# FACT FINDING DISCUSSION AND RECOMMENDATIONS

Between

**Capistrano Unified School District**

and

**Capistrano Unified Educators Association CTA NEA**

Re: Case No. LA-IM-3523-E

Impartial Chair

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

District Panel Member

John M. Rajcic, Esquire
Atkinson, Andelson, Loya, Ruud & Romo
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Association Panel Member

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Hearings Held

January 25 and 26, 2010

## BACKGROUND

Capistrano Unified School District (District or Employer) and the Capistrano Unified Educators' Association (Association or CUEA), an affiliate of the California Teachers Association (CTA) and National Educators' Association (NEA), are the parties in this fact finding matter. The 2200 certificated staff in this bargaining unit are members of CUEA.

The parties reached a tentative agreement on a number of language issues on January 5, 2010. Those language items are codified and cited in the Association Facts (AF) at tab 5 and are hereby incorporated into this report by reference.

Hence, the issues before this Panel are Inability to Pay, Health and Welfare, Wages, and Reduction of the Work Year with a corresponding pay reduction. The District's Final Offer made on June 8, 2009 is at Tab 5 in the Association's Facts Binder and is hereby incorporated by reference.

The parties "sunshined" their proposals for bargaining in the Spring of 2009. The District "sunshined" theirs on March 21, 2009 and the Association submitted their proposals to the District on March 30, 2009. The District "sunshined" the Association's proposals in April 2009. The parties engaged in direct negotiations twice in June of 2009. The District filed a request for Certification of Impasse with PERB on June 18, 2009. CUEA filed an Opposition to the Request for Impasse. On June 29, 2009, PERB issued a Notice of Determination of Impasse. From July through October, eight sessions were convened with the Mediator. When no progress was made to settle this matter, the parties were certified to Fact Finding by the Mediator. Subsequently, the District requested that the parties proceed to Fact Finding.

The District selected John Rajcic of Atkinson, Andelson, Loya, Ruud and Romo as the District Panel Member and the Association selected Angela Su from CTA to be their Panel Member. The Panel Members then selected Bonnie Prouty Castrey as the Impartial Chair and so notified PERB. Subsequently, Ms Su was unable to serve and Christine Balentine, Executive Director of CUEA/CTA was selected as the Association Panel Member.

The Panel met in conference and then held a hearing with the parties on January 25 and 26, 2010. 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. When that effort was not fruitful, the Members studied both parties submissions thoroughly and the Chair drafted this Report and Recommendations.

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."

## ADDITIONAL PERTINENT STATE LAWS

**Government Code Section 3547.5**

(a) Before a public school employer enters into a written agreement with an exclusive representative coverings matters within the scope of representation, the major provisions of the agreement, including, but not limited to, the costs that would be incurred by the public school employer under the agreement for the current and subsequent fiscal years, shall be disclosed at a public meeting of the public school employer in a format established for this purpose by the Superintendent of Public Instruction.

(b) The superintendent of the school district and the chief business official shall certify in writing that the costs incurred by the school district under the agreement can be met by the district during the term of the agreement. This certification shall be prepared in a format similar to that of the reports required pursuant to Sections 42130 and 42131 of the Education Code and shall itemize any budget revision necessary to meet the costs of the agreement each year of its term.

(c) If a school district does not adopt all of the revisions to its budget needed in the current fiscal year to meet the costs of the collective bargaining agreement, the county superintendent of schools shall issue a qualified or negative certification for the district on the next interim report pursuant to Section 42131 of the Education Code.

## STIPULATIONS OF CUSD AND CUEA

1. The Capistrano Unified School District is a public school employer within the meaning of Section 3540.1(k) of the Educational Employment Relations Act.

2. The Capistrano Unified Education Association is a recognized employee organization within the meaning of Section 3540.1(I) of the Educational Employment Relations Act and has been duly recognized as the representative of

the certificated non-management bargaining unit of the Capistrano Unified School District.

