

Jan

ARBITRATION AWARD

In the Matter of the Arbitration Between:

**CALIFORNIA SCHOOL EMPLOYEES
ASSOCIATION, CHAPTER 707 -**

and

**GROSSMONT CUYAMACA
COMMUNITY COLLEGE DISTRICT**

Subject: **CSEA Salary Increase**

Appearances:

For CSEA:

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For the District:

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Arbitrator

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BACKGROUND

The case before the Arbitrator arose out of a grievance filed by the California School Employees Association (Chapter 707) (herein "CSEA" or "Association") against the Grossmont-Cuyamaca Community College District (herein "Employer" or "District"). The dispute arose out of whether, as alleged by the Association in its grievance dated November 17, 2005, the Employer violated Article 7.1.2.1 of the Collective Bargaining Agreement when the College approved the United Faculty Agreement for 2004/2005 to increase their salary schedule by 3%. The Association sought as relief in the grievance that a salary increase of 1.2% be made to its members.

The California State Employees Association represents non-teaching staff who work for the District. Another labor organization, called "United Faculty" represents the faculty in the District. A third organization represents administrators. CSEA and the District negotiated a Collective Bargaining Agreement (herein "CBA") effective January 1, 2003 and ending on December 31, 2005 (Joint Exhibit No.1). That agreement contained language known as a "me too" clause that states:

"For the 2004-2005 school year, the salary increase shall be 1.8% COLA, on schedule, retroactive to July 1, 2004.

If any other bargaining unit or meet and confer group receives a greater than or equal to .3% COLA salary increase (.3%) the increase shall be awarded to CSEA on schedule, retro to the same point in time that the other group receives the greater amount." (Article 7.1.2.1)

The apparent purpose of this clause was to maintain parity with any other bargaining unit should the other bargaining unit receive a COLA raise more than .3% of that of the CSEA.

The parties also included in their collective bargaining agreement another provision, Paragraph 7.1.3 which states:

"The parties shall meet to assess conditions and determine any necessary or appropriate changes to salary, benefits, and/or growth formula in October of 2004. If the District reaches a more favorable agreement with any other employee group, regarding salary and/or benefits, the same principles will be applied to CSEA."

There is no dispute that in the 2004 negotiations, the parties agreed to an increase based on the COLA cost of living adjustment of 1.8%. There is also no dispute that later, when the District negotiated with the United Faculty, it was agreed that the United Faculty would receive a 2% COLA increase. There is also no dispute that the District agreed to further adjust the salaries of United Faculty by adding another 1 % to the faculty salary schedule. The District has taken the position that this adjustment referred to as "salary ranking" or "ranking dollars" was given to the United Faculty members in order

to bring the faculty's salary schedule up to the statewide average. The District has maintained that this 1 % adjustment was therefore not part of a COLA adjustment. Since the COLA adjustment for the faculty was 2%, which meant that it was only .2% greater than the 1.8% COLA increase given to the CSEA, the language of 7.1.2.1 which requires an increase of greater than .3% did not mandate a raise to CSEA.

CSEA took the position that this was an improper interpretation of the Collective Bargaining Agreement and that since United Faculty was given a total 13% increase, CSEA was entitled under the Collective Bargaining Agreement to also have the salary of its members raised 3 %.

After the parties could not agree on whether the District was required under the Collective Bargaining Agreement to increase the salary given to CSEA under the "me too" provision, the present grievance was filed and properly brought before the Arbitrator for a final and binding determination.

STATEMENT OF THE ISSUE

The parties stipulated that the issue before the Arbitrator is as follows:

"Did the Employer violate the Collective Bargaining Agreement or any other applicable agreements in the manner in which it is paying its classified employees? If yes, what is the appropriate remedy?"

APPLICABLE CONTRACT LANGUAGE

ARTICLE 7: COMPENSATION AND BENEFITS

7.1.2.1 For the 2004-2005 school year, the salary increase shall be 1.8% COLA, on schedule, retroactive to July 1, 2004.

If any other bargaining unit or meet and confer group receives a greater than or equal to .3% COLA salary increase (.3%) the increase shall be awarded to CSEA on schedule, retro to the same point in time that the other group receives the greater amount.

