PUBLIC EMPLOYMENT
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| **In the Matter of the Impasse Between** | ) | |
| | ) | |
| **NATIONAL SCHOOL DISTRICT** | ) | **FACTFINDING REPORT AND RECOMMENDED TERMS OF SETTLEMENT** |
| **Public School Employer,** | ) | |
| **- and-** | ) | **PERB CASE NO. LA-IM-3575-E** |
| **NATIONAL CITY ELEMENTARY TEACHERS ASSOCIATION/CTA/NEA** | ) | **REPORT ISSUED JULY 19, 2010** |
| **Exclusive Representative.** | ) | |

Hearing Held on July 14, 2010

## COMPOSITION OF THE FACTFINDING PANEL:

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

District Member:
Richard J. Currier, Esq.
Currier & Hudson
P.O. Box 910329
San Diego, CA 92191

Union Member:
Angela Su
Regional Uniserv Staff – NODD School Finance
California Teachers Association
1169 Mountain Avenue
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**MAKING PRESENTATIONS TO THE FACTFINDING PANEL:**

For the District:

Ronald W. Bennett, President & CEO
School Services of California, Inc.
1121 L Street Suite 1060
Sacramento, CA 95814

Cindy Frazee, Assistant Superintendent
Human Resources
National School District
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For the Union:

Alva Rivera
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California Teachers Association
1535 Grand Avenue, Suite A
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Mary Ellen Berumen, Executive Director
South County Teachers United/CTA/NEA
196 Landis Avenue
Chula Vista, CA 91910

Also Present for the District:

Alfonso Denegri
Manuel Machado

Also Present for the Association:

Lynda Moony
Linda Cartwright, President
Eleanor Cruz –De Vincenzo
Linda Cuff

## BACKGROUND AND PROCEDURAL HISTORY

The National School District ("District") is located in National City, just south of the city of San Diego. The District is comprised of 10 elementary schools serving a richly diverse student population of approximately 5,800 students in grades K-6. The District has separately funded preschool programs located throughout the District serving an

additional 750 students. Ninety-five (95%) percent of the student population is minority, of which 78 % are Hispanic. Approximately 55% of the students served are English Language Learners. The city of National City has the highest poverty level of any city in San Diego County and has one of the highest poverty rates in California.

The District's 10 elementary schools have all achieved an API similar school ranking of 10. The District offers a bilingual education program, along with a high-quality before and after school program which includes music, fine arts, academics, and recreational activities.

The District provides services to students from pre-school through 6th grade. The District employs approximately 354 certificated teachers that are represented by the National City Elementary Teachers Association/CTA/NEA (Association). The Association is the recognized exclusive bargaining agent for the certificated bargaining unit.

The impasse and factfinding proceeding at issue arose from the negotiations between the District and Association 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 Agreement covered twenty-two (22) articles and twenty-three (23) appendices. The parties have continued to operate under the provisions of the expired agreement since June 30, 2010.

The District sunshined its initial proposals on February 4, 2010 and the Association sunshined its initial proposals on February 10, 2010. In four bargaining sessions a number of articles were tentatively agreed to by the parties.

The District and Association began to negotiate on a successor agreement on February 19, 2010. The bargaining parties met for a total of four bargaining sessions, February 19, February 22, March 8, and March 16, 2010. In their initial proposal, the District proposed changes or amendments to twelve (12) articles and the Association proposed changes or amendments to six (6) articles in the agreement.

On March 18, 2010, 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 March 11, May 14 and June 4, 2010. 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 by the parties and appointed by PERB to serve as the neutral chairperson of the factfinding panel. The District and Union designated Richard J. Currier, an attorney with Currier & Hudson, and Angela Su, Regional Uniserv Staff – NODD School Finance with the California Teachers Association to serve as their respective members of the panel. On behalf of their principals, Mr. Currier and Ms. Su waived statutory time limits for the holding of a hearing but the District refused to waive a statutory timeline 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 July 14, 2010, in National City, California, during which time the District and Association 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 factfining report. Following the executive decision of the panel, the chairperson prepared a draft of the factfinding report and recommendation. 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 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.

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

## ISSUES

In the declaration of impasse filed by the District on March 18, 2010, and/or amended by the Association, the following represents the issues to be considered and addressed in this factfinding report:

(1) Term of the Agreement
(2) Article 4 - Organizational Security and Association Rights
(3) Article 6 - Hours of Employment
(4) Article 7 - Transfer and Reassignment
(5) Article 10 - Class Size
(6) Article 11 - Evaluation Procedure
(7) Article 15 - Salaries

## 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 under taken wholesale reduction in force of certificated staff position but has made significant cuts in most other categories of the District budget but there is now a need to look to the certificated 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 student 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 six years, resulting in an annual decrease in District revenues of approximately $8,000,000 dollars. The District has weathered many years of declining revenues through prudent fiscal management so that cuts to certificated staffing were avoided until last year when class sizes were increased. This resulted in teachers, classified staff and administrative staff having to be laid off.