3. The parties to this factfinding have complied with the public notice provisions of the Government Code section 3547 (EERA, "Sunshining" requirement)

4. The parties have complied with the Educational Employment Relations Act with regard to the selection of the Factfinding Panel and are timely and properly before the Panel.

5. The parties have complied with all the requirements for selection of the factfinding panel and have met or waived the statutory time limitations applicable to this proceeding.

6. The contract issues which are appropriately before the Factfinding Panel are as follows, all other matters were agreed upon by the parties during the course of the negotiations:

   Article 5-Hours of Employment
   Article 13-Health and Welfare Benefits
   Article 14-Wages

7. An impasse in bargaining was declared by the Public Employment Relations Board on or about June 18, 2009. The mediation process proceeded as scheduled, and the parties continued to meet with the mediator in an effort to reach agreement until October 22, 2009. The mediator certified the matter to factfinding on November 1, 2009.

8. The factfinding chairperson, Ms. Bonnie Castrey, was jointly selected by both parties.

9. The cost of each 1% for the CUEA bargaining unit is approximately 2 million dollars.

## COMPARISON DISTRICTS

The District used the comparison districts of unified districts serving K-12 students in Orange County and that are funded similarly by the State with a base revenue limit and have categorical funds as well. Additionally about 80% of the members of this bargaining unit live within these districts. Those unified districts are: Brea Olinda, Garden Grove, Los Alamitos, Orange, Placentia-Yorba Linda, Saddleback Valley, Santa Ana and Tustin.

CUEA, in addition to the comparison districts selected by the District, compared their bargaining unit to the other three unified districts in Orange County: Irvine, Laguna Beach and Newport-Mesa.

While teachers may choose to commute to those three districts and so are in that sense, they are comparative districts, those three districts are on a totally different funding model. That funding model is commonly referred to as "Basic Aid". This essentially means that property taxes collected in the school district boundaries are returned to the district for their use in providing educational programs, including the compensation of employees. They are not funded on an Average Daily Attendance (ADA) basis in which the State determines the dollar amount for each student based on their daily attendance. When the State is having problems with its budget, they underfund the base revenue limit as is discussed below.

Therefore, while the Chair is well aware that members of this bargaining unit may well look to leave CUSD and work in these three districts, the funding model, which in the economic matters before this Panel is critical, is so different, that the comparison is, as the cliche goes, "like comparing apples to oranges".

Hence, the Chair will use the eight districts on which the parties agree for comparison purposes, all unified districts in

Orange County which are funded based on ADA.

The following is a discussion of the outstanding issues with recommendations following each issue.

# ISSUES

## INABILITY TO PAY

### DISCUSSION AND FINDING

The first issue is the question of inability to pay.

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

State law requires that school districts must maintain a positive ending balance in the current year and two successive school years. In other words, the budget for fiscal year/school year (FY) 2009-2010, which commenced July 1, 2009 and ends June 30, 2010, must have a positive ending balance and a minimum two percent reserve (2%). In addition, FY 2010-2011 and FY 2011-2012 must also be able to show a positive ending balance.

Schools in California are dependent on The State of California for their revenue. The State is and has been in fiscal crisis for several years since at least 2007. 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 cut school districts unrestricted and categorical (restricted) funding by billions of dollars. For this District, this amounts to more than a twenty percent (20%) decrease in unrestricted funding and approximately twenty percent (20%) in restricted funding. Had the State not cut its unrestricted funding, also referred to as Base Revenue Limit (BRL), CUSD would receive in the 2009-2010 FY, $6,112.00 for each student attending class each day (Average Daily Attendance or ADA). With the State decreasing its funding of the BRL, the District will receive only $4,950.00, a difference of $1,423.00 equal to 22.3%. In FY 2010-2011, the CUSD should receive $6,349.00, however, according to current State budget projections, the State will likely only fund the BRL at $4,982.00 per ADA, which represents a $1,367.00 deficit, equal to 21.5%. So, for every one dollar this District should receive for each student, it is only receiving about 81-82 cents. (District Facts [DF] Inability to Pay tabs 10-12)

There is no question that these are huge losses in unrestricted revenues. The District has spent down its reserves and is deficit spending. Absent budget modifications, they project such deficit spending in the amount of twenty five and a half million in this fiscal year and growing to nearly thirty six million in FY 2010-2011 and nearly thirty nine million in FY 2011-2012 (DF tab 14).

