

CAPISTRANO UNIFIED SCHOOL DISTRICT
BOARD OF TRUSTEES
MINUTES – SPECIAL MEETING
MARCH 16, 2011
EDUCATION CENTER – BOARD ROOM

President Brick called the meeting to order at 6:00 p.m.

The Pledge of Allegiance was led by President Brick.

Present: Trustees Addonizio, Alpay, Brick, Bryson, Hatton, Palazzo, and Pritchard

Absent: Student Advisor Larson Ishii

A CD of the Board meeting discussion related to each of the items on the public agenda is on file in the Superintendent’s Office as a matter of the permanent record. An audio recording of the meeting is available on the District website: www.capousd.org

Permanent Record

It was moved by Trustee Alpay, seconded by Trustee Bryson, and carried by a 7-0 vote to adopt the Board agenda.

Adoption of the Board Agenda

AYES: Trustees Addonizio, Alpay, Brick, Bryson, Hatton, Palazzo, and Pritchard
NOES: None

President Brick asked Vice President Pritchard to facilitate the meeting.

President’s Announcement

Trustee Bryson shared information from an ethics and economics seminar she attended through the Action Institute. The mission of the Action Institute is to promote a free and virtuous society characterized by individual liberty and sustained by religious principles. Trustee Bryson quoted Reverend Robert Sirico, President of the Action Institute, “economic conditions can shape our moral character, and it works in reverse too. An essential precondition of investment is saving. Entrepreneurship is the embodiment of good judgment and alertness to opportunity. Keeping promises is the essence of the contractually based market economy.” Trustee Bryson added the last sentence was the key sentence for her.

Board Comments

CONSENT CALENDAR

It was moved by Trustee Alpay, seconded by Trustee Brick, and motion carried unanimously to approve the Memorandum of Understanding agreement with CUEA regarding the speech pathologists’ salary schedule.

**Memorandum of Understanding Agreement
Agenda Item 1**

DISCUSSION/ACTION

Attorney Jack Sleeth, of Stutz, Artiano, Shinoff, & Holtz, presented a formal report concerning the restoration of furlough days and pay for the Capistrano Unified Education Association (CUEA), the California School Employees Association (Capistrano Unified Chapter 224) (CSEA), the Capistrano Unified Management Association (CUMA), and Teamsters Local 952. Mr. Sleeth stated there has been the contention raised that the Board violated the Brown Act in connection with conduct taken in December and January and there is a threat of litigation. The best way to refute a Brown Act violation is with openness, transparency, and the opportunity for the public to comment. Mr. Sleeth stated that the settlement agreement with CUEA is a binding contract and the District must comply with the terms. Mr. Sleeth covered CUEA contract language regarding the

**Report on Restoration of Furlough Days and Pay
Agenda Item 2**

restoration of furlough days and pay and the triggering statement. When the State budget was adopted on October 8, 2010, it included an increase in the District's State-funded revenue limit amount per student, over the amount that had been forecast, triggering the requirement to reinstate the furlough days to the instructional calendar, as agreed in the CUEA contract. Mr. Sleeth explained there is confusion over the use of the word "and" in the requirement stating the triggering event could not occur until the State budgets of 2010-2011 *and* 2011-2012 were passed. If this were the case, then the District would have to take back a furlough day after it was worked in 2011. Any ambiguity in a contract requires the intent to be established, and both the labor negotiator for CUEA, and the District negotiator, indicated that "or" was their intent.

In response to the Brown Act violation, the Board met in December 2010, in closed session, with labor negotiators and decided to follow the rule of the law and honor the contract. Staff was directed to go forward with implementation of the previously approved agreement. In January the Board took action and approved reinstating the furlough days. Reinstating the furlough days was not a labor agreement but conduct that was required from the previously adopted contract in May 2010. The agreement was honored because the triggering event had occurred made it necessary to reinstate the furlough days. Allegations have been made that no agreements had been made to reinstate furlough days to the other organizations; therefore the Board did it independent of any agreement, and the action should have done at a Board meeting by a formal motion/approval of the Board. Mr. Sleeth stated such thinking misses an important logical step. Once the instructional furlough days were reinstated to teachers then all other groups needed the furlough days reinstated to perform their duties. At the January 11, 2011, meeting the Board took action in public session to revise the school calendar to reinstate the two instructional furlough days, which was required by the agreements with the employee organizations in 2010. The action by the State, to increase the District's State-funded revenue limit by \$225 per child, triggered the terms of the agreement with the employee organizations.

The following speakers addressed the Board:

- *Jim Reardon stated his concerns regarding the absence of any public record of action by the Board about the restoration of pay to not only the teachers but to Teamsters, CUMA, and CSEA; and the interpretation of the letter from OCDE regarding the increase in base revenue limit funding for CUSD as a result of the 2010-2011 enacted State budget.*
- *Attorney Craig Alexander reported he was retained by Trustees Addonizio and Palazzo after they received the March 11, 2011, letter Mr. Sleeth sent to Mr. Wayne Tate. Mr. Alexander stated neither Trustee was interviewed by Mr. Sleeth regarding the Board meetings of December 7, December 13, and January 11 and were never given a draft of the March 11 letter to review, so they could give comment, correction, or input. Trustees Addonizio and Palazzo advised Mr. Alexander there are material misstatements and material omission of facts in the letter. Both Trustees also had concerns regarding closed session information confidentiality issues.*

