

IN FACTFINDING PROCEEDINGS PURSUANT TO  
CHAPTER 10.7 OF DIVISION 4 OF TITLE 1 OF THE GOVERNMENT CODE

In the Matter of an Impasse )  
 )  
 between ) / FF-446 /  
 )  
 RICHMOND UNIFIED SCHOOL DISTRICT ) FACTFINDING REPORT  
 )  
 and )  
 )  
 UNITED TEACHERS OF RICHMOND, CTA/NEA ) Re:  
 ) SF-F-243, M-1740 (R-37A)  
 ) SF-F-244, M-1741 (R-37B)  
 ) SF-F-245, M-1742 (R-37C)  
 ) SF-F-246, M-1743 (R-37D)  
 ) SF-F-247, M-1744 (R-55)  
 )  
 and )  
 )  
 PUBLIC EMPLOYEES UNION, LOCAL #1 )  
 )  
 )

FACTFINDING PANEL

Barbara Bridgewater, J.D., Labor Arbitrator, Chairperson  
Ken Hall, School Services of California, RUSD Panel Member  
Charles J. Davies, Ph.D., CTA, UTR and Local 1 Panel Member

APPEARANCES

For RUSD:

Michael J. Keebler, Legal Counsel  
Laura Bruno, Assistant Superintendent, Fiscal Services  
Gloria Mikuls, Assistant Superintendent, Human Resources  
William C. Pieper, Consultant, School Services of California  
Patrick Keegan, State Department of Education  
Fred J. Stewart, Ed.D., State Appointed Administrator  
Bill Honig, State Superintendent of Public Instruction  
Jay Ziegler, State Controller's Office  
Mark Steinwert, Audit Manager, State Controller's Office  
Mashariki Kurudisha, Citizens Advisory Committee  
Anna Blackman, Associate Superintendent, C/I  
Karen S. Hancox, Adams Middle School Principal  
Linda Lester, Area I Director  
Sandra Peck, Administrator, Fiscal Services  
Marian Rothschild, Special Education Director

For UTR and Local #1:

Ernie Ciarrocchi, UTR Executive Director  
Sandra Falk, Local #1 Assistant General Manager  
Cloyd Masengill, CTA Finance Consultant  
Rudy Jenkins, Business Agent  
John Scruggs, Local #1 Chief Shop Steward,  
Bruce Leslie, Shop Steward, Locksman  
Larry Davis, Shop Steward, Furniture Repair Worker  
Susan Sheffer, RUSD Personnel Operations Supervisor  
James Pace, Custodial Services Supervisor  
James Emerson, Special Education Assistant

Report Issued: August 28, 1991

## JURISDICTION

In accordance with Chapter 10.7, Division 4, Title 1, the Factfinding Panel, supra, conducted a hearing in the matter of an impasse between RICHMOND UNIFIED SCHOOL DISTRICT, herein referred to as the "District" or "RUSD," and UNITED TEACHERS OF RICHMOND, herein referred to as "UTR," and PUBLIC EMPLOYEES UNION, LOCAL 1, herein referred to as "Local #1." The hearing was held on July 22, 30, 31, August 1 and 2, 1991 in Richmond, California, during which the parties were afforded full and fair opportunity to present evidence and argument. The Factfinding Panel met in executive session on August 14, 1991, in Sacramento, California.

## BACKGROUND

### The School District

The Richmond Unified School District is located in the San Francisco Bay Area, in the western portion of Contra Costa County. The District serves the communities of Richmond, Kensington, El Cerrito, El Sobrante, San Pablo, Hercules and Pinole. There are more than 30,000 students served in grades kindergarten through twelve in 37 elementary schools, 5 junior high/middle schools and 5 comprehensive high schools. The district also operates continuation high school programs and adult education programs.

### The District's Unique Situation

The Richmond Unified School District is currently responsible for the repayment of two (2) separate State loans, one for \$9.5 million and the second for \$19 million. It is also currently under protection from its creditors through the Federal Bankruptcy Court in a Chapter 9 proceeding. The District has no superintendent and its board of education has no authority. The District is governed by a sole Administrator, appointed by the Superintendent of Public Instruction.

The Richmond Unified School District has been struggling financially for many years. Walter Marks came to Richmond in 1987 as superincendent and embarked on an ambitious educational program commonly referred to as "System for Choice". This program became recognized by the Bush administration as a model school district program which allowed parents "choice" in the schools their children would attend. The U.S. Department of Education planned to include Richmond in the fall of 1989 as one of five regional hosts to tout the idea of choice for parents. In months and years to come it would be found that Dr. Marks used State and Federal revenues to fund this program, whether or not they were authorized for such purposes.

During that same fall, Dr. Marks struggled to reach agreement with the local unions to settle new contracts. Shortly before the national conference on choice arrived in Richmond, Dr. Marks and the board of education agreed to new two (2) year contracts with employee representatives which provided a 7% increase in salaries for 1989-90 and a 9% salary increase for 1990-91.

In the spring of 1990, the District began to look at ways in which it could cut a projected deficit for 1989-90. Dr. Marks and the board of education decided to issue certificates of participation (COP's) which were backed by school district buildings which were not used for students. These COP's would bring in millions of dollars which would be used to offset a projected \$6.4 million deficit.

In May 1990, the District began the process of seeking a \$14 million dollar loan from the State. In June, the legislature approved the loan, however, Governor George Deukmejian cut the amount to \$9.5 million. When the District received its first loan in June of 1990, the State also appoint a Trustee, Dr. Fred Stewart, who was given veto power over the board of education in all matters related to the financial condition of the District.

In November 1990, the District began to discuss the need for a second loan from the State, as much as \$29 million. In December, Superintendent Walter Marks resigned, under pressure from the community and representatives from the State. During the following months the legislature debated the District's request for another loan and Governor Pete Wilson indicated his hesitancy to approve the loan unless certain conditions regarding employee contracts were met.

In April, when the loan failed to be approved, and the cash flow situation showed that the District was out of money, the board of education was forced to file a Chapter 9 petition in Federal Bankruptcy Court. Later that month, the board of education, faced with the inability to pay employees after April 30, decided to close the schools for the remainder of the year, six (6) weeks early.

Several parents in the school district sued the State of California and the District to keep the schools open. On April 29, Contra Costa County Superior Court Judge Ellen James ordered the State to keep the Richmond schools open for the remainder of the school year, using whatever means necessary. (See District Exhibit 5).

On May 2, Judge James approved an agreement between the Superintendent of Public Instruction, Bill Honig, and the State Controller, Gray Davis, which provided a \$19 million loan to the District in order to continue school until June 14. (See Exhibit 6). As a part of this agreement, Mr. Honig suspended the powers and duties of the Richmond board of education and placed total authority to control the District in the hands of an Administrator, Dr. Fred Stewart. Dr. Stewart who formerly had only the power to veto school board actions, now had the full duties and power of the board of education. (See Exhibit 6). This agreement also included a separate agreement between the District, the United Teachers of Richmond and the Public Employees Union, Local #1, which spelled out a timeline for negotiations over new contracts. (See Exhibit 6).

The Administrator will continue to operate the District in place of the board of education until a recovery plan is approved by the State and he is released by the Superintendent of Public Instruction. At that time the District will be returned to the board of education.

#### Summary of Negotiations

The District has traditionally negotiated with a coalition formed by the United Teachers of Richmond and the Public Employees Union, Local #1. Negotiations over new contracts which expired with both units on June 30, 1991, began in early March, 1991. Initial proposals by the District and the unions contained changes in several portions of the contracts.

The parties met regularly during the months of March and April. On May 2, 1991, the District came under the control of the State of California and the powers and duties of the board of education were vested in an Administrator appointed by the State Superintendent of Public Instruction. On that same day, the District and both unions signed an agreement which set forth a timeline for negotiations, mediation, factfinding, and ultimate unilateral action by the Administrator if necessary.

The parties continued to negotiate during May and June. The original timeline for negotiations was modified by the parties, however the parties continued to agree to following the agreement's intent to move the negotiations forward in a measured way. The parties reached very few tentative agreements during the process.

After approximately twenty (20) negotiations sessions the District declared impasse in accordance with the agreed upon timeline. The State mediator began working with the parties on June 25, holding five (5) separate meetings. In July, 1991, the mediator certified the parties for factfinding.

#### Preparing the 1991-92 District Budget

The District had faced a \$20 million dollar cash flow problem in the Spring of 1991, and projected the ending deficit for 1990-91 to be several million dollars. The District was only able to pay employees during May and June through the use of money loaned to it by State Controller Gray Davis and Superintendent of Public Instruction Bill Honig. This money, however, came to the District in the form of a loan and will have to be repaid over time.

The District, in an attempt to balance its 1991-92 budget, eliminated the Schools for Choice program, laid off hundreds of teachers, cut the administrative staff by one-third, cut the educational program back to that which is barely beyond State minimum levels, and used the bankruptcy process to delay millions of dollars of long term debt.

## ISSUES

### LENGTH OF AGREEMENT

Article 1 (UTR and Local #1 Contracts)

#### District Position

A one year Agreement.

#### UTR and Local #1 Position

The term of this Agreement shall be for two years, with reopener provisions for Salary and Benefits increases.

#### Recommendation

A two year Agreement (1991-93), with reopener provisions for salary increases and site-based/shared decision making for 1992-93.

### WORK DAY FOR JUNIOR HIGH/MIDDLE SCHOOL TEACHERS

Article 10, Section 2 (UTR Contract)

#### District Position and Discussion

The District has proposed a change in the junior high/middle school work day due to the fact that students will only be taking five classes, instead of six. Under the District proposal, there would be five teaching periods of 53 minutes each, one homeroom period of 15 minutes per day, and a conference period of 50 minutes each day. Sixth grade teachers in the middle schools would be required to teach five (5) additional minutes each day.

The Union's proposal does not meet the state requirements for full funding under Education Code Section 46201. The District could lose up to \$325,000 for shortening the instructional day for students. The District does not believe that the students should receive any further reduction in their instructional time, especially that which would take them below the state guidelines. The District also cannot afford to lose any revenue to which it may be entitled. (See Exhibit 14)

### UTR Position and Discussion

Amend Article 10, Section 2 to provide for 250 minutes of student contact time.

The District seeks to increase student contact time by 80 minutes at the junior high school level. This would result in a teaching day at this level longer than it has ever been before. The Union is agreeable to increasing the length of the junior high teaching day to what it was before System-For-Choice, 250 minutes. Junior high school students are especially difficult to maintain on task for extended period of time. It is for this reason that the length of teaching periods in junior high schools has historically been shorter than in senior high schools.  
**ARTICLE 10, SECTIONS 2 AND 3**

Finally, the Union has proposed a limit on the number of different classes which can be assigned to teachers during the same instructional period. In return we are willing to delete Article 12, Section 2.4. This would return the parties to the pre-System-For-Choice status quo. **UTR PROPOSAL - ARTICLE 10, SECTION 4**

### Recommendation

Accept District position.

### INSTRUCTIONAL AND PREPARATION TIME FOR ELEMENTARY TEACHERS

Article 10, Section 6 (UTR Contract)

### District Position and Discussion

The District has proposed to reduce preparation time for teachers in grades 1-3 from 133 to 100 minutes per week, and to eliminate the preparation time for teachers in grades 4-6.

Preparation time requires the District to hire additional teachers to work with students while the classroom teacher is involved in preparation. Under the Union proposal, the District would be required to hire approximately 18.5 additional teachers than are currently in the budget to provide 100 minutes of preparation time for grades 4-6 teachers.