Further, the District asserts that they have been spending down their reserves and that while they show a positive ending balance in FY 2009-2010 of just over ten million dollars, unless they make substantial additional cuts, including cuts in this bargaining unit, their ending balance in the two successive years, will exceed a negative twenty five million dollars in FY 2010-2011 and a negative sixty four million dollars in FY 2011-2012.

The District self qualified their budget and has been assigned a Fiscal Advisor by the County of Orange, Department of Education. As stated above, the District, by law, must show a positive ending balance and a district this size should have at least a 2% reserve in the ending balance. (DF tab 15, pg. 66)

Finally, under State law, the Education Code at section 3547.5 provides that the superintendent and the chief business official of the district must sign that a collective bargaining agreement can be implemented and is affordable for the term of that agreement. The District asserts that they cannot continue to afford to pay the total compensation at the level in the current Collective Bargaining Agreement (CBA) and therefore they cannot certify the continuation of the terms of this CBA and meet the requirements of the law.

The Association, on the other hand argues that the District has a balanced budget for 2009-2010 and that historically the District's multi-year projections have been overstated. Additionally, they point out that the District has misclassified two classifications of administrators into their bargaining unit, the Elementary and Secondary Teaching Assistant Principal II's (ETAPS II and STAPS II), which account for $4.7 million. That $4.7

million should be accounted for in administrative costs not the CUEA bargaining unit costs.

Additionally, the CUEA shows that the District has projected zero enrollment growth, in the budget projections, for the next three years (DF tab15, pg.65). They contend that this is unrealistic and CUEA shows that historically, in the past five school years, the District has grown an average of 432.6 ADA per year. They grew 672 ADA in FY 2004-2005; 385 ADA in 2005-2006; 198 ADA in 2006-2007; 423 ADA in 2007-2008 and 485 ADA in 2008-2008. Totally, the district ADA has increased from 47,458 at the end of FY 2003-04 to 49,621 at the end of FY 2008-2009. (AF Tab 7, Ex. A).

There is no reason to believe that the District will have zero increase in ADA in 2009-2013, nor was there any assertion of projected declining enrollment. Therefore, the zero increase in ADA for three years in the budget is a very questionable assumption in this budget.

With the mid-year cuts and significant per pupil cuts that the District has sustained since FY 2007-2008, and the volatility of the State budget, it is likely that ending balances have been challenging to estimate. From the Chair's study of the budget documents, however, it is a fact that the District is spending down its reserves and is in deficit spending which is not sustainable. Even with continuing ADA growth, this deficit cannot be entirely offset.

The Association also posits that the District has many other options for cuts, all of these options were presented to the Board and included items such as capturing a portion of the deferred maintenance fund, closing small schools, and delaying the adoption cycle of textbooks (AF Tab 10).

Based on the foregoing and taking into consideration both parties facts and arguments, the Chair finds that the District has met its heavy burden of proof and that it has shown that it does have an inability to pay this bargaining unit at the current total compensation in the CBA.

The next question is how to address this critical matter without totally devastating the bargaining unit members ability to live and the parties ability to effectively deliver the educational programs of the District to students.

**DISTRICT POSITION**

**HEALTH AND WELFARE BENEFITS**

The District proposes freezing (a hard cap) all levels of health care benefits, purchasing health insurance from other alternative providers and eliminating retiree health benefits which are now provided, up to age sixty five, for early retirees.

