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August 27, 2011

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**RE: Fact Finding Santa Monica Community College District
and California School Employees Association, Chapter
#36, LA-IM-3627-E**

Dear Colleagues;

Enclosed please find the original signed Fact Finder's Report with attachment.

I've also enclosed the Chair's billing for services with a W-9 to the Panel Members. Please forward the billing to the appropriate person for payment.

As required in Government Code 3546.3.(a) cited below, I am


Dispute Resolution Services
Arbitration Mediation Factfinding Facilitation Educational Programs
Consultation Intra-Organizational Conflict Management
Labor-Management and Community Disputes

issuing this to you privately and "within 10 days", the District is required to make the Report and Recommendations public.

3548.3.(a) If the dispute is not settled within 30 days after the appointment of the panel, or, upon agreement by both parties, within a longer period, the panel shall make findings of fact and recommend terms of settlement, which recommendations shall be advisory only. Any findings of fact and recommended terms of settlement shall be submitted in writing to the parties privately before they are made public. The public school employer shall make such findings and recommendations public within 10 days after their receipt.

I wish you well in settling this matter.

Sincerely yours,


Bonnie Prouty Castrey

Enclosure

CC Wendi L. Ross, PERB
Interim General Counsel

Howard A. Friedman, Esquire

Tron Burdick, CSEA

FACT FINDING DISCUSSION AND RECOMMENDATIONS

Between)
)
Santa Monica Community)
College District)
and)
California School)
Employees Association)
Chapter #36)

Re: Case No. LA-IM-3627-E

Impartial Chair

Bonnie Prouty Castrey
Post Office Box 5007
Huntington Beach, California 92615

District Panel Member

Donald Girard
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Hearing Held

May 27, 2011

BACKGROUND

Santa Monica Community College District (District, SMCCD or Employer) and the California School Employees Association, Chapter #36 (Association or CSEA), a local affiliate of the California School Employees Association are the parties in this fact finding matter. The classified staff in this bargaining unit are members of CSEA.

The parties reached impasse over Health and Welfare Benefits. The District's last offer on Article 12, Health and Welfare Benefits is in the District Binder (DB) at Tab 9 and is incorporated herein by reference. It is dated September 9, 2010. (In Association binder at last area there is a District Proposal dated April 30, 2010; CSEA proposal dated May 17, 2010; a CSEA proposal dated August 17, 2010; the District proposal of September 9, 2010 cited above; and a CSEA proposal dated November 22, 2010. The District filed with PERB and was certified on January 6, 2011. Subsequently, State Mediator Loretta van der Pol met with the parties. When no agreement was reached in mediation, the parties were certified to Fact Finding by the State Mediator and PERB authorized the Fact Finding process on March 4, 2011. Dvora Mayer was appointed by CSEA as their Panel Member and Donald Girard was appointed by the District to serve as their Panel Member. They selected Bonnie Prouty Castrey to Chair the Panel. A Fact Finding hearing was held on May 27, 2011 in the District Office's at the Bundy Campus.

The issues before this Panel are Inability to Pay and Health and Welfare Benefits.

Both parties presented their documentation and facts regarding the issues before the Panel. The Panel Members then attempted to help the parties to reach a mediated settlement in Fact Finding. Following the formal Hearing, the Panel met together and attempted to help the parties resolve their dispute. When that effort was not fruitful, the Members studied both parties' submissions thoroughly and the Chair drafted this Report and Recommendations. Additionally, as the California landscape changed and additional information became available both regarding the budget and the amount of the PERS increases for the various health plans became available, Member Girard kept both Panel Member Mayer and the Chair informed.

In this matter, the Panel is guided by the California Government Code Section 3548.2 of the EERA which states in pertinent part:

In arriving at their findings and recommendation, the Fact Finders shall consider, weigh, and be guided by all the following criteria:

1. State and federal laws that are applicable to the employer.
2. Stipulations of the parties.
3. The interests and welfare of the public and the financial ability of the public school employer.
4. Comparison of the wages, hours, and conditions of employment of the employers involved in the fact finding proceeding with the wages, hours, and conditions of employment of other employees performing similar services and with other employees generally in public school employment in comparable communities.
5. The consumer price index for goods and services,

commonly known as the cost of living.

6. The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays, and other excused time, insurance and pensions, medical and hospitalization benefits; the continuity and stability of employment and all other benefits received.
7. Any other facts, not confined to those specified in paragraphs (1) to (6), inclusive, which are normally or traditionally taken into consideration in making the findings and recommendations.