7.1.3 The parties shall meet to assess conditions and determine any necessary or appropriate changes to salary, benefits and/or growth formula in October of 2004. If the District has reached a more favorable

agreement with any other employee group regarding salary and/or benefits, the same principles will be applied to CSEA ...

SUMMARY OF THE POSITION OF THE PARTIES

CSEA

CSEA argued that the language of the Collective Bargaining Agreement at issue was ambiguous. In support of this position it pointed to the testimony of members of its bargaining team who testified that they thought that the "same principles" language related specifically to salary schedules and that was the intent of the bargaining. Sandy Beasley testified that the statewide COLA has never been the basis for negotiating the CSEA salary. Another representative, Valjean Eskeridge, testified that no one thought there was any ambiguity in the language because in conversations and in negotiations, the agreement was that if anybody gets any more salary on schedule, CSEA would also get it on schedule. It was also pointed out that although Eskeridge related that it was her belief that there was no ambiguity, nonetheless, the chief negotiators for both the District and CSEA indicated through their testimony differing opinions on what should be the unambiguous language of the CSA. Accordingly, CSA contends the language is ambiguous and requires interpretation.

It was then pointed out that the language of the CBA does not refer to "ranking dollars" or statewide averages and that nowhere in the CBA is the term "ranking dollars" or "statewide averages" used. There was also no indication that these terms were even mentioned at the bargaining table.

It was then argued that while conceptually CSEA and the District may have discussed statewide averages for faculty at the bargaining table, it was important to note that CSEA does not bargain for the faculty. It was also contended that no CSEA negotiator was even aware of the term "ranking dollars" until after negotiations were complete. Therefore, without clear evidence that a discussion between the parties created an understanding which resulted in the agreed upon language of the Contract, it was argued that the District's belief is incorrect when it contends that the relative rank of the faculty has bearing upon a previously bargained agreement with CSEA.

CSEA next argued that there was some confusion exhibited by the District representatives as to how COLA is defined. It is not clear, according to the testimony from the District, exactly where COLA money comes from. Testimony from witnesses for the District showed that the District was well aware of the technical definition of COLA, and that it wished to limit the source of salary increase to COLA revenue by placing the term in the Collective Bargaining Agreement.

By contrast, CSEA witnesses were consistent that the term COLA equated by intent to past practice to a salary adjustment.

It was also pointed out that Eskeridge testified that she was concerned that the District would use a different phraseology to give other units a salary increase and wanted to be certain that if another unit received an increase, CSEA would receive it also.

The testimony of CSEA Chief Steward Martin Dubord was cited in which he testified: "We talked about it and it was, to us, very clear that a salary increase for the faculty even though they broke it up into COLA. They called part of it COLA and part of it ranking, was still an increase to the base pay, so we went to Ben ... " All of this shows, as was testified by CSEA leadership who were at the bargaining table, that as far as they were concerned, COLA equated to a salary increase and that this was the intent CSEA leadership had while bargaining the language in Article 7.

CSEA then contended that if a COLA, or statewide cost of living increase is an increase in the revenue that the District receives from the State of California, then the question should be, did the salary increase which was awarded to the faculty group come from COLA sources? It was pointed out that there was no evidence provided by the District of the source of funding in this case.

It was then argued that the District simply wanted to avoid triggering the equity clause and, therefore, attempted to rename an increase to the salary schedules for the faculty by referring to it as "ranking dollars."

CSEA next argued that "ranking dollars" does in fact amount to salary, and in this case, a salary increase. Joint Exhibit 7, which is the Public Employment Relations Board Settlement Agreement reached between the District and the United Faculty states:

"C. The parties agree to a 3 % on schedule salary adjustment to be applied to all United Faculty salary schedules. The 3% on schedule salary adjustment consists of: 2% COLA increase for 2004-2005 ... and a 1% improvement of salary ranking ... "

It was pointed out that CSEA understood that the parties to the Agreement delineated COLA from ranking dollars; however, whether entitled ranking dollar improvement, adjustment to salary schedules or COLA increase, the funds were still applied as an on schedule salary adjustment per the District's agreement with PERB.