They assert that the only way to contain their costs is a hard cap and that cap should be at the 2009 rates. The benefit year is January 1 to December 31 of any given year. This freeze in benefits allows the District to project exact costs for the three year budgeting process. The January 2009 rate is known, the number is predetermined and can be budgeted.

Further, they posit that they may be able to save on plans by seeking alternative providers and by eliminating retiree benefits for employees who retire before age 65. Currently, the district pays a portion of the retiree's insurance premium until age sixty five (65) when retirees are Medicare eligible.

**REDUCTION IN WORK YEAR**

The District proposes a reduction in work year of five days, from 185 days for teachers to 180 days, with a corresponding reduction in salary. Moreover, they propose that these days should include all of the CUEA bargaining unit members staff development and preparation days.

Psychologists, Nurses, Counselors and Speech Pathologists who have a contractually agreed upon longer work year would also have their respective work years reduced by 5 days with a corresponding reduction in salary.

The District costs this savings at about 2.70% with 0.54% savings for each furlough day.

**WAGES**

The District proposes a ten percent (10%) across the board reduction in salary and to freeze all step and column increases for all CUEA bargaining unit members.

**ASSOCIATION POSITION**

The official position of the CUEA is to maintain the status quo on Health and Welfare, the work year and wages.

**HEALTH AND WELFARE**

The CUEA argues that within the MEBA Trust plans, renewal rates have been consistently below the national average and that the 2011 renewal rates are projected to be below the seven percent currently budgeted by the District. Further, they contend that CUSD's initial budget projection of ten percent, for the FY 2009-2010 was high and it's first interim report of 7% is also high. (AF Tab 7, E-1, E-2).

The parties have worked together over several years with the current contract language which provides a "soft cap" to save overall health care costs. With the "soft cap" the bargaining unit members and CUSD share the increased costs. CUEA projects that with the "hard cap", proposed by CUSD, over six million dollars in health care costs would be shifted to employees.

CUEA maintains that the joint labor management Trust has been an effective vehicle for collaboratively maintaining both the benefits and containing the costs. In 2009, within the MEBA Trust, the parties agreed to significant plan changes which took effect in January 2010. For example, the Blue Cross HMO plan increased only 2.57% and Blue Cross POS increased only 2.98%. (AF Tab7, pg4). Those savings amounted to $1.5 million dollars. (AF Tab 7, EX E2).

Regarding retiree benefits, CUEA points out that not only within the eight unified comparison districts, but in fact in all 28 Orange County School Districts, retiree health benefits are provided to age sixty five when retirees reach Medicare eligibility. Furthermore, two of the twenty eight districts provide benefits beyond the age sixty five Medicare eligibility. (AF Tab 7, EX N)

**WAGES**

The CUEA maintains that a permanent cut in wages of 10% will put them at the bottom ranking of the comparison districts and all unified districts in the County. Their data also show that other Orange County districts and unions have saved on overall unit salaries through temporary furlough days, not permanent cuts to the salary schedule.

Moreover, the Association data show that the District historically underestimates the ADA which brings in significant dollars to the District. In the current budget the District has budgeted for zero ADA. As stated above and restated here, the District has grown an average of 432.6 ADA per year. They grew 672 ADA in FY 2004-2005; 385 ADA in 2005-2006; 198 ADA in 2006-2007; 423 ADA in 2007-2008 and 485 ADA in 2008-2008. In total the District ADA has increased from 47,458 at the end of FY 2003-04 to 49,621 at the end of FY 2008-2009. (AF Tab 7, Ex. A).

Next, they point out that in the 2009-2010 school year, the CUEA bargaining unit has already saved the District a large percentage, for which their unit should be credited. Their unit sustained a layoff of over 229 members. Thereby, the District saved both the wages and health care benefit costs for those 229 former employees. That savings alone amounted to approximately 20 million dollars!

They also point out that all ETAP II's and STAP II's are misclassified in the CUEA bargaining unit and that all 43 of them should be appropriately placed in administration.(AF Tab7, EX E).

