presenting its position. The District reiterated its position that it was spending down its reserves and was, and has been in declining enrollment for several years. The District stated that this was why it could not afford to provide a salary increase and needed to implement a cap on health insurance costs of \$17,496 for the 2013-2014 and the 2015-2016 fiscal years.

The District reiterated its position that it did not believe that binding arbitration was appropriate for the grievance procedure or for the final step in the disciplinary procedure. The District was clear that it had a new administration, and that while there may have been perceived unfairness in the past, the new administration was attempting to change that perception by trying to be fair with its employees, and that the Education Code, absent a collective bargaining agreement placed the final authority over grievances and disciplines with the Board of Trustees.

During its presentation, the District offered to accept CEUs' proposal on salary. This would have required the District to utilize 21% of the funds located in the 2013-2014 *Fund 10 Total Budget-Total Revenues*, as shown on page 33 of the attached *LTCCCCFS-311* report; initially with the caveat that this would be a "one-time compensation" increase off of the salary schedule. This condition was rejected by CEU. At that point the District Representative stated that they could accept applying any monies from this fund onto the Classified Schedule. CEU still did not agree to the proposal.

The District stated that it needed the health insurance cap of \$17,496 to ensure the cost containment of health insurance premiums. It stated that it had already moved its management, confidential, and certificated personnel under the cap, and that most of those employees were now covered by the standard plan versus the premier plan as defined by the District insurance provider TCSIG, and that the cap covered the cost of the standard plans, with any individual electing for the basic plan to receive \$222 contribution toward a 403(b) retirement savings account.

The District did acknowledge that the cap would force the payroll deduction of \$158/ month for those classified employees who remained in the premier plan. This was equal to a salary reduction of greater than 11% per employee, or a reduction of greater than 3.3% in total compensation. The District also acknowledged that the basic and standard plans provide lower levels of coverage in addition to increased deductibles and co-pays.

CEU was offered an opportunity to present its positions on the remaining issues, but declined to make any oral argument, or to present any additional documents in support of their positions other than those documents that were shipped to the Fact-finder prior to the hearing. In CEU's documents provided to the fact-finder, CEU asked for:

1. A 3% across the board salary increase
2. Binding arbitration for employees subject to discipline, which is provided for under Education Code 88013, subsection E
3. Binding arbitration of grievances
4. CEU was opposing a reduction in the current cap \$18,456, or to the health insurance plans.

CEU acknowledged that the District has been in declining enrollment but that based on the District projections would be increasing in 2013 -2014, and 2014-2015 fiscal years. Additionally, CEU was clear that the District's budget was balanced with reserves of 10% or greater, and that it was in a positive fiscal

position, and had not claimed an inability to pay, but was in a sound fiscal position. CEU also pointed out that the District should be receiving some additional money under the new funding for Community Colleges contained within the State of California's budget for Community Colleges for fiscal year 2014-2015, (*Ca. Community College Chancellor's Office of Communications – Key Facts*), further improving the Districts' fiscal health.

CONCLUSION

I am convinced that the Lake Tahoe Community College 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. The District needs to look at ways to attract and retain students. The bargaining unit, CEU, 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 2013-2014 fiscal year, the District has sufficient funds to meet its obligations, and to maintain a reserve for economic uncertainties for the 2013-2014 and 2014-2015 fiscal years, and still be able to meet its reserve requirement.

What is not clear, because neither CEU nor the District provided any data on the projected funding levels from the State of California under the *State of California Budget for Community Colleges* for the 2014-2015 fiscal year, is how the new funds will improve the Districts' overall fiscal condition. The fiscal information contained in their briefs and the information provided by the employer, show the District to have sufficient funds to meet its current obligations for 2013 –2014 and the 2014-2015 fiscal years, but the District will continue to spend down its fiscal reserves. If enrollment continues to decline and the District continues to spend down its reserves, it will find itself in a negative fiscal position some time after the 2014-2015 fiscal year.

Based on the information I have received, I do not believe that the District has proved that it has an inability to pay for the 2013-2014 and 2014-2015 fiscal years.

