

In the Matter of the Impasse Between)

MT. DIABLO UNIFED)
SCHOOL DISTRICT)

Public School Employer,)

- and-)

PUBLIC EMPLOYEES UNION,)
LOCAL ONE (M&O))

Exclusive Representative.)

FACTFINDING REPORT
AND RECOMMENDED
TERMS OF SETTLEMENT

PERB CASE NO. SF-IM-2882-E

REPORT ISSUED
April 1, 2011

Hearing Held on March 15, 2011

COMPOSITION OF THE FACTFINDING PANEL:

Impartial Chairperson: Daniel R. Saling, Esq.
Arbitrator/Factfinder
33192 Ocean Hill Drive
Dana Point, CA 92629

District Member: John Gray, Vice President
School Services of California, Inc.
1121 L Street Suite 1060
Sacramento, CA 95814

Union Member: Gary Stucky, Executive Director
Sutter & Yuba County Employees Association
718 Bridge Street, Suite A
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MAKING PRESENTATIONS TO THE FACTFINDING PANEL:

For the District:

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Local One
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Marty Kahn, Consultant
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Also Present for the District:

Bryan Richards, Finance
Julie Martin, Asst. Supt. Personnel

Also Present for the Association:

Judy Armstrong, CST Pres.
Rosa Cabrera, Business Agent
Jeff Apkarian, Business Agent
Michael Carter

BACKGROUND AND PROCEDURAL HISTORY

The Mt. Diablo Unified School District (“District”) is located in the northwestern portion of Contra Costa County (County). The District was established on July 1, 1949 and covers a large geographic area. The District covers approximately 150 square miles including the cities of Concord, Pleasant Hill, and Clayton, and portions of the cities of Walnut Creek, Pittsburg, and Martinez, and unincorporated areas of the County, including Pacheco and Bay Point and is located approximately 30 miles northeast of San Francisco. The District provides kindergarten through twelfth grade education services in thirty-one elementary schools, ten middle schools, six high schools, and ten alternative schools and programs, and provides adult education in two adult education centers. The District’s estimated average daily attendance (ADA) for fiscal year 2010-2011 is 32,343.60 students, and the District has a 2010-2011 assessed valuation of \$29,906,094,881.

The impasse and factfinding proceeding at issue arose from the negotiations between the District and Local One on a successor agreement to the current agreement between the parties.

BARGAINING HISTORY

The District and Union were parties to a Collective Bargaining Agreement, the (“Agreement”) that expired on June 30, 2010. The Agreement covered fifty-one (51) articles and numerous appendixes. The parties have continued to operate under the provisions of the expired agreement since June 30, 2010.

The District and Union sunshined their respective initial bargaining proposals on November 9, 2009. The parties began to negotiate on a successor agreement on January 14, 2010. The bargaining parties met for a total of twelve bargaining sessions between January 14, 2010 and May 21, 2010. In twelve (12) bargaining sessions a number of articles were tentatively agreed to by the parties.

The District filed a declaration of impasse and requested that the Public Employee Relations Board (“PERB”) appoint a mediator to assist the parties in their effort to reach an agreement. PERB assigned a mediator to assist the parties and mediation sessions were held on September 7, 2010, December 13, 2010 and January 5, 2011. Following an effort by the assigned mediator to settle the bargaining impasse, the parties were certified to factfinding under the provision of Government Code section 3548.1 through 3548.3. A factfinding panel composed of an impartial chairperson and a representative of each party was appointed.

Daniel R. Saling was chosen and appointed by PERB to serve as the neutral chairperson of the factfinding panel. The District and Union designated John Gray, with the School Services Group and Gary Stucky, with the Sutter & Yuba County Employees Association to serve as their respective members of the panel. Neither the District nor the Union would waive statutory time limits for the holding of a hearing or for the issuance of the panel's report.

The panel is statutorily authorized to meet with representatives of the parties through investigation and/or hearing and if an agreement settling all issues cannot be reached, to make a factual finding based on the evidence presented as well as to recommend terms of settlement. To initiate those quasi-legislative responsibilities, a hearing was held on March 15, 2011, in Concord, California, during which time the District and Union were given full opportunity to present evidence on the outstanding issues. Following the presentations of the bargaining parties, an effort was made to attempt to resolve the impasse through mediation. The panel members met with their respective groups and then met together with the neutral chairperson to attempt to resolve the impasse. Following several hours of mediation, it was determined that while the parties had made concessions and moved from their impasse positions, there would not be a negotiated settlement reached. The factfinding panel adjourned into an executive session to discuss the parties' presentations and to reach a consensus with regard to the issuance of a factfinding report. Following the executive discussion of the panel, the chairperson prepared a draft of the factfinding report and recommendations. A copy of the proposed factfinding report was emailed and/or faxed to the partisan members of the panel for their comments and/or suggestions. The partisan members of the panel were made aware of their right to either concur or dissent on all or part of the majority opinion. The chairperson prepared the final copy of this report and recommendations which was provided to the partisan panel members for their official signature.

