



School Board Briefing/Proposed Action Report

Informational (no action required by Board) **Action Report** (Board will be required to take action)

DATE: October 3, 2016
FROM: Dr. Larry Nyland, Superintendent
LEAD STAFF: Clover Codd, Assistant Superintendent of Human Resources,
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I. TITLE

TRI Settlement with Seattle Education Association

For Introduction: October 12, 2016

For Action: October 12, 2016

II. WHY BOARD ACTION IS NECESSARY

Under Board Policy No. 6220, Procurement, agreements and financial commitments over \$250,000 require Board approval. While this agreement should not have been executed by a District staff member and implemented without prior Board approval, the agreement is being brought to the Board for approval/ratification at this time out of recognition of the legal difficulties in rescinding the agreement and recouping payment, as well as the importance of maintaining our positive relationships with Seattle Education Association (SEA) and our substitutes. This action is proposed following the Board's independent investigation into the settlement.

III. FISCAL IMPACT/REVENUE SOURCE

Total Fiscal impact to this action is approximately \$766,498 (\$661,073 has already been paid).
2012-2013: \$105,425
2013-2014 and 2014-2015: \$661,0734

The revenue source for this motion is general fund.

Expenditure: One-time Annual Other Source

IV. POLICY IMPLICATION

It is the policy of the Seattle School Board Policy No. 6220 that any procurements, agreements or MOUs where the district either receives money, pays money or commits time and resources, that any agreement more than \$250,000 in value must be approved by the School Board.

V. RECOMMENDED MOTION

I move that the School Board approve execution and implementation of the Settlement Agreement between the District and the Seattle Education Association attached to the Board Action Report. Immediate action is in the best interest of the District.

VI. BOARD COMMITTEE RECOMMENDATION

This motion was discussed at the Audit & Finance Committee meeting on May 12th, 2016 and action was delayed pending the Board's independent investigation into this matter. The motion was then discussed at the October 6, 2016, Executive Committee Meeting, and moved forward to the full Board with a recommendation for approval.

VII. BACKGROUND INFORMATION

On June 11th, 2014, SEA filed a grievance on the issue of whether long-term substitutes were entitled to Time, Responsibility and Incentive ("TRI") pay under the 2010-2013 Collective Bargaining Agreement. TRI pay is compensation made to teachers for the considerable time teachers must work outside of the normal classroom hours for things such as parent conferences, report cards, curriculum nights etc. Following a step 3 grievance hearing on December 17, 2014, the District's former Director of Labor and Employee Relations conducted discussions with SEA about resolving the grievance. In the Spring of 2015, he reached a verbal agreement with SEA to pay a portion of the TRI payments sought by the Union.

In winter of 2015, SEA worked with the Director of Labor and Employee Relations to draft a Settlement Agreement to document and implement the verbally agreed upon resolution to the grievance. To this end, a Settlement Agreement was executed on February 19, 2016 by the former Director of Labor Relations which purported to agree to pay a portion of the equivalent of TRI for substitute teachers, who worked longer than 90 days for the 2014-2015, 2013-2014, and 2012-2013 school years. The Director of Labor Relations executed the Settlement Agreement without any prior notice or approval of any other District leadership member and it was not presented to the Board for approval prior to execution, as required by Board Policy No. 6220.

During the final processing of the TRI payment called for by the agreement, it was discovered that the Settlement Agreement would cost the district \$661,073 for the 2014-2015 and 2013-2014 school year payments; and \$105,425 for the 2012-2013 school year payments. The total financial commitment of the agreement, as signed, was thus \$766,498.

Given that this is well above the \$250,000 threshold needed for School Board approval, the Superintendent and the Board were immediately notified when the new Assistant Superintendent of Human Resources was alerted to the value of the payments. Because the payments for the 2014-2015 and 2013-2014 school years had already reached final processing, it was not possible to stop the payments before they were issued on May 2, 2016. While the 2014-2015 and 2013-2014 payments have already been processed and paid to employees, the 2012-2013 payments (\$105,425) are on hold pending Board review and action on this matter.

