

FACTFINDING PROCEEDINGS UNDER CALIFORNIA
GOVERNMENT CODE SECTIONS 3548.2 AND 3548.3

In the Matter of a Dispute	/	
	/	
between	/	REPORT AND
	/	RECOMMENDATIONS OF
	/	FACTFINDING PANEL
	/	
OAKLAND UNIFIED	/	
SCHOOL DISTRICT	/	
	/	PERB NO. SF-IM-2575-E
	/	
and	/	
	/	January 24, 2005
	/	
UNITED ADMINISTRATORS	/	
OF OAKLAND SCHOOLS	/	
	/	
	/	

Factfinding Panel

CHRISTOPHER D. BURDICK, Esq., Impartial Chair
RON BENNETT, District Appointed Factfinder
ROBERT D. LINKS, Esq. Association Appointed Factfinder

Hearing

November 15 and 30, 2004

Appearances

For the District: John Gray
School Services of California, Inc.
1121 L Street, Suite 1060
Sacramento, CA, 95814

For the Association: Julian Cane, Executive Director
United Administrators of Oakland Schools (UAOS),
8517 Earhart Road, Ste. 200,
Oakland, CA, 94621

INTRODUCTION

The Oakland Unified School District (OUSD) serves over 44,000 students and is the seventh largest school district in California, with 58 elementary schools, 19 middle schools, 17 small or traditional high schools, 11 alternative school sites, 5 special education program sites, 4 adult education program sites, and 20 charter schools. The District employs a total of 5,576 OUSD employees, including 305 Administrators, 3,195 Teachers, and 2,076 Classified Staff.

The 2003-2004 CBEDS enrollment data for elementary, middle, and high schools indicate that 43.4% of the total student population is African American, 32.2% is Hispanic, and 15.4% is Asian with the remainder representing other ethnic groups. Most of the student body is economically distressed. Over 90% of the students in several of the schools qualify for the free or reduced price meal program (e.g., Cox, Highland, Lazear, Lockwood, Melrose, Carter, Whittier, and Lowell) and 5% of the students attending Cole, Longfellow, Parker, Melrose, Castlemont, Mandala, and McClymonds qualify for calWORKS services.

Most of the District's students struggle with the inequities characteristic of an inner-city urban district, including crisis-level gang related crime and murders, drive-by shootings, homelessness, high unemployment rates, teen pregnancies and prostitution, drug and alcohol abuse, and the extensive need for health related services. From January 1999 to mid April 2004, the Oakland Police Department reported 31,795 violent offenses.

Despite these challenges, the District has seen some improved student achievement (i.e., August 16, 2004 News Memo from the Office of Public Schools). The 2003-2004 STAR test results show District-wide gains in language arts in grades 5 to 11 (excluding a flat 7th grade) and the California Standards Test (CST) indicates progress in moving students out of Far Below and Below Basic rankings. The high school exit exam (CAHSEE) reflected significant gains for 10th grade students. Summarized below are the 2003-2004 CAT6 Exam results. But only 27% of the District's graduates were eligible for the University of California, or the California Sate University systems upon

graduation in 2003, a rate which drops dramatically for African American and Hispanic students (i.e., 2004 Teaching American History Grant by Dr. Stanly Pesnick).

The United Administrators of Oakland Schools (UAOS) is the recognized employee organization for the District's "supervisory" employees, both classified and certificated, including principals and vice-principals at the elementary, middle and high schools, and a large numbers of accountants, food service administrators, IT professionals, program managers, office supervisors and managers, and the like. There are approximately 242 FTEs in the UAOS unit, down from 260 or so in 2002.

After a lengthy course of failed and contentious bargaining to replace the 1998-2002 CBA, in a milieu of steadily eroding financial news and concessions from all the District's other bargaining units, the parties reached impasse in March of 2004 and CHRISTOPHER D. BURDICK was appointed by the Public Employee Relations Board ("PERB") to serve as Impartial Chair of the Factfinding Panel, and RON BENNETT of California School Services was appointed to the Panel by the District, while United Administrators of Oakland Schools (UAOS) appointed its counsel, ROBERT D. LINKS. Hearing was held at District headquarters in Oakland on November 15 2004, followed by another meeting on November 30, 2004. JOHN GRAY of School Services of California appeared for the District, and JULIAN CANE, OUSA Executive Director appeared for OUSA. Both parties had previously waived, in writing, all of the time limits and deadlines set forth in Cal. Govt. Code Sections 3548.2 and 3548.3. The parties were afforded full opportunity to make opening statements, after which the proceedings were recessed and the parties attempted to negotiate a tentative agreement that they would each take back to their respective constituencies for ratification. (Note: there was no "cross examination" or detailed evidentiary presentation – all we really had were opening statements; no one was under oath)..

At the conclusion of the informal evidentiary portion of the hearing, the parties agreed to suspend the proceedings and, at the urging of the Chair, the parties continued to bargain and a tentative agreement (TA) was reached between the negotiating teams. That TA was approved by the State Administrator but was rejected by the OUSA membership (the second time the membership had rejected a TA agreed to by its

negotiating team). The Panel thereafter had several conference calls to review the parties' presentations and to consider its Report.

