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LOS ANGELES
REGIONAL OFFICE

VINELAND ELEMENTARY SCHOOL DISTRICT
AND
CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION, CHAPTER 185
(CASE NO. LA-IM-3823-E)

FINDINGS OF FACT AND RECOMMENDED TERMS OF SETTLEMENT

May 8, 2015

FACTFINDING PANEL

Impartial Chairperson:	David G. Miller
Association Representative:	Michael Noland
District Representative:	Carl Lange

REPRESENTATIVES

For the District:	Tim Salazar Schools Legal Service
For the Association:	Irma Rojas CSEA

BACKGROUND AND DISCUSSION

The parties to the impasse and, therefore, this procedure are the Vineland Elementary School District (hereafter "District") and the California School Employees Association, Chapter 185 (hereafter "Association").

Because of scheduling conflicts, no formal hearing was held; instead, the Panel, pursuant to its authority under Government Code Section 3548.2(a) conducted its investigation by requesting and receiving comprehensive written presentations and by making additional inquiries via telephone and e-mail and reviewing the responses thereto.

In the absence of stipulations, the Chairperson nonetheless finds that

(1) The District is a public school employer within the meaning of Government Code Section 3540.1(k).

(2) The Association is an employee organization recognized by the District as the exclusive bargaining representative of a unit of classified employees within the meaning of Government Code Section 3540.1(l). The unit is described as "...classified employees of the District, by whatever names, excluding certificated employees and those designated as Management, Supervisory, Confidential, and School Secretaries of the District." The unit consists of approximately thirty-five (35) classified employees.

(3) Vineland Elementary School District provides a K-8 education to approximately eight hundred (800) students through two schools: Vineland Elementary School (K-4) and Sunset Middle School (5-8). The district is located in southeast Kern County in a largely agricultural area.

The impasse arises out of negotiations for 2013-14. Health and Welfare Benefits represent the sole issue submitted to the factfinding panel. Specifically CSEA is proposing that effective October 1, 2013 the district increase its contributions toward the payment of premiums for health and welfare benefits; the district is proposing no increase in its contribution arguing that CSEA has failed and refused to participate meaningfully in a contractually required cost containment effort.

CSEA submitted its initial proposals in April 2013. The District submitted its initial proposals in September 2013. This leisurely approach to negotiations continued--the first negotiating meeting for a successor to the parties' 2010-2013 agreement did not take place until December 19, 2013.

On June 2, 2014 the parties reached a Tentative Agreement on all items except Health and Welfare Benefits. The Agreement called for no wage increase for 2013-14, continued the balance of the prior collective bargaining agreement and recited a term of agreement through June 30, 2016. Reopeners are available for 2014-15 and limited reopeners are available for 2015-16. The June 2, 2014 agreement specifically reserves the issue of Health and Welfare Benefits, reading in pertinent part, "Article IV-Health and Welfare Benefits shall remain open for negotiations." On July 15, 2014 CSEA submitted its Declaration of Impasse related solely to the issue of district contributions to payment of premiums for health and welfare benefits.

CRITERIA

Pursuant to Government Code Section 3548.2(b) the panel is required to 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.

FINDINGS AND RECOMMENDATIONS

The District's June 2, 2014 Counterproposal accurately summarizes the parties' respective positions at impasse:

For the Association: "The District to pick up the increase for the 2013-14 plan year for the SISC 80G-plan retroactive to October 1, 2013."

For the District: "...status quo to the current District contribution to the employee health and welfare benefit package. The District again counter proposes that the CSEA and the District meet to develop health and welfare cost containment measures prior to any increases in health and welfare benefits."

