PC · Lucie Sherry
Carrie
Debbie / DA
Lucy 10.25.12

October 22, 2012

OCT 25 2012

AFL-CIO
California School Employees Association

10211 Trademark St.
Unit A
Rancho Cucamonga, CA 91730

(909) 466-1006
(800) 526-9297
FAX: (909) 466-1105

www.csea.com

Member of the AFL-CIO

The nation's largest independent classified employee association

Denise Whittaker
Superintendent/President
Palo Verde Community College
One College Drive
Blythe, CA 92225

Re: Recent Changes in Law Mandate Negotiations Over Selected Topics as Per Savings Clause in Article 12.7(B) of CBA

Dear Ms. Whittaker:

Recently, Governor Brown signed AB 340 enacting significant changes to California public employee pensions. AB 340 will not modify or cut pensions for any current employees. Only employees hired after January 1, 2013, will be impacted by the benefit changes in AB 340. However, since new employees will have significantly different pension benefits than current employees, the contract language and/or practice may not be applicable in whole or in part for those new employees hired after January 1, 2013.

AB 340 will not affect current employees' retirement benefits. Current employees will continue to receive all current retirement benefits and formulas. Contribution rates also remain unchanged for current employees. New employees hired on or after January 1, 2013, will continue to receive defined benefit pensions. However, the formula for classified employees will be 2% at age 62 and will top out at 2.5% at age 67. Also, new employees will be required to pay 50% of normal costs (normal costs are the costs to fund current benefits, not including unfunded liabilities).

Because retirement formulas for new employees will be reduced, normal costs for new employees could be lower than the 7% currently paid by existing employees through an automatic payroll deduction. On the other hand, the maximum employee contribution under AB 340 for new employees hired on or after January 1, 2013, may differ from current practice. The parties' current practice and/or contract may contradict these portions of AB 340, creating many negotiable effects regarding new employees, and even existing employees, which must be addressed immediately in order to comply with the new pension provisions under AB 340.

In addition, on September 30, 2012, Governor Brown signed two additional bills impacting current contract language. First, AB 1203 amends Education Code section 88210, which contains the organizational release time statutes for community college districts. AB 1203 allows leaves of absence for union

business for all unionized classified employees, not just the elected union officers. Second, AB 1908 amends Education Code section 88017 (the statute governing layoffs) to provide for a 60-day layoff notice for classified employees. Both these changes contradict current contract language.

Education Code section 88210 currently requires community colleges to grant leaves of absences for a classified employee "for the purpose of enabling the employee *to serve as an elected officer* of a local school district public employee organization, or a statewide or national public employee organization with which the local organization is affiliated." The primary amendment to section 88210 is the addition of language that allows *unelected* employees to be on leave, paid for by the local union, in order "to attend important organizational activities authorized" by the local union upon request of the local, state or national union. The language in Article 1 of the parties' Collective Bargaining Agreement (CBA) does not reflect these expanded release time provisions under AB 1203 for unelected union members.

AB 1908 amends Education Code section 88017 to provide for a 60-day layoff notice, which contradicts the 45-day notice period stated in the parties' CBA. AB 1908 is a simple change. The only language change in the statute is to substitute "60 days" for all "45 days" references in the Education Code. For example, section 88017(b), the most frequently used portion of the statute in this area of law, now reads:

> *(b) When, as a result of a bona fide reduction or elimination of the service being performed by any department, classified employees shall be subject to layoff for lack of work, affected employees shall be given notice of layoff not less than 60 days prior to the effective date of layoff, and informed of their displacement rights, if any, and reemployment rights.*

This "60-day" change appears where applicable throughout the relevant Education Code sections. However, the Education Code requiring a 60-day layoff and/or reduction notice period to classified employees is not clearly stated in Article 9.2 of the parties' current CBA.

Savings Clause in Article 12.7(B) of the Contract is Applicable

The parties' CBA contains a "savings" clause meant to address situations in which law is changed "out from under" the parties' CBA in such a way that current, existing contract language is substantially contradicted or invalidated. Article 12.7(B) explicitly provides for such negotiations over topics when there have been significant changes through law or legislative act that impacts the CBA. Article 12.7(B) reads:

> ***If during the life of this Agreement there exists any applicable law or any applicable rule, regulation or order issued by the State of California or by the Federal Government which shall render invalid or restrain compliance with or enforcement of any provision of this Agreement, such provision of this Agreement, such provision shall be immediately suspended and be of no effect hereunder so long as such law, rule, regulation or order shall remain in force. Such invalidation of a part or portion of this Agreement shall not invalidate any remaining portions which shall continue in full force and effect. In the event of suspension or invalidation of any article, or section of this Agreement, the parties agree to meet and negotiate within thirty (30) days after such determination for purpose of arriving at a mutually satisfactory replacement for such article or section.***

As per Article 12.7(B), CSEA is requesting negotiations over the above-stated topics. Due to the timelines involved, especially given the possibility of new employees being hired into the District within a few weeks of the January 1, 2013 changes (especially if Prop. 30 passes), CSEA proposes including the above topics in the next scheduled negotiations. CSEA will provide the District with an initial proposal on these topics for "sun shining" purposes as soon as it is developed by the CSEA negotiations team and approved by the CSEA Chapter 180 membership at Palo Verde CC.

Please contact me as soon as possible to confirm CSEA's request to immediately negotiate modifications to the parties' CBA in order to comply with the new changes to the law in the above areas.

As always, please call me if you have any questions or concerns.

Sincerely,

CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION

Dale Wissman/mk

Dale Wissman
CSEA Labor Relations Representative

DW/mk
Certified Mail (7010 3090 0001 6959 1166)
12 DW 180 Whittaker re Savings Clause Negotiations Request
cc: Rich Soto, Chapter 180 President
Michael Martinez, Region 10 Representative
Dale Sorenson, Area F Director
Patrick Prezioso, RCFO Field Director
Chuck Sheppard, Senior Labor Relations Representative