

In the Matter of the Impasse Between

**MT. DIABLO UNIFIED  
SCHOOL DISTRICT**

Public School Employer,

- and -

**CALIFORNIA SCHOOL EMPLOYEES  
ASSOCIATION (CSEA)**

Exclusive Representative.

**FACTFINDING REPORT  
AND RECOMMENDED  
TERMS OF SETTLEMENT**

PERB CASE NO. SF-IM-2886-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

CSEA Member:

Stan Bransgrove  
California School Employees Association  
2345 Stanwell Circle  
Concord, CA 94520

## **MAKING PRESENTATIONS TO THE FACTFINDING PANEL:**

For the District:

Suzanne Speck  
School Services of California, Inc.  
1121 L Street Suite 1060  
Sacramento, CA 95814

Deborah Cooksey, Esq.  
Associate General Counsel  
MT. Diablo Unified School District  
1936 Carlotta Drive  
Concord, CA 984519-1397

For the Union:

Rob Norman, Labor Relations Rep.  
California School Employees Assn.  
2345 Stanwell Circle  
Concord, CA 94520

Carol Bruno  
California School Employees Assn.  
2133 Olympic Drive  
Martinez, CA 94553

Also Present for the District:

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

Also Present for the Association:

Annie Nolen

## **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 California School Employee Association (CSEA) on a successor agreement to the current agreement between the parties.

### **BARGAINING HISTORY**

The District and Association were parties to a Collective Bargaining Agreement (the "Agreement") that expired on June 30, 2010. The parties have continued to operate under the provisions of the expired agreement since June 30, 2010.

The District and Association sunshined their respective initial bargaining proposals prior to the termination of their collective bargaining agreement. The parties bargained throughout the fall of 2010 but were unable to reach a full agreement on all issues.

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 several mediation sessions were held but the parties were unable to reach agreement. 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 School Services of California and Stan Bransgrove with California School Employees Association to serve as their respective members of the panel. The District was not willing to waive statutory time limits for the holding of a hearing or for the issuance of the panel's report. The Association asked for a waiver of timelines but the request was denied by the panel.

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 the evening of March 15, 2011. At the commencement of the hearing the representatives for the District and Association requested that they be allowed to mediate a possible settlement of the outstanding issues. The panel agreed and the parties were allowed to mediate prior to making a formal presentation to the factfinding panel. The parties working with and through their representatives and with members of the factfinding panel reached a full settlement on all issues that had been certified for factfinding. The bargaining parties requested that the factfinding panel incorporate into its factfinding report the parties' signed mediated agreement. Further, the parties requested that the factfinding panel make the mediated agreement the official finding of the factfinding panel.

The factfinding panel incorporated by reference the complete signed mediated agreement dated March 15, 2011 into the final report as their official finding and recommendation. A draft of the panel's recommendations was emailed and/or faxed to the partisan members of the panel for their comment. 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 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.

### **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.

### **THE MEDIATED AGREEMENT**

A copy of the Tentative Agreement between the Mt. Diablo Unified School District and the California School Employees Association, Mt. Diablo Chapter 43, date March 15, 2011 is attached as addendum one to this report. (Addendum I)

### **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 employers 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 \_\_\_\_\_

Dissent \_\_\_\_\_

Dissent \_\_\_\_\_

Concur in part \_\_\_\_\_

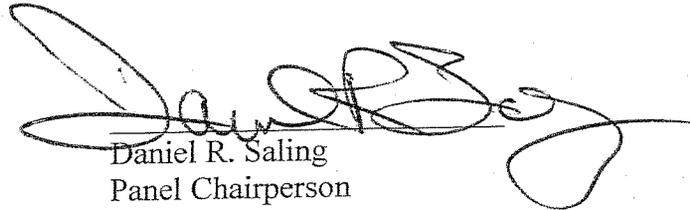
Concur in part \_\_\_\_\_

Dissent in part \_\_\_\_\_

Dissent in part \_\_\_\_\_

\_\_\_\_\_  
John Gray  
District Panel Member

\_\_\_\_\_  
Stan Bransgrove  
Association Panel Member

  
Daniel R. Saling  
Panel Chairperson

Report Issue: April 1, 2011  
Dana Point, California

TENTATIVE AGREEMENT BETWEEN  
MT. DIABLO UNIFIED SCHOOL DISTRICT AND  
CSEA MT. DIABLO CHAPTER 43  
MARCH 15, 2011

ADDENDUM 1

**Term:**

This agreement shall have a 3 year term July 1, 2010 through June 30, 2013.