RELEVANT FACTORS

Government Code Subsection 3548.2 (b) states as follows:

In arriving at their findings and recommendations, the factfinders shall consider, weigh, and be guided by all of the following criteria:

- (1) State and federal laws which 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.

Any criterion which has not been relied upon by the parties has not been considered in arriving at the findings and recommendations made herein.

The first duty of the panel is to address the District claim that it does not have the ability to pay the status quo. When a District asserts an 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.

Both the District and Union put forth arguments regarding the District's ability to pay. The District projects that its future financing will be substantially reduced and that it will have to make further reductions and expenditures of existing reserves. The Union pointed out that it had made concessions because of the financial crisis public education is facing but pointed out that the District had sufficient reserves to continue to pay current levels of benefits.

The Chairperson finds that the District met its burden of proof and that it has shown that it does have an inability to pay their employees at the current level of compensation and therefore has asked the Union for concessions.

ISSUES

In the declaration of impasse filed by the District on February 15, 2011, the following represents the issues to be considered and addressed in this factfinding report:

- (1) Article 2 Coverage

(2)	Article 5	Hours of Work
(3)	Article 6	Overtime/Scheduled Extra Work
(4)	Article 9	Vacation
(5)	Article 14	Industrial Accident or Illness
(6)	Article 22	Sick Leave
(7)	Article 24	Safety
(8)	Article 25	Salary
(9)	Article 26	Benefits
(10)	Article 27	Mileage
(11)	Article 28	Tools and Equipment
(12)	Article 34	Evaluation
(13)	Article 35	Layoffs
(14)	Article 36	Personnel Files
(15)	Article 37	Promotion
(16)	Article 40	Safety
(17)	Article 41	Transfer
(18)	Article 43	Transportation
(19)	Article 44	Sub Custodians and Drivers
(20)	Article 45	Extra Custodial Work
(21)	Article 47	Volunteers
(22)	Article 50	Term

At the commencement of the hearing, the parties stipulated that they wished to withdraw all the Articles listed above and agreed to status quo in the new agreement with the exception of the following articles they wished to present at the factfinding hearing.

Based on the stipulations of the parties, the only issues for consideration by the Factfinding Plan were the following:

- (1) Article 25 - Salary
- (2) Article 26 - Benefits
- (3) Article 50 - Term

DISTRICT GENERAL IMPASSE POSITION

It is the position of the District, that because of California's financial crisis and the decline in enrollment, the District must reduce expenditures and that it cannot continue to deficit spend its reserves. The District believes that it has either eliminated or reduced

services by making cuts in expenditures that have the least effect upon the delivery of educational services to the classroom and to the students. The District contends that it has not undertaken wholesale reduction in force of staff positions but has made significant cuts in most other categories of the District budget but there is now a need to look to the staff to find reductions that will help balance the budget.

The District contends that it has demonstrated its strong commitment to education by not making cuts to the classroom programs. The quality of educational services provided to the students of the District is outstanding and the District wishes to continue to provide each student with the best possible educational opportunities.

The District indicated that it had experienced a declining enrollment in the last seven years, resulting in a substantial reduction in the District's annual revenue. The District has weathered many years of declining revenues through prudent fiscal management so that cuts to staffing were avoided.

The District's budget deficit for the 2010-2011 school year is projected to be minus eighteen percent (-18%) below its statutory base revenue limit per ADA. The California State Department of Education projects that if the Governor's tax initiative is passed, the District will receive minus nineteen point six percent(-19.6%) of its statutory base revenue limit per ADA. If it is not passed the loss will be twenty-four point seven (24.7%) for the 2011-2012 school year.

UNION GENERAL IMPASSE POSITION

The Association contends that the District has carried excessive amounts of money in reserves. The District has maintained a statutory reserve of 2% for economic uncertainties even though the California Department of Education has waived the requirement to maintain a 2% economic uncertainty reserve. The Union contends that the District could reduce its contingency fund by 2/3 (.67%), thereby releasing funds for other expenditures.

The Union expressed concern with the District's budgeting practices over the years wherein the District underestimated its actual income and overestimated its actual expenditure, thereby increasing its reserves each year. The Union and its membership realize that the District is facing an economic hardship. The Union has agreed to wage freezes for the term of the new agreement. The Union has indicated a willingness to meet the District partially and assume some of the cost for medical coverage but the District continues to demand a cap on medical coverage that is unacceptable to the Union.

