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Factfinding Chairperson

FACTFINDING PROCEEDINGS PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTIONS 3548.2 AND 3548.3

In the matter of factfinding	**Case No.: PERB SA-IM-2689-E**
Between the	**FACTFINDING REPORT AND RECOMMENDATIONS**
SACRAMENTO CITY UNIFIED SCHOOL DISTRICT	
And the	
SACRAMENTO CITY TEACHERS ASSOCIATION	**DATE: August 5, 2003**

Factfinding Panel:

THOMAS L. HODGES, Chairperson
RON BENNETT, District appointed panel member
YALE WISHNICK, Association appointed panel member

Appearances:

For the Association:	For the District:	
Manuel Villareal	**Bruce Sarchet**	**Randy Gish**
Darrell Gifford	**Rhonda Pacheco**	**Joan Polster**
Benne Hopson	**Carol Mignone**	**Kathleen Whalen**
Robert Lynch	**Joan Butt**	**Patty Hagemeyer**
Mellissa Stepanick	**Marianne Clemmens**	**Brad Louie**
Bev Braverman	**Sandra Green**	
Ward V. Rountree, III.		
Marcie Launey		

Date of Hearing: June 24, 2003

INTRODUCTION

The hearing in the above-entitled matter began at 9:00 A. M. on Tuesday, June 24, 2003 at the Sacramento County Office of Education. Prior to the start of the hearing the factfinding panel met briefly in closed session. After introductions, the Chairperson announced that while information might be presented by the parties concerning the 2003-04 school year, the factfinding report would deal with issues raised in 2002-2003.

The Chairperson then described the order of presentation and enumerated the issues that were before the panel. Each party distributed binders containing the documentary evidence relating to the issues. The Association then proceeded with its presentation on the issues of wages and benefits.

During the presentations, it became apparent to the panel that each party had expended extraordinary effort in preparing materials and in organizing their respective presentations.

ISSUES

The following issues were presented to the panel:

The Association addressed and presented evidence on the following:

Wages

Health benefits

Elementary teacher preparation time

Retirement enhancement (CASA)

Duration

The Association withdrew its proposal for additional benefit coverage for new retirees citing the successful implementation of the Voluntary Early Retirement Incentive Program.

The District addressed and presented evidence on the following:

Wages

Health benefits (inclusive of new employee retirement benefits)

Hours of work

Evaluation

Peer assistance Review

Duration

As the hearing progressed, each party was able to raise questions concerning the respective presentations and had a full opportunity to present rebuttal information. Each party presented supplemental documentary evidence during the process.

RECOMMENDATIONS

I. WAGES

The Chairperson recommends that the certificated bargaining unit be accorded a 2% salary schedule increase, retroactive to July 1, 2002.

Discussion

The Association proposed a 3.5% salary schedule increase for 2002-03. The District proposed no schedule increase. The parties each presented information on comparative salaries and benefits. While the comparison school districts used by the parties vary, there are some reasonable conclusions that can be drawn from the respective data. Of the 20 districts selected by the Association as comparisons, 10 had settled for salary schedule increases for 2002-03 of between 2 % and 2.37%. Even though two districts had settled for 1% and 1.2% respectively, the average settlement was 1.99% While the average including all the 0% districts results in an overall 1.3% increase, the mode is 2%. (See Association Table S-1) The Association's comparable data indicates that application of a 2% factor to the lowest starting salary for the

2002-03 school year would move it from rank 16 to 13 within the 20 comparison districts. Rank 13 is consistent with the 2001-02 rank of 14. Thus, application of the 2 % schedule increase will in general terms maintain the District's lowest starting salary ranking within the Association's comparison districts.

