



Poway School Employees Association
February 27, 2015

Negotiation Update No. 7

Unfortunately, negotiations with the District over the 2014-2015 reopeners have taken a very disappointing turn, prompting PSEA to begin taking steps to hold the District accountable. In order for our members to fully understand what the District has done and why it is so troubling, we need to provide some background information.

THE DISPARITIES AFFECTING OUR MEMBERS

As you know, PSEA has been pressing the District during these 2014-2015 reopener negotiations to fix a number of disparities between classified employees on the one hand and managers and teachers on the other. For example, we have repeatedly demonstrated (and gotten the District to agree) that our members receive far less in District contributions towards health insurance than do APSM and PFT employees. We have also reminded the District that classified employee positions took the bulk of cuts during the economic downturn (in the form of lost positions and reduced contracts) and that those cuts need to be restored now. Finally, we have gotten the District to concede that the rate of vacation accrual for new classified employees lags behind that of other Districts (and far behind the vacation accrual rate of supervisors and managers) and should be addressed. To every one of these proposals, however, the District has responded that it does not have any money for these improvements and in fact may be facing budget cuts in a few years.

As a result of the District's cries of poverty, and in light that a new majority had been elected to the School Board, PSEA told the District on November 19, 2014 that we would agree to wrap up these negotiations now, accepting the 1% wage increase that the District had already offered (but with a me-too provision to make sure the District didn't give more to another unit than they gave us), and that we would return to the issue of fixing the disparities during the 2015-2016 reopeners, once the new School Board had settled in and gotten up to speed on the budget and negotiation processes. Strangely, the District balked at wrapping up the negotiations and started stalling.

THE DISTRICT'S DECEPTION

We have since learned that, almost as soon as we told the District we would wrap up these negotiations now and return to the issue of fixing the disparities in the next round of negotiations (Spring 2015), the District – without telling PSEA – started negotiating with the teachers to spend the money from next year's state budget now. The District has been delaying wrapping up our 2014-2015 negotiations so that we cannot move on to the 2015-2016 round until after the District agrees with PFT to spend all the money.

PSEA has now made it clear to the District that we find this type of conduct unacceptable, for a number of reasons:

- The District lied to PSEA about its finances, pleading poverty to us and then trying to spend the money on PFT;

- The District is purposefully stalling our negotiations in order to finish up negotiations with PFT, even though we have been bargaining for over a year and PFT has been in negotiations for barely a month;
- The District is trying to give away all of next year's money to PFT before PSEA can return to the table to negotiate for restoration of positions and hours, health and welfare parity, and improved vacation accrual rates;
- It is fiscally irresponsible for the District to spend next year's money during this school year, and after the District's horrible decision on the \$1 Billion Capital Appreciation Bond (CAB), we are surprised the District would try such a thing; and
- The District has been trying to hide the negotiations with PFT, and the District's continuing fiscal irresponsibility, from PSEA and the community.

Attached is a letter which PSEA sent the District on Friday, February 13, explaining in detail our extreme frustration with the District's conduct.

HOLDING THE DISTRICT ACCOUNTABLE

Once PSEA learned what the District was up to, we also realized that the District NEVER gave the community any notice that it was negotiating with PFT – something that by law the District is required to do before it can start negotiating with any union. Whenever PSEA (and, for that matter, SEIU) start negotiating with the District, we always make sure that both our initial proposals and those of the District are “sunshined” as required by law. And yet, in the District's rush to leapfrog PFT in front of our negotiations, it failed to conduct any “sunshining” of the initial proposals to and from PFT.

As a result, PSEA earlier today filed an Unfair Practice charge with the Public Employment Relations Board (PERB) objecting to the District negotiating with PFT without having first given the community notice and an opportunity to express its views on the parties' initial proposals. The purpose of this PERB charge is to force the District to comply with the law, to be transparent with the community, and to stop using PFT's negotiations as an excuse to delay an agreement with PSEA. To be clear, we have no quarrel with PFT advocating for its members – our objection is to the District playing favorites among bargaining units.

PSEA is also considering whether to file additional Unfair Practice charges against the District for its deceptive and dilatory conduct during the current reopener negotiations with us. And we are exploring all other options we have to hold the District accountable.