RECOMMENDATIONS

1. It is prudent for the District to implement cost savings based on the information provided to me by both CEU and the District through capping health and welfare benefits. While I believe it is a prudent action, I do not believe the change to the health and welfare cap should occur before July 1, 2014. What is clear is that the change in the cap is equivalent to a reduction in salary of 11% or greater, or a reduction of greater than 3.3% total compensation. Waiting until July 1st will give the employees time to adjust to the upcoming change in premium deductions, and an opportunity to review and select possible plan changes.
2. My recommendation on salary and compensation is that the District implement its proposal on a salary increase for 2013-2014, utilizing 2013-2014 *Fund 10 Total Budget/Total Revenues* as shown on page 33 of *LTCCCCFS-311* report and apply those monies across the board to the salary schedule for the Classified Employees. In addition, the District and CEU need to continue negotiating over any new or additional funds under the new *California State Budget of Community Colleges fiscal year 2014-2015*.
3. I am recommending binding arbitration of grievances because it is more cost effective and brings resolution to the issues quickly.
4. I am recommending binding arbitration of discipline as permitted under the *Education Code 88013 subsection E*. It is of particular importance that employees have faith that when they are subject to discipline that they will receive a fair hearing before a neutral, professional and competent individual who can render a fair and just decision.
5. I recommend that the parties make every effort possible to continue to negotiate on salary and benefits at least until they know the changes to the Governor's upcoming May Revision of the State's Education Budget. This will give both parties a better understanding of what future revenues will be available, and will also allow time to see if enrollment increases for the 2013-2014 year.

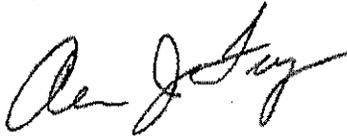
Signature Page

Concur in full: Concur in part:
Dissent in full: Dissent in part:

Kindred Murillo, Ed.D.
Superintendent/President
Lake Tahoe Community College

Concur in full: Concur in part:
Dissent in full: Dissent in part:

Alan J. Frey
Regional UniServ Staff
Community College Assn.



Panel Chair

John G. Moseley, Fact-finder

The Lake Tahoe Community College District and Community College Association
Case No. SA-IM-3271-E

Kindred Murillo, Ed.D.
Superintendent/President
Lake Tahoe Community College District's Representative

Concurring and Dissenting Opinion to the Findings of Fact and Recommended Terms of Settlement:

As the representative for The Lake Tahoe Community College District (District) to the Factfinding Panel, I concur with some portions of the Finding of Fact and Recommended Terms of Settlement (Report). There are significant points, however, with which I disagree, and for that reason, I am providing this concurring and dissenting opinion.

CONCURRENCE

I concur with the recommendations of Panel Chairperson John G. Moseley on the following matters:

Recommendation 1: Cost Saving Measures

I concur with the recommendation of the Report that "it is prudent for the District to implement cost savings... through capping health and welfare benefits." And I agree that it is a prudent action.

Originally, I was hesitant to concur with the recommendation, due to the additional cost of \$41,000 to the already deficit spending of the district budget (-\$438,000), and because all other employee groups moved over to the standard plan or paid the \$158 per month for Premier benefits. The District received validation on February 20, 2014 that the FY 2012-13 deficit factor was significantly lower (dropped to .23%) than was budgeted in FY 2012-13 and the District will receive an additional \$127k above the originally budgeted amount in one-time revenue. This additional one-time funding will allow the District to cover the additional cost, and maintain the two-year fiscal stability plan, so, therefore I concur the opinion.

Additionally, I concur with the recommendation, because the District will have accomplished setting a cap on Health and Welfare benefits for FY 2014-15 of \$17,496 per year per employee. However, as discussed below, I respectfully dissent on the statement that the change in the cap is equivalent to a reduction of 11% or greater in salary.

Recommendation 2: Continued Negotiations

I concur with the recommendation of the Report that the parties should make every effort possible to continue to negotiate. The District has been steadfast in its desire to reach an agreement with the Association. However, as determined by the Public Employment Relations Board, after bargaining since August 2011, the parties reached a genuine impasse in negotiations and have been unable to reach an agreement. Nonetheless, in the event that the parties are unable to reach an agreement and the District imposes its Last Best and Final Offer, the District remains committed to meeting and conferring with the Association in fiscal year 2014-2015.

