

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. UP-047-13

(UNFAIR LABOR PRACTICE)

MEDFORD EDUCATION ASSOCIATION,)	
)	
Complainant,)	
)	
v.)	RULINGS,
)	FINDINGS OF FACT,
MEDFORD SCHOOL DISTRICT 549C,)	CONCLUSIONS OF LAW,
)	AND ORDER
Respondent.)	
_____)	

On June 17, 2014, the Board heard oral arguments on Complainant’s objections to a recommended order issued by Administrative Law Judge (ALJ) Julie D. Reading, after a hearing on January 16, 2014, in Salem, Oregon. The record closed on February 18, 2014, following receipt of the parties’ post-hearing briefs.

Aruna A. Masih, Attorney at Law, Bennett, Hartman, Morris and Kaplan, Portland, Oregon, represented Complainant.

Kelly D. Noor, Attorney at Law, Garrett Hemann Robertson, Salem, Oregon, represented Respondent.

On October 22, 2013, the Medford Education Association (Association) filed a complaint alleging that the Medford School District 549C (District) violated ORS 243.672(1)(g) when it failed to abide by a 2011 Memorandum of Agreement (MOA).¹ Specifically, the Association alleged that after the District received additional school funding, the MOA required the District to restore teacher work days and increase salaries and contributions to bargaining unit employees’ insurance premiums. The District filed a timely answer.

¹The complaint also pleaded an alternative allegation that the District’s actions violated ORS 243.672(1)(e), but the Association withdrew the alternative (1)(e) claim and agreed to proceed only on the (1)(g) claim.

The issues are:

1. Did the District fail or refuse to comply with the MOA in terms of restoring school days, insurance coverage, and salaries, and, if so, did this violate ORS 243.672(1)(g)?
2. If the District violated ORS 243.672(1)(g), what is the appropriate remedy?

For the reasons discussed below, we conclude that the District violated the MOA, and thus ORS 243.672(1)(g), when it refused to restore four additional teacher work days² to the 2013-14 school year, and refused to apply additional funding to employee insurance premiums and salary increases in the manner set forth under the 2011 MOA and Appendix A to the 2011-13 collective bargaining agreement (CBA).

RULINGS

At oral argument, the District asserted that the Association's complaint was rendered moot when the parties agreed to a successor CBA, which purportedly resolved all of the underlying issues between the parties. In order to allow the Board to consider this mootness argument, the District moved at oral argument to reopen the record for the limited purpose of providing the Board with the successor contract and the ratification date of that contract. The Association did not object to the District's request, and the Board granted the District's motion. On June 18, 2014, the District submitted five proposed exhibits: the 2013-16 CBA; two e-mails regarding the tentative agreement and the new contract; minutes from the Medford School Board meeting where the new school year calendar was adopted; and minutes from the Medford School Board meeting where the new contract was ratified. On June 19, 2014, the Association objected in part to the District's proposed exhibits and submitted a response regarding the reopening of the record. On June 19, 2014, this Board informed the parties that it intended to: (1) admit the 2013-16 CBA as Exhibit R-25; and (2) supplement the record to include findings of fact that the Association ratified the 2013-16 CBA on March 6, 2014, and the District ratified that CBA on March 10, 2014.³ This Board further stated that it would not receive other exhibits submitted by the parties or consider the Association's June 19 response. The Board incorporates those rulings into this order.

The remaining rulings of the ALJ were reviewed and are correct.

²We use the term "teacher work days," instead of "school days," because the term "school days" could be construed to mean only instructional days, whereas "teacher work days" encompasses instructional days, preparation days and training days.

³"We generally grant a party's motion to reopen a record for submission of additional evidence if the evidence offered is material to the issues and was unavailable at the time of the hearing." *SEIU Local 503, OPEU v. State of Oregon, Department of Transportation*, Case No. UP-11-09, 23 PECBR 939, 943 (2010) (citing *Cascade Bargaining Council v. Bend-LaPine School District No. 1*, Case No. UP-33-97, 17 PECBR 609, 610 (1998)). Here, the admitted evidence is material to the issues in this case and was unavailable at the time of the hearing.

