Future Mediation Dates

There are several bargaining dates scheduled in November. We have agreed to three mediation dates on November 2nd, 15th, and 16th. In addition, we have scheduled multiple small group meetings between HR representatives and PAT staff to work on the mechanics of the proposals. We should have a good idea by November 17th whether we are making progress towards a settlement.

Superintendent Guerrero to Attend November 2nd Mediation Session

We have been informed that Superintendent Guerrero will be attending our next mediation session on November 2nd. We have had informal communications that lead us to believe that the Superintendent will be presenting new concepts and perhaps a new District proposal at this meeting. One thing that is obvious from our first meetings with Supt. Guerrero is that he has a keen understanding of educational issues. This perspective has often been lacking in the past. Your team is hopeful that this will lead to solutions to outstanding issues especially in Article 5: Work year/Workday/Workload and in Article 6: Student Discipline/Safety.

Workload Remains as Key Unresolved Dispute

The District is still proposing to delete our key workload language which says:

The workload of professional educators shall be generally comparable to that which existed in the 2010-2011 school year.

This provision is the basis of the arbitration award that was won at the high schools and is the language that is the basis of other workload grievances for special education teachers, middle level teachers, TOSAs, ADs and others. PAT has created a Workload Factsheet (www.pdxteachers.org) to provide you with more information about the District’s proposed takeback and other PAT workload proposals.

District Has Twice Objected to PAT Workload Proposals

The District has returned to the 2013-14 playbook that brought us within 24 hours of a strike, using a legal maneuver to object to key PAT proposals on workload, student loads/caseloads, and number of preparations for secondary teachers. The District’s strategy is to object to these proposals as “permissive” under the state bargaining law. Permissive subjects of bargaining may be bargained by school districts. They are not prohibited.

Oregon law defines three broad areas that help guide the collective bargaining process.

Mandatory Subjects of Bargaining: Subjects that the employer is required by law to negotiate with their employee group. Mandatory subjects include wages, benefits, workload and certain working conditions

Permissive Subjects of Bargaining: Subjects over which the employer is not required to negotiate. Examples of permissive subjects include testing, class size, and curriculum. It’s important to note that permissive does not mean prohibited. Employers can bargain and reach agreement on permissive subjects.

Prohibited Subjects of Bargaining: Subjects over which the employer is not allowed, by law, to negotiate. For example, age discrimination is an issue that would be illegal and therefore a prohibited subject.
However, the law allows districts to object to permissive bargaining topics and refuse to bargain over them. In that case the union can either:

1. retain the proposals if it feels they are mandatory and challenge the district’s legal interpretation perhaps through an unfair labor practice (ULP) charge;
2. rewrite the proposals to make them mandatory;
3. withdraw the proposals and amend other mandatory aspects of the proposal;
4. offer alternate packages (one with the permissive proposals and an alternate package without the permissive proposals).

The District first objected to certain PAT proposals in July. Your PAT team met with OEA attorneys and then modified our proposal. The District once again objected to some of these modified proposals in September. When PAT responds with its next proposal, it must once again decide which one of the actions above it will take.

OEA’s legal department has advised us that our proposals are indeed mandatory and are appropriate subjects of bargaining. Your team has decided to again revise the proposals to make the mandatory nature of the proposals even more clear. We are hoping that the District will not object to them for a third time. If they do, this can only be viewed as an end run around the issues that mean the most to our members: namely workload and student loads/caseloads.

If we decide to be ultra-conservative, we may reluctantly choose to offer alternate packages, like we did in the 2013-14 bargain. These legal maneuvers only add to the confusion around bargaining proposals and delay progress towards a settlement. We hope that the Board and Superintendent Guerrero understand the impact of a decision to try for a third time to force us to remove these topics from our contract.

“ULP” stands for “unfair labor practice”. Our contract negotiations are controlled by the Oregon Public Employee Collective Bargaining Act (PECBA), which requires PPS and PAT to meet at reasonable times and bargain in good faith over wages, hours, and other conditions of employment. Conduct by the Employer (or Union) that violates the law is defined as an “unfair labor practice” and may be litigated by filing a ULP charge with the state Employment Relations Board (ERB) for decision. Good faith is determined by looking at whether the employer’s overall conduct indicates an unwillingness to reach agreement. Refusing to bargain over a mandatory subject of bargaining, or introducing new topics into bargaining after mediation has begun, are actions that may indicate bad faith and could lead to a ULP charge.