DISSENT

I dissent from the Report's recommendations regarding the following three issues: (1) the recommendation to delay the implementation of the Districts proposal for cost saving measures of the health and welfare benefits; (2) the recommendation to provide increase in salary and compensation for 2013-2014; and (3) the recommendation to require binding arbitration for resolution of discipline and grievances.

Recommendation #1: Health and Welfare Benefits

I do not agree with the statement that the change in the cap is equivalent to a reduction in salary of 11% or greater. The midpoint for classified salaries is \$56,808 annually, and the additional \$158 per month equals \$1,896 annually. \$1,896 divided by \$56,808 equals 3.3%. Additionally there is no recognition that over the past five years the District covered 100% of the cost increases to the Premier benefit plan for all employees, and this provided the classified employees with a 13% increase in total compensation, while faculty only received an 8% increase (as presented in the Factfinding Presentation).

Recommendation #2: Salaries and Compensation

I respectfully dissent from the Report's recommendation that any proposal for an increase in total compensation be implemented. The Report incorrectly asserts that the District agreed to increase salaries utilizing the 2013-2014 Fund 10 Total Budget/Total Revenues as proposed by the Union. The District provided a counter proposal in an effort to come to an agreement through the Factfinding process, which was rejected by the Union. Throughout Factfinding, the District has always proposed to maintain salaries at their current levels. The District has proposed to maintain the status quo due to the financial hardships it has experienced over the recent years.

The District continues to experience the aftermath of the great economic recession that has financially devastated much of California and the rest of the Nation. The District has experienced increasing operational costs while simultaneously experiencing declines in student enrolment and state funding. Accordingly, the District is projecting a five year low in budgetary end fund balance for fiscal year 2013-2014. In short, the District is expending its reserves at what could become an unsustainable rate. It is due to this undisputed financial reality that the District cannot responsibly increase salaries.

Setting aside the District's dire financial status, I cannot agree with the Report's recommendation because it fails to justify the recommendation under any of the EERA fact-finding factors. The Report fails to provide any data regarding the comparison of the wages, hours, and conditions of employment of the employees in the Unit with those of other employees performing similar services in comparable districts (EERA fact-finding factor #4). The Report fails to provide any information regarding the consumer price index for goods and services, or any other increases in the cost of living for its members (EERA fact-finding factor #5). In point of fact, the Report fails to provide any information regarding 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 (EERA fact-finding factor #6).

Thus, even if the Association was successful in proving that the District has the ability to pay for its proposed salary increase without incurring a financial hardship, which it was not, it has not established that its proposals are warranted under the factors enumerated in the EERA.

Recommendation 3 & 4: Discipline and Grievance Procedure

I cannot agree with the Report's recommendation that the District should dramatically change its policies and procedures to allow for binding arbitration of all discipline appeals and grievances. It appears that the sole basis for the Report's recommendation for binding arbitration of grievances is the Chairpersons personal belief that it is "more cost effective and brings resolution to issues quickly."

However, there was no evidence presented at the fact-finding hearing which could support this conclusion. To the contrary, the cost of arbitration will likely be more expensive and far more time consuming than the process set out in Board Policy 5.08. This is due, in part, to increasing costs of arbitrators, whose daily rate for arbitrations range in the thousands of dollars per day to prepare for, preside over, and issue decision over disputes. Additionally, it is becoming expected that a transcript by a court report will be provided for the proceeding. Lastly, it is an unfortunately common experience in binding arbitration for the parties to utilize outside legal representation.

Further, and as noted during the hearing, the District has a long history of good labor relations with the classified unit and has not needed to utilize the grievance procedure contained in Board Policy 5.08. Accordingly, there is no reasonable need to dramatically deviate from a system to resolve disputes which has worked for years.

As to using binding arbitration for disciplinary proceedings, contrary to the assertion found in the Report, Education Code section 88013, subdivision (e) makes mandatory that the Board of Trustees "retain authority to review the determination under the standards" applicable to civil arbitrations. Thus, the provision of the factfinding report is contrary to law and I respectfully dissent. It is appropriate that the Board of Trustees make the determination regarding discipline consistent with the procedure proposed in the Last, Best, and Final Offer.

For the above mentioned reasons, I both concur and dissent from the Report's recommendations.

Kindred Murillo

Name

Kindred S. Murillo

Signature

February 26, 2014

Date