FINDINGS OF FACT

Parties and Relevant Contract Language

1. The Association is a labor organization within the meaning of ORS 243.650(13). The District is a public employer within the meaning of ORS 243.650(20).
2. The District and Association were parties to a CBA that was in effect from July 1, 2008 to June 30, 2011 (2008-11 CBA).
3. In 2011, the economic recession created state revenue shortfalls that significantly reduced the District's funding. The District was facing difficult financial decisions and considering extensive layoffs.
4. The parties began bargaining a successor agreement in March 2011. The Association wanted to help the District manage with limited resources and reduce layoffs. Therefore, as part of bargaining a successor agreement, the parties endeavored to create an extrinsic contract to adjust the number of teacher work days based on the District's funding.
5. The collective bargaining team members designated a subcommittee to develop the extrinsic agreement. The subcommittee met on May 19 and 26, 2011. During the May 19, 2011 meeting, the subcommittee developed the first draft of the proposed side agreement. The subcommittee organized the agreed on provisions in an outline format consisting of sections A through E, with corresponding subsections. The subcommittee developed the second draft agreement on May 26, 2011. That day, the subcommittee presented a draft of its language to the entire bargaining group. After additional discussion, the bargaining teams approved the language to be included in the MOA.
6. The parties reached agreement on a 2011-13 CBA, signing it on August 26, 2011. Article IX, section B of the 2011-13 CBA provided that the school year "shall not exceed one hundred-ninety (190) days, including not more than one hundred-seventy-seven (177) days when pupils are in attendance." In addition, the parties agreed to a wage freeze for bargaining unit members.
7. On August 26, 2011, the parties also signed the MOA. Changes were made between the May 26, 2011 version and the final signed version.⁴ Specifically, an additional section had been added as section B and titled "Working Conditions During School Days." The remaining provisions had been renumbered to accommodate this addition, resulting in the MOA containing sections A through F with corresponding subsections.
8. The MOA became effective on signature and stated that it "shall expire upon ratification of a successor contract for the 2013 year."

⁴The process and reasons for these additional changes are not clear on the record. However, these details are not relevant to our analysis.

9. The MOA's opening paragraph and alphabetized provisions stated:

"This Memorandum of Agreement contains the agreement of the undersigned parties with respect to the work year and the status quo period following the expiration of the 2011-2013 collective bargaining agreement. * * * As part of those negotiations the parties agreed to reduce the number of contract days each year of the agreement to 182 as follows:

"A. Employee Work Year/School Calendar

1. For the 2011-13 school years, the number of workdays provided for in Articles 9 and 12 of the parties['] collective bargaining agreement for members of the bargaining unit shall be reduced eight (8) days. The 182 contract days shall be as follows:
 - a. 170 student contact days
 - b. 7 paid holidays
 - c. 5 In-service days as outlined in Article 9(B)(5) and (6).

"B. Working Conditions During School Days

1. Article VII.C.2.iii will change from 'Wednesday sixty (60) minute preparation time' to 'Wednesday one hundred and twenty (120) minute preparation time.'
2. The parties further agree that the status quo 190 day cont[r]act for the 2013 year shall be reduced four (4) days until the parties ratify a successor agreement. The 186 contract days shall be as follows:
 - a. 170 student contact days
 - b. 7 paid holidays
 - c. 5 In-service days as outlined in Article 9 (B)(5) and (6)
 - d. 2 School Improvement days and 2 Professional Development days (4 total)
 - i. 3.5 hours for training
 - ii. 1.5 hours buildings
 - iii. 2 hours preparation

"C. Compensation

1. Salary
 - a. The 2010-11 contractual salary schedule shall become the 2011-13 salary schedule.
 - b. Salaries for bargaining unit members shall be reduced on a pro-rated full-time equivalent (FTE) basis to each member's normal work year.
 - c. The District agrees that the total salary losses related to the reduction of the school year shall be calculated and deducted

in equal amounts from paychecks remaining following the signing of this agreement.

