

FACT FINDING DISCUSSION AND RECOMMENDATIONS

Between)
)
)
 La Habra)
 City School District)
)
 and)
 La Habra Education)
 Association)
 CTA NEA)
)
 _____)

Re: Case No. LA-IM-3543-E

Impartial Chair

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

District Panel Member

John M. Rajcic, Attorney
Atkinson, Andelson, Loya, Ruud and Romo
12800 Center Court Drive, Suite 300
Cerritos, CA 90703

Association Panel Member

Steve Balentine, UniServ Director
California Teachers Association
749 S. Brea Blvd
Brea, CA 92821

Hearings Held

July 26, 2010
La Habra City School District Offices
500 Walnut Street
La Habra, CA 90631

BACKGROUND

La Habra City School District (District or Employer) and the La Habra Education Association (Association or LHEA), an affiliate of the California Teachers Association (CTA) and National Educators' Association (NEA), are the parties in this fact finding matter. The approximately 232 certificated staff, including teachers, speech and language specialists, nurses, reading specialists and teachers on special assignment, in this bargaining unit are members of Association (Tab 2, AB).

From the history provided to the Panel at the Hearing and in the voluminous, well prepared binders from both parties, it is clear that these parties negotiations have been very stormy and made significantly more difficult as the District froze step and column increases for 2009-2010 and proposed a three year freeze of step and column increases and the Association filed a law suit. The issues before this Panel are Salary, including freezing all step and column movement for three years and eliminating longevity increases; Health and Welfare changes including a hard cap; Leaves; Peer Assistance and Review; and Work Year changes to include permanently reducing the work year with a corresponding pay reduction. The District argued "inability to pay" based on the significant decrease in funding to this District and all school districts throughout the State. School funding from the State of California has been significantly reduced due to the State's budget crisis.

The parties commenced bargaining on September 14, 2009 following the sunshining of their respective proposals. Following five bargaining sessions, the District filed for impasse with PERB on or about November 19, 2009 and PERB notified the parties on December 9, 2009 that they found an impasse exists. On February 26, 2010, the parties met with the State assigned mediator. In March 2010 the Mediator certified the parties to fact finding as they did not make any progress toward settlement in mediation. Subsequently, the parties proceeded to Fact Finding.

The District selected John M. Rajcic, Attorney of AALRR as the District Panel Member and the Association selected Steve Balentine from CTA to be their Panel Member. The Panel Members then selected Bonnie Prouty Castrey as the Impartial Chair and so notified PERB.

The Panel met in conference to determine the process for the day of hearing and then held a hearing with the parties on July 26, 2010. Both parties presented their documentation and facts regarding the issues before the Panel. The Panel Members then attempted to help the parties to reach a mediated settlement in Fact finding. When that effort was not fruitful, the Members studied both parties submissions thoroughly and the Chair drafted this Report and Recommendations. The Panel also continued to explore options in an effort to assist these parties to reach an agreement.

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.

- © 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 THE DISTRICT AND THE LHEA

1. The La Habra City School District is a public school employer within the meaning of Section 3540.1(k) of the Educational Employment Relations Act.
2. The La Habra Education 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 representative of this bargaining unit of the La Habra City School District.
3. The parties to this factfinding have complied with the public notice provisions of the Government Code section 3547 (EERA, "Sunshining" requirement)
4. The parties have complied with the Educational Employment Relations Act with regard to the selection of the Factfinding Panel and are timely and properly before the Panel.
5. The parties have complied with all the requirements for selection of the Factfinding Panel and have met or waived the statutory time limitations applicable to this proceeding.
6. The contract issues which are appropriately before the Factfinding Panel are as follows, all other matters were agreed upon by the parties during the course of negotiations:

Salary
Step and Column
Longevity Increments
Work Year
Health and Welfare
Leaves

Peer Assistance and Review (PAR)

7. An impasse in bargaining was declared by the Public Employment Relations Board on or about December 7, 2010 (sic 2009). The mediation process proceeded as scheduled, and the parties continued to meet with the mediator in an effort to reach agreement until February 22, 2010. The mediator certified the matter to factfinding on March 18, 2010.
8. The factfinding chairperson, Ms. Bonnie Castrey was jointly selected by both parties.

ISSUES AND RECOMMENDATIONS

The following is a discussion of the outstanding issues with recommendations following the analysis.

DISCUSSION AND RECOMMENDATION

The first issue is the question of inability to pay.

When a district asserts inability to pay they have the burden of proving that they cannot afford to continue paying at the level they are and/or that they cannot afford to negotiate increases in compensation. Assuming that the district prevails in its proof on the inability to pay issue, they have an even heavier burden of proving that the amount of the proposed loss of compensation for a bargaining unit member to suffer is appropriate and further that they, the district, have maximized their options for savings in all aspects of the budget and have taken all appropriate actions to keep their options open in order to balance their budget in the future years as required by law.