After being alerted to this issue, an independent attorney with significant employment law experience was hired to investigate the settlement for the Board and report his findings. After extensive document review and interviews of a number of witnesses, the investigator concluded that the staff member who negotiated and signed the agreement acted without the knowledge of any other senior District staff. The staff member at issue failed to follow District protocol and did not obtain legal review, costs analysis, or approval by his superiors or the Board before negotiating and executing the agreement. Other than a failure to perform his job properly, there was no evidence that he acted in bad faith or colluded with SEA or others to carry out the

agreement. It appears he entered the settlement agreement with a good faith belief that the District would not prevail in arbitration if the grievance proceeded. While the District had prevailed in a similar grievance arbitration in 2011, the investigator determined the settled grievance was substantively different than the prior situation.

The investigation determined that the grievance settlement was not entered into quickly, but instead was the product of multiple conversations and email exchanges over the course of 2014 – 2016. After the grievance was filed in June of 2014 and the grievance hearing held in December of 2014, the former Labor Relations Director and SEA engaged in follow up discussions and email exchanges until a verbal agreement was reached in May of 2015. After that, it appears there were several discussions and email exchanges to complete the written agreement, which did not occur until February of 2016. The former Labor Relations Director drafted the settlement agreement on his own, did not alert any other staff to the settlement during this time, and did not obtain any approval to execute the agreement. The investigator found that, after the former Labor Relations Director departed the District, other staff implemented the agreement unaware that the appropriate approvals had not been obtained.

In light of this issue, new controls and other steps are planned or have been taken to prevent an incident such as this occurring again. These include:

- Notify all of our labor partners in writing that any settlement agreement with a cost over \$250,000 requires Board approval in order to be valid and binding on the District.
- The Assistant Superintendent of Human Resources has communicated to staff that for every settlement or related agreement, staff are required to:
 - Have any wages or compensation calculated by payroll prior to agreement;
 - Review the Responsibilities for Review, Approval, and Execution of Contracts and Other Agreements chart to determine the required reviewers/approvers (http://mysps.seattleschools.org/UserFiles/Servers/Server_543/File/District/Departments/School%20Board/Procedures/Series%206000/Attachment1_AuthorizationMatrix.pdf);
 - Route all settlement agreements and/or MOUs regarding personnel, pay, or compensation to the Assistant Superintendent of Human Resources for review and approval prior to signature; and
 - In addition to the above, Payroll staff will be required to check proper routing and approval forms before changes are made to compensation as a result of an MOU.

As to TRI payments for substitutes in the future, the new Collective Bargaining Agreement (2015-2018) does provide for long term substitute TRI pay, in the form of a stipend, for the term of that CBA. The new language states: “If a substitute working more than ninety (90) days in a position is ineligible for a leave-replacement contract, the substitute will receive a stipend equivalent to the TRI pay they would have received if they, or the position, had been eligible for a leave replacement contract.” ART V, Section 2.b, at page 56. This language was not in the 2010-13 or the 2013-15 CBAs.

Seeking to rescind the Settlement Agreement and/or seek to recoup the payments made presents significant legal challenges in addition to the risk of ultimately not prevailing on the underlying

grievance. Therefore, following the Board's independent investigation into the background of this matter, this BAR seeks authorization for the Superintendent to execute a Settlement Agreement with material terms substantively the same as those agreed to by the former staff member. This will provide the needed Board approval for execution and ratification of the settlement. District leaders and staff take seriously the failure to obtain prior Board approval in this matter and are committed to taking appropriate measures to ensure it cannot happen again.

VIII. STATEMENT OF ISSUE

Whether the School Board should authorize the Superintendent to fully execute the Settlement Agreement with the Seattle Education Association regarding TRI Substitute Pay, signed by a District staff member on February 19, 2016.

IX. ALTERNATIVES

1. Do not authorize the Superintendent to fully execute the remaining payment from the 2012-2013 school year in the amount of \$105,425.
2. Seek repayment by current substitutes, who already received the 2013-2014-2015 payments in the amount of \$661,073.