**Prior Agreements:**

This agreement incorporates all tentative agreements reached prior to mediation.

- **Salary Administration**

Employees shall have the option to have their regular yearly salary paid in twelve checks per year. Once the employee exercises the option to have their regular yearly salary paid in twelve checks per year, (s)he will be unable to change the election for the remainder of that fiscal year.

- **Evaluation**

Teachers and other non-management personnel shall not be present during the evaluation conference.

A yearly timeline for evaluation will be established rather than the use of anniversary dates.

- **Mileage**

The mileage rate paid by the District changes in accordance with the time of change of the applicable Internal Revenue Service regulations.

**Health Benefits:**

- **Cap:**

- Beginning January 1, 2011 employee pays 100% of any increase from the 2010 Kaiser rate for each cost tier for the 2010-2011 contract year and for all subsequent years of the contract term.
- District continues to pay full cost of vision and dental benefits for all employees working 4 or more hours per day and 20 or more hours per week.
- Employee deductions implementing the cap for the January 1, 2011, through April 1, 2011, which would have been deducted on the payrolls of December 31, 2010, through March 31, 2011, will be spread across the remaining pay periods in the benefit year (April 30, 2011 through November 30, 2011).
- Employees who separate from the District will have any remaining balances owed deducted from their final pay check.

- **Proration:**

- Newly hired employees as of April 1, 2011 working a minimum of 7 hours per day and 35 hours per week qualify for District-paid health benefits equivalent to what the District pays for full time employees.
- Newly hired employees as of April 1, 2011 working between 4 – 6.9 hours per day and 20 – 34.5 per week qualify for prorated District-paid health benefits using a divisor of 7 hours.
- Employees who work less than 4 hours per day are ineligible for District-paid health benefits.

#### **Retirement Health Benefit and Incentive**

- If the employee notifies the District by April 15, 2011 of intent to retire by June 30, 2011 the employee will not be required to: take furlough days for the 2010-2011 school year or have a cap on the employee's retiree medical benefit or have those benefits prorated.
- Effective with retirement notices received on or after April 15, 2011 post-retirement health benefits shall be capped at the 2010 one-party Kaiser rate and prorated based upon the retirees FTE in accordance with the proration calculations listed under Health Benefits above.

#### **Furlough Days**

- For 2010-2011: Employees whose regular work calendar is 226 days or less will take three furlough days. Employees whose regular work calendar is 227 days or more will take four furlough days.
- For 2011-2012 and 2012-2013: Employees whose regular work calendar is 194 days or less will take five furlough days. Employees whose regular work calendar is 195 days will take six furlough days. Employees whose regular work calendar is 196 – 209 days will take seven furlough days. Employees whose regular work calendar is 210 – 235 days will take eight furlough days. Employees whose regular work calendar is 236 days or more will take nine furlough days.

#### **Me Too Clause**

Parties agree that for terms of the agreement, if the District and other recognized exclusive representative (excluding MDEA, MDSPA) negotiate a total compensation increase in excess of what CSEA is receiving, then CSEA will receive the same. It is understood that this clause will not be triggered by crediting the 4 furlough days taken by DMA members in 2009-2010 toward the number of furlough days to be taken during this 2010-2013 contract cycle.

#### **Reopener language**

If District funded Base Revenue Limit changes by \$45 per ADA or more from the District's 2010-11 Funded Base Revenue Limit per unit of ADA during the term of agreement, then either party can reopen of salary, benefits or furlough days.

Waiver Issues

The District and CSEA are agreeing to settle these issues through the UPC process (see tentative agreement 9/28/10 which is not incorporated by reference herein).

Julie Braun Martin 3/15/11

Signed by: Julie Braun Martin      Date

Assistant Superintendent, MDUSD

Carol Bruno 3/15/11

Signed by: Carol Bruno      Date

President, CSEA

Rob Norman 3/15/11

Signed by: Rob Norman      Date

Business Agent, CSEA