I
ISSUES

At the conclusion of mediation, essentially three issues remained unresolved and were submitted to the Panel for hearing and recommendation, namely Term; Salary (or, more accurately, salary reduction), and Hours of Work as follows:

CBA ARTICLE	DISTRICT POSITION	OUS A POSITION
<p>Issue #1 Art. 12 Compensation and Appendix 4 — At the time of Tentative Agreement (6/9/04), the District and UAOS agreed to reduce salary and Salary Schedules by 2.5% effective 7/1/03, to be implemented in equal deductions beginning in 7/1/04 & ending 6/30/05 (any employee who left the district after ratification would have any balance of the salary reduction deducted from his/her final paycheck.</p>	<p>The District now proposes to reduce salary and Salary Schedules by 2.5% effective 7/1/03, equal deductions to be taken between the time of implementation and 6/30/05.</p> <p>Any unit member who leaves the district after July 1, 2004, will have any balance of the salary reduction deducted.</p>	<p>Agrees to implementation of 2.5% salary adjustment, but without retroactivity.</p>
<p>Issue #2 — Art. 18 — Duration At the time of Tentative Agreement (6/9/04), the District and UAOS agreed to a two-year term of agreement, 7/1/03 — 6/30/05.</p>	<p>Two-year agreement, 7/1/03 — 6/30/05</p>	<p>UAOS wants a 3 year agreement, through June 30, 2006.</p>
<p>Issue #3 — Art. 4 — Hours of Work Art. 4.C.1. Work Year; Appendix A-3 The work year for certificated unit members whose work year was increased by five (5) days in 2000 shall be reduced by five (5) days</p>	<p>District and UAOS agreed to revise Work Year and Appendix A-3, per TA</p>	<p>District and UAOS agreed to revise Work Year and Appendix A-3, per TA</p> <p>Length of the Work/Year is tied to the salary issue.</p>
<p>Issue #4 Art. 4 — Hours of Work Art. 4.C.1. Work Year; Appendix A-3, 2003-04 Professional Development Days, Side Letter Provides granting an equivalent day of Compensatory time to unit members for each day of professional development completed during the 2003-04 school year, up to a maximum of 5 days. (attached)</p>	<p>District and UAOS agreed to Side Letter of Agreement to provide Comp time in exchange for Professional Development Days taken during 2003-04 to be used on or before June 30, 2004.</p> <p>District proposes to amend Side Letter to provide Comp time in exchange for Professional Development Days taken to be used on or before June 30, 2005 (Side Letter of Agreement to expire on 6/30/05</p>	<p>Professional Development Days issue is tied to the salary issue.</p>

The parties' hearing binders covered each of these disputed issues and provided, to a greater or lesser degree, data, information and arguments supporting their contentions and positions.

II

STATUTORY CRITERIA

Gov. Code Sec.3548.2(b) mandates that the Panel consider and apply the following criteria in making its findings and recommendations:

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- (1) State and federal laws that are applicable to the employer.
 - (2) Stipulations of the parties.
 - (3) The interest 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 employees involved in the factfinding 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 other benefits received.
 - (7) Any other facts not confined to those specified in paragraph (1) to (6), inclusive, which are normally or traditionally taken into consideration in making the findings and recommendations.

III

HISTORY OF NEGOTIATIONS:

We set forth a brief outline of the protracted history of the negotiations leading to the Factfinding, a history which reflects the impact of the District's decision to seek a huge "bail out" loan from the State and the de jure replacement of the elected Board of Education by a State-appointed administrator, Dr. Randolph E. Ward.

March 29, 2002 – Union informs District in writing of its desire to enter into negotiations for a successor agreement and indicates that, in the Union's view, negotiations can be concluded within 30 days. Union asks District to calendar negotiating days "as soon as possible."

June 19, 2002 -- District “sunshines” its initial proposal for a successor agreement to be effective July 1, 2002 and proposes changes to the following Articles: 4.D - Calendar; 4.___ - In-service/Staff Development; 5.A.1.a – Vacations; 5.B.1 – Holidays; 5.B.2 – Work on a Holiday; 5.C.___ - Family Illness Leave; 5.C.___ - Family Medical Leave Act (FMLA); 6.0 – Performance Evaluation; 7.B.2 – Procedures for Filling Bargaining Unit Positions; 7.___ (new) (re-number); 7.B.3 – Posted Positions; 7.B.4 – New Job Classifications; 7.C – Probationary Employees; 7.G – Salary Adjustment; 8.A.2 – Grievance Procedure; 9.0 – Arbitration; 9.C – Panel of Arbitrators; 10.0 – Administrative Support for Contract Management; 11.0 – Reopeners; 12.0 – Salary Compensation; 13.0 – Health and Welfare Benefits; 15.0 – Longevity Incentive; 16.0 – Health Benefit Improvement Committee (HBIC); 18.0 – Duration; 19.0 – Labor Management Relations Committee; 24.0 – Annuity Boards; 25.0 – Settlement Payments; 26.0 – Scope of Agreement.

June 19, 2002 -- UAOS “sunshines” its initial proposal, proposing changes to Articles 4.D – Calendar; 5.B.1 – Holidays; 5.B.2 – Work on a Holiday; 5.C.___ – Family Illness Leave; 5.C.___ - Family Medical Leave Act (FMLA); 6.0 – Performance Evaluation; 7.B.2 – Procedures for Filling Bargaining Unit Positions; 7.B.4 – New Job Classifications; 7.G.2 – Salary Adjustment; 8.0 - Grievance Procedure; 9.0 – Arbitration; 9.C – Panel of Arbitrators; 10.0 – Administrative Support for Contract Management; 11.0 – Reopeners; 12.0 – Salary Compensation; 12.B – Annuity; 13.0 – Health and Welfare Benefits; 15.0 – Longevity Incentive; 18.0 – Duration; 23.0 – Management Opportunity Program; 24.0 – Annuity Boards; 27.0 – Savings Provision; Article ___ (new) PAR.