An analysis of the Association' data regarding maximum salaries shows that a 2% schedule increase would improve the district rank from 9 to 6 in its comparison districts, which relevant to 2001-02, maintains its 6th position. Comparing the top salary for 2002-03 with Elk Grove and San Juan Unified school districts reveals that application of a 2% increase would improve the district's rank from two to one, but the difference between the top two would be approximately $800.00. (Table S-14)

The Association presented other comparison data on 20 year and 25 year earnings, which generally ranked the district at the lowest end of its comparison districts. (Table S-12)

The District utilized a different set of comparison school districts all of which are unified. Additionally, the District computed regional and statewide averages to include in its 1 to 15 ranking displays. District Table 11, for example, arrays data of combined lowest scheduled salary with average compensation for health and welfare benefits. In that array, which reflects 2001-02 data, the combined total compensation amounts place the district in rank 3. The remaining district tables and accompanying graphic displays illustrate rankings relative to its comparison districts based upon various salary schedule placements and like table 11 incorporate average health and welfare benefit contributions as a factor of compensation.

The District data generally reflects that in the maximum salary/benefit category it ranks number 1. (See Table 14) The District ranks 5th at the BA+30, step 1 schedule placement. (See

Table 12) It ranks 12th at the BA+60, step 10 placement, (See Table 13) and ranks 6th in average salary plus average health benefits. (See Table 15) All District comparison tables and graphs reflected 2001-02 data.

The Association in tables S-7, S-8, and S-9 presented similarly combined salary/benefit data using its comparison districts. Table S-7, using lowest starting salary plus average benefits as of 2001-02 places the district at rank 14. Table S-8 using maximum salaries plus benefits as of 2001-02 places the district at rank 7. Table S-9, using average salaries and benefits as of 2001-02 places the district at rank 15.

The teaching staff enjoys a substantial maximum salary as illustrated by the comparison data submitted by each party. The district ranks number 1 in maximum salary according to the District's comparisons. The association's "Large 20 District" comparison ranks the district number 7 in maximum salary. (**See supra**) Within its "Large Local Three" comparison which incorporates 2002-03 data, the District currently ranks 3rd; however, application of a 2% schedule increase would make it number 1.

Data reflecting salaries and/or benefit compensation generally shows that except in the maximum salary category, the district does not rank number 1. Moreover, one of the three unified school districts that are utilized by both parties as comparisons has granted a 2% increase. A second common comparison district has granted a 2.37% increase. An additional 6 districts in the Association's comparisons (Table S-1) have granted increases of 2%. The panel believes that a 2% salary schedule adjustment for the 2002-03 school year will generally maintain the district's salary position in categories other than maximum salary. That the 2% will improve the district's maximum salary position to number one as compared with the nearby

"Large Three Local Districts" is not as dramatic as it appears, since the difference between the number 1 district and the number 2 district would be marginal.

Moreover, the District did not put forth an ability to pay argument with respect to the Association salary proposal. Improvement of the 2002-03 salary schedule by 2% retroactive to July 1, 2002, is justified by the comparison data submitted by both parties.

II. HEALTH BENEFITS

A. Cost Containment

The Chairperson recommends that a "floating" cap on health benefits be established at the Kaiser premium level. The panel further recommends that co-payments in the amount of $15.00 for medical office visits and pharmaceuticals be established, and that the cap and co-pays apply to all covered employees, including retirees. Additionally, the panel recommends the "floating cap" and co-pays be established effective July 1, 2002, but that implementation only be effective beginning July 1, 2003.

Discussion

The District presented data that the average cost of health and welfare benefits increased 16.2% for 2002-03. Pursuant to its obligation not to alter the status quo provisions of the collective bargaining agreement, the District absorbed this increase. Additionally, the District provides lifetime health benefits for its retirees. The District presented credible evidence that it presently faces an unfunded liability of approximately $345 million dollars based upon its obligation to pay the entire cost of health benefits for active and retired employees.

Additionally, in 2001-02 the District ranked number 1 in its average and maximum contributions to health benefits compared with the unified districts used by the District for comparison. The average contribution exceeds the statewide unified average included in District

Graph 7. The Association in its Table F-3 reported that the average district contribution for 2001-02 was $6,509.00. This contribution ranked the district 7 in the Association's 20 comparison districts. Application of the 16.2% increase to this amount brings the average contribution for 2002-03 to $7,563.00.

While debate between the parties may continue over the relative position of the District among other districts with reference to its contribution to health benefits, they together, have a greater obligation to act to reduce the unfunded liability of $345 million dollars that has been created by the District's willingness to provide health benefits at no cost to both active and retired employees.