In insisting on CSEA's meaningful participation in cost containment efforts the District relies on contract language which reads:

> "The Association recognizes that any further increases in the health insurance plans and their premiums specified under the provisions of this Article are additional liabilities to the District's budget and will be considered a part of the total compensation package during each year that this Agreement is in effect. Therefore, the parties mutually agree to institute a cost containment committee no later than January 1 of each new school year prior to commencing good faith negotiations for purposes of maintaining health and welfare benefits within the dollar amount(s) the District expended in the previous fiscal

> year. The committee will review the District's health insurance programs and make a good faith effort to strive towards reaching this goal. (Art. IV, Par. M.) "

The District's monthly contribution remains at $1145.70 monthly ($13,748.40 annually) which rate was implemented effective October 2011. For 2013-14 the 80G Plan[1] rate (including Rx, vision and dental) was $1233.70 monthly ($14,804.40 annually); CSEA seeks the $88 difference per month representing the difference between the District's contribution amount and the increased rate for 2013-14.

The District argues that its "...existing annual contribution of $13,798.40 is fair and warranted under the circumstances." The District's primary rationale for not offering its first health and welfare premium contribution increase in almost four (4) years relies heavily on its assertion that the Association did not participate in meaningful cost containment discussions even though contractually bound to do so. The District summarized its position as follows: "Rather than engage in good faith efforts to locate plans within the District's contribution, the Association maintained its demand that the District keep increasing its contribution toward health and welfare benefits at all times during the 2013-14 negotiations. This position is contrary to express provisions of the CBA bargained by the parties."

The Association disputes the District's assertions although conceding it is not interested in 'further watering down its benefits'.

[1] Other plans are available to employees but the contract recites that the employees who wish to enroll in such plans will "buy up" and be responsible for paying the difference in premium.

It is not the Panel's job to find whether or not the Association participated in good faith in cost containment efforts for at least three separate and independent reasons:

1. It's possibly subject to the contractual grievance procedure;
2. It's possibly subject to an unfair practice charge; and
3. It's irrelevant at this date because now, almost two years after the beginning of the 2013-14 school year, the Association has paid the price for any recalcitrance through its members' additional contributions.

One criterion under Government Code Section 3548.2(b) is listed as "Comparison of the wages, hours, and conditions of employment..." with employees performing similar services in "...public school employment in comparable communities." Another criterion is "The overall compensation received by the employees..."

The district's presentation describes Vineland as a unique district and offers, for comparability purposes, only one other district: Kernville Union School District a K-8 district serving approximately 850 students. Effective September 1, 2013 Kernville's classified bargaining unit employees receive up to $13,494.60 annually ($1124.55 monthly) for the SISC Plan 80 G with $30 co-pay; Vineland's plan has a little lower co-pay of $20 which may help explain some of the contribution differential of $21.15 a month or $253.80 per year.

But Kernville's salary schedule appears to be quite a bit higher than the Vineland classified salary schedule. Because of variations in classifications and job descriptions, comparison of classified salary schedules is not as simple as would be comparison of teaching salary

schedules. Nonetheless, comparing a few classifications which appear similar reveals the following:

HOURLY WAGES
(Using Step 6)

Kernville		Vineland	
Custodian/Maintenance Driver II	$17.81	Maintenance/Driver/ Custodian	$15.91
Instructional Aide	$13.96	Comprehensive Aide	$11.31
Head Cook	$15.01	Cook (there is a lower (classification of Cook's Helper)	$11.99

In terms of total compensation Kernville does not provide total support for the District's "no increase" position. And Vineland is committed to the concept of total compensation; for example, the district arguments rely heavily on the contract clause from the Health and Welfare article which begins, "The Association recognizes that any further increases in the health insurance plans and their premiums under the provisions of this Article are additional liabilities to the District's budget and will be considered a part of the total compensation package during each year that this Agreement is in effect." (Emphasis added)

On the basis of total compensation the Chair finds that Kernville does not provide major aid and comfort to the Vineland District's zero position.