June 27, 2002 – Union asks District to define certain terms, and asks for criteria for determining the number of assistant principals at various schools.

July 10, 2002--: Bargaining begins and the District and UAOS teams meet to commence pre-negotiations, discussing Evaluations; PAR Stipend; Health & Welfare Benefits, the UAOS wanted to reopen for contract years 2 & 3; New Employee Vacation Accrual; Progressive Discipline; Domestic Partner coverage; Concerted Activity; complaints regarding non-English usage and Translation Services; Work Year/Calendar(s); Professional Development and FLSA issues; Educational Incentive Program. UAOS proposals were due to the District by Wednesday, 7/17/02.

July 22, 2002 --the parties hold a general discussion of the following: removal of Professional Development Day Stipends from Salary Schedule replaced with provision of separate check and attendance verification, to include District sponsored training and to require approval of Executive Directors.

November 22, 2002 -- the parties agree to form two committees of two representatives from the District and two from UAOS to develop new Performance Evaluations for certificated and classified unit members., with reports due back on this issue by May 1, 2002. Also discussed were: Classified Committee; Art 7.B.3 – Website postings “ok”; Art 5 changes: blend 5.C.1.h with i; 5.C.2→5.C.3 – add Family Illness Leave; 5.C.6 – FMLA; 5.C.7; change Military Leave w/ law and Ed. Code; 4.D –

Calendar: union agreed to delete “year round sites”; 4.C.2 – Work Year: District agreed to consult with union and delete redundant language; Art 6.B Performance; Work Year/Calendar.

December 12, 2002 -- the parties discuss: Art 7.E.2 – Salary Adjustment/Demotion (New) (Ed Code 45113), membership on certain committees and Work Year/Calendar; (new) Progressive Discipline; (new) Safety; (new) Personnel Records; Art 8 – Grievance: The District proposes changing language to reflect a single procedure and UAOS agrees to drop “LEVELS” and keep “STEPS” as long as it permits arbitration. The District agrees to keep “STEPS” and integrate the two processes, by mutual agreement; Art 9 – Panel of Arbitrators; Art 24 – Annuity Board, both parties agree to delete; Art 23 – Management Opportunity Program, UAOS wants to revisit and create “buddy” or mentoring system and the District wants to delete; Art 25 – Settlement Payments, the District wanted to update in compliance with ed. Code; Art 5.C.1.h & (new) j: District proposes blending language regarding absence due to illness; Staff Development.

December 12, 2002 -- the parties discuss updating Appendix A-3, add language on Field Supervisors; Work Year/Calendar; Stipends counting toward retirement, per new STRS regulations; Progressive Discipline; Personnel Files; Signs; Safety; and Evaluation Subcommittee.

December 18, 2002 -- UAOS provides a draft Agreement and the parties discuss Visitor Registration; Comp Time: add “such time shall not be unreasonably denied”; Demotion per Ed. Code and Appendix A-6; Art 10: update to “HRD”; Art 11 – Reopener; the negotiation schedule going forward (e.g.: every 10, 15, or 21 days by mutual agreement); Enrollment levels and Reassignments; Annuity; Stipends for Masters Degree and need for updating; Comp Time: “such time shall not be unreasonably denied”; Health and Welfare Benefit, add “abide by HBIC recommendations”; and addition of Domestic Partner benefits coverage.

December 29, 2002 – Union writes to the District , suggesting various meeting dates for further negotiations; states that Union is still awaiting District’s “last, best and final” offer, as was promised by the District on November 5th; and reiterates that the Union “is willing to meet ‘24/7’ to bring negotiations to a conclusion”

January 1, 2003 -- the parties discuss: Grievance Procedure, streamline Step and Level language; Reopeners, UAOS desire for a 3 year contract (2002-03; 2003-04; and 2004-05 – with re-opener in last year); Work Year/Calendar; Art 10.0 – Administrative Support for Contract Management: change/update language in agreement to reflect District organizational changes: Art 18.0 – Duration; Art 12 – Salary Compensation and regressive bargaining, District rollback of salaries effective 7/1/02; Part-Time health benefits; Catastrophic Sick Leave; and HBIC. UAOS requests information regarding health, dental and vision usage and cost [EE; EE+1; and EE+family].

January 31, 2003: -- the parties discuss Health and Welfare cost (District provides H&W benefits cost to UAOS as requested on 1/15/03); Sick Leave Bank/Catastrophic Leave language and 5.C.1 – Sick Leave. ATT(S): Sick Leave; Health Benefit Costs

February 2, 2003 -- the parties discuss Art 9 – Arbitration; Reopener language; Domestic Partnership Affidavit; HBIC language; Art 17 – Concerted Activity; Work Year/Calendar; Comp Time; Safety; Early Retirement; Sick Leave Bank/Catastrophic Illness Leave. ATT(S): Sick Leave; UAOS’ Early Retirement proposal

February 26, 2003 -- the parties discuss Sick Leave Bank/Catastrophic Illness Leave issues.

March 5, 2003 -- the parties discuss Work Year/Calendar; Catastrophic Illness Leave: the District provides copies of Ed. Code section 44043.5 and review draft language for Side Letter; Staff Development “Buy Back” Days, including comparison with OEA language; Summer School issues/problems. ATT(S) from UAOS

March 12, 2003 -- the parties discuss Catastrophic Illness Leave and Committee rules plus draft Side Letter to “fast-track” approval process and Domestic Partner Affidavit; Ed. Code 44951 – not included; Work Year/Calendar.

