
5. SCTA's attempt to expand the Fact-Finding hearing is a blatant attempt to bypass the Successor Agreement Negotiations and to get to Fact-Finding on its issues without following the appropriate negotiations and impasse process which requires a request for impasse regarding negotiations topics, a PERB determination that an impasse between the parties exists regarding such negotiations topics and an opportunity for the parties to resolve such issues first through mediation and then if the mediator so certifies, through factfinding.

Background:

3. Independent Study:
 - a. The Instructional Day
 - b. Short-term Independent Study
 - c. Independent Study for Students with Disabilities
 - d.

negotiate items unrelated to the COVID/Reopening negotiations and attempts to circumvent PERB's role in determining whether an impasse exists related to compensation, benefits and other economic items. It appears that SCTA is attempting to include in this impasse factfinding process those compensation, benefits and economic articles from the Collective Bargaining Agreement ("CBA") that are part of successor contract negotiations that have not been certified by PERB to be at impasse.

In addition, SCTA is attempting to include in this impasse topics that are not mandatory subjects of bargaining—certificated employee layoffs, District staffing, indemnification, and joint development of a proposal on State Community Schools Funding, among others. There are three foundational cases providing that a party may not insist to impasse on non-mandatory subjects of bargaining "in the face of a clear and express refusal by the [other party] to bargain" over them. (See *Lake Elsinore School District* (1986) PERB Decision No. 603; *Chula Vista School District* (1990) PERB Decision No. 834; *San Mateo Community College District* (1993) PERB Decision No. 1030. While in the COVID negotiations process, the District has repeatedly and clearly refused to discuss those proposals from SCTA that relate to successor contract negotiations.

Conclusion:

The current COVID and Reopening Negotiations and PERB Impasse Determination have never involved compensation, benefits, and other general economic items like "staffing" in the District. The COVID and Reopening Negotiations relate only to the 2021-2022 school year and issues related to the pandemic specific to this school year. It would be an overreach and inconsistent with PERB's authority and the Education Employment Relations Act to determine that the impasse request filed by the District in December 2021 was around any aspects of successor contract negotiations.

The District respectfully requests that you limit the scope of the fact-finding to those issues related to the PERB Impasse Determination related to COVID-19 and reopening schools for the 2021-2022 school year.

Sincerely,

LOZANO SMITH

Dulcinea A. Grantham

DAG/cd