State law requires that school districts must maintain a positive ending balance in the current and two successive school

years. While the parties commenced negotiations in the 2009-2010 school year, by failing to complete the process, the District budget is now in the 2010-2011 school year. In other words, the budget for fiscal year/school year (FY) 2010-2011, which commenced July 1, 2010 and ends June 30, 2011, must have a positive ending balance and a minimum three percent reserve (3%) and FY 2011-2012 and FY 2012-2013 must also be able to show a positive ending balance of 3% reserve for economic uncertainties in order to be approved by the County as positive. In the alternative, without the appropriate 3% ending balance they are in a "qualified" status.

Schools in California are dependent on the State of California for their revenue. The State is and has been in fiscal "meltdown" for several years. As a result of their budget shortfall, due to decreased sales tax, income tax, and other revenues, the State has seriously decreased school districts' unrestricted and categorical (restricted) funding by billions of dollars statewide. The significant cuts to the districts' budgets commenced in FY 2007-2008 and have continued to present.

For this District this amounts to more than a twenty percent (20%) decrease in unrestricted funding and about twenty percent (20%) in restricted funding. As a result of these decreases, the District self-qualified at the Second Interim Report for 2009-2010 and the County of Orange confirmed the "qualified" status on April 7, 2010 (Tab 6, DB). Had the State not cut its unrestricted funding, also referred to as Base Revenue Limit (BRL), the District

would have received in the 2009-2010 FY, \$6,095.00 for each student attending class each day (Average Daily Attendance or ADA). With the State decreasing its funding of the BRL, the District will receive only \$4,723.00, a difference of \$1,372.00 equal to 22.5%. In FY 2010-2011, the La Habra City SD should receive \$6,071.00, however, according to current budget projections, the State will only fund the BRL at \$4,722.00 per ADA, which represents a \$1,349.00 deficit equal to 22%. So, for every one dollar this District should receive for each student, it is only receiving about 82 cents! (Inability to Pay, tab 8, pg 56, DB). There is no question that these are huge losses in unrestricted revenues. The District asserts that it is deficit spending (DF Tab 10) and will continue to deficit spend for the next three years, unless it makes even deeper cuts, including nearly 8% from this bargaining unit, in addition to the health and welfare benefit freeze and the step and column freeze .

As noted above, the County Office of Education certified the La Habra City SD as qualified at the second interim reporting period of the 2009-2010 school year (DF tab 6) and has assigned a County Fiscal Advisor. Further, as stated above, the District is already in the 2010-2011 school/fiscal year and unless the District makes substantial additional cuts, including cuts in this bargaining unit and other programs, their ending balance in the two successive years through the 2012-2013 school/fiscal year, they will not meet the minimum reserve for economic uncertainty as

required by law.

Additionally, under State law, the Education Code at section 3547.5 provides that the superintendent of the district and the chief business official must sign that a collective bargaining agreement can be implemented and is affordable for the term of that agreement. The District asserts that they cannot continue to afford to pay the total compensation at the level in the current Collective Bargaining Agreement (CBA) and meet the requirements of the law.

One of the significant issues which the Association points out in their binder of facts and arguments is that the District's multi year projections (MYP) have been inaccurate, showing much higher ending balances than originally projected in the beginning of and during the budget year. Furthermore, they strongly argue that these projections are made on the District's spending priorities (AB Tab 15).

Exacerbating the challenging years of state imposed cuts, with one made a mid-year, the District has been declining in enrollment. They have sustained a loss some 671 ADA over the last five years, with a commensurate loss of revenue (tab 14, DB). In addition, the teachers are a senior staff, which means that it costs more to service the salary schedule as they have moved through the salary steps and columns in recognition of both their years of service and educational achievement. Approximately 76% of the full time equivalents or 198 certificated staff, are paid in the right column

of the salary schedule (tab 13, DB). The Association points out that within the bargaining unit, those employees with high seniority as well, make up about 52% of this unit (AB Tab 15).

Based on the foregoing the Chair finds that the District clearly demonstrated that it has an inability to pay at the status quo current total compensation level, and therefore, has met its heavy burden of proof.

Having concluded that, the next question is whether the 8% reduction, plus the freeze on step and column and health benefits, from this bargaining unit, that the District is demanding, is reasonable and attainable. This proposed decrease in remuneration for each bargaining unit member includes permanent cuts in salary, a permanent decrease in the school year, a hard cap on health benefits and a three year freeze in step and column.

COMPARISON DISTRICTS

The Association has used the comparison districts of elementary districts in Orange County and the District has compared itself to all Orange County elementary districts, as well as several in Los Angeles County. The Chair will use the districts which both parties cited for comparison purposes, the elementary districts in Orange County.