The Union expressed that it was aware of the funding crisis for California schools because of reduced state revenues. The Association is aware that the state will not fully fund the Base Revenue Limit (BRL) for the 2010-2011 and 2011-2012 school year and that the District will need to spend some of its reserves to balance its budget.

SUMMARY OF BARGAINING PARTIES' POSITIONS

The District wishes to secure a three year agreement with the Union that would allow the District to initiate eight – ten (8-10) furlough days for all staff in the 2010-2011 school year and continue through the term of the Agreement. Additionally, the District wishes to make changes in the language of Articles 42 Benefits and cap the District's contributions to employee medical coverage.

The Union expressed a desire to have a one or two year agreement and allow the District to initiate eight – ten (8-10) furlough days for all staff in the 2010-2011 school year and continue through the term of the Agreement. If the District desired to increase the furlough day in excess of eight (8) days, the District would negotiate the additional days with the Union.

The District requests that a cap be placed on the employees' benefits and that any increase in medical cost would be picked up by the employee but the District would continue to pick up the increase in the vision and dental coverage. The Union did not agree with a cap on medical benefits.

Through their bargaining efforts, the District and the Association have reached tentative agreement (TA) on all of the issues, other than those covered in this factfinding report, and the parties agree that the TA's will be made part of the Agreement once the impasse issues have been resolved.

FACTFINDING PANELS FINDINGS AND RECOMMENDATIONS

1. ARTICLE 41 – SALARY

UNION AND DISTRICT POSITION

The District and the Union understand that because of the lack of funding from the state, the District is without revenues to provide for a cost of living increase. The District wishes to decrease the classified salary schedule by instituting eight – ten (8-10) unpaid furlough days for the term of the Agreement thereby reducing the cost of the 2009-2010

classified salary schedule. Furlough time will be prorated for employees working less than full time.

The Union agreed that the District be allowed to initiate up to six (6) furlough days during the term of the agreement but if the District desires more than six (6) furlough days, the District would meet with the Union to provide information as to why additional days are required and to explore alternatives to the additional furlough days.

The Union desires to have the furlough days built around existing school holiday periods and that there would be no changes to existing paid holidays during the furlough periods.

The Union understands the needs of the District to make cuts but it does not believe that reducing the number of days students attend school is educationally sound. Further, the Union understands that the District does not want to institute furlough days and only proposes such an action as a last resort and only because of the lack of adequate funding from the state.

ANALYSIS AND RECOMMENDATION

School Districts and Unions throughout California worked together to reduce class size to levels that provide students with optimum learning opportunities. The California State Legislature enacted legislation that lowers class size and places penalties on districts that exceeded the established student teacher ratio. As a result of the economic crisis in California, the state had passed legislation that allows districts to increase class size and pay reduced penalties. The Districts have proposed increased class size thus reducing expenditures and reducing some of the need to deficit spending its reserves.

It is the panel's recommendation that the District be granted the right to initiate three (3) unpaid furlough days for the 2010-2011 school year. The District for the 2011-2012 school year will have the right to initiate five (5) unpaid furlough days and for the 2012-2013 will be granted the right to initiate six (6) unpaid furlough days. It is recommended that the District build the employees furlough days around existing school holiday periods and that the established holidays continue as they presently exist. Additionally, if the District finds it necessary to add additional furlough days, in excess of those recommended herein, the District will enter into bargaining with the Union to explore alternatives to the additional furlough days.

ARTICLE 42 – HEALTH AND WELFARE

UNION AND DISTRICT POSITION

The District desires to shift the burden of increased medical costs to the employees. The District proposed that it would continue to pick up the additional cost for vision and dental coverage for the term of the agreement but wished to cap its expenditures on medical costs. The District proposed that for 2011, the employee would pay the first 5 % of the 6.9% increase in medical premium costs and the District would pay the remaining 1.9% increase. For the 2012 and 2013 years, any additional premium cost for medical coverage would be paid by the employee.

In addition to placing a cap on medical premiums the District proposed to pay no benefits for employees working four (4) or less hours a day and to pay the full share for all employees working seven (7) or more hours a week. Employees working more than four (4) hours but less than seven (7) hours would receive a prorated share based on the hours they work. Thus an employee working six (6) hours would receive 6/7 of a full share or 85.7 % of a full share.

The Union proposed a medical benefit contribution of a temporary (undefined) duration to begin July 12, 2010 in the amount of \$50, \$75 and \$100 for Kaiser cost tiers. The Union proposed that these dollar amounts would not increase during the term of the agreement.