March 19, 2003: -- the parties discuss Work year/Calendar; Catastrophic Illness Leave; and Early Retirement/Longevity Incentive plan. A Catastrophic Sick Leave Side Letter Agreement, dated 3/19/04, is signed by the parties and sent to the Board on 4/21/03. ATT: Early Retirement proposal from UAOS

April 25, 2003 -- the parties discuss Domestic Partner Affidavit; Seniority; Work Year/Calendar; UAOS Advisory Council; Early Retirement Incentive Plan: Professional Development Days. ATT(S)

April 6, 2003: -- parties review the March 12, 2003 draft TA and various Side Letters and edited documents. ATT: District Settlement proposal

May 13, 2003: -- review and discussion of contractual articles and provisions, draft new language for Article 4 – Professional Development Stipend. ATT

May 19, 2003 -- the parties discuss: crediting Professional Development Stipend for STRS/retirement calculations; District’s proposed Salary rollback(UAOS team states it has no authority to talk about a 6% salary rollback); AB75 state money; the District’s proposed layoff of 18 or 19 APs, for a claimed, estimated savings off approximately \$1.2 M ; Early Retirement Program; Management Opportunity Program; and Art 30 – School Site Decision Making/School-based budgeting.

May 22, 2003 -- the parties discuss, update and revise a 12/06/02 draft TA. ATT: an unsigned TA

June 13, 2003 -- the parties discuss Professional Development and Work Year/Calendar. ATT: a signed TA on 2003-2004 Work Year

June 27, 2003 -- the parties discuss reassignment of Assistant Principals; Work Year/Calendar; and general contract provisions.

September 16, 2003 -- the parties discuss Professional Development Days and Work Year/Calendar; drop in Student Enrollment and its impact; and Retroactive Salary Rollback issues in the morning session. State Administrator Dr. Ward was present for the morning session. In afternoon session, the parties discuss: Comp Time; Layoff of Classified Employees; a proposed 2.5% retroactive salary rollback, and UAOS' ATT: Professional Development Days proposal.

October 2, 2003 -- the parties discuss: Early Retirement; AB1207. Dr. Ward attends this session and observes that the proposal for Early Retirement looked too expensive; UAOS requests data to design a survey. The parties review a draft TA on Professional Development Days; on Unsolicited Written Derogatory Communications, and on District Committees. The parties discussed the OUSD's proposed retroactive 2.5% Salary Rollback.

October 9, 2003 -- Dr. Ward in attendance, the parties discuss Early Retirement and AB1207.

October 21, 2003 -- the parties discuss Early Retirement, with District providing STRS Retirement Incentive Program and the union discussing cash incentives, benefits, and ability to return to work as a substitute or consultant. ATT(S): data provided to UAOS by the District

October 30, 2003 -- OUSD explains SEIU settlement (ERIP Option A only); ATT: Work Year; Professional Development Days

November 5, 2003 -- UAOS makes a proposal for Early Retirement Incentive Plan [ERIP], basically that the District provide a lump sum of \$20,000 to be used to provide health coverage for the retiree (and spouse if so desired) until the retiree reaches 65, with any money remaining in the retiree's account, at age 65, paid to the retiree. If the retiree's account is depleted before age 65, the retiree can continue to participate in the District's health coverage by paying current premiums in advance. To be eligible to participate in ERIP the member must be: (a) a OUSD employee for 15 years; (b) 5 consecutive years in UAOS; and (c) be a minimum of 57 years of age by the end of the school year". The District rejected the proposal and told UAOS t would fax its Last, Best, & Final Offer (LBFO).

February 17, 2004 -- Discussion of Work Year; Salaries; and Professional Development Days and Side Letter regarding Comp Time for Professional Development

Days already “worked”; STRS/Retirement complications; Early Retirement; Performance Evaluation; School Closures; and Arbitrators (new procedures). ATT(S)

February 18, 2004 -- the parties discussed the District’s Last, Best and Final offer. This is the final bargaining session.

March 15, 2004 -- : Mediation sessions begin with Mediator Paul Roose.

March 25, 2004 -- A mediated TA (entitled Tentative Agreement Between United Administrators of Oakland Schools and Oakland Unified School District) dated 3/25/04, is signed by both parties. Additional internal meetings were held on 4/6/04; 4/19/04; and 4/21/04, without Mediator Roose present. Next Mediation session scheduled for 4/26/04. ATT: Annotated version of 3/25/04 TA

April 26, 2004 -- Discussion of the TA of 3/25/04. UAOS rejects that TA and a new Mediation session is scheduled for 5/10/04.

May 10, 2004 -- Continued discussion of issues in dispute.

June 9, 2004 – Final mediation session results in a TA entitled United Administrators of Oakland Schools – Tentative Agreement for a Successor Agreement , signed by both parties on this day.

August 27, 2004 -- UAOS submits the TA to its membership for ratification vote and the membership refuses to ratify the TA.

September 20, 2004 -- : PERB notifies the District and UAOS that Mediator Roose had advised PERB that the District and the UAOS had been unable to reach agreement through mediation and that factfinding was appropriate.

IV

THE DISTRICT’S FINANCIAL STATE AND ITS “ABILITY TO PAY”

Because the dispute deals almost entirely with proposals to alter the financial *status quo*, and the District’s claims of an unprecedented, massive financial shortfall of potentially chronic proportion, we review the District’s financial state as of the date of the hearing. The District asserts an “inability to pay” the demands of the Association, and so, under Gov. Code Sec. 3548.2(b)(3), the Panel is required to consider “[t]he interests and welfare of the public and the financial ability of the public school employer.”