**REDUCTION IN WORK YEAR**

The CUEA argues strongly that any reductions in the work year should be temporary as they are in other districts in the County and State which are negotiating reductions in the work year and commensurate temporary reductions in pay. (AF Tab 8).

**WAGES**

The Association argues vehemently against a 10% cut in the salary schedule. They show that such a cut would render the District non-competitive for certificated staffing, as they would be at the bottom of the comparison districts at every salary bench mark. (AF Tab 8, Q-1-3)

**ADDITIONAL AREAS FOR CONSIDERATION**

The Association maintains that there are additional areas where cuts can be made that do not affect employees ability to make a living. Many of these possible areas for either cuts or legally transferring funds were presented to the Board at their December 15, 2009 meeting.

They point to the flexibility allowed by the State to utilize normally considered categorical funds for partial or full use, such as partial use of cafeteria funds, deferred maintenance funds and the use of Adult Education and summer school categorical funding. (AF Tab 8, EX U, Memorandum regarding "FISCAL ISSUES RELATING TO BUDGET REDUCTIONS AND FLEXIBILITY PROVISIONS" from Jack O'Connell, State Superintendent of Public Instruction, April 17, 2009, 16 pgs)

As stated above, there are several additional cost saving options available to the District such as closing small schools and reorganizing programs which may be considered by the Board. (See AF Tab 10, December 15, 2009 document)

The Chair realizes that all these choices are difficult, but maintaining a motivated workforce is essential to teaching children in our public schools.

## RECOMMENDATIONS

In order to provide for planning for both the District and the CUEA membership, the Chair recommends the following three year agreement to be in an MOU:

### 2009-2010

**Work Year**

Reduce this work year by three days in an MOU (with partial to full work year restoration upon criteria such as restoration of Revenue Limit Funding, additional one time dollars from federal government for jobs, "sweeping" of one time categorical monies, and other options which the Board can exercise).

Three (3) furlough days (saves 1.62% at 0.54% for each day)

Credit this bargaining unit with the $20 million savings in salaries and benefits from the layoff of 229 bargaining unit members and removing the ETAP II's and STAP II's from the unit.

## 2010-2011

### Health and Welfare

During the 2008-2009 school year, the parties worked collaboratively within the MEBA Trust to make significant plan changes, which actually brought the overall increases in the cost of the plans down to 4% commencing in January 2010. In addition, the parties, within the MEBA Trust, were able to secure a significant rebate in order to keep the health care premiums from escalating significantly. (AF tab 7, 4b).

In studying this matter, the Chair finds that, while the "soft cap" served the parties well for a number of years, in order to have more control of the costs moving forward, a specific percentage split, between the employee and the district, along with the parties ongoing collaboration to change benefit plans as necessary would meet the interests of being able to budget and contain health care contributions.

The Chair recommends that as soon as possible and no later than the new plan year, January 1, 2011, Kaiser be offered at no cost to the employee, the employee plus one or the family. That the Blue Cross HMO be offered as 10% to be paid by the employee and 90% by the District. Currently employees do not pay a premium for this plan, so 10% paid tenthly will be a significant increase for employees who are also expected to take furlough days which will significantly impact their salaries. And, offer the Blue Cross POS plan with 15% paid by the employee and 85% by the District.

This is a savings to the District of about 1% of salary.

**Reduction of Work Year**

Reduce by up to five days (with partial to full work year restoration upon criteria such as restoration of revenue limit, additional one time dollars from the federal government for jobs, "sweeping" categorical monies, etcetera).

Five fewer days with a commensurate reduction in pay is equal to approximately 2.7%.

**Class Size**

In studying other potential areas where significant monies can be "saved", the Chair recommends temporarily increasing class size by two students. Each student added to a classroom is 2% each year. Therefore adding two students while increasing the teachers workload, it realizes temporary savings of 4% each year.

