



Pasadena Unified School District *Human Resources*

To: Alvin Nash, Contract Management Chairperson, United Teachers of Pasadena

CC: Roberto Gallegos, CTA Regional Staff
Bethel Lira, President, United Teachers of Pasadena
Shelly James, Chief Human Resources Officer
John Pappalardo, Chief Finance Officer

From: Steve Miller, Director of Human Resources

Date: October 27, 2009

This is in response to the Level Two Grievance filed on behalf of Karen Favor and all similarly affected bargaining unit members dated October 9, 2009.

The grievance claims that the District violated sections 6.3.10.1, 6.9, and 6.9.4 of the collective bargaining agreement (CBA) between the District and the United Teachers of Pasadena (UTP). It claims that the instructional minutes scheduled for the 2009-2010 school year, as of September 10, 2009, were over the limits contained in those provisions by between two and ten minutes per day. It also claims that the minutes were over contractual limits by five minutes on testing days and 25 minutes on Back-to-School and Open House days, even though testing days and Open House days have not yet occurred.

As I previously explained to Karen Favor, in 2007-2008, the District was sanctioned by the State for not meeting statutory instructional minutes requirements. In that year, Blair School was under its instructional minutes by approximately 10 minutes per day. In lieu of paying approximately \$550,000 to the State, the District was required to make up those minutes lost in 2008-2009, and again in 2009-2010, by adding instructional minutes to the schedule. This information was reviewed with Blair's teaching team in September 2008.

Thus, as a preliminary matter, I question whether the grievance is timely. The Union has known about the instructional minutes situation at Blair since at least September 2008, and all grievances must be filed within 20 days of the act or omission giving rise to the grievance. CBA, §§ 5.2.3, 5.3.1, 5.4.5.

In fact, it is my understanding that the matter of instructional minutes at Blair IB School has already been resolved between the parties. Last year, UTP filed a grievance regarding the

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instructional minutes at Blair as it related to prep and collaboration periods. This was resolved through a Memorandum of Understanding (MOU) between the parties dated April 24, 2009, which set out an arrangement for instructional minutes for the 2009-2010 school year. This MOU resolved that grievance. Thus, UTP should now be precluded from raising another grievance regarding instructional minutes at Blair for the 2009-2010 school year. CBA, § 5.4.5.

Even if this grievance is properly brought, I do not believe it has merit. First, there is nothing in the contract that can be construed to require the District to violate the law or to risk State sanction in order to meet the contract's terms. See, CBA, §§ 26.1-26.2. Section 4.3.2 of the CBA explicitly retains in the District the right to "determine all sources and amounts of financial support for the District and all means or conditions necessary or incidental to securing the same, including compliance with any qualifications or requirements imposed by law or by funding sources as a condition of receiving funds." This provision clearly permits the District to take any and all action necessary to avoid a State imposed funding sanction.

Furthermore, Article VI of the contract provides the District sufficient flexibility to change its bell schedule in this instance. For instance, while Sections 6.2, 6.3, and 6.4 deal with how teachers' workdays are to be structured, Section 6.5 says that "[t]he District shall administer the above in a reasonable manner." See also, CBA, 27.3 (same).

In addition, Section 6.1 of the CBA provides that:

The District and the Association recognize that the varying nature of a unit member's day-to-day professional responsibilities does not easily lend itself to a duty day of rigidly established length. Unit members shall spend as much time as necessary to fulfill their instructional and professional responsibilities. Although the minimum site-based assignment hours may be less than forty (40) hours per week, it is understood that fulfillment of a unit member's total professional responsibilities will generally require a work week well in excess of forty (40) hours.

These provisions clearly suggest that the District is entitled to some flexibility in determining the number of instructional minutes to provide its students and in designing its bell schedules.

These principles are reflected in the law, which holds that the entire issue of instructional minutes is not properly subject to the grievance procedure. The number of instructional minutes to be provided is within the prerogative of management, and is reserved to its discretion. This subject is outside the scope of bargaining, and therefore may be unilaterally changed without regard to the CBA. *Salinas Valley Federation of Teachers v. Salinas Union High School District* (2004) PERB No. 1639.

Education Code sections 46114 and 46142, which are referenced in the grievance, are of no relevance. Education Code section 46114 applies to elementary grades and to elementary schools, and does not apply here. Section 46142 provides an alternative way of calculating the minimum school day required in high schools as provided in section 46141. Since those sections set forth instructional minimums, and are for the benefits of students, not teachers, they do not support the grievance.

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Finally, as to your proposed remedy that the District correct the bell schedules at Blair IB School to conform to the Banking Time Framework, the District is unable to grant such a remedy, as a State audit has required that the District make up for missing instructional minutes or lose approximately \$550,000 in funding. Please note that the District is in the process of applying for a waiver from the State Board of Education of this requirement, which may provide it with additional flexibility in the future. In the meantime, nothing in the CBA allows or requires the District to violate State law. See, CBA, § 4.1.1.

The grievance also proposes as a remedy that the District compensate bargaining unit members at their pro rata per diem rate of pay for ten additional instruction minutes for each Monday and two additional instructional minutes for each Tuesday through Friday. However, the grievance sets forth no facts to support a claim that the bell schedule has resulted in additional working time for any bargaining unit members. Nor does it set forth any facts to show that there is any contractual entitlement to additional pay for any additional time worked. Even if such facts existed, UTP's bargaining unit members are salaried employees, and are not entitled to additional pay for overtime. And, any additional time worked beyond the work day was de minimus.

For the above-stated reasons, the grievance is denied. Please be advised that since the contract between the District and UTP has expired, the arbitration provision in the contract is of no force and effect for this grievance, therefore, it will not arbitrate this dispute at Level III. See, *California Department of Youth Authority* (1992) 17 PERC ¶ 24019 (PERB Dec. No. 962-S), adopting the United States Supreme Court's reasoning in *Litton Financial Printing v. NLRB*, 501 U.S. 190 (1991).