STIPULATIONS OF SMCCD AND CSEA

The parties did not submit stipulations in this matter.

COMPARISON DISTRICTS

The District used the comparison of all community college districts, statewide when they showed the percentage of the budget which is allocated to salaries and fringe benefits (DB tab 5). They listed a second set of districts of similar size in Southern California, except for LACCD which is significantly larger (DB 6). The District also submitted data comparing sixteen (16) Southern California Community College District's health and Welfare benefits (DB, Tab 7, pgs 5 and 6).

The Association did not submit data for any comparison districts.

The Chair studied all of the comparisons provided very carefully and will use all the sets of districts in the discussion below.

The following is a discussion of the pivotal issue of the District's claim of Inability to Pay and finding.

ISSUES

INABILITY TO PAY

DISCUSSION AND FINDING

The first issue raised in this fact finding is the question of inability to pay.

When a district asserts inability to pay, they have the heavy burden of proving that they cannot afford to continue paying salary and benefits at the level they currently are obligated to pay and/or that they cannot afford to negotiate increases in compensation.

Community Colleges in California are dependent heavily on the State of California for their revenue. The State is and has been in fiscal crises for several years since at least 2007 with billions of dollars in deficit budgets. Some economists have described California's budget as being in "free fall". As a result of the State budget shortfall, due to decreased sales tax, income tax, and other revenues, the State has unceremoniously cut school districts' unrestricted and categorical (restricted) funding by literally billions of dollars. Additionally the State has raised the fees students must pay at the community college, however, those fees go to the State and are not available to the district.

Very troublesome is the current economic climate and the State's 2011-2012 public education budget which contains "triggers" for additional budgetary cuts to public education's budget allocations if the revenues expected by the state do not

materialize.

The District has had two State loans over the last decade in terms of funding for FTES and the District represents that the loans have been defaulted on. The first from 1999-2004, they defaulted on a service obligation of 6,762 FTES for which they had received advance payment of \$15,219,833. The second default was for \$14,708,968 through 2008 for a total default in those nine years of \$29.9 million (DB tab 4). They have not had to pay back those dollars.

This District, however, has a large out of state student population, who pay tuition which does stay within the District to support programmatic needs which includes staffing. That non-resident program shows continued revenue increase.

The Association points out that the District receives approximately twenty million dollars (\$20,000,000.00) from this non-resident student outreach program (AB at section 3). Also at the same section, the Association calculates the restricted and unrestricted funds ending balances increasing over five years from 2004-2005 at \$5.6 million to 2009-2010 at just over \$24 million. Further, they point out that the District consistently moves monies from the ending fund balance to reserves. The Association is adamant that there is not an inability to pay as there are significant reserves.

The District has also been able to conduct fee-based instruction which brought additional monies to the District which

remained in the District. As of August 23, 2011, it is the Panels understanding that fee-based instruction is being maintained at about the current level going forward and will not be expanded by any significant amount.

The Panel also learned on August 24, 2011, that the District was able to save an additional 2.6 million dollars during the 2010-2011 school year by carefully managing resources to reduce expenditures as well as increased revenues.

While the District has decreased class offerings and made many other cost saving decisions, they have grown the reserves and maintained fiscal health and stability.

Based on a careful study of all the documents provided to the Panel at the hearing and post hearing, the Chair concludes that the District did not meet its heavy burden of proof that they have an inability to pay. In fact with the resources currently available they do have the ability to pay.

HEALTH AND WELFARE BENEFITS

DISCUSSION AND FINDINGS

The parties have had many discussions about this issue and the District hired a firm to evaluate the health and welfare benefit program in order to determine potential savings.

The crux of the dispute is that the District no longer is willing to be obligated to pay the full cost of the most expensive program known as PERS Care and the CSEA is desirous of maintaining that benefit as many of their members subscribe to PERS care.

Currently SMCCD pays for full health coverage for the employee and dependents.

In Fiscal Year 2009-2010, the latest year for which comparison data are available, the wages and benefits in the comparison districts for the state ranged from 62.8% to 91.4%. SMCCD is the fourth highest of those reporting at 88.2%.

Education is a labor intensive business and therefore it is not surprising that 88.2% of the District's funding is spent on personnel (DB Tab 5).

Of the 8 Southern California Districts cited, the total salary and benefits costs range from 72.6% to 88.2% with SMCCD as having the highest total cost.