Our goal in all of this is simple: 1) we want to wrap up negotiations for the 2014-2015 year ASAP, so that our members can get their wage increase; 2) we want to prevent the District from giving away the store before we can sit down with them again for the 2015-2016 reopener negotiations; and 3) we want to make it clear to the District that PSEA's leadership and its membership will not stand for this type of disrespect.

As always, our ability to win improvements for classified employees depends on having an active and engaged membership. If you have not yet signed a PSEA membership application, be sure to contact your PSEA Site Representative, or call the PSEA office at (858) 859-7968.

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VIA EMAIL ONLY

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Re: 2014-2015 Reopener Negotiations with PSEA

Dear Jerry and Tracy:

I am writing you at the direction of the entire PSEA leadership team regarding the status of the 2014-2015 reopener negotiations. The purpose of this email is three-fold: 1) to communicate PSEA's deep displeasure with how the District has conducted these negotiations for the last 3 months; 2) to make a proposal to wrap up these negotiations immediately; and 3) if our settlement proposal is not acceptable, to make a request for information relevant to the ongoing negotiations.

I. THE CONDUCT OF NEGOTIATIONS

As a preliminary matter, we want to express PSEA's extreme frustration at how the District has handled these negotiations, in particular since November 2014. This concern breaks down into two components: 1) the pace of negotiations; and 2) the District's misleading of PSEA.

A. The Pace of Negotiations

PSEA cannot fathom any legitimate reason for the current slow pace of negotiations, especially when there are no substantive items still in dispute. As you know, PSEA informed the District on November 19, 2014 that it was withdrawing virtually all of its outstanding proposals (everything except the restoration of Kathy Meyer's position to 12 months) and would agree to the District's proposed 1% wage increase. We told you that the reason we were doing this was: 1) because the District's negotiating team told us there was no more money to put on the table for the 2014-2015 year to address the inequities we had identified but not resolved in negotiations; 2) due to the fact that there was a new school board that needed to get up to speed on negotiations; and 3) because of our desire to give the new School Board the breathing room necessary to settle into their duties as Board members. We indicated that we planned on revisiting our demands regarding these inequities during the 2015-2016 round of reopeners, but for the moment would settle for what the District was proposing. Therefore, the only issues still unresolved as of November 19 were the restoration of Kathy Meyer to a 12-month position (at a cost of \$566.01) and the continuation of the me-too language from 2013-2014. Since both of these demands were

fairly modest (one was for an insignificant cost, and the other was merely a continuation of current contract language), we fully expected to wrap up negotiations that day.

However, the District's negotiating team indicated to us that it would need to speak "with John [Collins] and perhaps the Board" about continuing the me-too language, and that it needed to speak with the Special Education Department about restoring Kathy Meyer. We therefore scheduled another negotiation session for December 11, so that your team would have an opportunity to raise the me-too proposal with the Board at the December 8 meeting if it saw fit. At our negotiation session on December 11, however, while the District agreed to the restoration proposal for Kathy Meyer, you informed PSEA that you still needed to consult with the Board over the continuation of the me-too language. No explanation was given as to why this consultation did not take place on December 8.

PSEA then pressed you to schedule a closed session for the next Board meeting scheduled for January 5, 2015, but you insisted it could not have this discussion until the January 20 meeting. When we asked why, we were told that the District wanted to see the Governor's proposed budget for the 2015-2016 fiscal year. PSEA pointed out that we were discussing compensation for 2014-2015 and didn't see why the Governor's budget for a subsequent year was relevant, and your response was that while you could not explain the relevance, you had been assured by the District's Finance Department that it was relevant. PSEA then pointed out that what we proposed was not a specific salary increase (beyond the 1% that the District had already offered), but rather a commitment that raises would be distributed equally to all bargaining units (a commitment which already existed in the Agreement and which everyone acknowledges has been the District's practice), and therefore the District did not need to know at this point whether it was going to offer any units more money in order to commit that any such additional increases for another unit would be given to PSEA. Your team indicated you viewed things differently but did not explain what that difference was.