Trustee Addonizio stated she wanted to make a comment in regard to the establishment of the trigger. As a Trustee who signed the contract with CUEA, when the Trustees said "and," they did not mean "or," and 5 of the 7 Trustees agree there is not a mistake in that regard. Trustee Addonizio stated she wanted to make a statement on behalf of Trustee Palazzo and herself. "We have consistently requested that the original negotiators of the CUEA settlement be brought in to advise the Board of Trustees if it is the opinion that the trigger has occurred as in the settlement agreement. We have believed that because CUEA was ratified in May 2010, and the alleged trigger did not occur until October 2010, this requires the Board of Trustees to vote on a proposed finding of fact that the trigger has occurred. This request for a vote has consistently been refused and it is still

our belief that it is the responsibility of the Board, and not the Superintendent, to determine whether the trigger has occurred, so from our point of view this is all happening backwards. It was a fait de compli that this trigger has occurred and now months later some of us are still looking for information and a proper analysis of it and now we are backing into it when we really needed and still need a finding of fact. I know what side it may come down on in that finding of fact, however, I think it is fair to our constituents to go ahead and honor them in that way and take it from there as well as our employees.”

Trustees Addonizio and Palazzo recused themselves and left the Board room at 6:30 p.m.

Trustee Bryson stated she was morally and legally offended by Trustee Addonizio’s statement regarding what she was thinking during negotiations in closed session. Trustee Bryson remarked that she has no recollection of any Trustee expressing doubts regarding the wording of the document in open or closed session. Trustee Bryson stated she had reviewed the records and it was Trustee Addonizio who made the motion to approve the CUEA contract and Trustee Winsten seconded the motion.

Attorney Jack Sleeth reported the Districts response to the demand to cure and correct an alleged Brown Act violation. Mr. Sleeth restated his opinion that there was no Brown Act violation. Mr. Sleeth explained the next steps for the Board would be to reconsider the vote that was taken and take it again, or reject it, or hold it over, or bring back more information, and give the public the opportunity to comment. Mr. Sleeth commented the letter from OCDE is a good report based on State budget information and the language matched the language in the CUEA agreement.

Response to Demand to Cure and Correct Alleged Brown Act Violations
Agenda Item 3

Attorney Jack Sleeth recommended the Board reaffirm its earlier vote concerning restoration of furlough days and pay for CUEA, CSEA, CUMA, and Teamsters Local 952. The reaffirmation is for the settlement agreements approved on May 19, 2010, with CUEA, June 29, 2010, with Teamsters Local 952, August 3, 2010, with CUMA, and September 28, 2010, with CSEA.

Reaffirmation of Previously Considered Restoration of Furlough Days and Pay
Agenda Item 4

The following speaker addressed the Board:

- *Jim Reardon questioned Trustees on what vote or votes they were reaffirming by this action. Mr. Reardon stated the motion is defective and needs to be rewritten and brought back to a public meeting.*

Superintendent Farley clarified some of the comments made during public comments regarding salary restoration. Dr. Farley stated the District has not restored salaries to CSEA, CUMA, or Teamsters. The only language implemented relative to just salary was the language that was negotiated and approved for CUEA. The other organizations received an increase in salary as it relates to the restoration of two furlough days only.

It was moved by Trustee Bryson, seconded by Trustee Brick, to reaffirm the Board’s earlier vote concerning restoration of furlough days and pay for CUEA, CSEA, CUMA, and Teamsters Local 952.

Trustee Alpay made a substitute motion, seconded by Trustee Brick, for the Board to disregard the rule of law, subject CUSD to an unfair labor practice and unnecessary litigation, incur additional unnecessary legal expenses, and needlessly waste tax dollars on attorneys and legal costs, throw this District back into turmoil, cause further erosion of home values from San Clemente to Aliso Viejo, from Dana Point to Rancho Santa Margarita, and affirmatively breach our agreement with CUEA.

Trustee Alpay requested a 5 minute recess. Vice President Pritchard announced a 5 minute recess at 6:45 p.m. The Board reconvened at 6:50 p.m. and President Brick rescinded his second on the substitute motion. Motion failed due to the lack of a second.

The original motion by Trustee Bryson, seconded by Trustee Brick, carried by a 5-0 vote to reaffirm the Board's earlier vote concerning restoration of furlough days and pay for CUEA, CSEA, CUMA, and Teamsters Local 952.

AYES: Trustees Alpay, Brick, Bryson, Hatton, and Pritchard
NOES: None
ABSENT: Trustees Addonizio and Palazzo

Prior to recessing to closed session, Vice President Pritchard made the following announcement in regards to closed session item 5A: The Board will meet with Attorney Jack Sleeth in closed session to discuss an Anticipated Litigation. The Board recessed to closed session at 6:51 p.m. to confer with Legal Counsel regarding Anticipated Litigation (1 case) and confer with Labor Negotiators regarding CSEA/ CUEA/CUMA/ Teamsters negotiations.

Vice President Pritchard reconvened the meeting at 7:05 p.m. and announced Trustees Addonizio and Palazzo have returned to the dais. Vice President Pritchard reported the following action taken during closed session:


**President's Report
From Closed
Session Meeting**

Agenda Item 5A – Conference with Legal Counsel – Anticipated Litigation:
Significant exposure to Litigation: No action was taken.

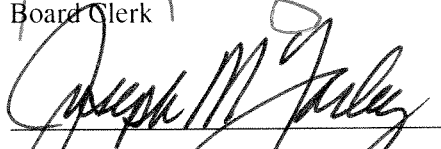
Agenda Item #5B – CSEA/CUEA/CUMA/Teamsters Negotiations: No action was taken.

It was moved by Trustee Bryson, seconded by Trustee Alpay, and motion carried unanimously to adjourn the meeting.

The meeting adjourned at 7:07 p.m.



Board Clerk



Secretary, Board of Trustees

Minutes submitted by Jane Boos, Manager, Board Office Operations