## Union Position and Discussion

The Union proposes to increase instructional time and decrease preparation time to levels which existed prior to the implementation of the costly System-For-Choice program. This means that teachers in grades 4-6 would teach 30-100 minutes more per week than they have taught during the past three years. They would be entitled to released time for 100 minutes per week instead of the 130-200 minutes of preparation time they currently receive.

The District's proposal would provide absolutely no preparation time for teachers in grades 4-6. They would be the only teachers totally without preparation time.

## Recommendation

Accept District position with the following exception:  
Provide 100 minutes of preparation time for grades 4-6 teachers.

## FACULTY MEETINGS

Article 10, Section 12 (UTR Contract)

### UTR Position

Limit duration of faculty meetings to one hour.

The current agreement limits the duration of faculty meetings to one hour, "normally." Regardless of which side's position on wages and benefits prevails, there will be an adverse economic impact on employees. The Union, therefore, has made proposals intended to compensate its members in other ways. Establishing a firm limit of one hour for the duration of faculty meetings is one such proposal.

### District Position

Maintain current contract language.



Recommendation

Accept Union's position. Delete "normally." Section 12 is to read as follows: ... Faculty meetings shall begin no later than 15 minutes after the student's instructional day and shall be limited to no more than one hour in duration.

SPECIAL EDUCATION TEACHERS, ASSIGNMENT OF AIDES

Article 10, Section 15 (UTR Contract)

District Position and Discussion

The District has proposed that the current additional "unassigned" period which secondary Special Education teachers receive be eliminated and that they teach the same day as all other secondary teachers.

The District has proposed that the current provision which requires the District to specifically provide instructional aides to Special Education teachers be removed from the contract.

All regular secondary teachers teach five periods and have one preparation period, while Special Education teachers have an additional unassigned period. Under the current budget circumstances, the costs of Special Education programs continue to increase and erode the General Fund money available to other programs in the District. If the District is required by this contract to continue to provide additional released periods to Special Education teachers and to provide a specific number of hours of aide time to Special Education teachers, the costs of Special Education programs will continue to rise and to cut into money available for regular programs. (See Exhibit 20).

In addition, this contract governs certificated employees. Any contract provision which restricts the District's assignment of a classified employee, such as an instructional assistant, is inappropriate, since it relates to the working conditions of employees represented by another bargaining unit.

UTR Position and Discussion

Provide 5 hours of aide time for NSH teachers.

At the junior and senior high school levels Special Education teachers have an additional daily period during which a specific class of students are not assigned to them. The Contract reserves this time for "non-programmed direct services to students." A definition is included. The District seeks to eliminate this unassigned period. This would unfairly penalize Special Education teachers.

The Union has indicated a willingness to reduce the number of hours of aide time provided to certain Special Education teachers from 6 to 5 per day. The District seeks to remove all reference to the amount of aide time from the Contract, although it "promises" to provide 5 hours. Since the parties are already in agreement on the assignment of aides to the classes involved, the Union sees no need to remove language which has existed for over 10 years.

Recommendation

Include the following language: The District shall staff for aides to the extent funded by the State of California or to the extent required by State law.

ADJUNCT NON-INSTRUCTIONAL) DUTIES

Article 11

UTR Position and Discussion

In the event the Union is forced to make significant economic concessions, it needs to provide its members with something meaningful in return. Elimination of non-instructional duties such as yard supervision and club sponsorship would be one of those things we feel are necessary to secure ratification of an agreement which contains such economic concessions.

District Position

Maintain current language.

Recommendation

Reject UTR position.

## SICK LEAVE

Article 11, Section 9.2

Local #1 Position. Sick Leave Incentive: Modify current language to read: Those employees who utilize 6 days or less of sick leave during the fiscal year, July 1 to June 30, shall receive two additional days of vacation. Eligibility shall be determined at six month intervals with allocations made proportionately.

### District Position

Maintain current contract language.

### Recommendation

Reject Local #1's proposal.

## MANDATORY VACATION

Article 11, Section 10 (Local #1 Contract)

### Local #1 Position

Amend the contract language to read as follows:

If agreement on this issue is reached by August 10, 1991, Local #1 is proposing on a one-time basis for 1991-92 that the week of December 23 be a mandatory week off, with affected employees utilizing vacation for work days (3) during that week; and with the stipulation that the District will close that week generating energy cost, utility cost and other related savings and that all such savings shall be used for restoration of or to offset the cost of maintaining staff/salaries/program as designated by the Union within the Local #1 bargaining unit. The Union and the District will form a Joint Committee to oversee this project and will meet in advance of implementation to develop an agreement to address anticipated problems associated with employees who do not have accumulated vacation, security issues associated with the closure and other potential problems.

### Recommendation

On a one-time trial basis for 1992-93 the week of December 21 or December 28, as determined by the parties, is to be a mandatory week off.

## VACATION ACCRUAL

Article 11, Section 4.

Local #1 Position

Beginning with the twenty-first year of service, one additional day of vacation per additional year of service shall be provided.

District Position

Maintain current language.

Recommendation

Reject Local #1's proposal.

## WORKERS COMPENSATION

Article 11, Section 11 (Local #1 Contract)

Local #1 Position

Include the following language: The District shall notify all employees of any legally required procedures regarding initial completion of workers compensation reports, claim forms and procedures related to designation of physicians. In addition, at the time that an employee completes the injury report, any comments or statements provided in writing by a manager or supervisor must be based upon direct observation or knowledge. The employee shall be provided with a copy of the manager/supervisor statement on the same day it is made, if the manager/supervisor statement in any manner refutes the employee's claim or statement.

District Position

Maintain current contract language.

Recommendation

Reject the first two sentences of the Union's proposal. Modify the last sentence to read as follows: The employee shall be provided with a copy of the manager/supervisor statement upon request if the manager/supervisor statement in any manner refutes the employee's claim or statement.

## CLASS SIZE ADJUSTMENTS

### Article 12 (UTR Contract)

#### District Position and Discussion

The District has proposed changes in the contract language which would allow for more flexibility in the staffing assignments in the schools, while maintaining reasonable class sizes for all teachers.

Under the District proposal, current contract language which refers to "maximum" class size would be revised to read "average" class size. Such averages would be calculated by department at each secondary school, and by grade level at each elementary school. State guidelines and mandates would continue to be met.

The District proposal would eliminate a section which prohibits the District from forming a K-1 combination class if there are fewer than eight students from each grade level. (Section 1.2.c.)

The District proposal would change the name of the Cyesis Program to the Adolescent Parent Program and change the class size maximum from 18 to a caseload of 30. (Section 2).

The District proposal would change the language which specifically limits the District from enrolling students in classes requiring special equipment, where the number of students exceed the number of work stations, to allow the District to make a "reasonable effort" to limit such assignment. (Section 2.3).

The District proposal would remove contract language which places limits on the number of students assigned to teachers in Gifted and Talented middle school programs. They would be governed by the general class size provisions like other teachers. (Section 2.4).

The District proposal would remove the requirement for the District to make special allowances for small classes based on stanine percentages. (Section 4.1)

The District proposal would remove contract language which places restrictions on the assignment of students in Special Education programs. (Section 5).

The District proposal would remove contract language regarding the minimum and maximum student numbers in the Limited English Proficient (LEP) program. (Section 12.2)

The changes proposed by the District would allow the flexibility needed to staff the programs with appropriate numbers of personnel necessary for each program. Each certificated staff position which the District is required by the contract to add to a program costs, on the average over \$45,000 in salary and benefits.

#### UTR Position and Discussion

- A. Since the class size maximums in the UTR contract have existed in their present form for 14 years, there is absolutely no reason why the District should feel compelled to remove them now. **ARTICLE 12, SECTIONS 1 AND 2**
- B. The District seeks to remove long-standing language preventing the formation of Kindergarten-First grade combination classes unless at least 8 students from each grade level are assigned.

K-1 classes are the most difficult for teachers to handle. The current language was a compromise over a UTR proposal to eliminate K-1 classes entirely. It was possible for one late arriving Kindergarten student to be assigned to a first grade teacher because the District did not wish to assign the student to the closest school where a Kindergarten class could accommodate him/her.

The District has found ways to work with this language over the years. Eliminating it represents still another irritant to teachers who are being asked to give so much to correct a financial problem they did not create. **ARTICLE 12, SECTION 1.2C**

- C. The Contract currently provides the District with 3-4 weeks in the fall to "balance" its classes. However, while the process of assigning, hiring, and transferring teachers goes on, the District is required to assign day-to-day substitutes to relieve teachers of students in excess of the contractual maximums.

Deleting this requirement, as proposed by the District, means that some teachers would have to teach classes of 40 or more for up to 4 weeks. Yet, by its own admission, the District spends less than \$5,000 per year on this item. This inexpensive provision provides a great service to teachers. It should not be eliminated. **ARTICLE 12, SECTION 3**

- D. The District is also attempting to remove contract language establishing class size maximums for special education classes. By their own admission, this action would not save much money. This is because the State funds Special Education on the basis of classroom units. The District is operating the same number of units for which it is receiving funding. Therefore, increasing the size of special education classes would not cause the District to reduce the number of classroom units for which it is funded because it is already at that number.

If LEP class size is increased from 20 to the regular class maximum (35 now, larger if the District's position on class sizes prevails), fewer LEP students will have to be served in regular classes, thereby relieving the burden of some regular class room teachers. However, our members understand this and still believe it is best to do a good job for those students we can serve properly than to participate in a farce. That would be the result of forcing teachers of LEP students to deal with classes of 35 or more. The Union, however, is willing to compromise. We will agree to raise the maximum to 25. **ARTICLE 12, SECTION 12**

Recommendation

Accept District position.

Discussion

The critical need to reduce spending requires that RUSD have maximum flexibility in scheduling the duration and size of classes.

STAFFING RATIO CORRECTIONS

Article 12 and Article 30 (UTR Contract)

District Position and Discussion

Remove the contract language which currently dictates the staffing structure of many of the District educational and support programs.

Remove contract language regarding the specific allocation of counselors. (Article 12, Section 6).

Remove contract language regarding the allocation of elementary music teachers. (Article 12, Section 8).

Remove contract language regarding the assignment of Speech and Language Specialists. (Article 12, Section 9).

Remove contract language regarding the allocation and assignment of librarians and library paraprofessionals and library assistants. (Article 12, Sections 10 and 11).

Modify the contract language to indicate that the District would not be required to assign a specific number of School Psychologists or Nurses in the District. (Article 30, Sections 1 and 2).

Each year the board of education and the community must review the educational program of the District and decide what the priorities will be for the following school year. This is normally part of the annual budget process. Under the current contract, many of these decisions are hindered by specific requirements as to the number of personnel which must be assigned to various programs. The board of education and the community should not be placed in a position where they cannot establish these priorities on an annual basis.

#### UTR Position and Discussion

- A. There are two issues relating to counselors. The first is the assignment ratio for 1991-92; the second is whether the Contract will include any case load language at all. UTR opposes District attempts to remove assignment ratios from the contract. We have had these for years, and they are every bit as important to counselors as class size language is to classroom teachers.

