

## FACT FINDING DISCUSSION AND RECOMMENDATIONS

### In the Matter of the Impasse Between

COVINA-VALLEY UNIFIED  
SCHOOL DISTRICT

Employer

-and-

COVINA UNIFIED EDUCATION ASSOCIATION  
Exclusive Representative

PERB CASE NO: LA-IM-4144-E

Report Issued  
November 21, 2022

Hearing Held on November 7, 2022  
Tri Community Adult Center  
231 Stephanie Dr  
Covina, CA 91722

### Members of the Fact Finding Panel

#### Impartial Chairperson:

Donald Raczka, Fact Finder

#### Employer Panel Member:

Elizabeth B. Mori, Attorney, Fagen Friedman Fullfrost

#### Union Panel Member:

Vern Gates, California Teachers Association

### Making Presentations to the Fact Finding Panel:

#### For the Association:

Michelle Ramos, Covina Unified Education Association  
Tom Pinkava, California Teachers Association

#### For the Employer:

John Gray, School Services of California, Inc.  
Manuel Correa, Covina-Valley Unified School District  
Michele Doll, Covina-Valley Unified School District

## **DISTRICT AND ASSOCIATION DESCRIPTIONS**

Covina-Valley Unified School District (C-VUSD) serves the communities of Covina, West Covina, Glendora, San Dimas, Irwindale and unincorporated areas of Los Angeles County. The District has nine elementary schools, three middle schools, three comprehensive high schools, a continuation school, and an online school – as well as preschool, and expansive adult education school. C-VUSD currently serves more than 11,000 transitional kindergarten through twelfth grade students, 240 preschool students, 50 adult transition students, and approximately 2,300 adult education students.

C-VUSD serves a diverse student population. Approximately, 68% of our diverse K-12 student population (80% Hispanic/Latino, 7% Asian, 7% Caucasian, and 3% African American) participate in the National Free and Reduced Meal program and 10% are designated as English Language Learners. Our staffing is approximately 575 teachers, 680 classified staff, 15 Psychologists, and 110 management/unrepresented staff members. Staff members are represented by three distinct bargaining associations, Covina Unified Educators Association (teachers), California School Employee Association (classified), and Covina Valley Association of School Psychologists.

The Covina Unified Education Association (CUEA) is the union representing over 500 classroom teachers, learning specialists, teachers on special assignment, school nurses, speech language pathologists, special education teachers, adaptive PE teachers, children's center teachers and adult education teacher is Covina-Valley Unified School District. CUEA is an affiliate of the California Teachers Association and the National Education Association. CUEA was established in 1966.

## **HISTORY OF NEGOTIATIONS**

The negotiations at issue pertain to the last year (2021-2022) of a three year agreement between C-VUSD and CUEA, with a term of July 1, 2019 through June 30, 2022.

The parties sunshined initial reopener proposals at a public meeting in accordance with law. CUEA proposed negotiations on the following articles:

Salary – Article XVII

Health and Welfare – Article XVI

Work with the District to codify into the contract the requirements set forth in AB 119

The Association also reserved the right to introduce additional articles as necessitated by working conditions and determined by the passage of new legislation.

The District proposed negotiations on Hours of Employment – Article VII.

Although there are one or two discrepancies in actual meeting dates from the materials presented to the Panel by each party on the date of the hearing, it appears that the parties met approximately 14 times before impasse was declared by PERB on May 25, 2022.

There were 4 mediation sessions held in August and September, 2022, and the mediator certified the parties to factfinding on September 27, 2022.