The District raises inability to meet the Association's demands and claims that the interests and welfare of the public would be severely damaged by the budget and program reductions required to fund the Association's demand, asserting that:

- 1: In 2001-02, the District was fiscally insolvent and so was forced to ask which the State to loan it District \$100 million.
- 2: This loan to the District was, and continues to be, the largest in state history.
- 3: As a condition of receiving this loan, the District's superintendent was terminated and replaced by a state administrator, Dr R. Ward.
- 4: The District has had chronic deficit spending in the past that continues today.
- 5: The District's current operating unrestricted General Fund balance is negative.
- 6: In direct response to the Oakland and Vallejo school district bailouts, the Legislature enacted AB 2756.
- 7: The District has already made significant budget and program reductions to meet state required financial standards and will need to make further program reductions in order to remain solvent.
- 8: The COLA provided by the State has been dramatically lower in future years thus reducing the District's ability to absorb ongoing costs.
- 9: The District's multi-year financial projections show the need to make budget reductions every year to meet State financial criteria and to remain solvent.
- 10: The ongoing costs of past salary settlements in excess of COLA continues into the future and limit the District's financial ability to pay more.
- 11: The District has chronic declining enrollment further which limits its financial flexibility.
- 12: The interests and welfare of the public would be severely damaged by the budget and program reductions required to comply with the Association's position.

UAOS did not really dispute any of these assertions. The Union's primary point is that, while it had agreed in principal to the District's proposed salary "rollback," it asked that the rollback not be made retroactive. In support of this position, the Union claimed it had contacted the District on many occasions to request further bargaining, but the District cancelled meetings and otherwise delayed coming to an agreement. In addition, the Union asserted that its current agreement has clauses that provide that the agreement remains in full force and effect unless and until superceded (e.g., Article 26 E). The Union's position was that, while the District could perhaps impose a "forward looking" salary rollback, it could not reclaim wages already paid to employees. Such

paid wages, the Union contends, are owned by, and vested in, the employees who worked for them and who in fact received them.

The Union's contentions are primarily legal arguments and UAOS did not really dispute the financial condition of the District.

V

POSITIONS AND ARGUMENTS OF THE PARTIES

The positions of the parties, and their arguments and rationales on the disputed issues are as follows:

District -- The key issue, the District believes, is its demand that UAOS join all the other units in agreeing to a salary reduction to help meet the massive deficit and to repay the State loan. UAOS, while willing to agree to a salary rollback, opposes a *retroactive* rollback for the reasons stated above. In general, and while a painful subject to confront, the Panel is of the view that the Union should share equally in the financial hardships currently afflicting the District and being shared by other bargaining units.

Looking at "ability to pay", the District points to the loan and argues that it has been deficit spending for several years and claims that adopting the UAOS demand only exacerbates that deficit.

Looking at a "comparison of wages . . . and . . . overall compensation", the District believes the data support its position. Administrator salary increases have exceeded the COLA, and OUSD spends more money on its administrators (of which it has more in number than the "comps") than its comparators (is this word right????).

Given the present financial uncertainties, a shorter-term agreement expiring in 2005, rather than 2006 as UAOS has proposed, makes more financial sense. .

Association -- The Union's position has been discussed above. While it is inexplicable why the rank and file did not support the agreement negotiated by the Union's leadership (this has happened twice), the fact remains that the parties did come to an acceptable resolution during the course of this fact finding proceedings. The

question now is whether that compromise should be implemented, even though it was rejected by the Union's rank and file membership.

VI

THE CHAIR'S FACTUAL DISCUSSION AND ANALYSIS

There is little for the Chair to analyze or to say here. The District has made an overwhelming showing of fiscal woe and distress that needs immediate response from all of the District's players and stakeholders. To date, all of the District's unions and associations (perhaps unwillingly) have "stepped up to the plate" and joined in assuming some of the pain that goes with turning the OUSD ship around. Only the membership of UAOS has, to date, declined to do so.

The District is, in essence, in a form of receivership. It has no superintendent and its Board has no powers. The State has made it a long-term loan (and not a gift) that has to be repaid. UAOS put on no evidence at the hearing or in its hearing binder that would justify the continued refusal of its membership to follow the recommendations of its negotiations teams and its leadership. Every one of the statutory criteria preponderate (and heavily so) in favor of the approach the District has proposed and to which the UAOS leadership has at least twice tentatively agreed.

VII

RECOMMENDATIONS

Based upon the general factual background set forth above, the Panel unanimously believes that the second TA rejected by the membership of UAOS is a fair, equitable, puts the District's administrators and principals in the same position as their more lowly paid subordinates, and should be adopted by the Board. That TA provides as follows:

1. Article 18 Duration - Term of the Agreement: July 1, 2003 - June 30, 2006
2. Article 12 Salary Compensation: 2.5 % reduction in all UAOS salaries and Salary Schedules, effective July 1, 2004.
 - a. Salary overpayments will be deducted in equal payments over a 12 month period, starting January 1, 2005 through December 31, 2005

