Collective Bargaining and Factfinding

ACBO Institute 2012 – Session Two

Presented by

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Overview

- Current Budget Issues
- Fundamental Principles of Collective Bargaining
- Strategy for Collective Bargaining

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Current Budget Issues

The State Budget

- The Legislature passed and Governor Jerry Brown signed an on-time Budget for 2012-13, the second time in as many years
  - Proposition 25, which authorizes a majority-vote Budget and penalizes legislators' pay if it is late, is clearly having its intended effect
  - The majority party Democrats control the entire Budget process and the Budget was passed on a strictly partisan vote
- Last year, the Legislature assumed $4 billion in additional revenue from a stronger economy
- This year, the Budget relies on voter approval of $8.5 billion in new taxes
  - If it fails, trigger reductions to revenue limits are imposed

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Economics – Fact or Fairytale?

- The economic cycle is still the key to long-term recovery in California
  - Consumers gain jobs and confidence and begin to spend
  - Businesses see increased demand for products and services
  - Businesses hire to keep up with demand
  - Unemployment drops
  - Consumers gain more confidence and spend more – and the cycle repeats
  - And the upward spiral begins
- The Budget assumes all that happens this year
  - A weak recovery has started
  - However, will it be strong enough to meet the Budget assumptions?

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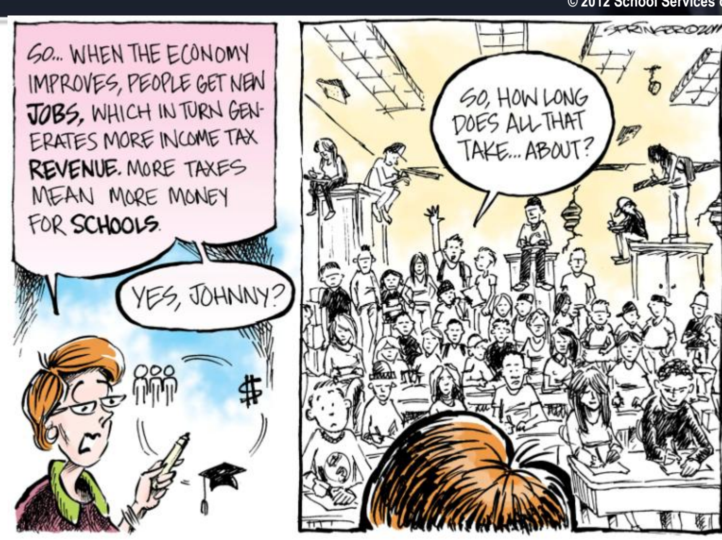
Economic Recovery – When?



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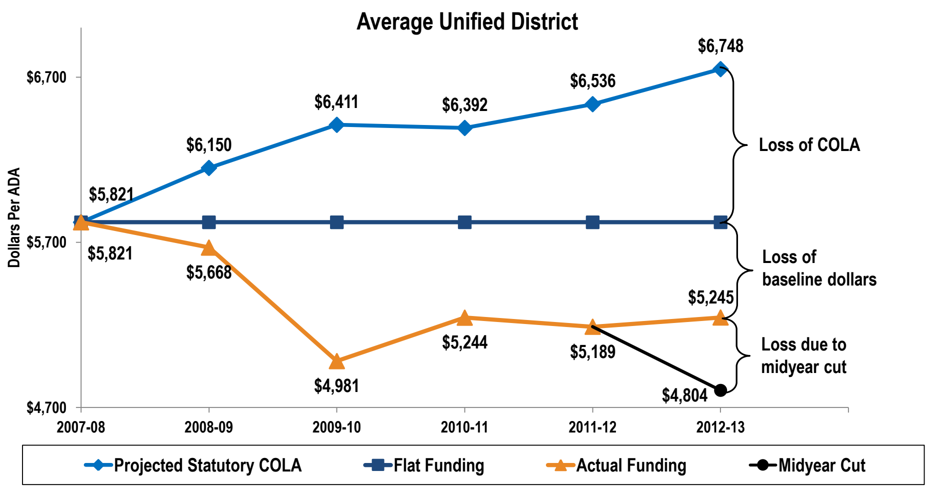
The Alligator Swallows the Money



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The Proposition 30 Trigger Reductions

- The State Budget as enacted authorized automatic trigger reductions totaling $6 billion if Proposition 30 failed:
  - $5.4 billion cut to K-14 education
    - Deficit factor increased by 6.542%, or about $440 per average daily attendance (ADA)
    - $339 million cut to community colleges
    - $2.2 billion deferral buyback eliminated
  - $250 million cut to both University of California and California State University
  - $50 million cut to developmental services
  - $30 million cut to city police department grants and CalFire
  - Other reductions totaling $20 million

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Raising Taxes Versus Making Cuts

- The Governor once again crafted a high-stakes measure for himself and his fellow Democrats
  - If the measure passed, the temporary taxes provide significant relief to the General Fund through his term in office and strengthen his position as Governor
    - Prior attempts at working with the Republican minority to raise revenues proved futile
  - If the measure failed, the Governor and Democrats in the Legislature own these cuts
    - The cuts will be used against incumbent Democrats if they seek re-election or higher office

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Meaningful Relief Will Depend Upon Revenues

- The Legislature has resorted to gimmicks and accounting maneuvers to provide “relief” to K-14 education in the past
  - General Fund revenues can be re-estimated to exceed the budgeted level
  - Another deferral can be enacted
- Meaningful relief from the full impact of cuts could be provided through additional measures to reduce expenditures or new revenues
  - K-12 districts could be authorized to reduce the school year by an additional 15 days on top of the 5 days that are now in effect
  - Class-size maximums could be relaxed
  - Relief in other expenditure areas could be offered
- The state revenue outlook is no more optimistic than when the Budget was enacted

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A Shorter School Year?