ANALYSIS AND RECOMMENDATION

It is the Panel's recommendation that during the terms of this agreement, the District continue to pay the full cost for employee dental and vision coverage. Coverage will be provided for all employees working seven (7) or more hours per day and workers working less than four (4) hours a day will not receive benefits. Employees working more than four but less than seven hours daily will receive the same benefits as a full time employee but new employees hired on or after the ratification of an agreement, in a part time position, will receive prorated payments toward their medical coverage.

The District will pick up the full cost of medical increases for the 2010-2011 school year. For the school year 2011-2012, the employee will pick up 100% of the medical premium increases but not more than 20% of the premium cost. In the 2012-2013 school year, the employer will pick up 80% of the premium cost and the employee will pick up 20% of the medical cost.

ARTICLE 43 - TERM OF THE AGREEMENT

UNION AND DISTRICT POSITION:

The District has proposed and has maintained throughout the bargaining process that the new agreement should be for three years. The District has expressed a desire not to have to bargain again for a number of years and indicated that the District and Union over the years have always had a three year agreement. The Union contends that because of the state's economic condition, a three year agreement would prevent the Union from addressing future budget concerns or from changing or modifying language that has been placed in the Agreement as emergency measures to correct current funding shortfalls.

ANALYSIS AND RECOMMENDATION

There is a substantial amount of uncertainty for both the District and the Union as a result of the economic conditions facing California at the present time. There is no way to predict what the state will do in 2011-2012 and 2012-2013, with regard to school funding.

It is the recommendation of the Panel that the term of the agreement be for three years (2010-2011, 2011-2012 & 2012-2013). The Agreement shall become effective on the date of final ratification by both parties and shall expire on June 30, 2013.

The panel recommends that the bargaining parties should consider re-openers if revenues to the District significantly improve or worsen during the term of the agreement.

REMAINDER OF THE AGREEMENT

It is understood that the Preamble and all Articles will remain the same as the prior Agreement or as modified through the recent bargaining process for the 2010-2013 Agreement.

CONCLUSION

3548.3. Findings of fact and recommendation of terms of settlement; submission; costs:

(a) If the dispute is not settled within 30 days after the appointment of the panel, or, upon agreement by both parties, within a longer period, the panel shall make findings of fact and recommend terms of settlement, in which recommendations shall be advisory only. Any findings of fact and recommended terms of settlement shall be submitted in writing to the parties privately before they are made public. The public school employer shall make such findings and recommendations public within 10 days after their receipt.

This report regarding the legal and jurisdictional requirement of Government Code 3548 et. seq, as referenced above has been met. This factfinding proceeding is concluded as required by law within the thirty (30) day requirement of the law.

Concur _____

Concur X

Dissent _____

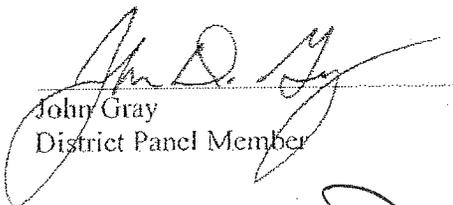
Dissent _____

Concur in part _____

Concur in part _____

Dissent in part X

Dissent in part _____


John Gray
District Panel Member


Gary Stucky
Union Panel Member


Daniel R. Saling
Panel Chairperson

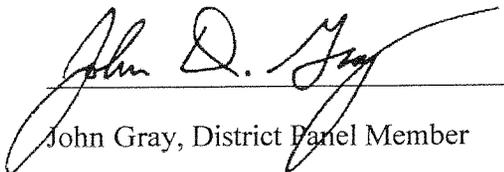
Report Issue: April 1, 2011
Dana Point, California

I fully concur with the conclusions of the Panel regarding the fiscal realities facing the District. In particular, I strongly support the conclusion that the District has an inability to maintain its current contractual obligations given greatly diminished funding levels. Specifically, I concur with the finding that "the Chairperson finds that the District met its burden of proof and that it has shown that it does have an inability to pay their employees at the current level of compensation and therefore has asked the Union for concessions."

With regard to the recommendations of the Panel, I concur with the recommendation that furlough days, proration of health benefits for part-time employees, and employees sharing in the cost of health benefits are recommended options to consider for achieving savings.

I concur with the Panel's recommendation that the parties consider a three-year agreement and that there be re-openers if revenue to the District significantly improves or worsens during the agreement. Since the date of the hearing in mid-March, the District's fiscal outlook has worsened as a result of the State Budget.

I appreciate the fact that the panel suggested the need for relief to the district in terms of health benefits. The district currently has a negotiated mechanism in place that has been accepted by other employee groups as it relates to the timing and structure for the sharing in the cost of health benefits. While I agree with the finding that employees share in the cost of benefits, I dissent on the recommendation as to the timing and mechanics recommended in the report and instead believe the district's current mechanism in place for all other employee groups be considered by the district for cost sharing.



John Gray, District Panel Member