Next, during our Labor Relations meeting on January 30, PSEA asked if we could finally wrap up the negotiations. Your side indicated that there was "an absolute commitment to parity" between the units, but informed us that the District was currently in negotiations with PFT over compensation, anticipated those negotiations would result in a compensation increase of more than 1%, and wanted to finalize those negotiations before agreeing to anything with PSEA. We once again pressed why, if there was such an iron-clad commitment to parity, the District would not simply sign the me-too agreement and allow the parties to wrap up the 2014-2015 reopener negotiations. Your response was that, after discussions with the Payroll Department, the District wanted to avoid having to issue multiple retro checks to the PSEA unit.

It is now the middle of February, a full three months after PSEA said that we would agree to the District's proposals, and we have still been unable to wrap up the negotiations – despite the lack of any substantive disagreement on what the terms of a settlement would be. You never gave an explanation for why the District failed to consult with the Board on December 8, despite telling us on November 19 that such a consultation might be necessary, and despite the fact that we purposefully scheduled the next negotiation session to land after the December 8 Board meeting. As for the concern expressed by the District's team (for the first time on January 30) regarding

extra workload for the Payroll Department if multiple retro checks have to be cut, we understand that concern (after all, we represent the employees in that Department) but see no good reason for the District to have waited two and a half months (from November 19 to January 30) to raise the concern for the first time. This was clearly an issue identified by staff and not the Board, and therefore could and should have been raised on December 11. Further, it now appears that the reason the District delayed consulting with the Board until January 20 was not to see whether the Board was comfortable with the concept of parity in salary increases across units, but rather to hold up PSEA's negotiations until the District could get authorization from the Board to offer PFT additional salary increases (which explains why the District wanted to see the Governor's January budget proposal before the discussion with the Board). At a minimum, you should have articulated the District's reasons for seeking to hold up an agreement with PSEA, rather than telling us it was because the District needed to see if the Board was comfortable with the concept of parity in salary increases (which now appears to have never been in dispute). And that leads us directly to PSEA's second frustration.

B. The District Misleading PSEA

There is no polite way to say this: The District apparently lied to PSEA about whether there would be any additional money available for 2014-2015, and is compounding that lie by now seeking to commit that additional money before it sits down with PSEA to discuss addressing the inequities we have identified.

As you know, PSEA's top economic priorities in these negotiations were: 1) fixing the extreme disparity in the out-of-pocket cost for health insurance paid by classified employees as compared to teachers and management; 2) restoring classified positions and hours which were lost in the recent economic downturn; and 3) increasing the rate of vacation accrual for classified employees to be more in line with comparable districts – and with what management receives. While we made it clear we also sought wage increases for our unit, we made no secret of the fact that these three items were our economic priorities for the 2014-2015 negotiations.¹

Throughout these negotiations, the District did not dispute that PSEA had identified legitimate issues which needed addressing. In fact, the District agreed that there was a structural inequity in health and welfare benefits, which has been long-standing. The District also conceded that – particularly for employees in their first three years with the District – the vacation benefits for classified employees lag behind those of other Districts. And, in his June 2, 2014 response to comments from the DAC and DELAC committees calling on the District to “[r]eplace services provided by parents with paid paraprofessionals[,]” the Superintendent assured the community that the District would “continue to work on staffing schools to the levels they were staffed prior to the budget cuts begun in 2007-2008.”²

¹ As you also know, we had agreed in 2013 to commence an “Interest Based Problem Solving” process to “consider creating additional benefitted positions” (Article 5.10 of the CBA). No IBPS session has been scheduled, however, because the District has consistently said it did not have the money to create any additional benefitted positions. While we did not raise this issue in the 2014-2015 negotiations, it remains one of PSEA's top economic priorities.

² See https://www.powayusd.com/doc_library/2014-15/SUPT%27S_WRITTEN_DAC_DELAC_RESPONSE.pdf

The sole objection which the District expressed to PSEA's proposals in these three areas was cost. It consistently said it lacked the money to make those commitments, and repeatedly pointed to the fact that the District was facing budget deficits currently and the possibility of budget cuts in a few years. In fact, the District's negotiating team even told PSEA that if it had the money, the District would love to address these issues, but that was not possible right now. And it was based on the District's representations that it lacked any additional money for the 2014-2015 year which could be used to address these concerns that PSEA agreed on November 19, 2014 to withdraw its proposals on these issues and revisit them in the 2015-2016 negotiations.