This Panel has a responsibility to look at and carefully weigh and consider comparability with other districts, as we recommend reductions to the parties. In this regard, the District's demand that permanent cuts be made to salary, benefits, school year

etcetera, is not comparable to other districts that the parties are compared to, nor for that matter, to districts throughout the state. Restoration language is common in the negotiated agreements.

In these very difficult budgetary times, districts and unions are working together to make cuts so that districts can stay within the laws and meet the requirements of solvency as well as the educational needs of students. It is not in either parties interest to have a district become insolvent as the state takes over. In recognition of that employees are making and taking huge concessions and suffering devastating economic losses. And, districts and unions in the comparison districts and parties throughout the state are bargaining language which restores those concessionary losses, as the districts' budgets are restored.

Therefore, while the Chair recognizes the need for reductions and recommends significant reductions in employee compensation, they are not at the level the District requests. Additionally, she recommends restoration language so that as the funding improves, this bargaining units' pay and benefits are also restored.

Moreover, the Chair notes that at the time of the hearing these facts and projections by the District were timely and more accurate, based on what was known at the time, however, it must be noted that, at this writing, the State has just passed a budget which will impact these the District positively. Hence, the District will receive more dollars per ADA in 2010-2011, than

originally projected. In addition, following the hearing, the Federal Government also made available additional one time money to be used by districts this year and next to off set the horrific salary and benefit cuts and layoffs. Therefore, this District will have some additional resources, which were not known in July 2010.

While the full impact of these two sources of revenue are not realized in this report and they certainly do not make the District whole, they will markedly help the District to meet its legal requirements for budgeting and also reduce the impact of their proposed cuts for this bargaining unit. The parties will have to address these matters in their post fact finding negotiations.

After weighing and giving careful consideration to all the evidence in both parties binders of facts and being guided by all the criteria established in law the Chair recommends the following framework for the settlement of this contract impasse:

Step and Column: When step and column is frozen for one, let alone three years, significant inequities occur in the salary schedule and insurmountable issues arise with new hires. Therefore the Chair recommends that the 2009-10 Step and Column increases be restored as of mid-school-year, approximately February, 2010. Further, that Step and Column increases be delayed in the next two school years in order to off set the District's long term budget issues. The Chair recommends that they be granted as of mid-school-year, approximately, February 1, 2011 for those eligible employees for the 2010-11 year and mid-school-year Approximately,

February 1, 2012 for those eligible employees in the 2011-12 year.

Longevity Increases: These earned increases also affect the schedule and life time earnings of employees. Therefore the Chair recommends that eligible employees receive this benefit on the same schedule as the recommendation for step and column increase, at mid-school-year each year of the CBA.

Work Year Furlough Days: Each furlough day represents a bit more than a half a percent (0.54%) in terms of salary costs for this bargaining unit. The Chair recommends six furlough days each in the 2010-11 and 2011-2012 school years. The furlough days should be apportioned in both instructional and non-instructional days of both school years.

By agreeing to a combination of an actual salary reduction through furlough days and postponement of step and column and longevity increases for a portion of each year and changing the work year to a total of 179 days (177 instruction days instead of 180 instruction days and two student free work days rather than five) the District achieves substantial savings over a three year period.

Restoration Language: In order to attain the reduction in salary that is needed in this urgent fiscal time and to remain competitive with comparable districts now and in the future, the parties will agree to restore all the work year cuts, with their commensurate salary reductions as the State restores funding for ADA through the Base Revenue Limit (BRL). We therefore recommend

this specific restoration language:

During the third year of this agreement, if the funding provided to the District by the State increases above the level anticipated in the District's three-year multi-year projection (MYP), submitted with the adopted budget for 2010-11, work year salary restorations shall be made. Any salary restoration made under these provisions shall be on-going.

- a. For the 2011-2012 school year (third year of this recommended agreement) of the agreement, the actual funded base revenue limit (BRL) per unit of ADA provided by the state (at second interim, to be retroactive to the beginning of that fiscal year) shall be compared to the amount projected for that year in the 2010-11 MYP for that year.
- b. If there is an increase of at least thirty-five dollars (\$35) in the funded BRL per unit of ADA, restoration of the furlough days which caused a salary reduction shall be the first priority. The priority is to restore furlough days and the commensurate salary for those days.

The District shall provide the Association with a copy of the three-year multi-year projection (MYP) submitted with the adopted budget for 2010-11 now and for the 2011-2012 budget, no later than July 30, 2011. This document will be in the SACS format.

Further, the parties to this agreement recognize that this restoration language anticipates that the State school finance system remains as prescribed in current law. If there is a

significant change in state law, the parties agree to re-open this agreement for the purpose of modifying the restoration provisions to ensure that after any statutory changes, the effect on the parties is as anticipated in this agreement.