Over the course of bargaining, the parties exchanged numerous proposals. Although the parties were unable to reach complete agreement on any of the opened articles, conceptual agreements appear to have been reached on the following issues:

- 2022-2023 Bell Schedules – 8:30 am start for High Schools
- 2026-2027 Calendar
- New Nurse Salary Schedule aligned to existing Speech and Language Unit Member salary schedule, giving Nurses a 10% higher salary
- New CTE Teacher Salary Schedule
- Agreement to move Administrative Regulation 4321.3a out of the contract
- Agreement that substitute rates are non-contractual issues but agreed to leave the language in the contract as an informational item
- Agreement to increased hourly rates for Speech and Language and Nurses to \$65.00
- Agreement to add a monthly \$100.00 stipend for National Board certified teachers
- Agreement to changes in Article VII, Section 7.6.1.1 – teachers working a 7 period day shall not be required to period substitute during both their conference and PLC periods on the same professional day unless an emergency arises.
- Agreement to changes in Article VII, Section 7.14.1 – shared teaching assignment proposals must be received in Personnel Services on or before February 15 in the year prior to the year in which the shared teaching assignment is requested
- Agreement to changes in Article 16 – 16.2, 16.2.1, 16.2.3, and part of 16.2.6

The parties were unable to reach agreement on: Article XVII, Salaries; Article XVI Health and Welfare Benefits; and the topic of the effects of transitioning the role of case carrier from Psychologists to Special Education Teachers, which effect Article XVII and Article VII.

## **FACTFINDING CRITERIA**

Pursuant to California Government Code Section 3548.2, the panel has considered and been guided by the following statutory 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 schools.
4. Comparison of the wages, hours, and conditions of employment of the employees 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. Such other facts not confined to those specified in paragraphs 1 through 6, inclusive, which are normally and traditionally taken into consideration in making such findings and recommendations.

## **ISSUES BEFORE THE PANEL**

| <b>ISSUE</b>                       | <b>DISTRICT POSITION</b>   | <b>ASSOCIATION POSITION</b>  |
|------------------------------------|--|--|
| <u>Salaries -<br/>Article XVII</u> | <b>2021-22 - 5.2%</b> <ul style="list-style-type: none"><li>• On schedule retroactive to July 1, 2021</li><li>• Current employees only</li></ul>   | <b>2021-22 - 5.2%</b> <ul style="list-style-type: none"><li>• On schedule retroactive to July 1, 2021</li><li>• All employees who worked in 2021-22 (includes retirees, resignations, and released employees)</li></ul>                            |
|                                    | <b>2022-23</b> <ul style="list-style-type: none"><li>• Negotiations for 2022-23 were not part of the Impasse and Fact Finding Process.</li><li>• The District and CUEA were released to Fact Finding on September 27, 2022</li></ul> | <b>2022-23 - 10.0%</b> <ul style="list-style-type: none"><li>• On schedule retroactive to August 1, 2022, for all unit members.</li></ul> <b>2024-25 - 10.0%</b> <ul style="list-style-type: none"><li>• Special Education Teachers ONLY</li></ul> |

| ISSUE  | DISTRICT POSITION   | ASSOCIATION POSITION   |
|--|---|--|
| <u>Health and Welfare Benefits - Article XVI</u> | <ul style="list-style-type: none"> <li>• <b>Current Employees hired on or before June 30, 2022</b> <ul style="list-style-type: none"> <li>○ Free/No Cost HMO Medical, Dental, Vision, and Life for Employees</li> <li>○ Annual Medical Premium Plan Contributions for Employee Dependent Coverage Contribution (increases annually) <ul style="list-style-type: none"> <li>▪ Employee Plus Child - \$15,413.68</li> <li>▪ Employee Plus Spouse - \$21,068.96</li> <li>▪ Employee Plus Family - \$26,774.00</li> </ul> </li> </ul> </li> <li>• <b>New employees hired after July 1, 2022</b> <ul style="list-style-type: none"> <li>○ <b>Free/No Cost HMO Medical, Dental, Vision, and Life for Employees</b></li> <li>○ Maximum Annual Medical Premium Plan Contribution for Employee Dependent Coverage (Hard Cap) <ul style="list-style-type: none"> <li>▪ Employee Plus Child - \$15,491.00</li> <li>▪ Employee Plus Spouse - \$21,245.00</li> <li>▪ Employee Plus Family - \$26,998.80</li> </ul> </li> </ul> </li> </ul> | <ul style="list-style-type: none"> <li>• <b>Status Quo – All Employees, regardless of hire date</b> <ul style="list-style-type: none"> <li>○ Free/No Cost HMO Medical, Dental, Vision, and Life for Employees</li> <li>○ Annual Medical Premium Plan Contributions for Employee Dependent Coverage Contribution (increases annually) <ul style="list-style-type: none"> <li>▪ Employee Plus Child - \$15,413.68</li> <li>▪ Employee Plus Spouse - \$21,068.96</li> <li>▪ Employee Plus Family - \$26,774.00</li> </ul> </li> </ul> </li> </ul> |