The Certificated (VTA) Settlement: CSEA has drawn the panel's attention to the district's settlement with the Vineland Teachers Association (VTA). That agreement is dated March 3, 2015, a little over seven (7) months following the declaration of impasse in this matter. The VTA

settlement provides a 2% salary increase retroactive to July 1, 2013 and adds an additional 1.57% to the salary schedule retroactive to December 1, 2013.[2] The District also increased its monthly contribution toward the payment of health insurance premiums from $1195.40 to $1286.10 retroactive to July 1, 2013. The agreement runs through June 30, 2015 with reopeners for health benefits and salaries. In connection with those reopeners the District's most recent proposal to VTA dated November 10, 2014 would raise the salary schedule by an additional 3% retroactive to July 1, 2014.

In summary VTA salaries have improved 3.57% with a possibility of an additional 3% for a total salary increase of 6.57% for 2013-14 and 2014-15. This comes along with the 7.5% increase in the district's contribution to health insurance for 2013-14. For a teacher making $50,000 per year the additional $1088.40 is the equivalent of a 2.1% salary increase.

The district argues strongly that the Panel should not rely on the VTA settlement for at least two reasons which the district believes are compelling, persuasive and dispositive.

First, the agreement with VTA was finalized in early March 2015. The district argues that because CSEA negotiations are for the 2013-14 school year and because impasse was declared in July 2014 that the Panel should not, indeed cannot, consider this event which occurred many months after the instant negotiations. Carl Lange, the district's panel representative, and an experienced and respected negotiator, wrote to the parties as follows: "The matter before the fact-finding panel is based upon the impasse over 2013-14 negotiations related to the level of the District's contribution for health insurance benefits for the 2013-14 school year only. I am unaware of any PERB regulation or case decision that authorizes consideration of events

[2] This 1.57% will be discussed in some detail later in this report.

or issues subsequent to the declaration of impasse over the objection of one of the parties." On behalf of the district he formally objected to any such expansion of the time frame during which relevant matters may be considered.

Second, the district argues that it received a negotiated *quid pro quo* in the form of an additional thirty (30) minutes of daily instructional time in exchange for a salary increase.

Despite the vigorous arguments presented by the District panel representative, I disagree for the following reasons:

First, on the time period for the VTA Agreement: While the district cannot find any PERB authority authorizing this post-impasse view, neither could I find any authority prohibiting post-impasse review. The district's negotiated agreement with its certificated employees represents a fact properly before the Panel. Particularly given the paucity of comparable districts cited to us, a negotiated agreement within the same district cannot be ignored. Criterion (4) calls for a "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 <u>and with other employees generally in public school employment in comparable communities.</u>"(Emphasis Added). The second part of the sentence omits the phrase "performing similar services". Since Vineland's teachers are in the same community as the Vineland classified employees, comparing their respective current working conditions is appropriate particularly at the time the Panel is deliberating. Obviously, the certificated salary schedule is much higher than the classified salary schedule but (1) this factfinding is limited to health insurance and (2) in such a comparison it is appropriate, at a minimum, to

look to the respective negotiated adjustments for purposes of this process. To ignore current conditions would omit relevant facts which the parties must consider.

I also find that the VTA Agreement falls under Criterion (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." It is not uncommon during negotiations for the classified unit to cite to the certificated unit's gains as part of the former's bargaining strategy.

Second, on the absence of a comparable *quid pro quo*: because the district negotiated with VTA for an increase in instructional time, the district argues that the Panel should not consider the salary schedule increase as potentially available to CSEA because there is no comparable trade-off being asked for at the negotiating table. I find that the entirety of the package cannot be credited to the increased instructional time. The VTA Agreement provides under ARTICLE III-SALARIES the schedule shall be increased by 2% effective July 1, 2013. At the end of ARTICLE V-HOURS AND ADJUNCT DUTIES the following notation appears: "****In consideration of the 30-minute increase in the workday, the District agrees to increase the 2013-2014 salary schedule by 1.57%, effective December 1, 2013." Thus, from an internal reading of actual contract language it appears that 1.57% is attributable to the increased instructional time but the language and the language placement do not account for the additional 2% in salary and the additional $1088 in health insurance premiums.