**Wages**

Retain current schedule with step and column movement in the contract. By MOU reduce wages one percent (1%) with a restoration clause including criteria such as restoration of the revenue limit, other ongoing monies, additional one time dollars such as from federal government for jobs, "sweeping" categorical monies and other one time monies all to be considered.

**2011-2012**

**Health and Welfare**

Maintain in the MOU the 10% employee and 90% District split on the Blue Cross HMO and the 15% employee and 85% District split on the Blue Cross POS. Continue to offer the Kaiser plan paid by the District. This will continue to be approximately 1% of salary.

**Reduction in Work Year**

Continue 5 day reduction unless restoration of any or all of the days is possible, based on savings of one time monies and any on going money in criteria as stated above.

**Wages**

Continue a 1% reduction in salary in the MOU unless restoration is possible based on the one time and on going money criteria recommended above.

**Class Size**

Maintain additional two students per class until the funded revenue limit returns to 2007-2008 levels or the parties negotiate changes. This is a continuing 4% savings.

Further, the Chair recommends that the District seek any necessary waivers from the State in order to implement this recommendation.

**MOU**

Agreeing to a Memorandum of Understanding and preserving the terms and conditions of the parties current CBA, provides the parties with flexibility as the State of California recovers and pays the District the deficited revenue limit funding and categorical funding.

The Panel Members representing the District and Association have met in Executive Session on March 1, 2010. Based on the above Recommendations of the Chair they concur as follows:

For the District:

X Qualified Concur

For the Association:

X Concur

Report attached YES

Report attached NA

John M. Rajcic, Esquire
District Panel Member

Christine Balentine
Association Panel Member

Issued with attachment on March 12, 2010 by

Bonnie Prouty Castrey,
Panel Chair

Concurrence with Panel Conclusions:

I fully concur with the conclusions of the Panel regarding the fiscal realities facing the District. In particular, I strongly support the conclusion that the District has an inability to maintain its current contractual obligations given greatly diminished funding levels.

With regard to the recommendations of the Panel, I strongly concur with the recommendation that modifications in the terms and conditions of employment for the certificated bargaining unit should yield a two year cumulative total (for the years 2009-2010 and 2010-2011) of 10.32% in certificated salary schedule equivalent cost savings. Such a recommendation is consistent with aspects of the position taken by the Governing Board throughout negotiations to date. This concurrence comes with a slight caveat. It is based, in part, upon the State funding reduction provisions contained in the Governor's January 2010 Budget Proposal. Should the 2010 May Revisions to the Governor's Proposal or the 2010-2011 Budget Act contain additional reduction provisions, the District would be forced to seek additional concessions from its employee organizations.

I appreciate the efforts of the Panel Chair to provide the parties with a menu of options to achieve the recommended levels of reductions and cost savings. I strongly urge the District to consider achieving the recommended level of 10.32% in reductions through a combination of alternatives including reducing the certificated work year, restructuring health benefits contributions as well as salary schedule reductions. I must disagree, however, with the Panel recommendations regarding increases in class size. In addition to significant facilities restrictions on the District's ability to increase class sizes, increases such as proposed by the Panel are inconsistent with sentiments in the community regarding class size, are pedagogically problematic and would lead to the lay off of a significant number of new teachers (teachers the District has expended substantial sums of money to train).

Normally, it would be my strong preference to implement the recommendation to close the contract for the 2011-12 fiscal year. In a more stable fiscal environment closing down the contract for three years would be desirable for both parties. However, in considering this recommendation, I am concerned that closing down the 2011-12 year could be problematic for the District and the Union should fiscal conditions dramatically change. I believe that any agreement entered into by the parties may require amendment by the parties to provide flexibility if conditions change.

In summary, I concur strongly with the conclusions of the Chair and I believe that the recommendations are helpful, with the exceptions noted above, in bringing the matter to resolution.

John M. Rajcic, Esquire

District Panel Member