| ISSUE   | DISTRICT POSITION   | ASSOCIATION POSITION   |
|---|---|--|
| <p><u>Special Education – Articles VII and XVII</u></p> | <ul style="list-style-type: none"> <li>• In 2024-25, Special Education assume case carrier duties and responsibilities               <ul style="list-style-type: none"> <li>○ Elementary Special Education teachers will be provided 75 minutes per week to perform case carrier duties</li> <li>○ Secondary Special Education teachers will be provided one class period per day to perform case carrier duties</li> <li>○ The elementary Special Education teacher stipend will be increased to \$4,014.00</li> <li>○ The secondary Special Education teacher stipend will remain \$1,338.00</li> <li>○ Special Education teachers will have access to site clerical support for the purposes of copying/mailing IEP documents and scheduling IEP meetings. The teachers will provide all necessary information for the purpose of scheduling the IEP meeting</li> <li>○ Special Education teachers will be provided<br/>2 release days per year</li> </ul> </li> </ul> | <ul style="list-style-type: none"> <li>• In 2024-25, Special Education assume case carrier duties and responsibilities               <ul style="list-style-type: none"> <li>○ New Special Education salary schedule that will exceed the teacher salary schedule by 10% (in lieu of a special education teacher stipend)</li> <li>○ Secondary Special Education teachers will have one designated student-free period to conduct case carrier duties</li> <li>○ Elementary, Preschool, and Adult Ed special education teachers shall have no less than four hours student-free minutes per week reserved as time to conduct case carrier duties. This is in addition to preparation time afforded to all unit members (i.e. music, P.E., DTT, etc.)</li> <li>○ Special Education teachers will have access to site clerical support for the purposes of copying/mailing IEP documents and scheduling IEP meetings. The teachers will provide <u>available</u>, necessary, and relevant information for the purpose of scheduling the IEP meeting</li> <li>○ Special Education teachers will be provided<br/>2 release days per year</li> </ul> </li> </ul> |

## **FINDINGS AND RECOMMENDATIONS OF THE CHAIR**

The Panel spent much time on November 7, 2022, working with the parties to attempt to achieve an agreement. The Chair still holds the belief that additional mediation would be beneficial for the parties. In the Chair's opinion, settling only the 2021-2022 reopener would be shortsighted and notes that the District has sunshined its 2022-23 proposal on November 14 and communicated its Salary Proposal of 5.3% on November 17 via its website. The Chair believes that a multi-year (at least 2 years) should be achievable.

During the hearing, the Chair suggested a multi-year settlement proposal that was not successful on the date of the hearing. The District maintained that the 2022-23 school year was not a subject of impasse:

*“Negotiations for 2022-23 were not part of the Impasse and Fact Finding Process”*

However, since the District has made the effective dates of its Health and Welfare and Special Education proposals to be outside the 2021-22 school year, the Chair believes that at least a two year settlement would be consistent to the conversations held on January 7, 2022.

Therefore, the Chair makes the following recommendations for the 2021-22 school year.

### **Recommendation 1, Article I:**

- The term of this Agreement would extend to June 30, 2023

### **Recommendation 2, Article XVII:**

- A one-time payment of \$5,000 per full time unit member currently employed in 2022-23, proportional to assignment for 2021-22.
- A 9% salary schedule increase effective 7/1/22.
- A 2% salary schedule increase effective 2/1/23.
- New Nurse Salary Schedule aligned to existing Speech and Language Unit Member salary schedule, giving Nurses a 10% higher salary effective 7/1/21 (Agreement in “Concept”)
- New CTE Teacher Salary Schedule effective 7/1/21 (Agreement in “Concept”)
- Agreement to increased hourly rates for Speech and Language and Nurses to \$65.00 effective 7/1/22 (Agreement in “Concept”)
- Agreement to add a monthly \$100.00 stipend for National Board certified teachers effective 7/1/22 (Agreement in “Concept”)
- Retroactive pay calculated and paid as soon as possible for the District's systems.