The District's budget deficit for the 2010-2011 school year is projected to be $2.6 million, with is approximately 11% of the District's annual budget. Additionally, the District has agreed to increases for employees' Health and Welfare benefits that will result in an additional $237,500 budget shortfall. The District has cut administrative positions, cut programmatic funding and has secured agreement with the classified and management staff to implement furlough days for the 2010-2011 and 2011-2012 school years. With the savings created by budget cuts and the implementation of furlough days, the District will carry a $307,926 budget deficit for the 2010-2011 school year.

## ASSOCIATION 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 3% for economic uncertainties and has also carried a substantial reserve that the School Board has created in its budgeting process. The District while indicating that it is deficit spending and is having to use some of its reserves to balance the 2010-2011 budget, continues to carry a

projected $1,354,637 in reserves and a projected unrestricted ending balance of $5,298,948. Additionally, the Association 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 Association 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 school year and that the District will need to spend some of its reserves to balance its budget. However, even with having to use reserves, the District continues to maintain approximately 11.74% of its budget in reserves.

The Association contends that while the District has had a declining enrollment over a number of years that in 2009-2010 there was an increase in ADA. The Association believes that this tread will continue into 2010-2011 school year and this will increase District Revenues through increased ADA.

The Association presented information that showed the District spending substantially more money on books, supplies and operating expenses than other similarly sized districts. Also, the Association believes that the District has not properly compensated its certificated staff. While the beginning teacher's salary is 7th out of 13 in the district, the veteran certificated staff member is being paid lower wages than other districts within the County and is ranked as 13th out of 13in the district at the BA + 30 Step 10 of the salary schedule step. Certificated teachers continue to rank at the bottom of the rankings for comparisons in maximum earnings and career earnings. While the District claims that it has not needed to lay off certificated staff, with the exception of last year, the reason may be that certificated staff has been supporting the education programs by receiving less pay than their counterparts in other districts.

## SUMMARY OF BARGAINING PARTIES' POSITIONS

The District wishes to secure a three year agreement with the Association that would allow the District to initiate a six day furlough for all certificated 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 4, 6, 7, 10 and 15.

The Association expressed a desire to have only a one year agreement and to retain the language and rights contained in Articles 4, 6, 7, and to modify language contained in Articles10, 11, 14 and 15.

The District and the Association have through their bargaining efforts 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. TERM OF THE AGEEMENT

***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 Association over the years have always had a three year agreement. The Association contends that because of the state's economic condition, a three year agreement would prevent the Association 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 Association due to 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. While the bargaining parties have entered into three year agreements in the past, this is not the time for a three agreement because of the current funding uncertainty.

It is the recommendation of the Panel that the term of the agreement be for two years (2010-2011 & 2011-2012). The Agreement shall become effective on the date of final ratification by both parties and shall expire on June 30, 2012. For 2011-2012 there will be re-openers on Health and Welfare Benefits under Article 14, Salaries under Article 15 and two additional Articles of each party's choice.

## 2. ARTICLE 4 – ORGANIZATIONAL SECURITY AND ASSOCIATION RIGHTS.

### *UNION AND DISTRICT POSITION*

The District contends that allowing the Association to reimburse the cost of a substitute when an Association member takes a contractually approved Association Leave violates California Education Code Section 44987 and California Government Code 3543.5. The District wants the Association to pay the District the actual cost of the teacher's daily rate of pay instead of the substitute's daily rate of pay.

The Association has maintained the language of Article 4 for many years and it is a common practice in California for Associations that have bargained Association Leave language to reimburse the District only for the cost of the substitute and not the daily rate of the teacher using the leave. The Education Employment Relations Act (EERA) allows the exclusive bargaining agent to bargain for release time to fulfill its Duty of Fair Representation under California Law. The districts that both the District and Association have used to make comparison all have some form of Association Leave. However, none of the Associations pay the actual cost of the teacher's daily rate of pay but only the cost of the substitute's daily rate of pay.

### *ANALYSIS AND RECOMMENDATION*

The language of California Education Code Section 44987 and California Government Code 3543.5 is subject to interpretation. There has been no California Court of Appeals decision that would interpret that districts violate the law when they allow the exclusive bargaining agent to use release time and to pay for such release time at the rate paid a substitute teacher. There is no holding by PERB that when an exclusive bargaining agent reimburses the district for organization release time at a substitute's rate, that this violates the law and somehow shows that the employer has contributed financial support to the exclusive bargaining agent.