* * * * *

2. Insurance
 - a. Insurance contributions shall not be affected by the furlough days.
 - b. There shall be no loss or interruption of insurance coverage to bargaining unit members due to the reduction of the work year.

* * * * *

“D. Employment Status

Since seniority is calculated based on employee’s first day of service, the reduction in the work year shall not impact the seniority status of any bargaining unit members.

“E. Formula for [R]estoration of [D]ays.

1. The parties agree that restoration of cut days is a high priority. To that end, the parties have agreed to restore Professional Development/Preparation days (see A.2.d of this agreement) with additional revenues under the following conditions:
 - i. If the District receives one time additional funding during the term of this agreement that is expendable on general payroll, for every \$350,000 a day shall be restored up to a maximum of 190 days.
 - ii. For every 0.5% increase in the per pupil allocation from the State of Oregon from 2010-11 to 2011-12 or from 2011-12 to 2012-13, a day shall be restored up to a maximum of 190 per year.
2. Days will be restored if the additional funding described above is received prior to April 15 of the given year. If funds are received after April 15, the days shall be restored in the subsequent year. If there are not days to be restored, the additional funding will be applied to the funding formula in Appendix A.”

10. Appendix A was the first appendix in the 2011-13 CBA. It provided a formula for how increases in the amount of state funding received by the District would be allocated to bargaining unit member salaries and insurance contributions. It provided that if the state funding increased sufficiently, the additional funds would be first used to increase the District’s contribution towards employee health insurance premiums, and any remaining moneys would go towards salary increases. Appendix A included an example of how the calculations had been performed in prior school years.

School District Funding – Generally

11. The Oregon State Legislature determines the amount of school district funding it will provide statewide. The Oregon Department of Education (ODE) serves as the facilitator for allocating and distributing school district funding.

12. To assist ODE in determining the proper allocation, school districts provide it with estimates of district enrollment numbers. School districts also provide ODE with enrollment estimates for students in designated categories such as those that are disabled, impoverished, and in pregnancy programs.

13. After a school district estimates its likely annual enrollment, ODE determines how much funding a school district should receive based on that enrollment and available legislative funding. ODE then provides school districts with a funding estimate at the beginning of the school year. ODE continues to provide school districts with monthly estimates that are submitted with funding payments. These are referred to as warrants. As the school year end approaches, ODE determines if a district's enrollment estimates were correct. ODE then provides the school districts with a May 15 warrant and tells them the amount that they should have received. This is referred to as the "enrollment reconciliation." ODE makes this determination from total actual enrollment, weighted by students in specific categories. This is considered a school district's per-pupil allocation.

14. In the May 15 warrant, ODE also makes adjustments to a school district's previous year's funding. This figure is an adjustment based on a school district's apportionment of statewide total public funding. ODE also determines the school districts' apportionment of an annual state high-disability grant, which like the general apportionment, may be less or more than what they initially received. Accordingly, in the annual May warrants, ODE provides school districts with information and a corresponding payment reflecting: (1) their enrollment reconciliation, (2) with apportionment reconciliation added or subtracted, and (3) the high disability grant added or subtracted separately. This is referred to as the "apportionment reconciliation."⁵

District's May 2012 Reconciliation

15. In May 2012, the District received revised State School Funding Estimates for the 2010-11 and 2011-12 school years. These estimates showed that the District's 2010-11 per-pupil allocation equaled \$5,688 and its 2011-12 per-pupil allocation equaled \$5,848.

16. In May 2012, the District also received its final payment and warrant, including its 2010-11 apportionment reconciliation. The apportionment reconciliation increased District funding by \$828,582.96 (state school fund of \$681,704.46, plus \$146,878.50 in additional high-cost disability funds).