**Recommendation 3 Article XVI:**

- Amend the unit member's tenthly cost for their contribution for their health plan (page 66 of the CBA) to reflect the following, effective January 1, 2023:

| Plan               | EE only   | EE + Children | EE + Spouse | Family    |
|--------------------|-----------|---------------|-------------|-----------|
| Blue Shield Access | \$0       | \$70          | \$110       | \$140     |
| Blue Shield PPO*   | \$249.94* | \$446.15*     | \$680.88*   | \$795.59* |
| Kaiser             | \$0       | \$70          | \$110       | \$140     |
| Blue Shield Trio** | \$0       | \$0           | \$0         | \$0       |

\*The Chair assumes the current out-of-pocket contributions are a calculated cost, but at the time of the writing of this report, could not determine that calculation from the materials submitted. These recommended amounts would be subject to change based on that calculation.

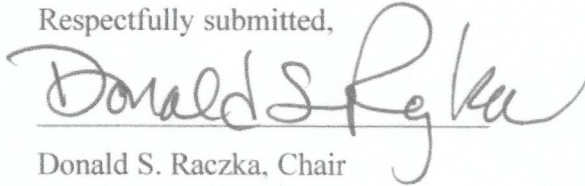
\*\*Both sides agree that a large portion (over 80%) of those unit members opting for Blue Shield Access could be served with the same plan benefits by migrating to the Trio option, thereby saving premium costs. To encourage this migration, the Chair chose to recommend the out-of-pocket contributions for this option at \$0 for the next plan year. The parties would have to meet to "reset" all of these amounts for the plan year beginning January 1, 2024.

- The Parties should meet to finalize contract language that would memorialize contract language that would share future annual increases to Health and Welfare Benefits at 80% of the increase costs being paid by the District and 20% of increased costs being borne by the Association, either by negotiations of the total money package for that year or by increasing the out-of-pocket contributions. This is not a new or unheard of concept.
- The Parties should form a joint Health and Welfare Committee to immediately begin discussions for cost savings for future years.

**Recommendation 4 Effects of transitioning the role of case carrier from Psychologists to Special Education Teachers:**

- The Chair notes that this transition would be effective in the 2024-25 school year. Although this year is outside the years given in Recommendation 1, Term of the Agreement, both sides were proposing this year as the implementation year.
- The stipend for TK-5 Special Education Teachers would increase from its current rate to \$5000 per year, beginning with the implementation of the transition.
- All other Special Education stipends currently being paid would increase to \$2500, beginning with the implementation of the transition
- Special Education teachers will have access to site clerical support for the purposes of copying/mailing IEP documents and scheduling IEP meetings. The teachers will provide all necessary information for the purpose of scheduling the IEP meeting.
- For grades 6-12, Special Education teachers will be provided one student-free class period per day to conduct case carrier duties.
- For grades TK-5. Special Education teachers will be provided 150 minutes per week to conduct case carrier duties.

Respectfully submitted,



Donald S. Raczka, Chair

**For the District:**

\_\_\_\_\_ Concur

  X   Concur in part

\_\_\_\_\_ Dissent

  X   Dissent in part



Elizabeth B. Mori, District Panel Member

**For the Association:**

\_\_\_\_\_ Concur

  X   Concur in part

  X   Dissent

\_\_\_\_\_ Dissent in part



Vern Gates, Association Panel Member

In the Matter of the Factfinding Between the  
Covina-Valley Unified School District and the Covina Unified Education Association

PERB Case No. LA-IM-4114-E

Partial Concurrence and Dissent of the  
District – Appointed Panel Member

November 22, 2022

The panel in this case was faced with the challenging task of resolving a one-year dispute after that year had already come and gone. The efforts of the impartial chair to provide recommendations that will serve to, hopefully, help the parties reach a mutually agreeable settlement, as opposed to further entrench them in their respective positions, are accordingly respected and much appreciated.