During the hearing the parties were asked to calculate the estimated savings to the district of implementing the "floating" cap, co-pay proposal. The parties independently calculated those annual savings to be about $3 million dollars. All or a portion of those savings could be dedicated to reducing the $345 million liability.

Furthermore, the District presented data that within its comparison districts it was alone in not having a "cap" on health benefit dollar contributions. (See District Article 13, Reason 1) During the hearing, the Chairperson raised the question of whether the District had investigated the possibility that retirees might acquire eligibility for Parts A and B medicare coverage. The Chairperson urges the parties to pursue this possibility as an additional method of reducing the costs of health care coverage.

Further, the parties are encouraged to continue researching the Trust approach to purchasing health benefits. (Appendix H of Article 13 of the current agreement reflects this notion) Multi-entity Trusts (Districts, COE's) may acquire market place purchasing advantages.

While the "floating" cap and co-pay proposal will result in some out-of-pocket expenditures for employees, they will still have the option of electing coverage from the three plan options now available.

B. Retiree Benefit coverage--new employees

The Chairperson does not recommend this proposal.

Discussion

The District, as part of its proposal on Health Benefits, proposed to limit such coverage to age 65 for employees hired on or after July 1, 2003. Currently the District provides lifetime health benefit coverage to retirees.

The proposal raises serious legal and ethical questions. The provision of lesser retirement benefits to future retirees based upon date of hire raises both equal pay and constitutional equal protection issues. Legal issues aside, the proposal creates a morale issue by creating classes of employees each with significantly different overall compensation packages.

III. ENHANCED PENSION BENEFITS

The Chairperson does not recommend this proposal.

Discussion

The Association proposed that its members be covered by a supplemental pension plan identical to that provided to District administrators who are currently covered by a supplemental pension plan administered by the California Administrative Services Authority, (CASA) an entity formed by agreement with the District and the Yolo County Office of Education.

According to documents submitted by the Association, the District had to borrow 6.5 million dollars on or about 2002 in order to provide for a then anticipated unfunded liability for the CASA plan of approximately 5 million dollars.

Since the number of classroom teachers significantly exceeds the number of administrative personnel, the panel fears that the liability created by implementing a "CASA" type plan providing pension supplements to STRS allowances would be prohibitive.

IV. ELEMENTARY TEACHER PREPARATION TIME

The Chairperson does not recommend this proposal.

Discussion

The Association proposed that elementary teachers be accorded an additional 90 minutes of preparation time. Since elementary teachers typically maintain self-contained classrooms, the usual and customary method of providing preparation time is to employ specialists teachers who release the regular teacher for preparation activities and provide instruction in other subjects, e. g. art, science, music. While the Chairperson recognizes that preparation time may result in improved instruction and academic achievement in math and language arts, the Association stated that its proposal would require the employment of 25 additional teachers. The Association's Table S-7, showed the 2001-02 lowest staring salary plus average health benefits as $42,291.00. 25 additional teachers would add about a million dollars to the District's recurring costs. Given the current tenuous nature of the State's financial condition and the District's unfunded liability for health benefit costs, it is fiscally unwise to implement this proposal.

IV. INCREASE IN INSTRUCTIONAL MINUTES

The Chairperson recommends no change in the teacher workday, but recommends that the District proposal be referred to a joint committee for further study.

Discussion

The District proposed that the teacher workday be altered to provide for 18 minutes per day of increased instructional time. Presently, the teacher workday provides that teachers be present 15 minutes before and 15 minutes after the instructional day, with some exceptions, i. e. on Fridays and days preceding holidays or vacation periods, the 15 minutes after the instructional day is not required.

Generally, though, there are 30 minutes of daily non-instructional time that could be converted to instructional minutes. However, there are some considerations that must be addressed with respect to such conversion.

First, the Chairperson supports the premise that increased instructional time will result in improved student achievement. However, the District proposal also refers to the "banking" of time that will result from an increase in instructional minutes. Apparently, as those minutes are added daily, the district will be able to schedule more shortened days than are now provided for in the calendar. The shortened instructional days will enable teachers of common grade levels to engage in "horizontal" articulation in math and language arts.