We have indicated a willingness to compromise on the exact numbers which would be required for 1991-92. To signal this, the Union proposed to increase the ratio to 600-1 for senior high school counselors and 300-1 for junior high school counselors. The current contractual ratios are 500-1 and 270-1, respectively.  
ARTICLE 12, SECTION 6

The Union has also proposed language establishing an average caseload of 55 for Speech and Language Specialists. ARTICLE 12, SECTION 9

- B. It is not necessary to delete language establishing assignment factors for elementary music teachers. The District is not eliminating all of these teachers. The language merely sets forth the factors to be used in making assignments. It does not specify a particular number. There is no reason to delete this reference from the Contract.  
ARTICLE 12, SECTION 8



- C. Unlike the language which applies to music teachers, the assignment criteria in the UTR contract for both nurses and psychologists does result in a requirement for specific numbers of these positions.

The District, therefore, seeks to add a clause to the existing language which would absolve it of the responsibility to do so.

The number of nurses and psychologists has a direct impact on the workload and class make-up of regular classroom teachers. This is especially true because these people are an integral part of the assessment process for Special Education placement. The Union, therefore, fought long and hard to secure contract language and implementation formulas which would guide the number of these support persons.

We are not willing to agree to the District's position. However, we are willing to compromise on the number of nurses and psychologists the District is to assign. Our proposal is to reduce staff for 1991-92 by attrition. We are willing to re-write implementation documents to accommodate the reduction.  
**ARTICLE 30, SECTIONS 1 AND 2**

- D. The Union opposes the removal of Contract language. The number of librarians clearly affects the work load of the staff and the language in question has existed for 14 years.

The Union is willing, however, to incorporate the proposed staffing model for librarians and paraprofessionals into the contract for 1991-92, provided the District agrees to restore the reduced positions in 1992-93 and provided they agree to our proposal on Article 10, Section 18. **ARTICLE 12, SECTION 10**

- E. The District has laid off over 500 teachers, nurses, counselors, psychologists and other unit members. UTR is concerned that, while the District claims it does not intend to require remaining unit members to increase their workload to provide the same level of services, no written assurance exists. The Union, therefore, is seeking contract language to this effect. Our proposal to substitute a statement of this intent for an obsolete section (18) of Article 10 is not unreasonable in light of District pronouncements.

For ARTICLE 10, Section 18: SUBSTITUTE: "The District and Union agree that staff reductions implemented beginning in 1991-92 are not to result in an increase in the workload of remaining employees."

Recommendation

Accept District position regarding staffing ratio corrections.

TEACHER DISPLACEMENT/WORKSPACE

UTR Position and Discussion

The District shall not implement new programs at any school if such implementation will displace a unit member from his/her workspace unless such displacement will result in an improvement in the unit member's workspace. This provision shall also apply to school libraries and teacher lounges/workrooms.

During the past few years, the District's System For Choice program created a number of new classroom uses in schools which were already overcrowded. This resulted in many unit members having to set up shop in areas such as closets and anterooms. Many of these spaces were poorly ventilated and were never intended to be used for instructional purposes. For instance, at one school, speech therapists, nurses and psychologists were forced to see children in what was little more than a hallway, because their room was commandeered for a photography lab. **ARTICLE 12, Section (NEW)**

RUSD Position

Reject UTR position.

Recommendation

Accept UTR proposal for new language in Article 12.  
No displacement unless improvement in workspace.

## VOLUNTEERS AND OBSERVERS/SUBCONTRACTING

Article 10, Section 16; Article 31 (UTR Contract)  
Article 22 (Local #1 Contract)  
Article 31 (UTR Contract)

### District Position and Discussion

The District has proposed language changes in both contracts which would remove barriers to involving those parents and community members who wish to donate their services to the District. The proposal also addresses parents and observers in the classroom.

There are many parents and community members who wish to donate their time and energy to help the schools. It is important that the District is able to work with these volunteers and allow them to donate their services which will benefit the entire school community.

### UTR AND LOCAL #1 Position and Discussion

The current contract allows teachers to refuse to accept certain volunteer workers or observers in their classrooms. Parents of their students are excepted from this provision.

This language allows teachers to control both classroom interruptions as well as those volunteers who mean well but who end up making additional work for them. Since teachers are responsible for what happens in a classroom they should have some control over who works with them.

The District proposes to delete this language which has existed for over 10 years. **ARTICLE 10, SECTION 16**

UTR has proposed to add language to the article on subcontracting, stating that employees who have been laid off are considered "available" to perform services.

The Union does not believe the District can meet various state mandates and requirements with remaining staff. In order to protect the rights of laid off teachers and the integrity of the Union we have proposed to add laid off teachers to the definition of unit member for purposes of interpreting this article only.

The Local #1 position is that this section shall be maintained as in current contract, with the understanding that all existing side letter agreements and practices by both parties shall be continued.

Recommendation

Maintain current contract language.

Discussion

During the factfinding hearing, Local #1 and UTR expressed concern that use of volunteers could cause a reduction of workdays or displacement of unit members. However, both Unions also expressed a willingness to not preclude the District from using volunteers for mutually agreed to purposes.

LEAVES OF ABSENCE (UTR Contract)

District Position and Discussion

The District has proposed to modify the contract language to provide for the granting of sabbatical leaves to be at the discretion of the District. In response to a Union proposal, the District has proposed that in 1992-93 only, up to 12 sabbatical leaves would be granted, giving those employees who have already applied for such leave (during 1990-91) first preference. (Section 17).

The District has proposed to remove the language in the contract which requires the District to budget at least \$25,000 per year for General Fund substitute costs for Inservice and Professional Leave. (Section 20.6).

The District has been cutting programs for 1991-92 to reduce the impact on the General Fund. The District is willing to look ahead to 1992-93 to fund sabbatical leaves that were canceled for 1991-92, however, the District cannot afford to continue to commit unknown revenues to sabbatical leaves in future years, since available money must first go to programs and current employee issues.

The District must cut back on all programs for 1991-92. It would not be prudent to continue to earmark \$25,000 specifically for Inservice and Professional Leave when there are other program needs built into the budget.

#### UTR Position and Discussion

- A. Add 2 days to leave allowed for a death in the family. Since the leave is for a specific purpose, the District can be assured that cost implications are slight. Teachers, however, would appreciate knowing the additional leave is available. **ARTICLE 13, SECTION 2**
- B. The Union also proposes to increase paternity leave by 4 days. **ARTICLE 13, SECTION 12.5**
- C. The Union wishes to add 4 days of paid leave to the single day available to teachers who adopt children. **ARTICLE 13, SECTION 12.6**
- D. The California Education Code allows the use of "any" days of sick leave for personal necessity. While the issue of whether a limit on the total number of days an employee may use in a year may be unclear, there is no doubt that advance approval is not required. The Union does not propose to increase the number of days available, but it does propose to remove the requirement to secure advance permission for 3 of them. **ARTICLE 13, SECTION 15**
- E. The District wishes to delete language guaranteeing the availability of 12 sabbatical leaves per year.

Sabbatical leaves are a benefit to teachers. While most of them cannot afford to take a year off for travel or study for half pay, many believe they will be able to do so "some day." However, the District also gains a better teacher in one who returns from a sabbatical. That is why such teachers must agree to work in the District for at least 2 years after returning from leave.

Finally, the cost to the District for this provision is modest. Although one need only accumulate 7 years seniority to apply for a sabbatical, in most years, the competition is such that only those teachers high on the salary schedule receive these leaves. They are replaced for the year by temporary teachers who tend to be at or near entry level salary. Thus much of the "cost" of paying half salary for sabbatical recipients is offset by the reduction in salary expenditures for replacements. That leaves the fringe benefit package as the major unrecovered cost. At \$4,200 per teacher (1991-92 actual cost), the District would expend approximately \$50,000 extra for health benefits for sabbatical recipients.

The Union's proposal in this area would require the District to award the leaves it was previously required to grant. In addition, as a gesture of good faith, we have offered to reduce the required number of leaves for next year to 10.  
**ARTICLE 13, SECTION 17**

- F. For a number of years, the UTR Contract contained provisions for Professional and Inservice leaves. While slightly different, both of these leaves were designed to assist teachers in enhancing their abilities to perform. They were totally permissive.

The District, however, consistently denied requests for leave in these areas, citing in their denial that there was "no budget for substitutes." The Union, therefore, sought and finally secured \$25,000 to be budgeted for Professional Leave and Inservice Leave. This was done in the current contract which was negotiated in 1989.

The amount of money involved is very small. The payoff to the District of having more competent teachers in these stressful times is great. **ARTICLE 13, SECTION 20.6**

#### Panel Recommendations

Article 13, Section 2

Accept UTR position. Add 2 days to bereavement leave.

Article 13, Section 12.5

Increase paternity leave by 2 days.

Article 13, Section 12.6  
Provide 2 days to adopt children.

Article 13, Section 15, Personnel Necessity Leave.  
The employee shall notify his/her principal in advance.  
When there is no opportunity to give advance notice,  
verification documentation must be provided, if available.

Article 13, Sections 17  
Accept UTR position on number of Sabbatical Leaves.

Article 13, Section 20  
Accept UTR position. Maintain contract language re \$25,000  
to be budgeted for Professional Leave and Inservice Leave.

**EXPENSE CLAIM**

Article 18 (Local #1 Contract)

**Union Position**

**Section 3.2 Damages to Personal Effects:** Local #1 modifies its  
prior proposal to provide for coverage of all vandalism and theft  
from school property at the current maximum rate of \$400.

**District Position**

Reject Local #1's proposal.

**Recommendation**

Renumber current Section 3.2 to read Section 3.2.a. Add a  
provision numbered Section 3.2.b to read as follows: The  
Governing Board shall reimburse employees for vandalism and theft  
from school property at the maximum rate of \$200.

VIOLENCE PRONE STUDENTS

Article 19, Section 13 (UTR Contract)

Union Position

Add: "In the event the teacher involved determines that this section has been violated and so notifies the principal, the student shall be immediately removed from the class."

The District is required to notify teachers when students who have exhibited violent behavior are assigned to their classes. Parents who have threatened or assaulted staff are also covered by this provision.

Through the years, the Union has found numerous instances where this provision has been violated. Grievances are filed, of course, but it is difficult to secure anything other than an apology after the fact.

UTR, therefore, proposes that an enforcement mechanism be added to the language in question which would require the District to remove the student in question when it is ascertained that proper notification has not occurred.

District Position

Reject UTR position.

Recommendation

Maintain current language.



## SALARY ADJUSTMENT

Article 23 and 24 (UTR Contract)  
Article 16 (Local #1 Contract)

### District Position and Discussion

The District has proposed to reduce all 1990-91 salary schedules, longevity schedules and extra duty pay schedules, by 9.0%, effective July 1, 1991.

The District has proposed a change in the Local #1 contract which would require an employee to be in paid status at least 50% of a month in order to receive a monthly longevity amount.

The District faces an extreme budget problem for 1991-92, due to circumstances discussed in the introduction. Salary increases of 7% and 9% over the past two years have far exceeded the revenue that has come into the District. (See Exhibit 10). The District has attempted to minimize its proposal of a salary decrease by reducing the educational programs to a minimum level. The District, however, must still propose this reduction in order to bring the budget into balance.

The issue of longevity is an issue of equity. Currently, an employee can receive a monthly longevity allowance for working only one day. It would appear to be appropriate for the employee to have worked at least one half of the month in order to receive a full month's allowance.

### UTR and Local #1 Position and Discussion

We are willing to agree to a deferral of a portion of salaries due in 1991-92. We propose a reduction of 5%, effective August 1, 1991. On January 1, 1992, 2% of this reduction would be restored, effective on that date. This would give the District some time to track its expenditures in the first few months of school. Then, effective July 1, 1992, 3% more would be restored to the salary schedule.

While we understand that the District has a significant financial problem, there is a limit to how much of the burden for solving it should be absorbed by employees who had so little to do with creating it.