Neither of these alternatives are recommended due to the legal and labor partner and employee relationship challenges inherent in seeking to rescind the Settlement Agreement and/or seek to recoup the payments.

X. RESEARCH AND DATA SOURCES / BENCHMARKS

We have fully investigated the situation and timeline of events and are committed to taking appropriate measures to ensure this does not happen in the future.

XI. TIMELINE FOR IMPLEMENTATION / COMMUNITY ENGAGEMENT

Upon approval of this motion, a communication plan will be developed and executed to inform SEA of final Board action and the outcomes or steps that need to be taken as a result.

XII. ATTACHMENTS

- Settlement Agreement prepared for execution by the Superintendent.

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made by and between Seattle School District No. 1 (“the District”) and the Seattle Education Association (“SEA”), collectively referred to as (“the Parties”).

A. RECITALS

The purpose for this Agreement is to resolve a grievance filed by SEA that claimed the District violated the 2010-2013 and the 2013-2015 Collective Bargaining Agreements (“CBA”) between the Parties when the District failed to award leave replacement contracts and make a Time, Responsibility and Incentive (“TRI”) payment to certificated substitute teachers who had been in a single assignment for greater than a 90-day period where no “unusual circumstance” existed.

In exchange for mutual consideration, the Parties agree as follows:

B. AGREEMENT AND RELEASE

1. Settlement Payment to Certificated Substitutes.

- A. Any certificated substitute teacher who worked in one long-term assignment greater than 90 days during the 2014-2015 school year and did not receive a leave replacement contract, shall be paid the equivalent of TRI pay for all months worked in that single position.
- B. Any certificated substitute teacher who worked in one long-term assignment greater than 90 days during the 2013-14 school year and who did not receive a leave replacement contract, shall be paid the equivalent of 50% TRI pay for all months worked in that single position.
- C. Any certificated substitute teacher who worked in one long-term assignment greater than 90 days during the 2012-13 school year and who did not receive a leave replacement contract, shall be paid the equivalent of 50% TRI pay for all months worked in that single position.
- D. The Parties agree that prior to this Agreement being signed that three (3) exhibits will be attached – a list of certificated substitutes who have received or will receive payment under this Agreement for school years: 2012-13 (Exhibit 1); 2013-14 (Exhibit 2); and 2014-15 (Exhibit 3).

2. Withdrawal of Grievance and Release and Waiver of Known and Unknown Claims. In consideration of the promises made by the District in this Agreement, SEA will permanently withdraw its

grievance. SEA further agrees that all claims against the District, real or potential, known or unknown, that arise out of or are related to certificated substitute payments working in one long-term assignment greater than 90 days for the 2012-13, 2013-14, and/or 2014-15 school years are resolved and SEA hereby releases and waives any and all claims against the District, real or potential, known or unknown, arising out of or related to the alleged violation of the CBA as asserted in the original grievance filed by SEA.

- 3. No Admission of Liability. By entering into this Agreement, neither SEA nor the District admits to any wrongdoing or fault or liability, except the obligations arising from the terms of this Agreement. The Parties agree that this is a negotiated settlement, the terms and conditions of which are specific to this Agreement, and, as such, sets no precedent for resolution of future disputes of a similar nature.
- 4. Governing Law. The terms of this Agreement shall be construed in accordance with and governed by the statutes and common laws of the State of Washington. Any disputes now or hereafter arising in connection with the execution and/or operation of this Agreement shall be determined in Superior Court in King County, Washington.
- 5. Opportunity to Review Agreement with Representatives. Both Parties have had the opportunity to review this Agreement with their respective representatives (attorneys or otherwise) and now execute this Agreement knowingly and voluntarily with full knowledge and understanding of its contents.
- 6. Entire Agreement and Representations. This written Agreement constitutes the entire understanding between the parties. SEA and the District agree that they have not relied upon any representations by the District prior to signing this Agreement that are not included herein. The Parties understand that any representations not included in the Agreement are not enforceable.

Name: _____
Title: _____
Seattle Education Association

Date

Dr. Larry Nyland, Superintendent
Seattle School District No. 1

Date