To that end, I strongly concur with the impartial chair's clear statement, as gleaned from the language of the factfinding report, that the status quo is not recommended, whether on salary, health benefits, or special education case carrier duties.

Specifically, I appreciate the fact that the chair concurs with the need for relief to the District in terms of health benefits. The District currently has a negotiated structure in place that has been accepted by other employee groups as it relates to the timing and method for sharing in the cost of health benefits. As such, while I agree with the chair's general finding that employees need to share in the cost of benefits, I dissent on the proposed model and instead believe that the District's negotiated mechanism in place for all other employee groups be considered by the District for purposes of cost sharing.

I also concur with the impartial chairperson's recommendation that a multi-year settlement would be in the parties' best interests, including one that includes competitive increases to employee salaries. However, such increases are only reasonable when coupled with a realistic model for future cost containment to health benefits. Based on that, I must respectfully dissent with the full extent of the proposed salary increases as it does not adequately recognize salaries as a component of total employee compensation, including health and welfare benefits.

As to the recommendations concerning transfer of special education case carrier duties, I wholeheartedly concur with the chair's acknowledgement that these responsibilities appropriately lie with the District's special education teachers, those working most closely with the children involved, as well as the recommendations regarding additional compensation to be provided for this work. And while I agree with a recommendation for some additional release time for elementary teachers to manage this work, I must dissent to what I believe is the chair's over-allocation of time away from classroom teaching and learning, as unwarranted by the data presented to the panel at the hearing.

In conclusion, I sincerely hope that both parties recognize the common realities they face and encourage them to engage in frank and candid discussions aimed at resolving the current labor dispute in such a way that does not further harm or disrupt the educational environment for District students, families of those students, and the employees of the District.



Elizabeth B. Mori  
District-Appointed Panel Member

## **Concurring and Dissenting report of Panel Member Gates**

**PERB Case # LA-IM- 4114-E**

**Between Covina-Valley Unified School District and Covina Valley Education Association**

Gates, Panel Member, concurring in part and dissenting in part:

I appreciate the Chairperson's attempt to mediate a settlement with the parties following the factfinding hearing. I concur that a settlement should have been reached, using the Chairperson's suggested framework. In fact, the Association indicated its willingness to mediate using the framework as a starting point. Unfortunately, the District refused to do so. At first the District claimed there were no cost savings (see below for more detailed discussion), which prompted the Chairperson to show the District the actual immediate cost savings, whereas there are no immediate cost savings under the District's proposal and future cost savings are speculative. After the Chairperson did so, the District returned and said that unless there was a hard cap on health benefits, the District was unwilling to reach a settlement. Faced with only one party willing to engage in negotiations (the Association), the Chairperson ended the mediation near 8 P.M.

Although I concur that the proposed framework is a starting point for a negotiated settlement, I am forced to dissent because the District has not met its burden of proof.

At the heart of any factfinding hearing, similar to any arbitration, is who carries the burden of proof and has the party met that burden? In general, the party asserting the claim (or change in this case) has the burden proving it.<sup>1</sup> The party seeking to change the status quo bears the burden of proving the need to change the status quo.

When the union seeks a cost-of-living increase, the union is seeking to change the status quo and bears the burden of proof. The union usually needs to show that their proposal is necessary to keep up with the consumer price index/implicit price deflator, stay competitive in the labor market, and/or maintain the employers current compensation package, often called the employer's maintenance of effort. Fortunately, in this case, the parties have agreement on the cost-of-living increase for 2021-2022.

Conversely, when the employer seeks to make a cut to compensation or a cut to health and welfare benefits, the employer is seeking to change the status quo and the employer bears the burden of proof. The employer needs to show it does not have the ability to pay the current cost (the status quo) and if the employer cannot show an inability to pay, the employer cannot meet its burden of proof.

The main dispute in this case is the employer's contribution to health care benefits. On this the parties disagree and since it is the District who seeks to make changes to the status quo, it is the District that bears the burden of proving a need to change the status quo. Here the District has not done so and cannot do so. In fact, the District admitted as much during the factfinding hearing.