Section 6 Longevity: Local #1 will agree to the following language: "To be eligible for the longevity payment, an employee must work at least three days in the month it is paid."

#### Recommendation

Reduce salary, longevity and extra duty pay schedules, by 9%, effective September 1, 1991. Reopen negotiations for 1992-93 salary schedules, longevity schedules and extra duty pay schedules.

Modify Article 16, Section 6 (Local #1 Contract) as follows: To be eligible for the longevity payment, an employee must work at least five days in the month it is paid.

#### Discussion

RUSD indebtedness is approximately 60 million dollars. Moreover, notwithstanding bankruptcy proceedings, the District must begin making installment payments on the State of California loans (\$9.5 and \$19 million = \$28.5 million dollars). Based on the cost of a 1% increase in salaries (\$768,402, District Exhibit 25), a 9% reduction in salaries would result in a total savings of approximately \$6.9 million dollars. However, the \$6.9 million does not include the cost of driven benefits. Further, the projected budget data for 1991-92 shows a \$652,265 deficit.

Substantial evidence was presented regarding District inability to pay and, under Section 3548.2 (3) of the Rodda Act, the factfinders must consider the financial ability of the public school employer. A 9% reduction in salary, longevity and extra duty pay schedules will begin the process of restoring fiscal responsibility in the Richmond Unified School District.

#### FRINGE BENEFITS FOR CURRENT EMPLOYEES

Article 25 (UTR Contract)  
Article 15 (Local #1 Contract)

#### District Position and Discussion

Place a monthly dollar limit contribution by the District in the contract (\$328.67 has been used as an estimate until final premium amounts are determined. The actual dollar amount will correspond to the highest premium among these four HMO plans). An eligible employee would have to pay any excess above this amount in order to participate in the plan. There would be new language in the contract to determine how a part-time certificated employee's contribution would be determined.

The District has proposed to place a monthly dollar limit contribution by the District in the contract for dental insurance also. The actual dollar amount would equal the 1991-92 premium amount of the dental plan selected by the parties. Eligible employees would be required to pay any excess above this amount in order to participate in the plan.

The District and the Unions have historically worked through a joint benefit committee to review options in the area of health and welfare benefits. These parties have spent much time exploring new HMO plans for both employees and retirees. The District proposal to place a dollar amount contribution in the contract is an attempt to make employees aware of the cost of these benefits, encourage them to make wise decisions when electing their insurance plan and to make insurance companies aware of the limitations so that they will seriously consider the impact on the District and employees prior to raising premiums each year. The District is prepared, as discussed through the joint benefit committee, to implement these new plans on October 1, 1991.

#### Unions Position

Reject changes in dental and vision plans.

Tax-Sheltered Annuity: Increase from \$50 per month to \$75.

#### Recommendation

No cap on medical or dental premiums.

Provide employees the Elder option (AB 265) to buy into Social Security. The date of election of that option is to be determined by the parties.

No change in \$50 per month tax sheltered annuity program in Article 15, Section 1 of Local #1 Contract.

## BENEFITS FOR RETIREES

Article 25 (UTR Contract)  
Article 15 (Local #1 Contract)

### District Position and Discussion

The District has proposed that employees retiring after July 1, 1991 shall be eligible for benefits until they reach the age of 65 years, rather than for life, as is the current practice. This would not affect any current retired employees.

Currently, the District is paying out over \$4.5 million each year to retired employees in the form of lifetime medical and dental premiums for the retired employees and their spouses. This represents about 4% of the General Fund budget. Each year this amount grows, due to the additional numbers of retirees and the increasing premium amounts of the insurance. It is imperative that something be done to bring this matter under control as it will increasingly cut into the limited revenues available for programs and for current employees. (See Exhibits 13, 33, 34 and 35).

### Unions Position and Discussion

We oppose elimination of retiree benefits even for those after age 65 as the District now proposes. The Union understands this is a costly program. It is a primary reason why RUSD teacher salaries do not compare favorably with those in other school districts.

If these benefits are eliminated, there will be absolutely no reason why teachers will want to work here. We know that salaries will become even more uncompetitive, and health benefits for active employees will become inferior.

Without the retiree program, Richmond will have nothing with which to retain and attract quality teachers.

Recommendation

Cap medical benefits at age 65 at the amount equal to the current payment on coordinated Medicare and HMO plans.

Discussion

As shown by the data, medical and dental premiums for current retirees and their spouses cost RUSD approximately 4.5 million dollars a year. The panel's recommendation provides medical payments for future retirees when they become 65 years old. The escalating cost of medical premiums requires some lessening of their impact on the District. That can best be achieved by capping the cost of benefits for future retirees at age 65. RUSD has agreed to continue the current practice of providing medical coverage for retirees who are less than 65 years old.

SUMMER SCHOOL SITES

UTR Position

**ARTICLE 37, ADD Section 2:**

**Summer school sites shall be rotated among all District schools.**

The Union still seeks to add language to the contract which would provide for a rotation of summer school sites. This is because there is a greatly increased workload for teachers whose rooms are to be used for summer school. All supplies and materials must be removed from the rooms hosting summer programs. Items must be packed, labeled and stored. If this is not done, summer school staff tends to use whatever it can find in their programs.

While all rooms must normally be cleaned up at the end of the regular school term, books, supplies and equipment do not have to be completely removed.

District Position

Maintain current contract language.

Recommendation

Reject the Union's proposal.

## PAYMENT FOR WRITING INDIVIDUAL EDUCATION PROGRAM (IEP) REPORTS

### District Position and Discussion

The District has proposed to discontinue the practice of paying Special Education teachers for time spent on writing IEP reports.

The District currently pays Special Education teachers money in addition to their annual salary for time spent on writing IEP reports. The District contends that such work is an integral part of their job, similar to the grading of papers for regular education teachers and as such they should not receive additional compensation.

### UTR Position and Discussion

Continue current practice.

The District has a long-standing practice of providing two days of released time to Special Education teachers for the purpose of writing the lengthy and comprehensive Individualized Instructional Plans (IEP's) required for each student. Teachers may choose to take the cost of a substitute for this and write the IEP's on their own time.

Writing IEP's is an extra task above and beyond the preparation of lessons required of all teachers. The process is very time-consuming.

Considering the undeserved economic penalty all RUSD teachers are being required to absorb in this contract, the Union sees no reason why Special Education teachers for special punishment.

### Recommendation

Accept the District's position. Discontinue the practice of paying Special Education teachers for time spent on writing IEP reports.

## STAFFING AND REASSIGNMENT OF CLASSIFIED POSITIONS

Supplement 1, Article 23 (Local #1 Contract)  
Supplement 4, Letter of Agreement (Local #1 Contract)

### District Position and Discussion

The District has proposed to remove the language regarding the reassignment of building maintenance and custodial and landscaping personnel which prohibits the District from reducing the staffing model, except by attrition. (Supplement 1, Article 23, Section 1).

The District has proposed to remove the language which requires the District to follow a specific staffing formula for Clerk Typist I personnel in elementary schools. (Supplement 4 ).

Both of these provisions restrict the District's ability to determine the specific program needs of the District and then make necessary adjustments. These provisions protect certain positions from being examined in light of necessary budget adjustments and require the District to look at cutting other programs.

### Local #1 Position

The District shall not reduce the overall staffing model of bargaining unit positions in any department, division or unit below that in existence July 1, 1991. Nothing in this provision shall be construed as preventing the District from restoring staffing in the bargaining unit above that level.

Supplement 1, Section 2: Modify to read: The Staffing model for building maintenance workers, custodial and landscaping and the maintenance department shall not be reduced. At the beginning...

Supplement 2 Paraprofessional Unit: The Union modifies its previous proposal to: The standard work hours for Instructional Aides, regular education shall be equivalent to three (3) hours per day/fifteen (15) hours per week, except for those employees currently working a greater number of hours. It is agreed that as those employees voluntarily "attrit", the positions may be reduced to the standard assigned hours. Special Education Aides: Local #1 rejects the District's proposal presented on July 19 and re-submits the last Local #1 proposal as presented on July 19 which was in response to several of the District's proposals presented at various times prior to that date.

Supplement 4: Office/Technical Unit: The Union rejects the District's proposal to delete this Letter of Agreement.

Recommendation

Accept paragraphs 2 and 4 of Local #1 position. Maintain current language and Side Letter on staffing and reassignment of building maintenance, custodial and landscaping personnel, and Clerk Typist I personnel in elementary schools. (Supplement 1, Article 23 and Supplement 4, Letter of Agreement).

Reject paragraph 1 of Local #1 proposal.

Reject paragraph 3 of Local #1 proposal.

ISSUANCE OF CONTRACTS WITHIN FIFTEEN DAYS OF EMPLOYMENT

Article 41, Section 1 (UTR Contract)

UTR Position and Discussion

ADD: "Individual contracts for temporary and probationary employees as well as tenure notification shall be issued no later than September 15 of each year or within 15 days of appointment, whichever is sooner."

UTR proposes that individual contracts of employment be issued to teachers within 15 days of their employment. This is not at all an unreasonable request.

The RUSD has become very careless on this issue. During the past few years, teachers have had to wait months to receive their contracts. If an error is made, such as a misclassification, many teachers are not aware of it until well into the year.

This problem is compounded by the fact that the District is in the habit of hiring all teachers initially as Temporary or even substitute employees, then changing their classifications later. Often, teachers receive a letter outlining their initial classification, but the District neglects to inform them of any change until they receive their contracts. Usually, this happens sometime during the second semester.

District Position

Maintain current language.

Recommendation

Accept the Union's proposal.



SPECIAL PROVISIONS, G/T & INTERNATIONAL STUDIES SCHOOLS

Article 48 (UTR Contract)

District Position

Delete Article 48, the Gifted and Talented & International Studies School provisions.

UTR Position and Discussion

The District proposes to delete this language because the programs involved are to be "reduced or eliminated." The District's own position indicates that the fate of these programs is still in doubt.

If there are no "G/T or International Studies" schools, then this language would not apply anyway. However, these special programs are popular in some school communities. It is possible that sometime during the term of the agreement such a program could be reestablished. In that case the language would apply.

If the District prevails, it could reinstate some of these programs and force the Union to renegotiate the provisions governing terms and conditions of employment for personnel assigned to them.

Since the District is not harmed by retaining the language but the Union could be harmed by deleting it, we feel the Article should remain.

Recommendation

Accept the District's proposal.

Discussion

The fiscal crisis requires that RUSD have maximum flexibility in scheduling the duration and size of classes.

## HARASSMENT

### UTR Proposal (New Provision)

Include the following language:

The Board will not tolerate harassment of District employees by any other employee of the District. Harassment is defined as any treatment of an employee which has the purpose or effect of affecting employment decisions concerning an individual, or unreasonably interfering with an individual's work performance, or creating an intimidating and hostile working environment. Such conduct includes but is not limited to unwelcome conduct of a sexual nature, arbitrary or capricious changes of assignments of an individual or of a particular sexual, racial, or minority group, or display of a hostile attitude (including but not limited to yelling, swearing and verbal abuse) toward an employee by a supervisor or other employee.

UTR proposes an addition to the Contract which would define harassment and set forth a code of conduct for employees to follow in dealing with each other. We admit this is a new area for teacher contracts. However, all of us are becoming more aware of issues related to harassment in the work place, especially sexual harassment.

Since the economic settlement in this District is to be adverse regardless of whose position prevails, it is not unreasonable to expect concessions from management on issues such as this.

