

**FACT FINDING DISCUSSION AND RECOMMENDATIONS**

Between )  
 )  
**New Haven Unified** )  
**School District** )  
 )  
and )  
 )  
**New Haven Teachers** )  
**Association/CTA/NEA** )  
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Re: Case No. SF-IM-3217-E

Impartial Chair

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

District Panel Member

Matt Philips, CPA  
District Panel Representative  
Director Management Consulting Services  
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Association Panel Member

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Hearing Held

April 18, 2019  
New Haven Unified School District  
Conference Rooms  
Alvarado-Niles Street  
Union City, CA 94510

## **BACKGROUND**

The New Haven Unified School District (NHUSD or District) and the New Haven Teachers Association (Association or NHTA), a local affiliate of the California Teachers Association and the National Education Association (CTA/NEA), are the parties in this fact finding matter. The certificated staff in this bargaining unit are members of NHTA/CTA/NEA). There are 580 teachers in this bargaining unit as of the date of this hearing. The District currently serves about 11,300 students in grades transitional K-12. There are seven (7) K-5 elementary schools, two (2) middle schools, one (1) comprehensive high school, one (1) continuation school and one (1) alternative education site which provides home schooling and independent study programs. There is also an Adult Education Program which serves about 1000 adults each year.

The parties current CBA is from July 1, 2017-June 30, 2020. These negotiations are a contract re-opener for July 1, 2018 and forward for salary.

The parties have been in negotiations since December 6, 2018, however, they only had two direct negotiating sessions and went to impasse. At the first session, NHTA proposed a 10% on schedule increase retroactive to July 1, 2018, salary schedule compression from 32 steps to 27 steps and an off schedule stipend of \$1,500.00 and for July 1, 2019 a 10% on schedule increase and \$1500.00 stipend. Regarding the Schedule step compression, the parties had previously reached an agreement which was ratified to compress the

salary schedule from 32 to 29 steps as of July 1, 2019. The District costed the Association proposal at \$24,528,625.00 or about 25.18% over the two years. At their second direct negotiation session, January 31, 2019, the District proposed no increase for 2018-19 and to reopen negotiations for 2019-20. Following that direct negotiation meeting, the parties jointly went to impasse and PERB assigned State Mediator Kenneth Glenn to assist them in mediation. They met on March 5, 2019, but were still unable to reach agreement and were certified to Fact Finding on March 7, 2019 by the mediator (DX pg 8 and AX tab, Issues before the Panel).

The District selected Matt Phillips as its Panel Member and the Association selected Charles "Chuck" King as its Panel Member. They selected Bonnie Prouty Castrey to Chair the Panel and PERB subsequently appointed her on or about April 2, 2019.

The issue before this Panel is: Article 11, Salary.

The hearing before the Panel was held at the District Offices in Union City, CA on April 18, 2019. Both parties briefly presented their voluminous documentation and facts regarding the issues before the Panel and had time for clarifying questions. Following the hearing, the Panel met in Executive Session to discuss potential options for settlement. The Panel Members then worked in joint, separate and off the record, confidential mediation sessions with the parties in an attempt to assist these parties in reaching a Tentative Agreement that night. Following long hours of confidential mediation in this factfinding, the

parties moved but did not reach a tentative agreement, hence the following report and recommendations.

The Chair asked the parties to provide additional information, which was provided and also urged them to continue to meet confidentially under the cloak of the panel mediation to reach an agreement.

When this effort was not successful, the Panel Members studied both parties entire submissions thoroughly, held conference calls to discuss the issue 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 covering 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 NHUSD AND NHTA**

1. The New Haven Unified School District is a public school employer within the meaning of Section 3540.1(K) of the Educational Employment Relations Act.
2. The New Haven Teachers 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 exclusive representative of the non-management bargaining unit of the District.
3. The parties to this factfinding have complied with the public notice provisions of 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 the selection of the factfinding panel and have met the statutory time limitations applicable to this proceeding. NHTA does not waive the timelines.