⁵At different times, witnesses used the terms "true-up" and "reconciliation" to refer to both the enrollment reconciliation and the apportionment reconciliation. For the sake of clarity, we will refer to each type of reconciliation separately.

17. Applying MOA section E, the District considered the May 2012 additional apportionment reconciliation funds as “one time additional funding.” Because the District received the funding after April 15, 2012, the District determined that it should be applied to the 2012-13 school year. The District determined to restore teacher work days by dividing \$350,000 (contract amount needed to restore one day) into \$828,582.96 (2010-11 additional one-time funding), which equaled two restorable days in the 2012-13 school year.

18. The District restored an additional two days based on the \$160.00 per-pupil increase from 2010-11 to 2011-12.⁶ In total, the District restored four days to the 2012-13 school year, for a total of 186 teacher work days.⁷

Events Related to the 2013-14 School Year

19. In spring 2013, the Association and the District began negotiating a successor CBA. At a May 23, 2013 bargaining meeting, the parties discussed their understanding that the District had received \$800,000 in one-time additional funding.

20. On April 15, 2013, District Superintendent Phil Long shared three proposed 2013-14 school year calendars with the Association’s President, Cheryl Lashley. Two of the proposed calendars included 190 teacher work days. One of the proposed calendars provided for 186 teacher work days.

21. In May 2013, the District received revised State School Funding Estimates for the 2011-12 and 2012-13 school years. These estimates reflected that the District’s 2011-12 per-pupil allocation equaled \$5,859 and its 2012-13 per-pupil allocation equaled \$5,983.

22. In May 2013, the District also received its final payment and warrant, including its apportionment reconciliation, showing one-time additional funding in the amount of \$1,532,870.99 (additional state school fund of \$1,549,140.04 minus \$16,269.05 in reduced high-cost disability funds).

23. On June 3, 2013, Long wrote to Lashley and stated that he planned to take a tentative 2013-14 school year calendar to the District Board of Education. He explained that the “proposed tentative calendar is similar to this year’s calendar and makes no presumptions about how the contract will be resolved. It is, effectively, a status quo calendar.” Long attached a copy of a 186-day school year calendar.

⁶The District’s method of calculating the additional two days based on the per-pupil increase was complex and not relevant to our analysis. Accordingly, we do not describe it here.

⁷At hearing, the Association presented calculations to suggest that the District should have restored seven teacher work days to the 2012-13 school year instead of four. The District responded that the Association did not plead any allegation regarding the 2012-13 school year, and that, in any event, such a claim would be untimely. At oral argument, the Association clarified that it was not making a claim regarding the 2012-13 school year and that the calculations were not offered for that purpose, but rather as context for arguments regarding the claim for the 2013-14 school year. The evidence regarding the 2012-13 school year, therefore, is considered only for that limited purpose.

24. Lashley responded immediately, stating “[o]ur current MOA has the ‘trigger’ language for either adding back PD [Professional Development] days, and with the addition of the \$800,000 that would equate to a 2 day add back, or some other compensation for that money.”

25. On June 10, 2013, the District School Board of Education approved a 2013-14 school year calendar, with 186 teacher work days.

26. On June 20, 2013, Oregon Education Association (OEA) Consultant Jane Bilodeau wrote to Superintendent Long, requesting that the District restore school days and/or increase insurance coverage and salaries in accordance with section E of the MOA. Bilodeau stated that the District had received \$800,000 in additional one-time monies and a per-pupil increase of 2.1 percent between the 2011-12 school year and the 2012-13 school year.

27. The District’s attorney responded to Bilodeau on July 8, 2013, stating “[t]here is no support in the MOA language for your interpretation that the District is required to take the steps you have listed.”

28. On August 10, 2013, Bilodeau requested that the District provide her with information regarding the District’s additional funding in 2013, along with other financial data about insurance and budgeting.

29. On September 6, 2013, the District responded to the Association, providing the requested information. On October 22, 2013, the Association filed the complaint in this case.