### District Position

Reject UTR's proposal.

### Recommendation

Include the following language:

The Board will not tolerate harassment of District employees by any other employee of the District. Harassment is defined as unwelcome verbal or physical contact when:

A. Submission to or rejection of such conduct is made either explicitly or implicitly a term or condition of employment;

B. Submission to or rejection of such conduct by an individual is used as a basis for making personnel decisions affecting an employee; or

C. Such conduct has the purpose or effect of unreasonably interfering with an employee's performance or creating an intimidating, hostile, or offensive work environment.

## NON-DISCRIMINATION

### UTR Proposal (New Provision) and Discussion

The Board shall not discriminate against any unit member on the basis of race, color, creed, age, sex, national origin, political affiliation, domicile, marital status, sexual orientation, physical handicap, membership or participation in the activities of an employee organization.

Most teacher contracts contain a non-discrimination clause. In light of the current situation, it is not unreasonable for management to concede this issue.

### Recommendation

Accept UTR proposal.

## SITE-BASED/SHARED DECISION MAKING

### Local #1 Position and Discussion

The District has proposed to " continue to discuss" this matter. Local # 1 maintains its current proposal on this matter and sincerely requests that discussion on this issue "begin". (emphasis added)

### UTR Position and Discussion

During the past four years, RUSD elevated the concept of "top-down" management to new heights. Both parties agree that teachers and parents were systematically excluded from the so-called reform process which was taking place.

This management style was the antithesis of what has been taking place throughout the nation. Just like their counterparts in the private sector, school district managers are learning that the best reform is that which is developed by, or at least in conjunction with, the employees who must implement the plan.

As the RUSD rebuilds, it will be presented with an outstanding opportunity to not only enhance the educational process, but to make major changes in the way decisions are made. This is necessary because the "old" way has, clearly, not worked well.

The District has virtually ignored this Union proposal, choosing not to even make a counterproposal. Yet virtually all public pronouncements by the current administration include references to "de-centralized" authority and "site-based management."

The Union sees no benefit in de-centralizing decisionmaking without a concurrent process of empowering teachers to make meaningful decisions. In fact, we see teachers becoming even less influential if individual principals are allowed to impose programs and policies previously created at the central staff level.

At least the Union has some chance of successfully representing its members' interests with superintendents and school boards. If individual principals are allowed to set up their own programs it will be extremely difficult to represent members interests in some 60 different places.

The proposal the Union has made in this area is comprehensive, It provides for councils of teachers administrators parents and classified personnel at each site. These councils would have two tasks, if they choose to function. One of these tasks would be to develop policies on operational issues such as school discipline plans, supply allocations, even procedures governing use of the copy machine.

The second task involves the creation of reform arrangements which represent departures from the "norm." Since the collective bargaining agreement could be an impediment in some of these, the proposal provides a process for requesting waivers of certain provisions.

Because, it will always be necessary for some coordination to occur at the central level, the proposal calls for a joint committee to review and approve local site-based arrangements.

For many teachers the professionalism inherent in this proposal is as important as the salary they will receive next year. As is the case with other "language" proposals the Union has made this year, management must recognize that it cannot expect the Union to make significant, for us even revolutionary, concessions unless it is willing to reciprocate with means it has at its disposal.

Professionalizing RUSD teachers is one of those means.

District Position

Reject the Unions' proposals.

Recommendation

A reopener on site-based/shared decision making for 1992-93.

FLEXIBLE SCHEDULES FOR OFFICE/TECHNICAL UNIT

Union Position

Local #1 requests that discussion on this issue begin.

District Position

Reject Local #1's proposal.

Recommendation

Reject the Union's proposal.

STAFF DEVELOPMENT

UTR Proposal for New Article

Just as teachers need to be involved in the determination of educational goals and policies, they must have a say in the kind of staff development activities, workshops, etc. which will be offered to help implement those goals and policies.

The Union has fashioned an extensive proposal in this area. Management, however, has also ignored this item. They have never even bothered to explain why they oppose it.

Again, this is a meaningful concession the District can make to help offset the impact of an adverse economic settlement.

RUSD Position

Reject UTR position.

Recommendation

Reject UTR position

CONCLUSION

After full consideration of all of the evidence presented, the Factfinding Panel believes this Factfinding Report represents a sound basis for settlement of the impasse between the parties.



BARBARA BRIDGEWATER, J.D., Labor Arbitrator  
Chairperson



KENNETH F. HALL, School Services of California  
RUSD Panel Member  
My statement of concurrence and dissent is attached to this report.



CHUCK DAVIES, Ph.D., CTA Bargaining Specialist,  
Unions Panel Member  
My concurring and dissenting opinion is attached to this report.

Report Issued: August 28, 1991

**In the Matter of an Impasse**

**between**

**RICHMOND UNIFIED SCHOOL DISTRICT**

**and**

**UNITED TEACHERS OF RICHMOND, CTA/NEA**

**and**

**PUBLIC EMPLOYEES UNION, LOCAL #1**

**FACTFINDING REPORT**

**Re:**

SF-F-243, M-1740 (R-37A)

SF-F-244, M-1741 (R-37B)

SF-F-245, M-1742 (R-37C)

SF-F-246, M-1743 (R-37D)

SF-F-247, M-1744 (R-55)

**CONCURRENCE AND DISSENT OF DISTRICT APPOINTED REPRESENTATIVE:**

The District has clearly and convincingly described a tragic fiscal crisis facing Richmond Unified School District. The recommendations of the Chairman of the panel are supported by the testimony of the parties. I concur with all recommendations of the Chairman, except one, as indicated below.

The Chairman recommends that the District continue its current practice of providing 100 minutes of weekly preparation time for teachers of grades 4-6 (Article 10, Section 6). The Chairman's recommendation would increase the budget of the District in the 1991-92 fiscal year by approximately \$925,000. As indicated by the Chairman, the District already faces a current year deficit of \$652,265. It is highly inappropriate to increase the deficit of the District to levels in excess of \$1.5 million to provide this preparation time.

Except, however, for the single item noted above, I respectively concur in the Chairman's recommendations.



**KENNETH F. HALL**

District Appointed Panel Member

CHARLES J. DAVIES  
CALIFORNIA TEACHERS ASSOCIATION  
BARGAINING SPECIALIST  
2177 Diamond Blvd., Suite 1  
Concord, CA. 94520  
Telephone (415) 676-2822

Panel Member for the Unions

IN THE MATTER OF THE FACTFINDING  
BETWEEN

THE UNITED TEACHERS OF RICHMOND, CTA/NEA  
and  
PUBLIC EMPLOYEES UNION, LOCAL #1

and

THE RICHMOND UNIFIED SCHOOL DISTRICT

SF-F-243, M-1740 (R-37A)  
SF-F-244, M-1741 (R-37B)  
SF-F-245, M-1742 (R-37C)  
SF-F-246, M-1743 (R-37D)  
SF-F-247, M-1744 (R-55)

CONCURRING AND DISSENTING OPINION OF  
UNIONS' PANEL MEMBER

August 26, 1991



## INTRODUCTION

The current Factfinding proceedings between the UTR/Local 1 and the Richmond Unified School district are unique not only in the legal history underpinning the negotiation/impasse process and the bankruptcy proceedings in federal court, but also in a question of the legitimacy of the current administration of the school district with whom the unions have been required to negotiate. Because these matters are intertwined and are material to the recommendations of the panel and, indeed, may have impact on the enforceability of any final agreement, they will be addressed at length below.

### THE SUPT. OF PUBLIC INSTRUCTION AND THE SCHOOL BOARD

For all practical purposes, the Richmond Unified School District has ceased to exist in any legally recognizable form. The road the district followed to reach this end is well known.

The district's budgetary problems seemed to begin with the employment of Superintendent Walter Marks in July of 1987 and his initiation of a "System for Choice" shortly thereafter. Danger signals appeared in May of 1988 when the District issued \$14.3 million dollars in Certificates of Participation<sup>1</sup>, 9.8 million in cash with the rest in interest, to finance general operations. This money was apparently used to fund the district's deficit for 1988-89.

The chronology of the district's budgetary problems continued through 1989/90 when the district required an emergency state loan<sup>2</sup> to balance its books for the 1989/90 fiscal year. Along with the loan, however, the district was forced to accept (and pay the salary of) a state trustee who, as in prior state loans to other districts, would have statutory power to veto any action of the school board that would affect the financial condition of the district. The trustee, in fact, operated to protect the state's money. Dr. Fred Stewart was appointed to this position by Bill Honig, State Superintendent of Public Instruction.

In November of 1990, the school board "bought out" the remainder of Superintendent Marks' contract and shortly thereafter applied for another emergency loan to continue the operation of the school district for fiscal year 1990/91.<sup>3</sup> This loan did not materialize, and, throughout the early spring the district paid its employees through advance apportionment from the county and state of funds due for fiscal 1990/91.

---

<sup>1</sup>Except for recent history in Oakland, Certificates of Participation are normally issued to finance capital improvements.

<sup>2</sup>AB 171. The district had originally asked for 14 million.

<sup>3</sup>Gov. Wilson threatened to veto legislation implementing this loan unless the legislation also contained a rescission of Collective Bargaining between the district and its employee unions for the term of the loan.

Having exhausted the potential of further advance apportionment, the school board filed for Chapter Nine bankruptcy on April 18, 1991. And finally, after it became clear that the board would not be able to meet the May payroll, it voted to close the schools effective May 1, 1991.

Upon the school board's vote to close the schools, both the California Teachers Association (UTR's parent organization) and a group of Richmond parents filed separate legal actions to prevent school closure. The parent's suit reached the Contra Costa Superior Court first.<sup>4</sup> The parents' suit sought injunctive relief from the court to keep the schools open. The suit filed by the CTA<sup>5</sup>, and covering broader grounds than the parents' suit, is still pending.

In her order granting the parents' request for injunctive relief, Superior Court Judge Ellen James ordered:

"... the State and Bill Honig, the Superintendent of Public Instruction, to insure that the students of the Richmond Unified School District are not deprived of six weeks of public education while others within the state are not so deprived. How these defendants accomplish this is up to the discretion of the defendants ...."

In pertinent part Judge James based her decision on the following legal premise:

"The law is clear that the responsibility of the State goes beyond merely providing an equal level of funding to all districts. If the District is unable to carry out the State's mandate to provide a public education basically equivalent to the education being provided in the rest of the State, the burden falls back on the State to remedy the situation. Deprivation of education in the Richmond Unified School District is constitutionally unequal education. The State does not argue to the contrary." (emphasis supplied).

Upon the issuance of Judge James' order for injunctive relief as well as her action on the parents' basic suit, the State of California appealed directly to the California Supreme Court. The Court, however, declined to overturn the order for injunctive relief to keep the schools open.

---

<sup>4</sup>*Thomas K. Butt, et al. vs. Richmond Unified School District Board of Education [and the] State of California; Superior Court Action No. C91-01645.*

<sup>5</sup>*Dragos v. Honig, No. 91-01753.*

Two court orders flowed from Judge James' decision. The first, prepared by the parents' counsel, ordered Honig and the State to keep the schools open. The second order was prepared by Honig's attorneys and signed by the Judge. That order provided, among other things, that:

**"The Superintendent of Public Instruction has broad powers under Education Code Section 33112(a) to 'superintend the schools of this state'. Because of the ultimate responsibility of the State to provide every California student with an equal public education, the Superintendent of Public Instruction, under the unique financial conditions presented in the instant case, has authority to relieve the Richmond Unified School District governing board of its legal duties and powers, appoint a trustee, develop a recovery plan and, subject to the approval of the Controller, develop (sic) a repayment plan on the district's behalf as necessary to ensure the operation of the schools through June 14, 1991, the financial recovery of the district, and the protection of state funds loaned to the district." (emphasis supplied).**

By this order, the circle was completed. Bill Honig reappointed Fred Stewart trustee pursuant to the order - but with greatly increased powers. In effect, Honig and Stewart became the school board. Stewart was empowered to do everything a normal district administration as well as a school board would do - including the district's part of collective bargaining with its employee unions.