The sixteen districts surveyed by the District have a variety of plans and they all handle the cost structure and sharing of costs differently. Many offer an HMO option that is 100% paid and employees who choose other options pay the difference. Some districts have different arrangements with each group of employees and at least one district has a two tier system where current employees as of a date certain were "grand fathered" in with fully paid health and welfare benefits and employees hired after a specific date pay a portion of the plan they choose (DB, Tab 7, pages 1-8 with specific note to pages 5-6).

The content of this tab was sent to all SMCCD employees in a series of emails and provides useful information.

The information which we do not have to analyze is specifically

how the classified staff in each of the districts compare in terms of either total compensation or just health and welfare plans available and whether they have negotiated restrictions.

This District has not looked to save money through furloughs or salary cuts, but they are very interested in saving substantial monies in the benefit area and in equalizing the benefits among employees.

PERS Care is the most expensive package at \$9,447 annually for the employee up to \$24,562 for the employee and family. The other four plans have employee only in the \$5,000 range and employee with family from \$13,341 to \$15,504. The District calculates the average cost per employee covered by PERS Care to be at \$15,458.00 and the other plans combined at \$9,101.00. The difference per employee is \$6,357.00 (DB tab 1).

There are 274 employees in this bargaining unit who have one of the other four plans offered and 138 employees who are enrolled in PERS Care (DB tab 1).

The PERS rate increases were announced in mid June as follow:

PERS Care increases by 15.14%

PERS Choice increases by 1.91%

Blue Shield Access Plus (HMO) increases by 2.78%

Blue Shield Net Values (HMO) increases by 2.73%

Kaiser (HMO) increases by 7.29%

The PERS Care is more than twice as much of an increase as the next highest rate increase. This 15.14% increase will make the

difference in equity for benefits for all classified employees even greater and is not realistic.

The question is how to provide a bridge for those employees in PERS Care to help them to transition to a different plan and/or how to share the cost of the difference in the other four plans for those employees who choose to stay in PERS Care.

To that end the Chair recommends these options:

Employees who are willing to choose another plan receive a \$2,000 to \$3,000 cash out, to help them bridge the difference in coverage.

Employees who choose to stay in PERS Care have employee only coverage and if they wish to cover their family, they pay the difference in coverage.

In light of the recommendations as well as the information available to the parties regarding the numerous possibilities for handling both this issue, the Chair recommends strongly that the parties return to the table to negotiate.

The Panel Members representing the District and Association have met in Executive Session by conference calls on August 24 and August 26, 2011. Based on the above Recommendations of the Chair they concur or dissent as follows:

For the District

Concur

Dissent

Concur in part

Dissent in part

For the Association

Concur

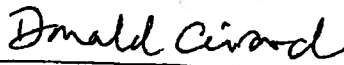
Dissent

Concur in part

Dissent in part

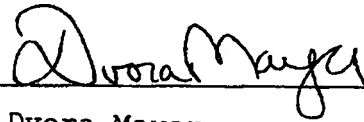
Attachment YES

Attachment NO



Donald Girard

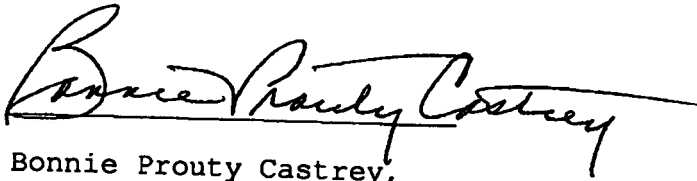
District Panel Member



Dvora Mayer

Association Panel Member

Issued (with attachment) on August 27, 2011 by



Bonnie Prouty Castrey,

Panel Chair

Concurrence in Part by District Panel Member Donald Girard

I agree with the findings in the "Health and Welfare Benefits" part of the Panel Chair's report. I believe that the Panel Chair has proposed a reasonable solution to help address the District's escalating health care costs.

The District's ability to pay cannot be determined solely by its balance sheet. The current severity of State budget cuts are unprecedented. For the 2011-12 academic year, Santa Monica College will be offering nearly 1,200 fewer credit class sections than in 2008-09, a 16% reduction. This is placing an extraordinary strain on the public welfare as students attempt to complete their studies.

The District framed the Issue for resolution in its March 11, 2011, letter to PERB:

Is the College's last, best and final offer of September 9, 2010 regarding Article 12 Health and Welfare Benefits reasonable in light of the factors set forth in Govt. Code section 3548.2?

Government Code section 3548.2 provides in factor 3: "The interests and welfare of the public and the financial ability of the public school employer."

The Panel Chair's report addresses only part of the inquiry required by Government Code section 3548.2. Any conclusion requires a balancing of "financial ability" and the "interests and welfare of the public."

Donald Girard