30. At the time of the January 16, 2014 hearing, the parties had not yet reached agreement on a successor CBA. The District had implemented its final offer, which stated that the school work year “shall not exceed one hundred-ninety-two (192) days.” However, the teacher work days for the 2013-14 school year remained at 186.

31. After the hearing, the parties reached a tentative agreement on a successor CBA. On March 6, 2014, the Association ratified the tentative agreement. The District ratified the tentative agreement on March 10, 2014. The resulting 2013-16 CBA was signed by the Association representative on June 12, 2014, and by District representatives on June 13, 2014.

32. The 2013-16 CBA set the teacher work year at 190 days for the 2013-14 school year. The new agreement also set the compensation and insurance benefits package for bargaining unit employees.

CONCLUSIONS OF LAW

1. This Board has jurisdiction over the parties and subject matter of this dispute.
2. The District violated the MOA and ORS 243.672(1)(g) when it refused to restore teacher work days to the 2013-14 school year and refused to increase salaries and contributions to insurance premiums for bargaining unit employees under the Appendix A formula.

ORS 243.672(1)(g) makes it an unfair labor practice for a public employer to “[v]iolate the provisions of any written contract with respect to employment relations.” The Association contends that the District violated the terms of the MOA, and therefore, subsection (1)(g), when it refused to restore teacher work days for the 2013-14 school year and refused to increase bargaining unit salaries and contributions to insurance premiums after receiving additional one-time revenues. The District responds that it did not violate the MOA as alleged, arguing that the provisions of the MOA (Section E) governing restoration of work days and applying additional funding according to the formula in Appendix A did not apply during the *status quo* period. For the following reasons, we agree with the Association.

To resolve this dispute, we must interpret the relevant provisions of the MOA. Our goal when interpreting contracts is to discern the parties’ intent. To determine that intent, we apply the three-part analysis described in *Lincoln County Education Association v. Lincoln County School District*, Case No. UP-14-04, 21 PECBR 20, 29 (2005) (citing *Yogman v. Parrott*, 325 Or 358, 937 P2d 1019 (1997)). We first examine the text of the disputed contract language in the context of the document as a whole, and if the provision is clear, the analysis ends. Unambiguous contracts must be enforced according to their terms. *Portland Fire Fighters’ Assn. v. City of Portland*, 181 Or App 85, 91, 45 P3d 162, (2001), *rev den*, 334 Or 491 (2002). Contract language is ambiguous if it can be given more than one plausible interpretation. *Id.* If the provision is ambiguous, we proceed to the second step and examine extrinsic evidence of the parties’ intent. Finally, if the provision remains ambiguous after applying the second step, we proceed to the third step and apply appropriate maxims of contract construction. *Yogman*, 325 Or at 364.

Here, the parties primarily disagree about the scope of Sections B.2 and E. Section B.2 states that the “parties further agree that the status quo 190 contract for the 2013 year shall be reduced four (4) days until the parties ratify a successor agreement.” The District argues that Section B.2 established 186 as the fixed number of teacher work days for the 2013-14 school year (unless the parties reached an agreement, ending the *status quo*), and that Section E had no application once the parties entered the *status quo* period. In essence, the District reads Section B.2 as the exclusive provision that governed the *status quo* period and reads the remaining MOA provisions as having controlled the parties’ obligations before the expiration of the 2011-13 CBA. The Association argues that the 186 teacher work days in Section B.2 were a baseline for the 2013-14 school year, subject to possible restoration under Section E, which provided for reduced days to be restored according to a specific formula if the ODE provided the District with additional funding.

In the recommended order, the ALJ first examined the text and context of the language in Sections B.2 and E, and concluded that this language was ambiguous. After reviewing the extrinsic evidence offered by the parties, the ALJ concluded that the Association’s interpretation of the contract gave meaning to all provisions of the MOA and was otherwise consistent with the intent of the parties. As a result, the ALJ concluded that Section E’s requirements were intended to continue during the *status quo* period, and that the District violated the MOA and ORS 243.672(1)(g) when it failed to restore four school days to the 2013-14 school year.