Now, through normal procedures of law and not through the separate agreement mentioned by the Chairperson and included as her Exhibit 6, the impasse procedures are coming to an end. In the event that no agreement is reached between the unions and the district and a second impasse is reached after the issuance of this Factfinding report, the "district" may impose work rules as provided under the EERA. The "district", however, will not be the school board but in fact will be the team of Bill Honig and Fred Stewart.

#### **THE TRUSTEE AND BANKRUPTCY**

As mentioned above, the Richmond Unified School District Board of Education filed for Chapter 9 bankruptcy in federal court on April 18, 1991. So called "Chapter 9 bankruptcy" is a provision of Federal Statutes under which public entities (school districts in this case) can seek protection from their creditors and continue to operate with their debt restructured by the court. The theory of the federal statute is to protect the public entity and to permit it to continue to operate free from coercion by its creditors.

In the body of my dissent on economic matters, I will develop my rationale for rejection of the district's offer on salary. Suffice it to say here, however, that the principal district creditor is the State of California. Moreover, recognize that federal bankruptcy law is pre-emptive of state law. With this in mind, I will leave it to the reader to interpret the following news report on actions taken by Mr. Honig's trustee, Dr. Fred Stewart who is now both administrator and school board for the Richmond Unified School District:

"SAN PABLO - Richmond Unified School District today will seek to have its four-month-old bankruptcy case dismissed, state-appointed administrator Fred Stewart announced Wednesday night.

"....The district continued bankruptcy proceedings to try to restructure its debt of more than \$50 million with some of its creditors outside the court, using bankruptcy filing as a lever to bring those creditors to the negotiating table.

"....With the state being the district's largest creditor, 'we're taking the decision out of bankruptcy court and putting it in the hands of the state?' parent Renee Offeman asked."<sup>6</sup>

#### THE "SYSTEM FOR CHOICE" AND BANKRUPTCY

The Contra Costa County Grand Jury found, among other things, that ".... 4. The RUSD Superintendent [Marks] utilized unsound management practices and unjustified budgeting techniques to advance his program...."<sup>7</sup> Most teachers, as well as this panel member, would have no quarrel with this conclusion. The System for Choice was too expensive for the school district and operationally wasteful of the district's resources. There is no doubt that this program bankrupted the district and produced the present crisis. But is this the whole story? I think not.

Were we to accept the conclusion that all of the district's financial problems flow from the "System for Choice" and that without it Richmond finances and its educational program would be adequate to the challenges of urban education, we would be sadly mistaken. The "System for Choice" clearly pushed us over the edge, but Richmond - as well as most urban school districts in California - was in trouble long before its former Superintendent appeared. It is frankly more

---

<sup>6</sup>*West County Times*, "Richmond district wants its bankruptcy case ended," August 15, 1991

<sup>7</sup>*Contra Costa County Grand Jury Report No. 9109, "The Financial Affairs of the Richmond Unified School District, May 29, 1991*

expensive to educate an urban student from an economically disadvantaged environment than it is to educate a student from the wealthier suburbs in Contra Costa County. State funding for urban districts does not take this disparity into account. The motives of the "System for Choice" were to provide a compensatory educational program for an urban school district. And those motives, at least were consistent with Judge James' recent decision.

Up until the time of Judge James' decision in Butts et al equal educational opportunity was defined by the landmark decision of the California Supreme Court in Serrano v. Priest<sup>8</sup>. In that decision, the Court found that the then current method of funding public education based on the wealth of local school districts was in violation of the equal protection rights of students in low wealth districts. The court essentially based its decision on a dollars per student basis - assuming that if approximately equal dollars were spent per student throughout the state, equal educational opportunity would result.

School funding legislation - driven by the Serrano decision - went through a series of permutations involving a "squeeze" of COLAs for high wealth school districts and an equalization of revenue limits in low wealth districts in the years following Serrano.

In 1982, Serrano was refiled in Los Angeles Superior Court. The plaintiffs asserted that despite all state attempts to "squeeze" and equalize dollars for wealthy and poor school districts, respectively, California school finance was still not in compliance with the original Serrano decision.

The Superior Court found otherwise ruling that Serrano was essentially complied with and that 93.2% of school districts were funded within a band of \$200 per ADA. The Court found that inasmuch as only 6.8% of students fell outside that band, both above and below it, "that the allowable range was not a significant disparity," and that the constitutional requirement of Serrano was satisfied.<sup>9</sup>

In Butts et al, the Court went well beyond Serrano. It distinguished between the equal money per ADA theory of Serrano and went to a broader standard of "...basically equivalent [education] ... being provided in the rest of the state." Although the basis of the Court's decision was based on the number of days provided to the students of the Richmond Unified School District, it is not a great stretch to apply the equivalent education theory to the differing costs and needs of students in the disparate school districts throughout California.

---

<sup>8</sup>Serrano v. Priest (1976) 18 Cal. 3rd. 728

<sup>9</sup>Serrano v. Priest, Memorandum of Decision, April 28, 1983

In the remainder of this recommendation, I will try to reconcile Judge James' order providing

**"....The law is clear that the responsibility of the State goes beyond merely providing an equal level of funding to all districts. If the District is unable to carry out the State's mandate to provide a public education basically equivalent to the education being provided in the rest of the state, the burden falls back on the State to remedy the situation...."<sup>10</sup>**

with the district's (read that, the state's) plans to reduce significantly the program well below levels existing before the "System for Choice" and to cut employees salaries and benefits to a level that will force many valuable employees to seek employment elsewhere.

---

<sup>10</sup>*Butt et al, op cite*

## DISCUSSION AND RECOMMENDATIONS OF THE PANEL ON SPECIFIC ISSUES

In general, the neutral Chairperson has structured her recommendations in the form and order of the current agreements between the unions and the school district. Where there are distinctions between proposals and/or recommendations for UTR and Local #1, she has distinguished them.

In my concurrence/dissent, I will group my recommendations into broader categories than the specific sections of the two contracts and not necessarily follow the order of the Chairperson's recommendations.

### SALARY ADJUSTMENT

Article 23 and 24 (UTR Contract)  
Article 16 (Local #1 Contract)

#### Recommendation

The Chairperson has largely accepted the District's proposals on Salary. Except as explicitly set forth below, I dissent from the Chairperson's recommendations.

#### Discussion

Negotiations and impasse between the parties regarding salary are unique.

Never, in my twenty-five years of experience in Public Sector negotiations have I observed school employees' unions actually **proposing** cuts in salary. Such proposals from employee unions would normally be considered unthinkable. Since the end of World War II, unions, both in the public and private sectors, have had to fight to increase salaries in order to keep up with the ever escalating cost of living. While the percentage increases have slowed since the double digit figures of the Seventies, they are still increasing.

In past Factfindings, teacher unions have presented data showing the escalating curve of the cost of living as reported by the Bureau of Labor Statistics and compared it to percentage increases in their compensation - the difference between the two curves demonstrating the erosion of compensation. As a matter of fact, the EERA (the Government code Sections under which these Factfinding proceedings have been conducted) directs the panel to consider cost of living as one of the bases of its recommendations. While neither this panel nor its Chairperson have considered cost of living, the reader should recognize that any proposed decrease in salaries is amplified by a gradually increasing cost of living.

Notwithstanding the foregoing, UTR and Local #1 have proposed decreases in salaries because both unions recognize that the school district's present financial condition will not permit the normal and necessary increases in salary to compensate for continuing increases in cost of living.

The unions have faced the current reality. The problem, and the basic reason for my dissent, is that Mr. Honig and his administrator have not. They ask too much and they go too far. Consider the following:

District Income for 1991/92: The district has cast its 1991/92 budget on several assumptions which have the effect of minimizing district income and exaggerating district expenditure.

With respect to income, the district forecasts no ADA growth for 1991/92 - even though its own figures indicate an average 3% growth for the past several years. The district asserts that the bad publicity RUSD has suffered for the past several months will motivate parents to remove their children from the Public Schools and send them to private schools. District representatives had no answer to the unions' counterargument that, because of the growing recession, parents would likely tend avoid private school tuition and return students previously removed from the public schools - thereby increasing rather than decreasing RUSD ADA.

The district's only argument in support of its no growth prediction was the rhetorical one outlined above and that "it wanted to be conservative." No data were presented, no demographic studies were done. The district presented nothing to the panel on this point except conjecture.

On the other hand, the unions presented the district's own P2 ADA reports<sup>11</sup> which show a surge of ADA growth in the elementary schools beginning in 1984/85 and a major upward spike in high school ADA in 1990/91. The unions went further. Employing the district's P2 reports for the past twenty years - from 1970/71 through 1990/91, the unions performed a *quadratic regression analysis*<sup>12</sup> on the data. The unions' analysis demonstrated an accelerating ADA increase through 1994/95 with total ADA rising from a current 31,017 to a 1994/95 prediction of 35,294. It is likely that the final prediction of 35,294 is quite conservative. This is because the high school figures showed a decline until 1989/90 when high school ADA reversed with a final dramatic spike in 1990/91. The statistical methods employed did not relate elementary ADA increases to high school ADA and therefore did not "believe that the high school figure was real".

Growth ADA, which will clearly occur in 1991/92 and thereafter, will provide significantly greater income than is forecast by the district. Only a portion of that income, probably as little as a third will be necessary to provide program for the additional students.

---

<sup>11</sup>A school district report of average daily attendance (ADA) submitted to the state as of April 15 of each fiscal year.

<sup>12</sup>An elementary statistical technique designed to project population trends. These techniques are standard and are used by many school districts to forecast future ADA.



In addition to its purposely low forecast of ADA for 1991/92, the district conveniently forgot about a possible positive beginning balance for 1991/92 from unexpended 1990/91 funds.

Consider that the district's current 1991/92 budget projections are the result of months of study by highly competent employees from the California Department of Education and the State Controller's Office and was based on an anticipated 1990/91 COLA of 3%. Consider also that the \$19 million dollar loan previously cited and negotiated between the Controller's Office and the CDE and was supposed to bring the district's books to a zero balance for 1990/91. Consider further that this conclusion was made by these highly competent people as late a May 2, 1991, the date of the loan agreement. Then what happened?

After May 2nd, and after the 1991/92 budget was cast on an assumed 3% 1990/91 COLA with a zero ending balance for that fiscal year, the state announced that the 1990/91 COLA had been underestimated and that the true 1990/91 COLA would be 3.7827296%.<sup>13</sup> Well, hooray, you say. The ending balance will not be zero. It will be positive, and the district will have more money for 1991/92 than it had thought.

Would you be surprised to hear that this simple, straight forward conclusion was wrong? The district got its experts together and announced that the 1990/91 books and fund balances would not be closed until September 15, 1991. This is the same day as the final adoption for the 1991/92 budget and a time by which a contract with the unions will have been negotiated or the Honig/Stewart last best offer has been imposed upon Richmond employees. When asked only to speculate on the possible 1990/91 ending balances, the district's experts murmured something about "unanticipated expenses".