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<sup>1</sup> Elkouri & Elkouri, How Arbitration Works, Eighth Edition, pg. 8-104, E. Burden of Proof

### The District Has the Ability to Maintain the Status Quo

Mr. John Gray, President of School Services of California, Inc., presented at the hearing on behalf of the District. Mr. Gray unequivocally stated that the District was not making an inability to pay argument. This definitively means that the District can afford to maintain the status quo.

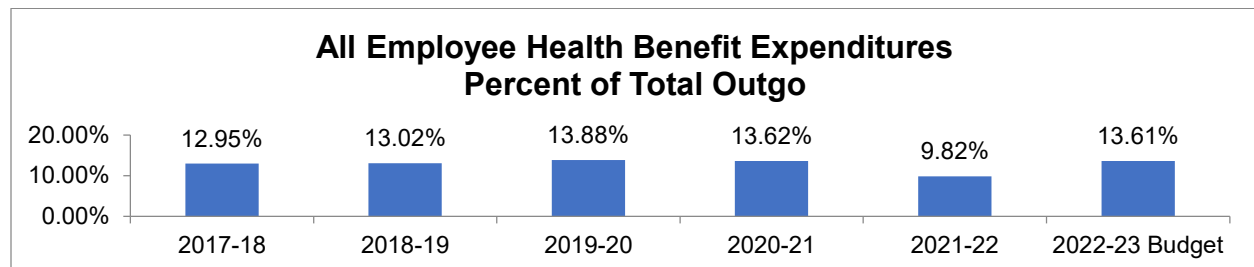
When an employer makes an inability to pay argument, they are seeking to change the status quo and demonstrate that current circumstances necessitate cost savings of some amount. Contrast this with a hypothetical dispute over salary. For example, say the union proposed a 4% cost of living increase and the employer proposed a 2% cost of living increase. The employer would similarly not argue an inability to pay – the employer can certainly pay the status quo plus a 2% cost of living increase as that is the proposal the employer made. Instead, the employer would seek to prove that 4% was not needed to maintain its current standing compared to other employers (its maintenance of effort). The union would seek to prove that the 4% increase is needed to keep up the employer's maintenance effort.

In this hearing, the District made no attempt to demonstrate needed cost savings. The District did not make an inability to pay argument. The District has not made such arguments because there are no facts to support a change to the status quo on health care benefits.

The argument the District did make is that they are competitive when compared to other Districts that they selectively chose. Even discounting the self-serving nature of the comparison employers chosen, the District still cannot show a need to change the current structure of health benefits and impose a hard cap. The argument the District made is more akin to the hypothetical salary dispute described above, only that's not the dispute here. The parties are not disputing how much of any increased cost of health care benefits the District will pay for. The District is proposing to not pay any cost over a certain amount for new employees. Forever.

The closest the District comes to making any type of argument about cost is on page 48 of the District presentation, Tab 7, Fact 7. On this chart the District shows its actual health and welfare costs from the 2016-17 school year through the 2021-22 school year. The reader will note the asterisk next to the years 2022-23, 2023-24, and 2024-25. That denotes these are projections, not actual costs. The District provides no supporting documentation for these projections. Not even an article that refers to anticipated nationwide health care cost trends. Nothing.

The best method of comparing how and what a District spends its revenue on is to compare any given category with the District's total expenditures, inclusive of transfers out and other uses (also called total outgo). This is the method the State requires the District to use to determine the amount of money the District is required to keep in reserve. This is usually expressed as a percentage of total outgo and serves as an apples-to-apples comparison with other school districts and also demonstrates a district's maintenance of effort over time, accounting for dollar increases in spending. The chart below shows the same dollar cost amounts expressed as a percentage of total outgo. This demonstrates the District spending is flat over time, less than a one percent increase since 2017-18.



As District revenues increase and district expenditures increase, as is normal, the percent of total outgo spent on health benefits remains flat, indicating that the District has not shifted spending from other areas of the budget to health care. This is significant. If the District was spending more than normal and could not afford to continue to pay the status quo, the District would have said so in its presentation.