It was also pointed out that there was no indication that the ranking dollars were applied unevenly to faculty or in any manner other than on the United Faculty salaries. Also there was no testimony indicating the source of the funds utilized for the ranking dollars.

All of this meant that the agreement reached with the United Faculty was simply to increase their faculty compensation by 3% broken into different components in order to give the District an excuse for not awarding the classified bargaining unit the full 3% increase to which they were entitled.

CSEA then dealt with the issue of whether "equity" or "me too" clauses are legal and presented various arguments as to why they were legal.

In summary CSEA argued that the controlling contract language was ambiguous and therefore requires a specific ruling in the arbitration. It contended that the language does not state nor allude to either ranking dollars or statewide averages. Nor was there any intent to include such in the language. Therefore, this concept should have no bearing upon the previously bargained Agreement. In addition because ranking dollars cannot be separated from compensation increases, ranking dollars are salary and therefore covered by the Agreement. In addition no evidence was introduced by the District to substantiate any claim that United Faculty ranking dollars were not funded by COLA revenue received by the District. Therefore attempts to separate COLA from ranking dollars are transparent and invalid. Furthermore if COLA revenue sources funded both the ranking dollars and the COLA portions of the United Faculty agreement, then COLA revenue sources should also fund the salary increase mandated in the "me too" clause of the CSEA membership. This means that the District should not be permitted to violate the CBA by simply renaming a portion of the compensation which they awarded to the faculty group.

Based on the above it was argued that as a remedy, the CSEA classified bargaining unit employees should receive a salary increase of 1.2% on all classified salary schedules effective July 1, 2004.

DISTRICT

The District began by arguing that the terms of the Collective Bargaining Agreement were not ambiguous and therefore it is not necessary to look beyond those terms to such factors as bargaining history, etc. in order to determine the intent of the parties.

According to the District, the plain meaning of COLA does not mean ranking dollars. In support of this position the language of Section 7.1.2.1 was cited. It was argued that the plain meaning of that provision is that if two COLA provisions are compared, and if the other unit's COLA agreement is larger than the CSEA COLA agreement, by the margin provided, then CSEA gets the larger COLA agreement. In this case the agreement with United Faculty was for a 2% COLA increase which was plainly less than the .3% margin contained in the CSEA CBA language. Therefore, clearly under the plain meaning of the CBA, the provision for raising salaries for the CSEA based on a COLA given to another bargaining unit would not apply.

It was then pointed out that the District also agreed in a separate provision to add an additional 1 % to the faculty package in the form of "ranking dollars." Under the plain language of the CBA, however, COLA does not apply to ranking dollars because that salary adjustment, unlike the COLA adjustment, was not a cost of living adjustment. This is because the purpose and effect of the two components were entirely different. The adjustment made to the unit with respect to ranking dollars was based solely on

bringing the faculty up to the statewide average and it was not in any way a cost of living adjustment. Instead the ranking dollars provision was an adjustment to bring salaries in line with other colleges in order to permit the District to attract quality employees. Ranking dollars is used, it was argued, simply to address market competitiveness and recruitment and not the cost of living.

The District next cited the term "the same principle," as used in Article 7.1.3 and argued this does not mean "the same increase." It emphasized that the language does not say that the same salary would be applied, but only the "same principles."

It was then argued that the principle governing the decision to add 1 % to the *faculty* dealt with the concern that faculty *salary* be competitive. The record established, by contrast, that the classified salaries for members of CSEA are, in fact, above average. Therefore, applying the "same principle", the faculty salary schedule should be adjusted, but the schedule for CSEA employees need not be similarly adjusted.

It was then pointed out that the District was able to show that CSEA was already at the 51 to 52 salary percentile statewide during the year in question. Therefore the "principle" requirement for CSEA, which would be keeping the salary above the average, was already satisfied with respect to CSEA in contrast to the faculty salary which needed adjusting under the same principle to meet statewide averages.

The District next argued that the principle governing COLA adjustments is to reflect changes in the general economy and to adjust salaries accordingly. This means that the consideration of COLA looks at the general economy to keep salaries relatively in the same position. By contrast the ranking dollar analysis looks to the future and the need to attract more quality employees. It was then argued that these two principles were entirely different.