While the thrust of the proposal is to improve student achievement, there needs to be additional planning done to more clearly establish (a) What will happen in classrooms with the additional 18 minutes that will have a direct impact on achievement, and (b) What will happen on additional staff development days that will have a measurable effect on student achievement.

Moreover, there is a substantive difference between before class "supervision" or "miscellaneous non-teaching duty" minutes and instructional minutes. Testimony was given by Association members that the before and after school duties are not uniform in nature and vary from day to day. The use of instructional minutes requires careful planning to insure the time is tailored to individual student learning and clearly connected to increased achievement. Because of this fundamental difference, the parties must revisit the issue of compensation for any increased instructional time even though the overall workday time would not increase.

V. EVALUATION

The Chairperson recommends no change in the current evaluation form or process, but recommends that this proposal be referred to a joint committee for further study.

Discussion

The District proposed the use of a new evaluation form and a host of changes in the collective bargaining agreement language concerning evaluation.

The District utilized the "California Standards for the Teaching Profession" publication as the basis for the revisions to the criteria for teacher evaluation. The panel supports this effort. As California moves to a standards based approach to curriculum development and instruction it is wholly consistent to employ standards based evaluation instruments.

In this case, however, the Chairperson believes that other matters relating to staff evaluation need to be addressed by reconsideration of the format of the proposed new form.

First, the proposed form contains no provision for either excellent or outstanding ratings. The Chairperson believes that exemplary performance should be acknowledged. The panel notes that the District in Reason Three of Issue #6 (PAR) quotes Ed. Code 44501 (c), "The consulting teacher shall have demonstrated Exemplary teaching ability. . ." (emphasis added) Second, the evaluation form does not provide for the existence or acknowledgement of any conditions that may impede meeting the standards listed. The District also has proposed eliminating the "working conditions" provision of the CBA evaluation article.

In a District as large and complex as Sacramento City, it would not be uncommon for a number of conditions to exist that might reasonably impede meeting all the standards in the newly proposed form. For example, testimony was introduced at the hearing that presently not all staff members obligated to use the standardized math and language arts materials, have those materials.

Therefore, the new form needs to capture in some way the principle that there may be conditions over which individual teachers have no control that adversely impact the teaching process. Third, the front page of the proposed form contains the provisions of referral to the PAR (Peer Assistance Review) process. Perhaps those referral options could be on the last page of the document.

VI. PAR (PEER ASSISTANCE REVIEW)

The Chairperson recommends continuation of the PAR provisions in the existing collective bargaining agreement, and the participation of the Association therein.

Discussion

The District presented substantial evidence that the current CBA contains a Peer Assistance Review program and procedure. Pursuant to the status quo principle, neither party can unilaterally alter the terms of a CBA, even though the agreement may have expired. The Association's refusal to participate in the program is the functional equivalent of removing the provision from the contract, a violation of the status quo as well as a breach of contract. Additionally, the incorporation of the PAR provisions into the CBA creates a binding agreement that survives the loss of State funds appropriated expressly for the purpose of encouraging districts to create such programs.

Aside from the legal/technical arguments that support continuation of the PAR program, the purpose of the program is to provide assistance and support to staff members who may not have had the opportunity to acquire the teaching skills possessed by others with the ultimate goal of improving student performance. Moreover, in its present form it is voluntary.

VI. DURATION

The Chairperson recommends that the existing agreement incorporate those matters recommended by the panel into a successor agreement that expires June 30, 2004.

Discussion

First, the issues of increased instructional minutes and evaluation procedures should be subjected to joint committee review during the 2003-2004 in order that some agreement on these issues might be incorporated into a contract beginning July 1, 2004.

Second, because of the tenuous financial status of the State, compensation issues should be re-examined at the end of the current fiscal year.

Since 2002-03 has elapsed, the panel in essence proposes a One-year agreement in order that the parties remain flexible in relation to State finances and have the opportunity to reach agreement on the instructional issues considered in this factfinding as well as others that may arise.

CONCLUSION

The Chairperson commends the parties for their thoughtful presentations and hopes that this report may be of use to them in reaching agreement.

Thomas L. Hodges,
Panel Chairperson

August 5, 2003