

BACKGROUND

Oxnard Elementary School District (District or Employer) and the Oxnard Educators' Association (Association or OEA), an affiliate of the California Teachers Association (CTA) and the National Education Association (NEA), are the parties in this fact finding matter. The District and Association commenced bargaining on October 28, 2008. The parties reached agreement on a number of issues including salaries, but when they could not agree on two language issues. They declared impasse on May 20, 2009. Following one mediation session, they were certified to Fact Finding for resolution of those two issues. The issues properly before this Panel are: Article 15, Individual, Partial and School Wide Contract Variance, sections 15.5 f, g, and h and Article 29, Term of Agreement. The District wants those specified sections of Article 15 deleted and the Association's position is status quo. Regarding the term, the District's position is June 30, 2009 and the Association's is June 30, 2010.

The parties agreed that they have followed all proper procedures from "sunshining" their proposals, through impasse to timely selection of their respective Panel members and the Panel Chair. The parties agreed to waive the time limits for this fact finding process.

A hearing was conducted by the Panel on November 12, 2009. Following the hearing, the Panel worked with the parties in an effort to help them reach an agreement on the issues. When the

parties were unable to reach accord, the Panel studied the materials presented at the hearing and wrote the following report of findings and recommendations.

PERTINENT CONTRACT LANGUAGE

ARTICLE XXIX: TERM OF AGREEMENT

This agreement shall remain in full force and effect up to and including June 30, 2008 and from year-to-year thereafter unless either party submits a request to the other to terminate, modify or amend the agreement. ...

ARTICLE XV: INDIVIDUAL, PARTIAL AND SCHOOL-WIDE CONTRACT VARIANCE

The District and the Association recognize that creativity and innovation are essential elements for maintaining a high quality educational program. It is in their mutual interests, therefore, to provide a vehicle to accommodate such elements within the framework of their collectively negotiated agreement. By so doing, the parties encourage flexibility without generally impinging on the need to uniformly apply the terms and conditions of the agreement; accordingly, the following conditions shall apply to individual, partial and school-wide variances from specific written provision(s) of the collectively negotiated agreement:...

5. Individual Variances

...

- (f) All permanent unit members in grades 1 through 3 at a site may choose a split reading or extended day schedule for the following year. If the unit member makes no election on or before May 30th of any school year, the unit member will be assigned the default reading schedule in the subsequent school year. The current District default is a split reading schedule.
- (g) Unit members must make the choice annually and on the prescribed form which shall be an appendix to the CBA (Appendix B).
- (h) Second year probationary unit members will have the choice to select split reading or extended day schedules; all other non-permanent unit members must use the default reading schedule. The current District default is a split reading schedule.

PERTINENT STATUTORY LANGUAGE

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."

DISCUSSION AND RECOMMENDATIONS

The Panel must first consider the issue of the term of this agreement as that directly impacts the Panel's deliberations

regarding the issues raised in Article XV. To get right to the point, the school year ending in June 2009 is completed, making it impossible to implement a change for that school year. Moreover, the 2009-2010 school year is half over, hence the Chair finds that it is most logical to recommend that the term of this agreement be through and including June 30, 2010. This recommendation also allows the Panel to analyze and rule on the issue of split reading assignments, as the effects of such recommendation can be implemented in the 2009-2010 school year for the 2010-2011 school year.

To the second issue, the District has the burden of proof in their position of insisting on the deletion of portions of section 5 of Article XV. Specifically to delete subsections f, g, and h.

The District and Association have agreed to a work year of 183 days. 180 days of the work year are student instruction days. Since 2002, the District's enrollment has declined over 1000 students and has now stabilized and is showing slight growth. (District Fact 9).

To understand the disagreement regarding this issue, it is useful to understand how the Split Reading Schedule operates. In a class within grades 1-3, approximately one half of the students start at the stated commencement hour of the school day. One hour later the rest of the students in that class come to school. Then the students who arrived early (referred to as Early Bird) for lessons, go home an hour earlier than the students who arrived the

hour later. The students who arrived later (referred to as Late Birds) go home an hour after the first group leaves. Each group of students receive the same number of minutes of education in their school day. Students who are not in teacher's classrooms who have opted for the split reading schedule are all in classes together for the entire school day, thereby not losing an hour of class time each day. The teacher's work day, however, is the same number of hours in either the split reading schedule option or the extended day schedule.

The Association asserts that the smaller classes at the beginning and end of each day allows them the opportunity to provide increased individualized attention to each of their assigned students, since there are fewer students in the classroom at the beginning and end of their work day. This time is used for reading intervention. Moreover they point to the body of literature which supports a finding that lower class sizes increase student learning.