It also pointed out that during negotiations, if negotiations are considered, that the CBA terms were fairly negotiated. This is based in part on the fact that the evidence showed that the CSEA negotiating team proposed removing the term "COLA" from the language in the "me too" provision. The District, however, rejected this attempt. This means the issue now before the Arbitrator had been raised and negotiated by the parties when CSEA attempted to remove the term "COLA" from the "me too" agreement entirely. The District, however, did not want this to occur because this would have broadened the "me too" language too much. This is because if the term "COLA" was not in the language, CSEA would be entitled to a wage increase if any other bargaining unit, for any reason whatsoever, received an increase greater than .3% of CSEA's increase. This was specifically rejected by the District which insisted that the CSEA salaries only be tied to COLA increases with respect to the "me too" clause. Bob Eygenhusen, who was a member of the District's bargaining team, testified that the parties held negotiations directly on the issue of the meaning of the "me too" provision as it applied to other units receiving increases for purposes other than cost of living. The District, however, did not

want confusion and wanted to be able to increase salary schedule ranking separately from increases for cost of living. Therefore, the language proposed by CSEA was rejected.

The District also argued that the un rebutted evidence showed that CSEA knew the meaning of "ranking dollars." The testimony of Dr. Lastimado, also on the District's bargaining team, was that he was concerned about possible confusion in the "me too" agreement and the District's plan to add "ranking dollars" to faculty salary schedules. He testified that he therefore called the President of the CSEA chapter, Sandy Beasley, and asked her if she understood that ranking dollars was different from COLA. She said, according to his testimony, that she understood the difference and that she did not believe that the "me too" provision would apply to the "ranking dollars" increase to the faculty. (transcript p. 181 - 182) It was then pointed out that when Beasley was asked during her testimony if she had this conversation, while she did not admit that she had the conversation, she did not dispute it and instead all she could say was that she could not remember the conversation. It was then argued that the fact that she did not refute Dr. Lastimado's testimony leaves the record with the unrefuted and rebutted evidence that the conversation took place. It was also argued that if CSEA's interpretation of the "me too" agreement applied, it would violate the "EERA." Various reasons were then given for this argument.

In conclusion it was argued that under the plain terms of the "me too" provision, COLA is different from the ranking adjustment, which means that the "me too" provision does not apply as shown by the evidence.

Based on the above it was therefore argued that the grievance should be denied.

DISCUSSION AND AWARD

After considering the evidence and arguments presented by the parties, the Arbitrator has concluded that the Employer did not violate the Collective Bargaining Agreement, or any other applicable agreement in the manner in which it paid its classified employees.

The Arbitrator based his decision on what he regards as the clear and unambiguous language of the Collective Bargaining Agreement. It has long been recognized by arbitral authorities that if the language of a collective bargaining agreement is clear and unequivocal, it is the arbitrator's role only to enforce the collective bargaining agreement, and not to reinterpret it in any way. That is because the language as bargained for by the parties speaks for itself. In the instant case the Arbitrator is fully persuaded that the language is clear and unambiguous and should be enforced as written.

With respect to that language, there are two parts of the Collective Bargaining Agreement that are potentially applicable in this case. The first is Article 7.1.2.1. This language makes it very clear that the salary increase for CSEA represented employees is

1.8% based on COLA. There is no dispute that the CSEA received that 1.8% salary increase based on COLA.

The language then goes on to indicate if any other bargaining unit receives an increase greater than, or equal to .3% COLA increase, then that same increase shall be awarded to CSEA.