It is the Recommendation of the Panel that the language of Article 4, remains ***status quo*** until such time as the bargaining parties amend, modify or terminate the terms of the Agreement. Further, it is recommended that the Association reimburse the District for the cost of the substitute plus cost of statutory benefits within thirty (30) calendar days from the date of the invoice.

## 3. ARTICLE 6 – HOURS OF EMPLOYMENT: WORK CALENDAR

### *UNION AND DISTRICT POSITION*

The District expressed a desire to have its school calendar mirror the Sweetwater Union High School District school calendar. The District indicated that parents with children in both the elementary and high school districts have asked the District to change its school calendar because the substantial difference in the two calendars created a problem for parents, students and for the District. Parents complained that there are child care issues when older children are not available to take care of younger siblings during school breaks. Also, the District believes parents remove their elementary children from school when the High School District is out and this causes reductions in ADA funding and the District receives less money from the state.

The Association expressed a concern with the elementary adopting the high school schedule because of educational concerns for the younger students. The high school calendar begins in July and while this may be good for the high school programs, it is not good for the elementary students. If the District were to adopt the High School District Calendar, this would require Kindergarten students to begin school at four years of age and the First Grade students would move into the Second Grade at age five. Additionally, the Association does not want to give up the right to bargain hours (calendar) by granting the District the right to unilaterally adopt a school calendar similar to that of the Sweetwater Union High School District.

### *ANALYSIS AND RECOMMENDATION*

The Association's concern for students is admirable but younger students will adjust over time. The Association did not indicate that it opposed having the same break schedule and vacation/holiday schedule that is used in the high school district. The only issue was with the early start and how that may negatively impact younger students.

The need to coordinate the elementary and high school calendars for the benefit of the parents and to reduce any possible loss of ADA revenue provides good reason to adjust the elementary calendar to be similar to the high school calendar. The District may wish to adjust the beginning date for school to address the concerns of the Association and the needs of the younger students.

It is the recommendation of the Panel that commencing in the 2011-2012 school year, the school calendar for employees shall be determined by the District and it shall be "very closely aligned" with the school calendar for the Sweetwater Union High School District. The term "very closely aligned" means that the instructional days shall be on the same dates, major breaks shall be on the same dates, and the starting and ending dates shall be within five work days of the work calendar of the Sweetwater Union High School District.

## 4. ARTICLE 6 – HOURS OF EMPLOYMENT: WORK DAYS

### *UNION AND DISTRICT POSITION*

The District proposed that members of the certificated bargaining unit agree to a work a calendar that would decrease the 2009-2010 work calendar by six days. The District indicated that because of financial conditions and the funding level by the State, the District needs to have certificated employees take six days of unpaid furlough to help balance the budget. Each day of furlough represents a savings of approximately .54 % of the annual salary for certificated employees or approximately $112,320 per day. The District indicated that for the 2010-2011 school year, the furlough days would be 1 non-student day and 5 student days and the furlough days would be 8/20/10, 11/12/10, 11/22/10, 11/23/10, 6/15/11 and 6/16/11. The District indicated that both the classified bargaining unit and management had agreed to the six furlough days.

The Association objected to having any furlough days and indicted that it believed the District's push for six days of furlough was excessive. The initial language proposed by the District regarding furlough days indicated that the furlough days could be "up to six days," and the Association believed that they had the right under the EERA to bargain hours and that the number of days should be determined with certainty through the bargaining process and not left up to the unilateral determination by the District or the Superintendent. Additionally, the Association reviewed other comparative districts to see what number of furlough days they had bargained. It was determined that several districts had not bargained furlough days and that the average number of furlough days was less than six for those districts that had agreed to furlough days.

### *ANALYSIS AND RECOMMENDATION*

Both the District and the Association expressed their concern for having to reduce the number of instructional days. Yet, the District contends that after all of the cuts that have been made to the budget over the past several years, the only area for substantial savings is in staff compensation. The District indicated that when money was once again

available to increase the number of student days, furlough days will be reinstated as work days for the certificated staff.

The District and Association expressed concern for having to implement furlough days but all parties understood that under the present economic crisis that furlough days were needed. The real issue became how many days would help the District and what would happen if the economic condition of the District were to improve?

It is the recommendation of the Panel that language be added to the Agreement for five (5) unpaid furlough days per school year in 2010-2011 and 2011-2012. The language regarding furlough days shall sunset at the expiration of the Agreement on June 30, 2012, and the language of the 2007-2010 Agreement shall be reinstated and will remain in full force and effect until such time as the bargaining parties either amend, modify or terminate the terms of the Agreement.