- b. For unit members who are demoted or laid off, the balance of the overpayment shall be forgiven. Unit members who resign or retire must pay the balance of the overpayment, to be deducted from their final paycheck.
 - c. Article 4 Hours of Work: The Work Year for certificated unit members shall be reduced by five (5) days, effective July 1, 2004 (eliminate five additional professional development days when Work Year was increased in July 2000).
- 3. Article 7.D.2: Reassignment – Involuntary: Delete current language (sections 7.D.2.a and 7.D.2.b) and replace with the following language: “The parties agree to comply with applicable provisions of the Ed Code (see Ed Code 44951)”
- 4. Article 6.A: Performance Evaluation: Amend to read:
 - a. “Prior to reassignment or demotion under Article 7.D.2: Reassignment - Involuntary, an evaluation shall be completed which must contain a recommendation for re-assignment or demotion. This provision shall not apply to reassignments or demotions necessitated by loss of enrollment which triggers a staffing reduction, closure of schools, consolidations of positions or other reductions in the number of positions in a particular classification. The evaluation for this purpose shall be completed on normal timelines outlined in Appendix A-7. However, for 2004-2005 only, the October 1 (step 2) date shall be December 1 and the October 17 (step 3) date shall be December 17; and the Step 4 deadline shall be the 4th Friday in February.”
 - b. “The content of an evaluation is not grievable.”
- 5. Contingent upon agreement between the District and the Association of California School Administrators (ACSA), the District shall provide membership for all members of the Union, for one year only, effective July 1, 2005.
- 6. Appendix A-7: Delete: “No later than June 15th” [Step 5 of page 5 of the Administrative Employee Appraisal Timelines and Instructions Form in the Appendices section of the current Agreement] and replace with: “Per the deadlines set forth in Ed Code section 44663”

7. Appendix A-7: in the Appendices section of the current Agreement [page 7] Certificated evaluation form changed. In the Recommendation section of the current Administrative Employee Summary Appraisal Form, revise the check box for “Reassignment” to be “Reassignment/Demotion”:

Reassignment/Demotion

PART B: The parties agree to the following:

1. Article 1 Recognition: No change.
2. Article 2 Definitions: No change [see Side Letter re: definition of the State appointed Administrator, as per SB 39].
3. Article 3 District Rights: No change.
4. Article 4 Hours of Work: See settlement in PART A above.
5. Article 4.A.2 – Workday: Add: “Such time shall not be unreasonably denied”.
6. Article 4.C.2: Work Year: Add new language: “Beginning in January of each year, the parties agree to meet to develop a work year calendar, including but not limited to opening and closing of schools, religious and secular holidays, and professional development days.” (Replaces entire paragraph in current Agreement).
7. Article 4.D: Calendar: Delete this section.
8. Article 5: Vacations and Non-Workdays, Holidays and Leaves of Absence:
Section 5.A.1.a: Modify first sentence to read: “The vacation anniversary date for classified unit members shall be determined by the date of hire.” Delete balance of Section 5.A.1.a (i, ii, and iii).
9. Article 5.A.1.b: Correction of typographical error. Add the word “less” to the last sentence, to read: “Full vacation credit shall be earned for each month in which a classified unit member is in a paid status for more than half of the working days of the month. Vacation credit shall be prorated for each month in which the unit member is in a paid status for ~~more~~ less than half of the working days in the month.”
10. Article 5.B Holidays, section 5. B.1: Holidays shall be listed as follows:

- New Year’s Day
- Martin Luther King Jr.’s Day
- Lincoln’s Day
- President’s Day
- Cesar Chavez Day
- Memorial Day
- Independence Day
- Labor Day
- Veteran’s Day
- Thanksgiving Day
- Christmas Day

Delete: “~~In Lieu of Admission Day~~” in the current Agreement.

After listing the holidays, insert immediately after the list of holidays:

“Note: Due to the fact that the Education Code requires school districts to observe Lincoln Day, the day will be observed on the Friday preceding Memorial Day.”

11. Article 5.B. Holidays, section 5.B.2: Insert the word “classified” as follows: “A classified unit member who is required to work on the day a Board-recognized holiday is celebrated shall be compensated for such work at one and one-half his/her normal rate of pay.”

12. Article 5.C.1 Sick Leave:

- a. 5.C.1.h in current Agreement will now be 5.C.1.i ~~now becomes i~~ – and delete existing 2nd and 3rd sentences which are duplicative with new 5.C.1.h (...with normal District procedures. ~~An absence due to personal illness or injury....shorter duration if required by the District.~~ A unit member absent....)
- b. 5.C.1.i becomes j

13. Article 5. C.1.h is replaced with new language as follows: “Medical verification of an employee’s absence due to personal illness or injury which exceeds 5 days

shall be required. Such verification by a licensed physician shall be supported by a written statement of the first and last date of the disability and the date the employee is able to return to duty. A physician's statement shall be submitted for absences of shorter duration if required by the District. When a supervisor has a reasonable belief that the employee's condition may have caused him or her to be unable to perform work-related functions or is a danger to the health and safety of the workplace, the District shall require a written statement by a licensed physician attesting that: the employee is capable of fully performing the essential functions of his/her job, the first and last date of disability and the date the employee is able to return to duty."