A few other points stand out with regard to District Fact 7, Tab 7. First, the chart shows health care spending for all employees, not just the teacher union. The District has two other unions it negotiates with as well as the non-represented management group. This factfinding hearing is not about other groups, it concerns the teacher bargaining unit. Leaving this aside for the moment, total spending on health care is projected – *projected* – to increase by about \$1 million per year in 2023-24 and 2024-25. This is roughly equivalent to the cost of 1%, as listed by the District on page 29, Fact #1 of their presentation. Over the course of 2021-22 through 2024-25 the District will receive 31.45% in additional ongoing revenue.<sup>2</sup> Suffice to say, the District can afford 2% out of 31%.

Further evidence that the District can maintain the status quo – does not need to change health care spending – is evidenced on page 348 of the Association presentation. The two charts here split out health care spending by the teacher unit alone. Since 2017-18, health care costs for the teachers only as a percent of total outgo has remained relatively flat, with a small decline in spending in the past few years, from 7.00% down to 6.73%.

The above reasons explain why the District did not, and cannot, make an inability to pay argument. The party seeking to change the status quo has the burden of proof. The District cannot meet this burden, so they didn't even try to do so. Since the District can afford to maintain the status quo, there should be no change to health care benefits.

#### No savings from District Proposal

The District makes no attempt to show savings on health care spending in their presentation. Why? Because there aren't any. There are cost savings in the Chairperson's framework, however, this was flatly rejected by the District. In Tab 9, page 439 of the Association's presentation is a copy of a presentation made to the C-VUSD Board by Manuel Correa, CBO. The presentation itself shows no cost savings in immediate years and very little costs savings until years 2025-26 and beyond.

#### District Reserves

The District has substantial reserves. *Substantial*. Page 352 of the Association presentation shows that the combined reserve amount of the General Fund (Fund 01) and the Special Reserve Fund (Fund 17) is 24.38% ABOVE the State required reserve of 3%. Furthermore, as the Association demonstrated the District also failed to include over \$15m in new ongoing revenue for 2022-23 and over \$24m in one-time funding in their budget (page 337), nearly \$7m of which is available to be used for health and welfare or pension costs (page 620).

#### The District has a Soft Cap on Health Benefits Costs

The District claims in several places in their presentation that health benefits are "uncapped." This is patently untrue. The District has a "soft cap" in place, where the District contributes an amount up to a specific plan cost. If an employee chooses a health plan that costs more than

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<sup>2</sup> School Services of California, Inc Dartboard (inclusive of 2022-23 augmentation of 6.7%) accessed at [https://www.sscal.com/sites/default/files/SSC%20Dartboard\\_2022-23%20Enacted%20State%20Budget%20%28rev%209.29.22%29.pdf](https://www.sscal.com/sites/default/files/SSC%20Dartboard_2022-23%20Enacted%20State%20Budget%20%28rev%209.29.22%29.pdf)

the specified plan, the employee pays the difference out of their own pocket. In addition, there is a fixed employee cost share amount. These amounts are shown on page 732 of the Association presentation, page 113 of the District presentation, and also page 66 of the parties collective bargaining agreement. As can be seen, employees choosing the family PPO plan will pay \$725.59 per month (tenthly), for a total of \$7,255.90 per year out of their paycheck.

### The District's Proposal is Outside the Scope of the Hearing

As the Chairperson pointed out during the hearing, the year in question before the panel is the 2021-22 year. The Chairperson correctly noted that the District's health care proposal was for the 2022-23 year, and thus should not be included in this factfinding report. The Association opened the 2022-23 year for negotiations, making a salary proposal, in an attempt to reach a settlement. The District refused to negotiate. Indeed, the District made a point during the hearing of disputing the inclusion of the 2022-23 salary proposal, arguing it wasn't the year in question before the panel. The chairperson indicated in that case, he would exclude their health and welfare proposal from his report. Several days after the hearing was over, the District sought to open negotiations for 2022-23.