Further the Association's evidence shows that at least one other district, in the State, Sacramento City School District, may choose to be on an early/late schedule. It is noteworthy that in the language provided by the Association provides that both the administration and faculty must agree and that the vote is of the majority of the entire faculty.

The Chair finds that is significantly different from the language in this contract, which is the individual teacher's option

not a joint decision and not a vote of the teachers at the involved school site.

Next, the District points out that since the teacher's individual work day is the same number of hours, the students in this configuration of early bird/late bird, as stated above, actually lose an hour of instruction each day. Over the school year of 180 days of student contact days, this amounts to 174 fewer hours of instruction each year or a full 29 school days. This actually results in the delivery of 6,965 fewer minutes of instruction of the State Mandated 50,400 minutes for grades 1-3 for the students on Early Bird Late Bird assignments. Additionally, in the 2007-2008 school year, the District increased students minutes in grades 1-3 to a total of 53,875 minutes of instruction. However, in that year, the students in Early Bird Late Bird had 10,440 fewer minutes of classroom instruction.

The District maintains that because of the fewer hours of instruction, these students actually have not progressed as well as the students in classes which provide the full hours of instruction each day. The District provided the Panel with evidence that demonstrates that the students in the Early Bird Late Bird classes actually did not fare as well as students in regular classes with the full day of instruction.

The District's unrefuted evidence also shows that of the 296 teachers who are assigned to grades 1-3, only 72 select the Early Bird Late Bird schedule for classroom instruction of students.

That amounts to about 24% or one in four teachers. Hence, they assert that this is not an overwhelmingly used strategy. Further, they testified that teacher's who do not use the Early Bird Late Bird scheduling have said that it is because they "cannot fit in all the standards in the pacing guides".

The District's evidence also shows that other comparable district's in the County area do not have these programs, nor contractual language for such programs.

They also provided significant research to support a finding that focused, increased classroom instruction time with students does in fact make a significant difference in children's learning, comprehension and retention.

It is also of note that parent's have attended the Board meetings to state their concerns and written letters of concern with this program.

Based on the foregoing discussion, and a study of all the materials produced by both parties, the Chair finds that the District did meet its heavy burden of proof. Therefore, it is recommended that the language of Article XV, section 5, subsections f, g and h, be deleted from the parties Collective Bargaining Agreement.

Following the careful study of both parties evidence regarding the issues, the above recommendations are made for the resolution of this set of contract negotiations between the Oxnard Elementary School District and the Oxnard Educators' Association, CTA, NEA.

The Panel Members representing the District and Association have met in Executive Session by telephone conference call on January 13 and 19, 2010 to discuss the Chair's Report and Recommendations. The Panel shared the "Draft" Report and Recommendations with the parties and encouraged them to settle this matter. When they failed to reach agreement by February 10, 2010, the Panel issued the Report and Recommendations. Based on the above Recommendations of the Chair they concur or dissent as follows:

For the District:

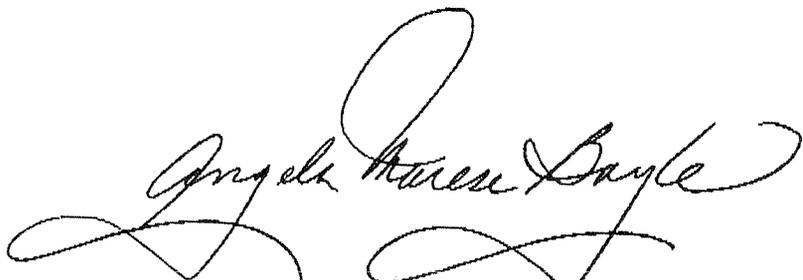
Concur Dissent
 Concur in part
 Dissent in part

For the Association:

Concur Dissent
 X Concur in part
 X Dissent in part

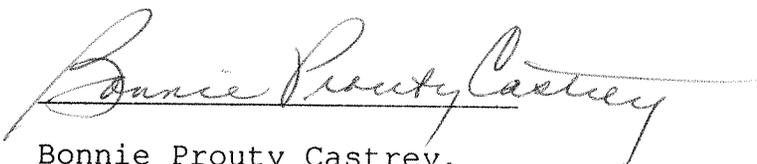


Ronald W. Bennett
District Panel Member



Angela Marese Boyle
Association Panel Member

Issued on February 12, 2010 by



Bonnie Prouty Castrey,
Panel Chair