14. Article 5.C.2 Family Illness Leave: Add new language as follows: "Unit members shall be entitled to use up to a maximum of one-half of their annual entitlement to sick leave to attend to an illness of a child, parent, spouse, domestic partner or child of domestic partner of the unit member. Unit members shall comply with the procedures governing the use of sick leave set forth in the contract and shall reflect on the leave form that the unit member is using "family illness leave". This entitlement does not extend the maximum period of leave to which a unit member is entitled under the Family Medical Leave Act or the California Family Leave Act." (Renumber old 5.C.2 – Other Absences Chargeable to Sick Leave [Necessity Leave] as 5.C.3 and renumber accordingly).
15. Article 5.C.6 Family Medical Leave: Add new language as follows: "The District will provide leave consistent with the Family Medical Leave Act (FMLA)." (sections to be renumbered accordingly).
16. Article 5.C.9.f: Add: "The parties agree to comply with the provisions of the California Military and Veteran's Code, sections 390-398 and the applicable provisions of the Ed Code (Ed Code 44018)."
17. Catastrophic Sick Leave. Refer to Side Letter, approved by the Board on 4/30/03 to be attached as (new) Appendix A-8 of the Agreement.
18. Article 6.A Performance Evaluation: See 11/15/04 settlement in PART A above.
19. Article 7.B.2 Procedures for Filling Bargaining Unit Positions: Article 7.B.2 shall be amended to read "Notices of vacant unit positions shall be posted at each open

- work location, the District office, the Union office, and when practicable, the Oakland Unified School District's Employment Web Site. Bargaining unit members who desire notification of vacant positions during times when their work locations are closed may submit a self-addressed stamped envelope and the positions in which they are interested to the Human Resources office". Add: "The website's current URL address is: <http://employment.ousd.k12.ca.us>."
20. Article 7.B.3 Procedures for Filling Bargaining Unit Positions: Shall now read: "Posted positions shall be posted for a minimum of 10 work days." Delete: "~~at the locations stated in B.2~~"
 21. Article 7.D.2 Reassignment – Involuntary: See settlement in PART A above.
 22. Article 7.E.1 Demotion: Add the following references in parenthesis immediately after "...as provided in the Ed Code": "(see, e.g., Ed Code 44951 and 44896)".
 23. Article 7.E.2 Demotion: Add: the word "classified", to new section to read "Any classified unit member who fails to successfully complete the probationary period (6 months) for the promotional position, shall be employed in the classification from which he or she was promoted [See attached revision of Ed Code section 45113]". Re-order lettering/numbering accordingly.
 24. Article 7.E.3 Demotion (formerly 7.E.2): remains unchanged, except for – Add the following references in parenthesis immediately after "...in accordance with the provisions of the Ed Code sections": "(see, e.g., Ed Code 45113, 45116, – refer to Appendix A-6)".
 25. Language in (old) section 7.E.2 remains unchanged. Switch existing section 7.E.2 to now be re-numbered and shown as section 7.E.3.
 26. Article 8 Grievance Procedure: Delete: "Level Process" (on pages 30 – 31 from the current Agreement) and retain "Step procedure".
 27. Article 8 Grievance Procedure: Delete: all references to Level processes.
 28. Article 8 Grievance Procedure: Section 8.A.2 shall now read as follows: "A grievance is defined as a written complaint by a unit member or the Union that the District has violated, misinterpreted or misapplied a term or condition of this Agreement or District policies or procedures." Delete (the last 2 sentences): "~~When it is alleged that a term or condition of the agreement has been violated,~~

~~misinterpreted or misapplied, the Step procedure below shall be used. When it is alleged that a District policy and/or procedure has been violated, misinterpreted or misapplied, the Level procedure below shall be used.~~” This language is outdated given the above noted change to Article 8.

29. Article 8.A.5: Delete: all references to the Level procedure, e.g.: “All grievances will commence at Step One ~~or Level I~~ unless the grievance arises from the action of an authority higher than the unit member’s immediate supervisor, in which case the grievance may be filed at the appropriate step of the grievance procedure.” This language is outdated given the above noted change to Article 8.
30. Article 8: Step Three – Add: to end of second paragraph a new #11 to read: “and 11) Recommendation of the mediator shall be advisory in nature and non-precedent setting. Neither party shall cite the recommendation(s) in a future grievance.” .
31. Article 9 – Arbitration: No change to Section A, 1. and 2 in current Agreement.
32. Article 9, section C: The District and UAOS agree to modify the following language in Article 9.C by deleting the following: “The parties agree to establish a list of arbitrators. ~~consisting of 13 individuals...~~ The following panel of ~~13~~ arbitrators is agreed to by the District and UAOS for both grievance and advisory disciplinary appeals arbitrations”
33. Article 9.C Panel of Arbitrators: Both parties agreed to the following list of twelve (12) arbitrators:
 - i. Anne Andrews Ellis
 - ii. Claude Ames
 - iii. Thomas Angelo
 - iv. Hon. Joseph Grodin
 - v. C. Allen Pool
 - vi. Robin Matt
 - vii. Alexander “Buddy” Cohn
 - viii. William Riker
 - ix. Norman Brand
 - x. Melvin Silver

- xi. Barry Winograd
- xii. Franklin Silver

34. Article 10 Administrative Support for Contract Management: Section A shall read: “When a unit member is required to meet with representatives of another employee organization for purposes of conducting an investigatory interview, adjusting grievances or other matters related to labor relations or labor contract administration the unit member may contact the ~~Office of Labor Management and Employee Relations~~ and Human Resources Division for advice and counsel regarding the upcoming meeting. The unit member may request a member of the ~~Labor Management and Employee Relations~~ staff to assist in any written response required as a result of the subject meeting.” “~~The Office of Labor Management and Employee Relations~~ Human Resources Division shall provide training to unit members on subjects pertaining to labor relations and contract administration.”. Correction of typographical error(s): the letter “s” is to be added to all references to “Human Resource_” throughout the Agreement.
35. Article 11.A Reopeners: Delete: outdated sections A, B, C and D in the current Agreement. Article 11 shall now read as follows: “There shall be no re-openers for the first two years of the Agreement unless mutually agreed. There shall be a re-opener on the last year of the Agreement on any one article (present or new) of each parties choosing”.
36. Article 12 Salary Compensation: See settlement in PART A above.
37. Article 12, Section A.3 General Provisions: Add: “New or current members who are promoted from a lower annual salary range shall be placed at a range and step that is a minimum of five percent (5%) higher than the member was earning on his/her former range at the time of the promotion, but not above the maximum salary of the new range. If the promotion is made at the beginning of the new fiscal year, the member shall be granted the normal step increase on the range, if eligible, before placement on the range is made.”
38. Article 12.B: Annuity: Delete outdated language: delete this entire section in the current Agreement and re-order lettering/numbering accordingly.