6. The contract issue which is appropriately before the fact finding Panel is as follows, all other matters agreed upon by the parties during the course of negotiations for the three year contract July 1, 2018-June 30, 2020 with this re-opener:

Article 11. Salary

7. An impasse in bargaining was declared by the Public Employment Relations Board (PERB) on or about February 5, 2019. The mediation process proceeded as scheduled, and the parties met with the mediator, Kenneth Glenn, in an effort to reach agreement until March 5, 2019. The mediator certified the matter to factfinding on March 7, 2019.
8. The parties selected factfinding chairperson, Bonnie Prouty Castrey and she was notified of her assignment by PERB on or about April 2, 2019. (DX pg 6; AX tab stipulations).

### **COMPARISON DISTRICTS**

The District selected for use in comparison districts that have similar funding under the Local Control Funding Formula (LCFF), are geographically located within driving distances for teachers, are where teachers live who work at NHUSD and are unified districts. Additionally they have an ADA of 5,000 to 40,000 students. See page 3 of District Facts (DX 3). The fifteen districts are:

Alameda USD  
Castro Valley USD  
Dublin USD  
Fremont USD  
Hayward USD  
Livermore Valley Joint USD  
Milpitas USD  
Morgan Hill USD  
Newark USD  
Oakland USD  
Pleasanton USD  
San Jose USD  
San Leandro USD  
San Lorenzo USD  
San Ramon Valley USD

The Association submitted 14 comparison districts in the Alameda County with 1000 ADA or more. (AX Tab 19).

Alameda USD  
Albany City  
Berkeley USD  
Dublin USD  
Castro Valley USD  
Fremont USD  
Hayward USD  
Livermore USD  
Newark USD  
Oakland USD  
Piedmont City  
Pleasanton USD  
San Lorenzo USD  
San Leandro USD

As these parties agreed on the following 11 districts, the Chair uses them for comparison in her analysis and discussion:

Alameda USD  
Castro Valley USD  
Dublin USD  
Fremont USD  
Hayward USD  
Livermore Valley USD  
Newark USD  
Oakland USD  
Pleasanton USD  
San Leandro USD  
San Lorenzo USD

In comparison with the Consumer Price Index, NHTA used the Bay area CPI facts that housing prices are high in this area and rising, rentals are expensive, teachers cannot afford to live near their work and further they have paid the entire amount of their Health Insurance premiums since 2014-15, which are substantial (AX 15,16,17,18,and 19). As of 2014-15, the parties recognized the benefits cost provided by the employer for the benefit of employees is \$22,491 and since that time the parties have just bargained salaries (AX 16).

At tab 17, the Association shows that "post restoration" of funding from FY 14-15 to present, the cumulative CPI for "SF-Oak-Hay" has escalated 16.7% and the NHTA salary increases are 10%. When compounded for the same period, the CPI is 17.8% and salaries are 10.33%(AX tab 17).

The district used the last four years of the State Consumer Price Index to show that certificated members salaries increased by 10.0% while the CPI increased 9.70% and the State COLA was 3.43%. The district points out that the cited increases do not include step and column increases which teachers receive per the salary schedule and furthermore, that the Step and Column increases are being compressed from 32 steps to 29 steps as negotiated in 2017-2018 to commence in fiscal year 2019-2020. The Chair recognizes that the State funding is based on COLA.

## **FINDINGS and DISCUSSION**

### **SALARY**

This salary issue involves several areas including additional salary schedule compression, on schedule increases, off schedule one time payments for both fiscal years 2018-19 and 2019-20 and many questions about the budget and district priorities.

State law requires that school districts must maintain a positive ending balance in the current year and two successive school years. This district is required to maintain a 3% reserve for economic uncertainties. In other words, the budget for fiscal year/school year (FY) 2018-2019, which commenced July 1, 2018 and

ends June 30, 2019, must have a positive ending balance. Additionally, under State law, in FY 2019-2020 and FY 2020-2021, the district must also be able to show a positive ending balance with at least the 3% reserve for economic uncertainty. Furthermore, as noted above, the Superintendent of schools must sign to certify that the negotiated settlement can be paid and that reserve balances will be maintained. If that cannot be guaranteed then the County Department of Education will not certify the district budget.