Another factor reinforces the above stated limitation: VTA had filed an unfair practice charge against the District (LA-CE-5907-E) alleging a unilateral increase in teaching time. A hearing date of June 1-3, 2015 had

been scheduled when the parties reached the negotiated agreement referenced above. In VTA's letter to PERB withdrawing the charge, CTA attorney Richa Amar wrote, in pertinent part, as follows: "The parties have reached a collective bargaining agreement, ratified by the membership, which resolves the dispute over work hours that was the subject of the above referenced unfair practice charge." This suggests that the 1.57% was part of an agreed upon unfair practice charge settlement; thus, it is hard to value the amount as a simple trade off for increased teaching time because the circumstances and reasons for settling such matters are frequently not quantifiable.

Accordingly I find that the district's economic settlement with VTA cannot contractually be characterized as wholly in return for 30 minutes more instruction; nor will I ignore the negotiated trade-off. In terms of total compensation the trade-off appears to represent about one-third of the package. I will also credit the district with some time based upon CSEA's apparent lack of enthusiasm for its contractual obligation to explore cost containment options.

RECOMMENDATIONS:

Health and Welfare Benefits: Effective February 1, 2014, the District to increase its monthly contributions to $1233.70. The effective date is one-third of a year later than CSEA's proposed date of October 1, 2013.

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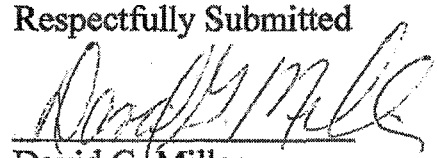
Cost Containment Committee: District and Association to look at the contract language with an eye to the following changes: The Committee is a standing committee rather than being formed anew each January 1; the Committee consist of representatives from certificated and classified bargaining unit, managers, confidential employees and supervisors. The Committee should be charged with exploring alternative plans or options within then current plans and with making non-binding recommendations to the parties.

Dated: May 8, 2015

Respectfully Submitted



David G. Miller
Panel Chair

Michael Noland,
CSEA Representative
Concur (x) Dissent ( )
Concur in part; Dissent in Part ( )

Carl B. Lange,
District Representative
Concur ( ) Dissent (x)
Concur in Part; Dissent in Part ( )

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Dated: May 4, 2015

Respectfully Submitted

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David G. Miller
Panel Chair

Michael Noland,
CSEA Representative
Concur (X) Dissent ( )
Concur in part; Dissent in Part ( )

_____
Carl B. Lange,
District Representative
Concur ( ) Dissent ( )
Concur in Part; Dissent in Part ( )

May 5, 2015

Mr. David G. Miller
Fact-finding Panel Chair

Mr. Michael Noland
Association-appointed Panel Member

Re: Vineland Elementary School district and CSEA Chapter #185
(District's Dissent to Fact-finding Panel Recommendation)

Gentlemen.

I must respectfully dissent from the proposed "Findings of Fact and Recommended Terms of Settlement" adopted by the Panel majority as follows:

1. During the 2013-2014 negotiations, CSEA Chapter #185 determined that it would not agree to a 2013-2014 health benefits insurance package that would maintain "health and welfare benefits within the dollar amount(s) expended in the previous fiscal year" *(emphasis added)* as provided by the collective bargaining agreement. As explained, CSEA was not interested in "further watering down its benefits." Taking the position that the District should increase the dollar amount of its health and welfare benefits contribution to an impasse essentially vitiated whatever concession or concessions the District may have negotiated in return for the cost containment promise. Since the record is unclear in this regard, a judgement cannot be made as to the appropriate weight, if any, to be given to the cost containment language of the agreement.

2. Based on CSEA's recalcitrance regarding this matter during the 2013-2014 negotiations, the Panel recommendation that the District's health and welfare benefits contribution level be increased (even for a part of the 2013-2014 school year) is unsupportable.

Thank you for your consideration of this dissent.

Respectfully,

Carl BA Lange III
District-appointed Panel Member