39. Article 12, modify current section 12.E.1 (new section 12.D.1): Add: “Such time shall not be unreasonably denied.”
40. Article 12, modify current section 12.E.3 (new section 12.D.3): Add to end of paragraph: “...and shall not be unreasonably denied.”
41. Article 13 Health and Welfare Benefits, Section A.3: Add the following new language to Section 13.A.3 of the current Agreement: “Effective January 1, 2005, the employer shall provide health insurance for unmarried domestic partners of eligible unit members. ‘Domestic partner’ is defined as an unmarried, unrelated individual who has lived with the unit member for not less than twelve (12) months. To enroll, the unit member must complete an application form during the open enrollment period, accompanied by a notarized affidavit supplied by the employer (see Appendix A-5). The unit member will be taxed on the cash value of the Domestic Partner premiums, in compliance with IRS regulations. COBRA provisions do not apply to Domestic Partner coverage.” Add: “and eligible domestic partner.” to the end of the 1st sentence of Section 13.A.3 in the current Agreement.
42. Article 13 Health and Welfare Benefits, Section A.6: Add: Create a new #6 and add the following language: “Health and Welfare benefits continue as per the multi-union agreement between the District and the Health Benefits Improvement Committee (HBIC). If the HBIC agreement is re-negotiated, then benefits will be adjusted accordingly”
43. Article 14 Reimbursement for Loss: No change to current Agreement.
44. Article 15 UAOS Longevity Incentive: Delete: entire section and Appendix A.5.
45. Article 16 HBIC: No change to current Agreement.
46. Article 17 Concerted Activity: No change to current Agreement.
47. Article 18 Duration: See settlement in PART A above.
48. Article 19 Labor Management Relations Committee: No change to current Agreement.
49. Article 20 Organizational Security: No change to current Agreement.
50. Article 21 Dues Deduction: No change to current Agreement.
51. Article 22 Compensation – Personal Autos: No change to current Agreement.

52. Article 23 Management Opportunity Program. No change to current Agreement.
53. Article 24 Annuity Boards: No change to current Agreement.
54. Article 25 Settlement Payments: No change to current Agreement.
55. Article 26 Scope of Agreement: Insert the words: “the discussions” in place of “Interest Based Bargaining”. Article 26, Section A now reads: “The parties acknowledge that during the discussions which resulted in this Agreement each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed from the area of collective bargaining by applicable laws. The understandings and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement.” Sections B, C, D, and E of the current Agreement remain unchanged.
56. Article 27 Savings Provision: No change to current Agreement.
57. Article 28 Safety: No change to current Agreement.
58. Article 29 Summer School Employment: No change to current Agreement.
59. Article 30 School Site Decision Making: Add (in 1st paragraph): “Pursuant to the School Board’s adoption of Board Policy 0420.5 on August 25, 2004”; and delete ~~Draft 3A on June 9, 1999~~ as well as delete all references to outdated Draft 3A. Add (in 2nd paragraph): “The parties will continue to meet in the development and implementation of Board Policy 0420.5”; and delete ~~Draft 3A~~.
60. Article 31 Clarity: Delete the word: “contract” and use the word “Agreement” (only first letter capitalized).
61. Add revised Appendix A-3, Work Year – Certificated and Work Year – Classified.
62. Add “Side Letter – Memorandum of Understanding” regarding agreement to meet and confer on Classified Evaluation and Salary Schedules for Administrators assigned to small schools created since July 1, 2000.
63. Add (new) Appendix A-5, “Affidavit for Enrollment of Domestic Partners” form (attached)

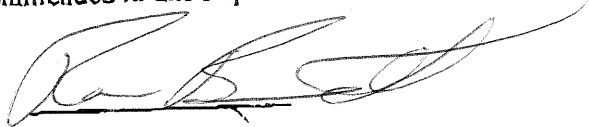
DATED: January 24, 2005



Christopher D. Burdick
Impartial Chair

I agree with the Chair's findings and recommendations and believe it is in the best interests of the parties to adopt the settlement recommended in this Report.

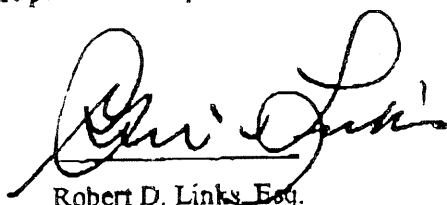
DATED: January 24, 2005



Ron Bennett
District Appointed Factfinder

Although I do not necessarily agree with all of the Chair's findings and recommendations, nor do I support or endorse his *ratio decedendi* in all aspects, nevertheless I believe it in the best interests of the parties to adopt the settlement recommended in this Report.

DATED: January 24, 2005



Robert D. Links, Esq.
UAOS Appointed Factfinder