District Expenditures for 1991/92: The district cast its 1991/92 budget on an anticipated 1991/92 cost per employee. Clearly, the public are schools labor intensive and employee costs make up the largest part of the district's budget. The district reported that the percentage of its budget devoted to all salaries, including certificated and classified administrators, amounted to 75.18%. Clearly, then, a reliable figure for predicting cost per employee would be vital to casting the 1991/92 budget.

Throughout most of the negotiations, I sat as a consultant to the UTR and Local #1 bargaining teams and I made it my special project to work with district representatives in coming to a good projection of the 1991/92 per employee cost. Since 1991/92 had not yet begun, I began by asking for a scattergram of certificated unit employees by step and column and by their percentage of employment (FTE). I had intended thereafter to make the same request for the classified units.

---

<sup>13</sup>This announcement, along with the elegant computation of seven "significant figures" was made by School Services of California whose President sits as the district's representative on this panel.

The theory shared by the district representatives and me was that in order to have an accurate breakdown of the mean employee cost for 1991/92, we needed an accurate 1990/91 scattergram. From that scattergram, we would "back out" the cost of unit members whom we knew would be layed off; back out the costs of employees resigning and/or retiring for 1991/92; then added the cost of employees recalled from lay-off and compensated for employees returning from and taking leaves of absence for 1991/92. Then if we did all these things and then advanced the projected bargaining unit by step and column for 1991/92, we could come to the average cost per employee.

In furtherance of this project, I even offered to create a special data base computer program, with the assistance of CTA, so as to be able to project the specific individuals and their salaries who would be layed off for 91/92. This project was quickly abandoned because the district did not have a complete and accurate record of the certificated employees credentials! So much for that effort; however, we attempted to forge ahead. After some effort, the district produced a teacher scattergram dated March 3, 1991. I entered those data on a special computer program I have and the data became scattergram Number 1.

Up until the day of the Factfinding hearings, when I was still working on scattergram No. 41, neither the district nor I knew the true 1990/91 teacher salary costs! The final teacher scattergram was derived by tracing teacher by name employed during 1990/91. We could not, however, predict the teachers who would return for 1991/92.

We did know however that the average teacher cost would rise the greater the number lay-offs. We also knew that the average cost would fall, the greater the number of high seniority retirements and resignations. We were able to determine that 1990/91 retirement more than tripled prior year averages. What was even more surprising was that teachers who were too young to retire - but still high on the salary schedule were resigning. Most of these teachers were on the final column and close to the top step of the schedule!

The final budgeted figure for average 1991/92 certificated unit cost was \$41,910 which is reduced to \$38,138 after the district's proposed 9% cut. I would predict that that figure will be much lower (by up to \$1,000) by continued, but as yet unreported, resignations.

Clearly, the district will receive more income, have greater reserves, and spend less on certificated employees than its experts had computed when it made its 9% cut demand. The district's demand, however, has not changed.

The principal union presentation before the panel dealt with comparability and asked the panel to consider the question, "Who would work in Richmond if the district's contract demands were agreed to?" We compared Richmond salaries not only to the "Top Twenty-one Largest" school districts in the state, but also to all of the school districts in the nine county Bay Area. We also presented data showing how many school districts had recently increased their credit for outside

experience policies from the traditional five year to much higher figures.

Comparability of Salary and Fringe Costs, Bay Area: Salary and fringe benefit comparability data for the 9 county Bay Area Region were drawn for all reporting school districts (Unified, Secondary and Elementary) in the following counties: Contra Costa, Alameda, Santa Clara, San Mateo, San Francisco, Marin, Sonoma, Solano and Napa. Within these counties there were 155 reporting school districts.

For salary comparisons, we used Fiscal 1989/90 (the same year employed by the district) because all districts had not reported negotiations for 1990/91 completed. For fringe benefit comparisons, we used we used premium costs for 1990/91 (all of which were available) and assumed that the percentages of total fringe costs for 1989/90 would remain constant in 1990/91. This assumption put Richmond at a statistical disadvantage in fringe comparisons because Blue Cross was offered during those years and its premiums were significantly higher than other plans. (There will be a complete discussion of fringe benefits later.)

We devised two measurements for Richmond, RICHMOND I and RICHMOND II. RICHMOND I represented the 1989/90 negotiated certificated salaries and the 1990/91 fringe benefit costs. RICHMOND II represented the district's 1991/92 salary and fringe benefit cut demand.

Remember (and the district conveniently forgot it during Factfinding), that the RICHMOND II figure is for 1991/92 - this year. We will be comparing the district's offer for 1991/92 with salary data for 1989/90 and fringe benefit data for 1990/91.

Here are the figures for salary only measured at AB+60, Step 10:

**RICHMOND I, 86TH OUT OF 155 DISTRICTS.  
RICHMOND II, 109TH OUT OF 155 DISTRICTS.**

Now have a look at RICHMOND I and RICHMOND II when the comparison is made at AB+60, Step 10 + fringe costs:

**RICHMOND I, 67TH OUT OF 155 DISTRICTS.  
RICHMOND II, 111TH OUT OF 155 DISTRICTS.**

Remember, once again, the RICHMOND II figures represent the district's 1991/92 cut demand compared to what other Bay Area teachers were making in 1989/90!

Comparability of Salary and Fringe Costs, "Top Twenty-one Largest": The same pattern has been employed to compare Richmond with the so called "Top Twenty-one Largest" school districts. Unlike the Bay Area statistics, fringe benefit costs for the "Top Twenty-

one" represent 1989/90 costs.

Here are the figures for salary only measured at AB+60, Step 10:

**RICHMOND I, 16TH OUT OF 21 DISTRICTS.  
RICHMOND II, 19TH OUT OF 21 DISTRICTS.**

Here are the figures when fringe benefit costs are added to AB+60, Step 10:

**RICHMOND I, 16TH OUT OF 21 DISTRICTS.  
RICHMOND II, 18TH OUT OF 21 DISTRICTS.**

As far as this panel member is concerned, that's the good news! RICHMOND II here reflects the district's 1991/92 demand. What about 1992/93?

The neutral has recommended a re-opener on salary for 1992/93. What will the district's salary demand be for next year.

The district's 1991/92 budget **does not contain** funds for debt repayment. The district asserts that even so, its 1991/92 budget is out of balance by \$600,000.

Remember that Bill Honig's trustee has announced intention to withdraw the district's bankruptcy petition apparently requiring repayment of over \$60 million in debt to begin in fiscal 1992/93. By the time comparable salary and fringe benefit figures are available from all Bay Area and Top Twenty-one Largest districts for 1991/92, Richmond salaries + fringe benefits will be well within the bottom 10% of the Bay Area and certainly at the very bottom of the Top Twenty-one Largest! Where will the district's 1992/93 demand put us when RUSD must begin paying back that \$60 million?

As a matter of fact, it seems likely that most, if not all, of the district future added income from COLA and growth must be devoted to debt repayment for years to come.

During the course of the Factfinding proceedings, district spokespersons continually repeated that the present fiscal plight of the district was not the fault of the employees of the district. However, it seems to this panel member that even though we are not the cause of the present problems we and the students will have to pay for them.

During the hearings a district witness, Mr. Patrick Keegan, a management employee of the California Department of Education, was asked by me, "Considering the comparability data presented by the unions and the likelihood that almost every district in commuting distance of Richmond will pay much more than Richmond, why would any employee want to stay here?"

To the best of my recollection, Mr. Keegan responded that he thought it would be too bad that Richmond would lose many experienced employees, but he believed the district would always be able to get someone to work here!

Educating kids is not something that "anyone" can do. Public school is skilled employment and even public school employees have families to support and mortgages to pay. Why indeed should they stay in Richmond?

For all of the reasons set forth above and for the reason that the 9% increase demanded by the district will contribute to a situation in which the RUSD will not be able to comply with Judge James' order to

"...provide a public education basically equivalent to the education being provided in the rest of the state... ."

I repeat my dissent to the neutral's 9% salary cut recommendation. I further dissent from any re-opener recommendation for 1992/92 that does not establish the ultimately arrived at salaries for 1991/92 as an absolute floor.

I concur, however, in the September 1, 1991 effective date of her recommendation, and further concur in her recommendation for longevity payments for Local #1.

**FRINGE BENEFITS FOR CURRENT EMPLOYEES:**

Article 25 (UTR Contract)

Article 15 (Local #1 Contract)

I concur in the Chairperson's recommendation on fringe benefits for current employees generally. I however, dissent from her position not to increase TSA amounts from \$50 per month to \$75 per month for Local #1. The \$75 per month is the amount already paid to UTR members.

**FRINGE BENEFITS FOR RETIREES ABOVE AGE 65:**

Article 25 (UTR Contract)

Article 15 (Local #1 Contract)

The Chairperson's recommendation for retirees over age 65 is perhaps the most damaging and dangerously wrong of her many economic recommendations favoring the district's positions.

Most Richmond employees know why they have continued to work in this district for salaries which in the past have been substandard, and which, if the district were to ultimately prevail in its 9% cut demand would be absurdly non-competitive. The reason has been retiree fringe benefits. It has been the only economic benefit in the entire contract which was above average.

Yet clearly it was not unique. As demonstrated during the hearing many other district in the Bay Area as well as within the "Top Twenty-one Largest" school districts provide medical and dental benefits for retirees - including retirees over the age of 65.

It is, moreover, ironic that the district would press this impossible proposal in the face of the unions' historic co-operation in cost containment.

The district has asserted that the cost of retiree benefits (for all retirees, including those below the age of 65) is \$4.5 million dollars. What the neutral has failed to perceive is that much of the cost of retiree benefits has been taken up by Blue Cross premiums. She has forgotten that Blue Cross will not be offered in 1991/92 which will greatly reduce the cost of all fringe benefits. What financial savings, then, would come to the district if it were to prevail in this proposal - almost none. Retirees currently receiving benefits could not be "capped" by the district proposal inasmuch as they have vested their rights to benefits provided to current employees. Beyond that, the district's bargaining behavior has already driven away most members who might qualify for this benefit in the immediate future!

Why then the freezing of district coverage at the current cost of Medicare Supplemental coverage? Clearly the provision of "Elder Medicare coverage"<sup>14</sup> will benefit very few members of the bargaining unit. Anyone over 55 years of age who does not have Medicare quarters earned from private employment would not be able to qualify by the time he/she reached 65. The few remaining employees who will retire within the next few years and who do not have the proper number of Medicare quarters will find it impossible to buy even the most minimal coverage with the district's "capped offer".

Most importantly, Richmond employees have come to work in Richmond and have stayed here relying on Health and Dental benefits beyond the age of 65. These employees and their unions have consciously traded salary for the negotiation and maintenance of this vital benefit. The union would break faith with its members were it to accept this unconscionable rollback.

**CLASS SIZE ADJUSTMENTS:**  
Article 12 (UTR Contract)

I dissent from all of the Chairperson's recommendations on class size. While some district proposals on class size adjustments might be marginally acceptable, the elimination of class size maximum language is certainly not.

---

<sup>14</sup>AB 265 (Elder) This legislation permits employees, hired prior to March 31, 1986, to individually elect to participate in Medicare. Such election would require the employee to pay 1.45% of his/her monthly gross salary into Medicare with an equivalent payment from the district. The 40 quarter minimum requirement for Medicare coverage still remains.

Class size maximum language has been part of the Richmond contract since the earliest days of collective bargaining. Such language has been paid for in bargaining compromise after bargaining compromise over the years. No self-respecting union would permit such an egregious roll back.