Additional language will be added to Article 6 that will cover the possible change in unpaid furlough days for each year of the Agreement.

For the second year 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 Multi-Year Projection (MYP) for that year:

| Year | 2010-11 | 2011-12 |
|---|---|---|
| COLA Est. | -0.39% | 0.00% |
| Funded BRL/ADA | $4,728.75 | $4,728.75 |

If there is an increase of at least $50 in funded BRL per unit of ADA beyond the projected funded BRL per ADA in the above chart for any school year, 0.54% shall be added back to the salary schedule with a corresponding unpaid furlough day being deleted from the work year. An additional 0.54% shall be added for each $50 increment above the amount of funded BRL per unit of ADA planned for that year and additional corresponding unpaid furlough days shall be added back at the rate of one per each 0.54% salary restoration. If there is a decrease of at least $50 in funded BRL per unit of ADA beyond the projected funded BRL per ADA in the above chart for any school year, 0.54% shall be taken back from the salary schedule and one workday shall be taken back from the work year. In no year shall the number of unpaid furlough days exceed five (5). One restored unpaid furlough day is equivalent to 0.54% on the salary schedule.

To avoid "double-counting," any year that a salary restoration is made using the provisions above, the funded BRL budgeted in each subsequent year as a baseline for restoration shall be increased by the dollar amount already used to provide salary restoration.

## 5. ARTICLE 7 – TRANSFER AND REASSIGNMENT

### UNION AND DISTRICT POSITION

The District proposed language that it believed would streamline the transfer and reassignment process. The District proposed that the Superintendent be given the right to fill a vacancy that opened after the start of school with a new hire. The District did not want to have to post the position fearing that it could cause a domino effect and that this would be disruptive to the students. The District believed that since the existing language allowed the Superintendent to make the final decision, there was no need to have to go through the process of posting the position. The District claimed that the need for a change in the existing language became apparent after the Association filed two grievances.

The Association indicated that it understood that the Superintendent had the right to fill the position so as not to be disruptive to the students but there were procedures that needed to be followed. Under the same provision that grants the Superintendent the right to make the final decision, the language requires the posting of the position to allow certificated employees an opportunity to request a voluntary transfer to the vacated position. There is no language that mandates that a person requesting the transfer must be given the transfer.

### *ANALYSIS AND RECOMMENDATION*

Article 7 of the Agreement outlines how positions are to be posted and the rights of certificated bargaining members to be made aware of open positions and the process of how they may request the transfer but the final decision is that of the Superintendent. When there is a vacant position open and if members of the certificated bargaining unit are not allowed to express their desire for a transfer, this could result in the decline of employees' moral. The posting of an open position is not a burden to the District and has been the norm in the District for many years. There was no showing by the District that open positions in the past have caused a domino effect.

The Grievance filed by the Association did not challenge the authority of the Superintendent to make the final decision in filing a vacancy that occurs after the start of

the school year but challenged the fact that he did not follow the procedures outlined in Article 7 regarding the posting of the position and the notification of the Association President. The two grievances have been processed up to but have not gone to arbitration and we can only assume the Association has not proceeded to arbitration because the only award that could be issued by an arbitrator is to interpret the language of Article 7 and find that the District must post an open position and then to order that the District post vacant positions in the future.

It is the Recommendation of the Panel that the language of Article 7, remains ***status quo*** until such time as the bargaining parties amend, modify or terminate the terms of the Agreement. It is recommended that the Association drops any and all pending grievances alleging violations of Article 7.

## 6. ARTICLE 10 – CLASS SIZE

### *UNION AND DISTRICT POSITION*

In light of the increased cuts to education, the state granted school districts the ability to increase class sizes within the class size reductions (CSR) program, while still receiving incentive funding at a reduced penalty rate. The District proposed that class size limits in the prior Agreement be increased to allow for reduction in budget expenditures under the CSR.

The Association expressed a concern with the increase in class size because smaller class sizes provide a greater opportunity for certificated personnel to assist students. While understanding the benefits of smaller class sizes, the Association also understands that the budget crisis may cause the need for temporarily increasing class size for primary grades but only to the extent that the quality of education can be maintained for the community and the students the District serves. The Association opposed the effort to increase class size in the upper grades because this would be detrimental to the students that are already in crowed classrooms.