Simply put, the District cannot have it both ways. The District cannot be allowed to argue that the 2022-23 year is not before the panel, except for their 2022-23 health care proposal. The Chair was correct to indicate that this issue would be excluded from the report. Although the Chair is correct in a practical sense that the parties are best served by a two-year settlement, the inclusion in this report is improper based on the District's arguments during the hearing.

This isn't the only improper behavior by the District during the hearing. At one point, the District panel member brought in printed proposals made during the State Mediation process, proposals that are confidential and protected by State law. Prior to entering into mediation, the State Mediator requires both parties to sign a confidentiality agreement. The purpose of the agreement is to ensure that the parties are comfortable exploring various options to settle the dispute that they otherwise would not discuss. California Evidence Code sections 1115 through 1129 govern and are referred to in the mediation agreement.<sup>3</sup> Of note, factfinding hearings are a noncriminal proceeding in which testimony may be compelled.

#### 3548.2.

- (a) The panel shall, within 10 days after its appointment, meet with the parties or their representatives, either jointly or separately, and may make inquiries and investigations, hold hearings, and take any other steps as it may deem appropriate. For the purpose of the hearings, investigations, and inquiries, the panel shall have the power to issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence....

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<sup>3</sup> 1119.

Except as otherwise provided in this chapter:

(a) No evidence of anything said or any admission made for the purpose of, in the course of, or pursuant to, a mediation or a mediation consultation is admissible or subject to discovery, and disclosure of the evidence shall not be compelled, in any arbitration, administrative adjudication, civil action, or other noncriminal proceeding in which, pursuant to law, testimony can be compelled to be given.

(b) No writing, as defined in Section 250, that is prepared for the purpose of, in the course of, or pursuant to, a mediation or a mediation consultation, is admissible or subject to discovery, and disclosure of the writing shall not be compelled, in any arbitration, administrative adjudication, civil action, or other noncriminal proceeding in which, pursuant to law, testimony can be compelled to be given.

(c) All communications, negotiations, or settlement discussions by and between participants in the course of a mediation or a mediation consultation shall remain confidential.

*(Added by Stats. 1997, Ch. 772, Sec. 3. Effective January 1, 1998.)*

Whether this behavior by the District Panel Member, an attorney with years of experience, warrants something other than a comment in this dissent is for others to decide. The behavior is certainly less than ethical, contrary to the policy set by the State, and will have a chilling effect causing mistrust of the District for some time. Such behavior is anathema to reaching a negotiated settlement.

### Growing Labor Shortage

One need only glance at the headlines to see low unemployment numbers as well as growing concerns over the coming shortage in teachers. Compensation is consistently listed as one of the prime reasons teachers leave the profession or others do not choose to become teachers. Cutting health benefits couldn't be a worse idea in the current climate. Not only does the Association list several references to data which confirms this and current C-VUSD vacancies (pgs. 369 – 415) but parents have also spoken against the District's proposal to the Board (pgs. 419 – 423).

### Why Does the District Want a Hard Cap if there are No Savings?

As demonstrated by both the District and Association presentations, there are no immediate cost savings in the District proposal and no cost savings are needed. So why does Superintendent Eminhizer cling to this proposal? Perhaps the answer lies in evidence the Association presented on pages 427 – 435. The Superintendent wants to split the union. Two-tiered compensation and health plans are a tried-and-true method for management to cause division within a union. When there are no immediate costs savings, no costs savings needed, and less than ethical behavior, we need to look outside of factual financial evidence for motivation. Oftentimes in tense negotiations, simple ego gets in the way. Sometimes it's more sinister. Neither are acceptable.

The better question to ask is, why would a school board continue to employ a Superintendent who clings to a proposal with no legitimate reason, when a labor action is imminent which would interrupt the educational process? One wonders.

### Conclusion

Although I concur with the Chairperson that his framework may serve as a starting point for a settlement, I must also dissent for all of the reasons discussed above. The District has not met its burden to show that a change in the status quo is needed.

A handwritten signature in blue ink, appearing to read "Vern Gates", is shown on a light gray background.

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Vern Gates: Association Panel Member  
November 22, 2022