We agree with and adopt this portion of the recommended order's reasoning and conclusion, to which the District did not object.⁸ In short, considering the MOA as a whole, along with the extrinsic evidence, we conclude that Section E continued to apply during the *status quo* period, and therefore, the District violated ORS 243.672(1)(g) as alleged.

Although the District has not objected to this conclusion of law, it raised a new contention at oral argument as to why the complaint should nevertheless be dismissed. Specifically, the District argued that because the parties had agreed to a new CBA after the hearing record had closed, the case had become "moot." Under that theory, because the MOA "expire[d] upon ratification of a successor contract for the 2013 year," and the parties had ratified such a successor contract in March 2014, there was no longer any viable dispute under the MOA.⁹ For the following reasons, we disagree with the District's "mootness" defense.

A case before this Board "is moot, despite a continuing dispute between a union and an employer over the meaning or legality of a contractual provision or proposal, if there are no longer any specific rights of specific parties at issue." *Portland Assn of Teachers v. Portland Sch. Dist. 1*, 94 Or App 215, 218, 764 P2d 965 (1988). Alternately stated, we will consider a case moot if a "decision no longer will have a practical effect on or concerning the rights of the parties." *Jefferson County v. Oregon Public Employees Union*, Case No. UP-18-99, 20 PECBR 217, 226 (2003) (Order on Remand), citing to *Brumnett v. PSRB*, 315 Or 402, 406, 848 P2d 1194 (1993).

Here, although the parties have signed a successor CBA, the District has not cited (and we have not found) a contractual provision that addresses, much less extinguishes, the dispute as to whether employees were entitled under the MOA to additional compensation or insurance contributions under the Appendix A formula, as asserted by the Association (and discussed below). Consequently, on this record, we are unable to conclude that our decision will not "have a practical effect on or concerning the rights of the parties" regarding the District's violation of the MOA. See *Jefferson County*, 20 PECBR at 226.

We now turn to the Association's limited objection to the recommended order. As a remedy to the District's breach of the MOA, the recommended order required the District to restore the maximum number of work days allowed under the MOA (four days added to 186 days for a total of 190 days), or provide the Association's members with the "financial equivalent" of those four days. Although the recommended order also concluded that there was additional funding left over after restoring the teacher work year to 190 days, the recommended order declined to require that the remaining funding be applied to the Appendix A formula, pursuant to section E of the MOA. The recommended order reasoned that, under the terms of the MOA, additional funding would be applied to the Appendix A formula only if there was insufficient funding to restore *any* work days at all. The Association contests this reading of the MOA, arguing that the parties intended for the

⁸When a party does not object to a recommended order, any potential objections are deemed waived and unpreserved. See *International Brotherhood of Electrical Workers, Local Union No. 659 v. Eugene Water & Electric Board*, Case No. UP-008-13, 25 PECBR 901 (2014); *Jackson County Sheriff's Employees' Association v. Jackson County Sheriff's Department*, Case No. UP-023-11, 25 PECBR 449, 459 (2013).

⁹As set forth above, we granted the District's motion, which was not objected to by the Association, to reopen the record and submit evidence regarding the successor CBA and its ratification.

District to apply additional funding to the Appendix A formula once the 190 maximum work days had been restored. The District argues that any remedy should be limited to that set forth in the recommended order because to do otherwise would grant the Association a “double remedy.”