### *ANALYSIS AND RECOMMENDATION*

The District indicated during the factfinding that the change in the language of the Agreement to allow for an increase in class size was not something that the District, parents or staff wanted to do. The need to increase class size is temporary and the District indicated that if money is made available to lower class size that it would be the intention of the District to reduce class size back to lower levels. The Temporary increase in class

size will decrease budget expenditures and allow the District to reduce its level of deficit spending.

It is the recommendation of the Panel that commencing with the 2010 – 2011 school year, the District's maximum class size for grades K – 3 shall not exceed twenty-two (22) students and class size for grades 4 - 6 shall not exceed thirty-three (33) students. Commencing with the 2011 – 2012 school year, the District's maximum class size for grades K – 3 shall not exceed thirty (30) students and class size for grades 4 - 6 shall not exceed thirty-three (33.) students. The class size established by the terms of the 2010-2012 Agreement shall sunset at the expiration of the Agreement on June 30, 2012, and the language of the 2007-2010 Agreement shall be reinstated and will remain in full force and effect until such time as the bargaining parties either amend, modify or terminate the terms of the Agreement.

During the 2010-2011 school year, K-3 class size shall not exceed 22:1. The District shall not increase the maximum class size for grades K – 3 in 2011-2012 beyond twenty-five students (25) if it actually receives $6,226 base revenue limit per ADA for that school year.

## 7. ARTICLE 11- EVALUATION

### *UNION AND DISTRICT POSITION*

The District proposed that the language of the Article 11 remains ***status quo***. The District indicated that the bargaining parties had bargained the language of Article 11 and that there is not a need to amend the language. The Association desired to clarify language in Article 11 by adding language regarding a deadline for paperwork in the Professional Improvement Process and explaining that the Detailed Assistance Plan is not necessary if PAR objectives are in place.

### *ANALYSIS AND RECOMMENDATION*

The purpose of a certificated evaluation system is to improve education, to assist certificated employees in reaching their goals and objectives and to improve the certificated employees' overall performance. The language of the Agreement does appear to have some ambiguities and it would be beneficial for both the District and the members of the certificated bargaining unit to have language that is clear and a process that accomplishes the purpose of having an evaluation process. While the Association provided information in their presentation regarding concerns with the language of Article 11, the primary concern appeared to be the forms used in the evaluative process

and the forms found in appendices. The Association wishes to be part of the process to insure that the evaluation forms fully conform to the language of the Agreement.

It is the recommendation of the Panel that the language of Article 11 remains ***status quo*** until such time as the bargaining parties amend, modify or terminate the terms of the Agreement. Further, the panel recommends that the parties meet and confer on the evaluation forms to insure that the forms conform to the language of the Agreement.

## 8. ARTICLE 14 – HEALTH AND WELFARE

### *UNION AND DISTRICT POSITION*

The District and Union negotiated a tentative agreement to increase the District's contribution to the Health and Welfare program for certificated bargaining unit members.

### *ANALYSIS AND RECOMMENDATION*

It is the recommendation of the Panel that the new Agreement increases the District maximum cap to $9200 per eligible full-time employee effective for the 2010-2011 school year as proposed by the District and agreed upon by the Association.

## 9. ARTICLE 15 – SALARY

### *UNION AND DISTRICT POSITION*

The District and the Association 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 certificated salary schedule by instituting six unpaid furlough days for the term of the Agreement thereby reducing the 2009-2010 certificated salary schedule by 3.24 %.

The Association did not agree to the District proposal regarding the instituting of six unpaid furlough days. The Association understands the need 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 Association 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 Associations 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 District has proposed increased class size thus reducing expenditures and reducing some of the need to deficit spending it reserves.
It is the recommendation of the Panel that the certificated salary schedules for 2009-2010 be reduced for 2010- 2012 because of the institution of unpaid furlough days. The Panel recommends five unpaid furlough days which is equal to 0.54% off the schedule per each unpaid furlough day times five days = 2.7% reduction of the salary schedules.

**REMAINER OF THE AGREEMENT**

It is understood that the Preamble and Articles 1, 2, 8, 11, 12, 13, 16, 17, 18, 20, 21 and 22 will remain the same as the prior Agreement or as modified through the recent bargaining process for the 2010-2012 Agreement.

Articles 3, 5, 9 and19 will be the same as the oral tentative agreements attached to the District's Statement of The Issues for Fact-finding.

## 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 have been met. This Factfinding proceeding is concluded as required by law within the thirty (30) day requirement of the law.

Concur_____

Dissent_____

Concur in part ✓

Dissent in part ✓

Richard J. Curmer
District Panel Member

Concur ✓

Dissent_____

Concur in part_____

Dissent in part_____

Angela Su
Association Panel Member

Daniel R. Saling
Panel Chairperson

Report Issue: July 19, 2010
Dana Point, California