Next, questions arose at the bargaining table and in the hearing regarding the sale and expenditure of funds from the Cabello property. That property was sold in January, 2015. The District, with approval from the State Allocation Board (SAB), allocated the funds from that sale to establish a Fiscal Stabilization Fund of 7% (\$9,800,000) in order for the District to maintain a prudent 10% reserve with the 3% reserve that the State requires for economic uncertainty and the additional 7% for Fiscal Stabilization. Also from that sale, \$2,800,000 was allocated to the Retiree Post-employment benefit fund and \$1,163,115 for facilities projects. The total sale was \$13,763,115. (DX Facts 24 and 25 pgs 110-130 regarding the sale of Cabello property and the post retirement trust documents are incorporated here by reference).

Further, regarding the benefit plan trust, it is important to note that the allocation of \$2,800,000 from the Cabello property

sale has been offsetting the district's obligation of \$500 per year, per full time certificated employee to fund the trust. That allocation, however, will be used/spent down by the 2020-2021 fiscal year and the district will need once again to allocate the \$500.00 annually per certificated employee from the general fund (DX 25 pg. 114).

Following the "Great Recession", of 2007-08, when the State took 22 Billion dollars from public education, causing great economic hardship to this district and this bargaining unit with 24 Furlough days over three years, from 2008-09 through 2010-11; in 2013, rather than simply restoring the funding, the Governor and legislature implemented a new funding formula known as the Local Control funding Formula (LCFF). The new formula replaced the base revenue limit and multiple specific categorical funded programs and consists of three levels of funding including a base level grant of funds for all students. The second level is supplemental grant funds which must be used in specific ways to enhance learning for specific students and programmatically accounted for in a Local Control Accountability Plan (LCAP). The specific designated student population of unduplicated pupil percentage counts (UPP) are foster youth, English Language Learners (ELL) or students who qualify for Free and Reduced price Meals (FRPM). The third level of funding is a 50% concentration grant fund for districts which serve a UPP of 55% or more of foster youth, ELL and/or students who qualify for FRPM. This district's 2018-19 UPP was 54.76% as of February 2019

and therefore it does not qualify for the concentration grant funding at this time.

That fact is important as the additional services for enhancing student learning must be provided with the supplemental grant funds without the benefit of the concentration grant funds (DX 5, pgs 46-59).

The District points out that as of the last certified J-90 funding for 2017-18 their LCFF funding was less than comparison districts by as little as \$173.00 per student ADA and as much as \$1500.00 per ADA (DX 9). In the same year, this district spent 54.09% of unrestricted monies on certificated non-management salaries which is \$4547.46 per ADA and is more than the comparison group and significantly more (nearly 10.42%) when compared to all Unified Districts in California. (DX pg 76 and 77)

Moreover, the district continues to experience a decline in enrollment since 2013 for a total loss of about 1062 ADA (DX 10). This is a huge loss of base funding and further impacts the supplemental funding. At last count, the District lost 307 students in this year, 2018-19.

The district budget is further substantially impacted, as are district budgets around this state by increasing needs of Special Education students. The needs of many of the students are increasing and the costs are rising dramatically per ADA. These increases significantly impact the general fund dollars as the state and federal governments are not meeting the increased costs

of the needs of these young people. Rather they are needs funded out of the base grant funds/the general fund. In this district from 2013-14 to 2017-18, on a per ADA basis, that additional expense represents an increase of 57% encroachment (DX 21).

The lack of adequate, full funding by the State of California for this district, is quantified in real terms, by the personal experiences of the members of this bargaining unit sharing their feelings and sense of not being valued. They tell of the increased number of students in their classrooms, the amount of professional development necessary to keep up with curricular changes, increasing health care premiums that they must fully pay, as the district does not contribute any amount to the premiums and the stress of living in an area where the cost of housing and rentals are ever increasing. This often means driving longer distances to and from work and working more than one job to make ends meet while still not being able to afford to purchase a home. The committee members stress the lack of progress in negotiations and their frustration with the perceived lack of communication and understanding of their economic circumstances (AX tabs 1,2,3,4,15,19).

Both parties agree that teachers tend to stay with the district for 13 years or longer which is certainly good for stability (DX 13 and AX 19). The district also cites that it is a desirable workplace as there are many applicants for any open teaching positions (DX 14).