The district seems to have convinced the neutral that all modifications of class size and teacher and aide ratios are driven by budgetary imperatives. She has bought this argument even when accepting it has made the delivery of an educational program impossible. In doing so, and particularly with Class size, she forgets that the District is under a Court Order. It might be instructive to recall that almost every educational authority in the country relates reduced class size to the goodness of the educational program. How stands Richmond then, and Mr. Honig and Dr. Stewart with such outrageous proposals which fly in the face of Judge James' order:

"... If the District is unable to carry out the State's mandate to provide a public education basically equivalent to the education being provided in the rest of the State, the burden falls back on the State to remedy the situation. Deprivation of education in the Richmond Unified School District is constitutionally unequal education. The State does not argue to the contrary."<sup>15</sup>  
(emphasis supplied)

Does the State not argue to the contrary? Mr. Honig's lawyers were before Judge James when she issued her order. Did they say, "Judge, we don't argue to the contrary, but the state's agents, Mr Honig and Dr. Stewart intend to insist upon an increase in class size, a worsening of pupil/teacher/aide ratios to a point which would put Richmond well below the norm in Contra Costa County. Of course this will not maintain the educational program's basic equivalency to other provided throughout the state." Having heard the State Superintendent's speeches on class size, one wonders about his agent's current position on class size.

#### **STAFFING RATIO CORRECTIONS:**

Article 12 (UTR Contract)

Article 30 (UTR Contract)

I again dissent from the neutral's recommendations on staffing ratios both as they affect members of the UTR unit as well as the Local #1 unit.

The arguments for my rejection of the neutral's recommendations are the same as those advanced for class size modifications. The only real difference is the absolute absurdity of some of the district's demands.

---

<sup>15</sup>*Butt, et al. op cite*

How is it possible to have a necessary and statutorily required nursing program for 31,000 students and one (1) nurse?

How is it possible to decimate the counselor and psychologist services and still mediate the needs of the student program?

The same argument applies to librarians, music teachers aides and assistants. It is just simply impossible to provide an educational program comparable to those provided in the rest of the state with the district's proposal.

#### **INSTRUCTIONAL AND PREPARATION TIME FOR ELEMENTARY TEACHERS:**

Article 10, Section 6 (UTR Contract)

I concur in the neutral's recommendation on preparation time for elementary teachers.

#### **LENGTH OF AGREEMENT:**

Article 1 (UTR and Local 1 Contracts)

I concur in the neutral's recommendation for a two year contract. I do so with this in mind. It is my recommendation that no re-opener on retiree fringe benefits will be necessary inasmuch as the union will not agree to the changes proposed by the neutral. Moreover, inasmuch as the neutral limits her salary reopener to "salary increases", the floor I called for above is agreed to.

#### **WORK DAY FOR JUNIOR HIGH/MIDDLE SCHOOL TEACHERS:**

Article 10, Section 2 (UTR Contract)

Both the district and the union have merit to their arguments. Reducing instructional time would indeed cost the district SB 813 money and be contrary to the intent of Judge James' order. However, expecting teachers to work longer hours for less money is absurd.

During earlier negotiations there seemed to be flexibility between the parties on this subject. I suggest that the rush to impasse prevented agreement.

#### **FACULTY MEETINGS**

Article 10, Section 12 (UTR Contract)

I concur in the neutral's recommendation to make the 1 hour length of faculty meetings mandatory.



## **SPECIAL EDUCATION TEACHERS, ASSIGNMENT OF AIDES:**

Article 10, Section 15 (UTR Contract)

I dissent from both of the neutral's recommendations in this section. During the course of negotiations, the parties came close to compromise on these issues. The neutral's recommendation are not helpful in these matters. In fact, the neutral's recommendation provides for less staffing than the district has already indicated it intends to provide. There is, therefore, no rational for substituting the neutral's language for the union's last proposal.

In addition, as it concerns Local #1, the neutral's language falls far below the level of the district's last proposal.

## **ADJUNCT NON-INSTRUCTIONAL DUTIES:**

Article 11 (UTR Contract)

I dissent from the neutral's recommendation on adjunct duties. If ever there was an opportunity to suggest a compromise, here it is. Clearly administrators can perform some adjunct duties and just as clearly, some of those duties can be eliminated altogether. I recommend that the parties look at this item more closely in post-Factfinding negotiations.

## **SICK LEAVE INCENTIVE PLAN**

Article 11, Section 9.2 (Local #1 Contract)

The intent of Local #1's proposal was to reduce cost to the district. The neutral's recommendation and the district's position are both short sighted. I dissent from the recommendation.

## **MANDATORY VACATION**

Article 11, Section 10 (Local #1 Contract)

I concur with the neutral's decision. Again, as in the Sick Leave Incentive Plan, Local #1 has proposed a creative article which will save the district money. Both of these proposals should have been agreed to prior to impasse.

## **VACATION ACCRUAL:**

Article 11, Section 4 (Local #1 Contract)

I dissent from the neutral's recommendation and am amazed by it. The district clearly saves money by maintaining long term and skilled classified employees. All the vacation accrual would have done would have been to encourage senior and very skilled employees to remain on

the job. How short sighted of the district and the neutral not to see this.

**VOLUNTEERS AND OBSERVERS/SUBCONTRACTING:**

Article 10, Section 16; Article 31 (UTR Contract)

Article 22 (Local #1 Contract)

I concur in the neutral's recommendation to maintain current contract language and letters of agreement on these matters.

**WORKER'S COMPENSATION:**

Article 11, Section 11 (Local #1 Contract)

I concur in the neutral's recommendation. While the totality of Local #1 position would not have burdened the district, the final sentence is absolutely critical.

**TEACHER DISPLACEMENT/WORKSPACE:**

Article 12, New Section

I concur in the neutral's acceptance of the UTR proposal.

**LEAVES:**

Article 13, Sections 2, 12.5, 12.6, 15, 17 and 20 (UTR Contract)

I concur in all of the neutral's recommendations of leaves.

**EXPENSE CLAIM:**

Article 18 (Local #1 Contract)

I concur in the neutral's recommendation to add coverage for theft to the Local #1 contract.

**VIOLENCE PRONE STUDENTS:**

Article 19, Section 13 (UTR Contract)

I dissent from the neutral's recommendation. Schools can sometimes be dangerous places. Either the district should agree to this proposal or re-employ the Police Officers it has recently layed-off.

**SUMMER SCHOOL SITES:**

Article 37, New Section

I dissent from the neutral's recommendation. There would be absolutely no cost to UTR's proposal to alternate summer school sites. Some inconvenience to administrators, perhaps, but no cost.

**PAYMENT FOR WRITING IEP's:**

UTR Contract, current practice

I dissent from the neutral's position. The district has already done so much harm to the Special Education Program that I cannot believe that the neutral would buy into this rollback. The program and the kids can only suffer.

**STAFFING AND REASSIGNMENT OF CLASSIFIED PERSONNEL:**

Article 23, Supplement # 1 (Local #1 Contract)

Supplement #4, Letter of Agreement (Local #1 Contract)

I concur and dissent in the neutral's recommendations. All of Local #1 proposals on staffing should have been accepted.

Local #1 has suffered significant layoff in recent years. To leave out the paraprofessional unit from these staffing models will reduce the effectiveness of programs for students who need them most and will reduce the overall compensation (beyond the 9% cut) of some of the least well paid RUSD employees.

The district's rejection of Local #1 proposal and the neutral's partial rejection is mean spirited and unnecessary.

**ISSUANCE OF CONTRACTS WITHIN FIFTEEN DAYS OF EMPLOYMENT:**

Article 41, (UTR Contract)

I concur in the neutral's acceptance of the UTR's proposal.

**HARASSMENT:**

New Provision, (UTR Contract)

I concur in the neutral's acceptance of the UTR's proposal and in her suggested language. This new contract provision meets a real need.

**NON-DISCRIMINATION:**

New Provision (UTR Contract)

I concur in the neutral's recommendation to accept the UTR language on this very important matter.

**SITE BASED/SHARED DECISION MAKING:**

New Provision (UTR and Local #1 Contracts)

I dissent from the neutral's position. Los Angeles teachers fought a strike over this issue. It is important to both unions. Simply re-opening on the issue in 1992/93 is not enough.

**FLEXIBLE SCHEDULES FOR OFFICE/TECHNICAL UNIT:**

New Proposal (Local #1 Contract)

The neutral rejected a proposal from Local #1 that sought only to open discussion. Flexible scheduling works in the private sector and as a matter of fact, improves productivity. It is particularly important to single parents. In fact, the district had previously indicated its interest and favorable view of this proposal and had proposed to continue discussions with Local #1. While it is probably too late to institute this program this year, nothing prevents the parties from doing so in 1992/93.

I dissent from the neutral's recommendation.

**STAFF DEVELOPMENT:**

New Proposal (UTR Contract)

The UTR's Staff Development proposal is of the same character as its Site Based Decision Making proposal. As with the former proposal, it was well thought out, would have cost the district no money, would have contributed to the professional standards and usefulness of staff development; and, finally, as with Site Based Decision Making would have contributed to a sense of self-esteem of teachers. I understand why the district rejected this proposal, but I cannot understand why the neutral did. I dissent from her recommendation.

**SPECIAL PROVISIONS, G/T & INTERNATIONAL STUDIES SCHOOLS**

Article 48 (UTR Contract)

I dissent from the neutral's totally incomprehensible position.

The district has announced an intention to eliminate the G/T program and has laid off teachers to effect that elimination. Thereafter, the district has indicated that it might restore part or all of this program.

The UTR agrees that it is within the legal prerogative of the district to eliminate programs that are not mandated by law. But, the union argues that, if the district does indeed restore the program, the contract language would be there, waiting. If the district doesn't restore the program, what harm would the old language do?

The neutral's discussion calls for "maximum flexibility [for the district] in scheduling the duration and size of classes. Both the duration and size of classes are mandatory subjects of bargaining. All of the "district flexibility" in the world will not change that fact.

## CONCLUSION:

My title in the CTA structure is "Bargaining Specialist". I know about bargaining and am reputed to know a great deal about other matters related to bargaining.

I sat through months of UTR/Local #1 - RUSD "bargaining" as an advisor to the unions. No bargaining occurred. Despite the continued and skillful efforts of both unions' chief spokespersons, the district representatives remained frozen like a doe in the headlights of an oncoming car. Why? Why was the district either afraid or unwilling to bargain. Were they waiting for the time when Dr. Stewart could legally "impose last, best offer work rules"? Or were they so overwhelmed by the district's problems that they didn't know where to begin?

I, frankly, don't know.

I do know, however, that sometime in the future a contract, in the fullest meaning of the word, must be negotiated with both unions. UTR and Local #1 are too strong and well organized to permit imposition without agreement. Neither of the unions nor CTA nor I feel intimidated by the Constitutional officers or their representatives who testified in the Factfinding hearings. We will have a contract we can bring back to our union memberships. We will have those contracts either now or later.

I submit to the district that it should use post Factfinding negotiations as they should be used. The publication of the Factfinding report will break the impasse. A little flexibility on the part of the district could form the basis for successful negotiations. If we're ever to get out of this crisis, we must begin to work together to find solutions.

FOR UTR/CTA/NEA and PUBLIC EMPLOYEES UNION, LOCAL #1

A handwritten signature in cursive script, reading "Chuck Davies", written in black ink. The signature is positioned above a horizontal line.

**Chuck Davies**  
**Unions' Panel Member**  
**August 26, 1991**