Looking at this language, it is very clear to the Arbitrator that it is referring to increases based on COLA and based on COLA alone. There is absolutely no reference in that language to any increase other than an increase based on COLA. In fact, the evidence of bargaining introduced by the Employer shows that CSEA specifically tried to remove the reference to COLA from that paragraph. If CSEA had been successful, that would mean that CSEA would be entitled to a salary increase any time any other bargaining unit received a salary increase, for any reason, equal to or greater than .3% of the salary increase given to CSEA. Thus this change would have ensured that CSEA would receive a salary increase if any kind of an increase, whatsoever, was given to any other bargaining unit. The Employer, however, successfully resisted this effort by CSEA. Instead the Employer successfully insisted that the COLA limitation stay in Section 7.1.2.1. It is thus clear to the Arbitrator that the clear and unambiguous language in the Collective Bargaining Agreement, which guarantees an increase to the CSEA if another bargaining unit receives a salary increase .3% above the CSEA salary increase is only relevant to, and limited to, COLA salary increases. It does not apply, based on the clear language of the Collective Bargaining Agreement, to any other kind of salary increase.

It is undisputed in this case that the COLA salary increase given to United Faculty was a 2% increase. This means that the faculty increase given to United Faculty was .2% greater than the increase given to CSEA which in turn means that since it was less than the .3% that would trigger an increase for CSEA, CSEA is not entitled to a COLA increase based on the COLA increase given to United faculty.

There is, as asserted by the Union, another section of the Collective Bargaining Agreement which must also be considered in this case. That section is Section 7.1.3 in which it was agreed that if the District reached a more favorable agreement with any other employee group, which would obviously include United Faculty, regarding salary and/or benefits, then "the same principles" would be applied to CSEA. Again the Arbitrator finds that this language is clear and unambiguous.

It first must be noted that the term "same principles" is not the same as the term "same salary" or "same increase," unlike the language of 7.1.2.1 which says that if another bargaining unit receives a greater COLA increase than the .3% given to the CSEA, then CSEA "shall" be awarded the same salary increase. The language of 7.1.3 does not indicate that if another bargaining unit receives a salary increase, CSEA would receive the same "increase." Instead it only indicates that the same principles upon which the raise was given to the other bargaining unit would be applied to CSEA. That immediately raises the question of what is meant by the "same principles."

There is no indication that the term "same principles" has anything to do with COLA. It seems clear to the Arbitrator that the term "same principles" means that whatever the principles used to grant a raise to another bargaining unit would also apply to CSEA.

In the instant case, the Arbitrator found persuasive that the principle used to raise the faculty salaries the additional 1 % was based on the reasonable need perceived by the District to make faculty salaries more competitive with other institutions around the state. The Arbitrator found significant the evidence introduced by the District that prior to the 1 % increase, the faculty salaries which it was paying were below the state average. Therefore, the principle that was adopted for providing the 1 % increase was to raise faculty salaries across the board in order to bring the faculty's salaries into a position where the faculty salaries were more competitive and, more specifically, were at least at the state average. The record also showed that by comparison, if the same principle was applied to CSEA, CSEA would not be entitled to an increase in salaries. This is because the record established to the Arbitrator's satisfaction that Management had investigated where faculty salaries were relative to other institutions, and had also investigated where the salaries of the CSEA represented employees were relative to other institutions. Using the same principles and applying them to both the faculty and CSEA, the record established that Management made a reasonable determination that faculty salaries were below the state average, while salaries paid to CSEA represented employees were above the state average. Therefore, by applying the same principles to both the faculty and CSEA, Management appears to have acted reasonably and responsibly by deciding to raise faculty salaries to meet the statewide average without raising CSEA salaries.

Again it must also be noted that there is absolutely no showing that the 1 % salary adjustment for faculty members had anything to do with the cost of living adjustment or COLA. It is clear that the COLA adjustment was the 1.8% for faculty salaries and that it was based on a cost of living adjustment, which is what COLA is all about. It is also just as clear that the remaining part of the salary increase, which was the 1 %, which was called "salary ranking" or "ranking dollars," was based on something entirely different than a cost of living adjustment. Accordingly, the Arbitrator is not persuaded that under the COLA language of Section 7.1.2.1. or under the language of 7.1.3., that CSEA was entitled to an additional salary increase under the Collective Bargaining Agreement.

The Arbitrator also did not find any other settlements or other factor outside the language of the CBA controlling in this case.

AWARD

The Arbitrator finds that the Employer did not violate the Collective Bargaining Agreement or any other applicable agreements in the manner in which it paid its classified employees. Accordingly, the grievance must be denied.

08/7/2007
Date

[Signature]
Arbitrator