We begin by determining whether the MOA language at issue is ambiguous. As noted above, in order to determine whether a contract is ambiguous, “we analyze whether ‘it is susceptible to more than one plausible interpretation,’ considering ‘the context of the contract as a whole, including the circumstances in which the agreement was made.’” *Tualatin Employees’ Association v. City of Tualatin*, Case No. UC-012-12, 25 PECBR 565, 572 (2013) (quoting *Cassidy v. Pavlonnis*, 227 Or App 259, 264, 205 P3d 58 (2009)). The “threshold to show an ambiguity in a contract is not high.” *Association of Oregon Corrections Employees v. State of Oregon, Department of Corrections*, Case No. UP-33-03, 23 PECBR 222, 238 (2009), *rev’d and rem’d*, 246 Or App 477, 268 P3d 627 (2011), *rev’d and rem’d*, 353 Or 170, 295 P3d 38 (2013) (citing *Milne v. Milne Construction Co.*, 207 Or App 382, 388, 142 P3d 475, *rev den*, 342 Or 253 (2006)).

Here, we have little difficulty concluding that Section E, the disputed provision of the MOA, is ambiguous—*i.e.*, susceptible to more than one plausible interpretation. Section E.2 of the MOA states that, “[i]f there are not days to be restored, the additional funding will be applied to the funding formula in Appendix A.” The Association argues that this language was meant to apply to the situation here—namely, if the District received sufficient funding to restore all of the reduced teacher work days up to the 190 day maximum, then there were “not days to be restored” and the District was obligated to apply any additional remaining funding in the manner set forth in Appendix A. The District argues that the recommended order correctly interpreted this language to mean that funding would only be applied to the Appendix A formula if the additional funding was so little that there were no days to be restored at all.

Both interpretations are plausible. It is plausible that the parties intended for Section E.2 to apply once the cut days were fully restored up to the 190-day maximum, at which point there “are not days to be restored.” It is also plausible that the language would only apply if the additional funding was so little that there were not *any* “days to be restored.”

The extrinsic evidence, however, clarifies the intention of the parties. Specifically, both parties offered testimony from witnesses who participated in the negotiation of the MOA, as well as notes and minutes from the bargaining sessions where the MOA was discussed. The testimony from witnesses for both parties confirmed that the intent behind Section E.2 was to first use any additional funds to restore teacher work days, as both parties agreed that this was the top priority. That intention was also captured in Section E.1 of the MOA. Further, these witnesses (and bargaining notes) confirmed that Section E.2 was meant to apply in the event that all of the cut days were restored (up to the 190 day limit) and additional funds were still available. Under such circumstances, the additional funds would be applied to the formula in Appendix A. Consequently, we agree with the Association that Section E.2 of the MOA required the District to apply any remaining additional funds (after restoring cut days to the 190-day maximum) to the formula for salary and insurance contribution increases set forth in Appendix A.

We must now determine whether the District received sufficient additional revenues to trigger the Appendix A formula. The calculations presented by both parties are significantly

different, but both calculations make it clear that there would be at least some level of funds remaining after the final four teacher work days are restored. The Association calculated that, after restoring the additional four teacher work days to the 2013-14 school year, the District would still have \$728,933 of additional funding to be applied to the Appendix A formula. The District disagreed, asserting that the calculation for the revenue available for restoration of days, salary and insurance contributions under the MOA should be “normalized” to exclude certain federal and state funding contributions that the District did not view as “additional one time funding” under the MOA. Under its calculations, there would only be \$132,870.99 of additional funding after restoring the four additional teacher work days to the 2013-14 school year.¹⁰

The parties presented extensive evidence and arguments relevant to their respective calculations, including whether special funding received from the federal and state governments to compensate for revenue shortfalls should have been characterized and calculated as one-time funding, or increases in per-pupil funding. However, it is not necessary to decide at this point the exact amount of additional funds available for application to the Appendix A formula. Under both the District and the Association’s calculations, there were additional funds available even after restoring the four teacher work days to the 2013-14 school year. These funds, regardless of the amount, should have been applied to the Appendix A formula as required by the MOA. As a result, the District violated the terms of the MOA when it failed to apply the additional funds to salary and insurance contribution increases for bargaining unit members.