The NHTA points out that over the years certificated management salaries as a percentage of budget have increased as a percent of budget outgo from 5.5% in 2010-11 to 7.65% at second interim in 2018-19 (AX 7). The certificated non-management, teachers, during the same period declined in budget outgo from 54.50% to 44.17% (AX 6). The revised figures from 2013-14 which are helpful as that is the commencement of the LCFF demonstrate a Bargaining unit decline of total outgo from 51.35% to second interim 18-19 of 43.88%. The Management salaries in dollars start at \$6,280,362 and increase to \$10,303,310 (Panel Member King 4/19/19). A part of the increase in Management salaries is the re-codification of Confidential employees (Panel Member Phillips 5/5) (See Attachment A from Member Phillips).

While some of that decline for teachers is accounted for with the declining enrollment and having fewer teachers, which is a significant number, the district explained further that over these six years from 2013-14 to 2018-19, the increase in management included the restoration of Assistant Principals who were cut during the recession. Further, to meet LCAP goals, are the addition of Social Workers and English Language staff who are paid for with supplemental funding. Additionally, from the supplemental funds technology positions were added to support the 1:1 devices for students at the high school and that goal is expanding to the grade schools in the FY 2019-20 budget (Member Phillips supplemental materials).

In addition to changing the funding formula, the State legislature and governor also added a huge increase in CalSTRS funding obligations to districts, which has diminished the budget resources available for salary consideration. Over the last few years, while the State restored school funding, they significantly increased the district's contribution levels. Over the next six years, the contributions which must be made by districts increase very dramatically. At this writing, the state has not provided any funds to mitigate the increases. In 2017-18 the employer contribution was 14.43% and by 2022-23 is expected to rise to 17.60%. These amounts affect the total budget and directly impact the amount of money available for salary increases (DX 22).

Clearly the economic pressures on both the district and the employees are challenging.

#### RECOMMENDATIONS

The cost of 1% for this bargaining unit is approximately \$689,366.

For this current school year, 2018-19, while the COLA was 3.7%, the CalStrs and statutory benefits as well as service to the step and column and operational expenses account for a major portion of that COLA. While those expenses have been paid by the district, it is important to also acknowledge that the members of this bargaining unit pay all of their health care.

There are unassigned funds which can be used for an on schedule salary increase at mid year, which will cost less this

fiscal year, but going forward is the full percentage. (See budget DX 17 pgs 90-101 and AX 14)

A mid-year on schedule increase of 3%, will cost 1.5% in 2018-19 and appears to keep this unit in the top five of the comparison districts while also helping to off set the ever increasing health insurance premiums for the employees.

The COLA for 2019-2020 is currently proposed to be 3.26%. The Chair recommends an additional 3% in order to keep this bargaining unit competitive with the comparison districts. This recommendation provides these parties an opportunity to seriously bargain to determine "on schedule" and "off schedule" components of salary as well all implementation dates. These increases will help the district retain their qualified staff and remain competitive in this area of the state.

As the salary schedule compression from 32 steps to 29 steps has been previously agreed to for implementation in 2019-20, unless additional COLA or other unrestricted funding is realized in the 2019-20 budget, the Chair does not recommend further compression at this time. This remains a worthy goal as it currently would affect about 1/3rd of the bargaining unit.

Finally, recognizing that the budget issues are dependent on the education of the legislators as to the very real needs of the district for increased funding, the parties might consider going together to educate their representatives regarding the ongoing effect of inadequate funding on students and staff. It is in the

public interest to have well funded public education.

The Panel Members representing the District and Association have met in Executive Session, by a conference call on May 5, 2019 to finalize this Report and Recommendation. Based on the above Recommendations of the Chair they concur or dissent as follows:

For the District:

\_\_\_\_\_ Concur  
\_\_\_\_\_ Dissent  
\_\_\_\_X\_\_\_\_ Concur in Part  
\_\_\_\_X\_\_\_\_ Dissent in Part

For the Association:

\_\_\_\_\_ Concur  
\_\_\_\_\_ Dissent  
\_\_\_\_\_ Concur in Part  
\_\_\_\_\_ Dissent in Part

Report attached: No to follow

Report attached Yes or **No**

Accept the report as the Recommendation of the Chair

      Matt Phillips      

      Chuck King      

Matt Phillips  
District Panel Member

Chuck King  
Association Panel Member

Issued on May 5, 2019 by

\_\_\_\_\_  
Bonnie Prouty Castrey,  
Panel Chair