Nearly as soon as PSEA withdrew these proposals in the face of the District's cries of poverty, however, the District began planning to commit potentially millions of dollars to additional compensation for teachers – money which could have been used at least in part to begin addressing these inequities. To make it worse, it appears (from the fact the District was waiting to see the Governor's January budget proposal) that the District is seeking to raise teachers' 2014-2015 compensation with money it anticipates receiving from the 2015-2016 state budget. Which leads us to wonder whether the District is negotiating these increases with PFT now so that when it finally sits down with PSEA for the 2015-2016 reopener negotiations, it can once more claim it has no money available to fix the inequities – having hurried up and spent it before PSEA could return to the negotiating table.

II. A PROPOSAL TO WRAP UP THESE NEGOTIATIONS

As we said previously, PSEA is sympathetic to the concern expressed about additional workload if Payroll has to cut multiple retro checks (one for 1% now, and another for any additional increases negotiated with PFT). At the same time, however, it is not acceptable to us to have our agreed-upon wage increase delayed because of the status of the District's negotiations with another unit. To resolve this issue, therefore, we propose the following simple compromise:

- First, the District implements a 1% salary increase for PSEA unit members prospectively (the salary schedule will increase by 1%, but no retro checks will issue at this time), effective no later than the March payroll;
- Second, the District agrees to issue retro checks to the PSEA unit no later than the June payroll, and these retro checks will be either for 1% or for the amount of any increase agreed to with any other unit, whichever is greater.

This proposal would allow our unit members to get their agreed-upon 1% increase now, would ensure that our unit receives the same salary increase as any other unit, and would avoid the need for multiple retro checks. Attached is contract language reflecting this proposal. Please let us know at your earliest convenience whether we can wrap up our negotiations on this basis.

III. REQUEST FOR INFORMATION

We noticed that, during the January 30 Labor Relations meeting, the District was unwilling to tell PSEA what percentage increases it was discussing with PFT. And, as far as we are concerned, the purpose of the me-too language we proposed on November 19 was that we would not have to be privy to such information because whatever that number ended up being, we would receive the same amount. We also understand why, from a public relations point of view, the District would want to keep close to the vest the numbers it is discussing with PFT. However,

if an agreement with PSEA is going to be held up while the District negotiates salary increases with PFT, then PSEA has the right to know what the numbers are that are being discussed between the parties, and how much this will cost. As a result, if the District is unwilling to agree to our proposal above, PSEA requests that the District provide us with the following information:

- What is the current cost to the District of a 1% increase in PFT salaries?
- What is the current cost to the District of a 1% increase in APSM salaries?
- What is the current cost to the District of a 1% increase in SEIU salaries?
- What is latest compensation proposals exchanged between PFT and PUSD? In other words, what was PUSD's last proposal to PFT, and what was PFT's last counter-proposal to PUSD?

Please provide us that information no later than February 27, unless we have reached an overall Tentative Agreement before that time.

IV. NEXT STEPS

As you can no doubt tell by the tone (and length) of this letter, PSEA views these last three months as having significantly set back the relationship between the parties. We have, to date, been circumspect in how we describe the conduct of management to our members and the broader community, out of respect for the bargaining relationship. But if District management is not going to similarly respect PSEA as an equal – not only an equal with management, but also an equal with the other bargaining units – then I anticipate PSEA will reevaluate its approach, a decision which could well lead to an increase in labor conflict at the District. Such an outcome is not inevitable, but much depends on what actions management now takes.

As always, feel free to contact me or Lynnette if you would like to discuss any of these issues.

Very truly yours,



Ricardo Ochoa
Attorney at Law

Enclosure: Article 14.6.1 (PSEA Proposal #3)

Cc: PSEA Board of Directors and Negotiating Team (with enclosure)
John Collins, PUSD Superintendent (with enclosure)
PUSD Board of Education Members (with enclosure)