REMEDY

Having concluded that the District violated ORS 243.672(1)(g), we now turn to the remedy. In its complaint, the Association requested that we issue an order that the District: (1) cease and desist from violating the MOA; (2) restore four teacher work days to the 2013-14 school year and make bargaining unit members whole for the difference in insurance and salary they were paid and what they should have been paid under the MOA and the Appendix A formula; (3) post a notice of the violations; (4) pay a civil penalty of \$1,000; and (5) reimburse the Association’s filing fee.

Because we have determined that the District violated the MOA and ORS 243.672(1)(g) by failing to restore school days during the 2013-14 school year, and by failing to follow the formula set forth in Appendix A, we will order the District to cease and desist from engaging in such conduct. *See* ORS 243.676(2)(b). We also agree that a make whole remedy is appropriate, which would normally include restoration of the four teacher work days to the 2013-14 school year

¹⁰In May 2013, the District received the revised State School Funding Estimates for the 2011-12 and 2012-13 school years. These estimates reflected that the District’s 2011-12 per-pupil allocation equaled \$5,859, and its 2012-13 per-pupil allocation equaled \$5,983 (showing a 0.98 percent increase). At that time, the District also received its final payment and warrant, including information about its 2011-12 apportionment reconciliation in the amount of \$1,532,870.99 (additional state school fund of \$1,549,140.04 minus \$16,269.05 in reduced high-cost disability funds). In both the District’s calculation for adding days to the 2012-13 school year, and its May 2013 hypothetical calculation for the hearing, the District considered the apportionment reconciliation funds it received as “additional one time funding.” Under the MOA, the District was required to restore one day for every \$350,000 in one-time funding, up to 190 days. Dividing \$350,000 into \$1,532,870.00, equals 4.4 days. Per the MOA, the maximum number of teacher work days was 190, which the District would reach after restoring four days. This leaves a minimum of \$132,700 available, even using the District’s more conservative estimates.

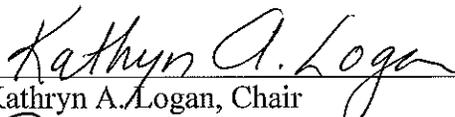
and the payment of whatever additional money and benefits the bargaining unit members should have received under the MOA, plus interest. However, as noted above, the exact amount of additional money that should have been applied to salary increases and insurance contributions under the Appendix A formula is in dispute between the parties. In addition, it is difficult to discern what impact, if any, the recently ratified 2013-16 CBA should have on the remedy. At oral argument, the parties acknowledged that it would be appropriate to provide them time to bargain over an appropriate remedy, should we award an additional remedy beyond that set forth in the recommended order. We agree that it would be appropriate to allow the parties an opportunity to come to a mutually satisfactory agreement. Accordingly, we will order the parties to bargain in good faith over the remedy (which might include the posting of a notice or payment of a civil penalty). If the parties do not reach agreement after 60 days of bargaining, each party shall submit to the Board the last offer made to the other party within seven days of the conclusion of bargaining. The Board may choose the Association or District's final offer, or craft an alternate remedy that best effectuates the purposes and policies of the Public Employee Collective Bargaining Act.

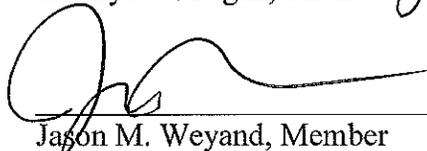
ORDER

1. The District violated ORS 243.672(1)(g) by failing to restore teacher work days and failing to increase contributions to employee insurance premiums and salaries as required by the MOA. The District shall cease and desist from engaging in such conduct.

2. The District and the Association shall bargain in good faith over an appropriate remedy consistent with the Remedy section of this Order. The parties have 60 days from the date of this Order to reach an agreement. If the parties do not reach an agreement within 60 days, each party shall submit to the Board the last proposal that it made to the other party within seven days of the conclusion of bargaining. The Board will either select one of the parties' last offers or craft its own remedy.

DATED this 13 day of August, 2014.


Kathryn A. Logan, Chair


Jason M. Weyand, Member


Adam L. Rhynard, Member

This Order may be appealed pursuant to ORS 183.482.