At the conclusion of this three year agreement, the work year and all step and column and longevity allocations are fully restored.

Health and Welfare: The District shall add a Blue Cross HMO option, selected from the MEBA Trust to be effective January 1, 2011. The District shall fully fund both the Kaiser and Blue Cross HMO plans. Employees who choose/elect the more expensive Blue Cross Point of Service (POS) plan options shall pay the difference between the Blue Cross HMO plan and the Blue Cross POS Plan.

The District shall continue to pay the HMO rates in effect in the 2012 benefit year until the parties reach a subsequent agreement.

Peer Assistance Review (PAR): The District proposes the elimination of this program and the Association proposes suspension of the program for one year.

This is a program negotiated by the parties to assist teachers who have unsatisfactory performance evaluations. The purpose of the program is to help teachers who are having challenges in the classroom to work with a teacher who can assist them in perfecting their performance.

The Chair recommends that the parties suspend this program.

during the life of this agreement. If a teacher receives an unsatisfactory performance review during this time period, the parties should look at each individual case to determine a level of support that can be provided to help the teacher correct his/her performance.

Leaves: The issue of taking time for personal necessity (P.N.) arises both as to number of days allowed from an employee's sick leave bank and criteria for using the days. In this matter the Association has the burden of proof. The Association documents show that five of the twelve comparison districts have seven days as does La Habra. Of those five, Centralia has all employee discretion days for use of P.N. days and Cypress allows four of the seven to be used at the employee's discretion. Of the remaining seven districts, three have ten days total and four allow all credited sick leave to be used for personal necessity. Of those districts, one has ten days allowed at employee discretion; two have a sliding scale of earned discretionary days based on the employees sick leave bank, one has two discretionary days and one district, Anaheim which allows all sick leave to be used for P.N., does not allow discretionary use for P.N.

The District argued that in these difficult budgetary times, no discretionary time should be allocated as it is a cost factor and the language has served the parties well.

In this matter, the Association has shown that this District is not comparable when looking at both the number of days and the

use of any or all as discretionary days. Therefore, the Chair recommends that four (4) of the seven (7) days allowed for P.N. be allocated as employee discretionary days (no tell).

Early Retirement: Although an early retirement option is not before the panel, the Chair recommends that the parties promptly investigate such an option both because of the seniority of the staff and the declining district enrollment. When properly designed a certain number of employees are required to retire or the early retirement is not operational. In a declining enrollment district, most teachers are not replaced or are replaced by teachers at the beginning of the salary schedule and therefore, a district can save very substantial dollars. Such a plan assists the parties in servicing the salary schedule and also helps them to deal with the decline in enrollment and ADA.

Other Options: The LHEA also argues that the District should consider all options for closing the budget gap including closure of schools where the enrollment has declined. While this can be a painful decision, with the loss of some 600 plus ADA it may be viable, as that many students represent at least two elementary school sites.

Term: As discussed above, the MOU will be for three years through June 30, 2012. For 2010-11 and 2011-12 the contract is closed unless the parties agree to reopen.

These recommendations represent decreased compensation which is comparable to other districts and they take into account the

total impact on this bargaining unit and its members ability to live and work in this community and also meet the educational needs of the students they teach and they provide the District the ability to meet its educational and legal obligations in this continuing time of decreased funded BRL.

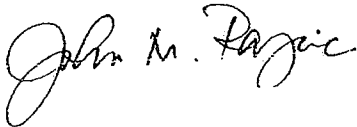
The Panel Members representing the District and Association have met with the Chair in Executive Session on October 13, 2010 to thoroughly discuss and finalize this Report and Recommendation. Based on the above Recommendations of the Chair they concur as follows:

For the District:

Concur (Qualified/attached)

For the Association:

Concur



John M. Rajcic

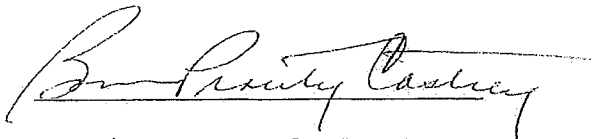
District Panel Member



Steve Balentine

Association Panel Member

Issued on Oct 18, 2010 by

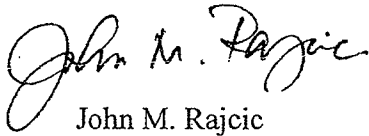


Bonnie Prouty Castrey,

Panel Chair

Qualified Concurrence

Concurring Opinion - The District's multi year projection for the 2010-2011, 2011-2012 and 2012-2013 fiscal years was not before this Panel because it is in the process of being developed as part of the District's First Interim Budget Report for the 2010-2011 fiscal year. The Recommendations contained in this Report might require some adjustments in order to accommodate the multi year projection.

A handwritten signature in cursive script that reads "John M. Rajcic".

John M. Rajcic

District Panel Member