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The Outlook for Higher Revenues

- The economy is performing in line with the Budget forecast
  - The U.S. unemployment rate dropped 0.3% in September to 7.8%, a four-year low
    - The long-term average unemployment rate is 5.8%
  - California's unemployment rate is 10.2%; it is still one of the highest in the nation
    - Between August 2011 and August 2012, California added about 300,000 jobs, about 25,000 per month
- General Fund revenues are slightly below the 2012-13 Budget Act forecast
  - Year-to-date revenues through August are off 2.1%, or about $240 million

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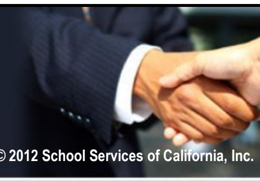
Outlook for Higher Revenues



- Housing is a key barometer of the economy and it appears to be turning around
  - Foreclosure filings for the U.S. are at the lowest level in five years
  - In California, defaults have dropped 45% since September 2011
  - The median price for a home in Southern California is up 11% to $309,000, while the median is also up 11% in the Bay Area, with the price reaching $410,000
    - Inventory is down to 3.2 months compared to 16 months at the depths of the recession
- The next official estimate of state revenues will be provided by the Legislative Analyst's Office in mid-November 2012

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SSC Community College Financial Projections Dartboard 2012-13 Adopted Budget

Factor		2011-12	2012-13	2013-14	2014-15	2015-16	20016-17
Statutory COLA if Tax Initiative Passes		2.24%	3.24%	2.30%[1]	2.50%	2.60%	2.80%
Funded COLA if Tax Initiative Passes		0.00%	0.00%	0.00%	2.50%	2.60%	2.80%
Growth Funding if Tax Initiative Passes		—	$50 million	Ongoing	Ongoing	Ongoing	Ongoing
Systemwide Apportionment Cuts if Tax Initiative Passes		-$385 Million	Ongoing	Ongoing	Ongoing	Ongoing	Ongoing
Systemwide Apportionment Cuts if Tax Initiative Fails		-$385[2] Million	Additional $338.6 Million, Total -$723.6 Million	Ongoing	Ongoing	Ongoing	Ongoing
State Categorical Programs		Ongoing[3]	Ongoing	Ongoing	Ongoing	Ongoing	Ongoing
California CPI		2.42%	2.10%	2.20%	2.40%	2.50%	2.70%
California Lottery	Base	$123.00	$125.00	$125.00	125.00	125.00	125.00
	Prop 20	$29.00	$30.00	$30.00	30.00	30.00	30.00
PERS Employer Rate		10.923%	11.417%	11.417%	11.417%	11.417%	11.417%
Interest Rate for 10-Year Treasuries		1.92%	1.90%	2.30%	2.60%	2.70%	2.90%

[1] While a positive statutory COLA is projected for 2013-14, the state's ability to fund it is suspect. Districts should have a contingency plan if the state decides not to fund this COLA percentage.

[2] Estimates provided from the Chancellor's Office, net of fee increases, for 2011-12 enacted ongoing cuts. District should plan on an additional reduction for 2011-12 only of $100 million (Chancellor's Office latest estimate) due to the estimated shortfall in student fee collections.

[3] Reflects 2009-10 cut of 32% (except as noted in list). Programs are "protected" because funding restrictions and requirements remain.

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Federal Sequestration

- The 2011 federal Budget Control Act calls for automatic funding cuts unless Congress passes a deficit reduction plan for the 2013 federal fiscal year
  - Sequestration would apply to funds that would be available commencing July 2013 for California's 2013-14 school year, including Title I, Title II, Special Education, Career Technical, and Adult Education
    - Federal Impact Aid, however, would be cut in 2012-13, if sequestration takes place
- On September 22, 2012, Congress adopted a six-month Continuing Resolution to fund the federal government through March 27, 2013
- The federal Office of Management and Budget estimates the cut to school programs at 8.2%; Defense and Medicare could be cut 10%

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UCLA Forecast

"UCLA argues that the U.S. will avoid a double-dip recession because the sectors of the economy that normally drive the broader economy into a recession are already depressed: housing, autos, inventories, and consumer durables."

– *UCLA Lead Economist*

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UCLA Forecast

- The concept of "stall speed" applies to this economy, which is growing at such a slow pace that "any modest shock can trigger a full-blown recession"
- Growth in the gross domestic product is now forecast to be only 2.0% for 2012, compared to 2.5 %, which was forecast just three months ago
  - Growth for 2013 was revised down from 2.9% to 2.0%

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Final Thoughts

- The worst of the recession is behind us
  - Upside potential for revenues is greater than it has been in five years
- However, many risks remain
  - November election on Proposition 30
  - Reversing prior Budget actions – deferrals, state payroll shifts, accounting gimmicks – could consume most of the new funds from a recovery
  - Trillion dollar federal budget deficits place continuing pressure to reduce federal outlays
- Conclusion: Stay the course and stay positive. Things will get better.

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Reserve Levels

Unrestricted General Fund Net Ending Balance as a Percentage of Unrestricted General Fund Expenditures		
	2009-10	2010-11*
Average Statewide	16.20%	18.80%
Lowest	5.60%	2.60%
Highest	36.80%	38.90%

- Statewide, the average reserve was significantly higher than the 5% prudent level
  - Due to local actions to reduce costs by eliminating course sections, reducing staffing, etc.

* As of the latest statewide data available.

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Reserve Levels and Cash

- This is likely to be short lived
  - A seemingly high ending fund balance is unlikely to carry a district through a multiyear problem
- The 5% prudent level of reserves is only about seven to eight days of payroll
  - But how much of reserves are actually cash?
    - A diminishing portion because of deferrals

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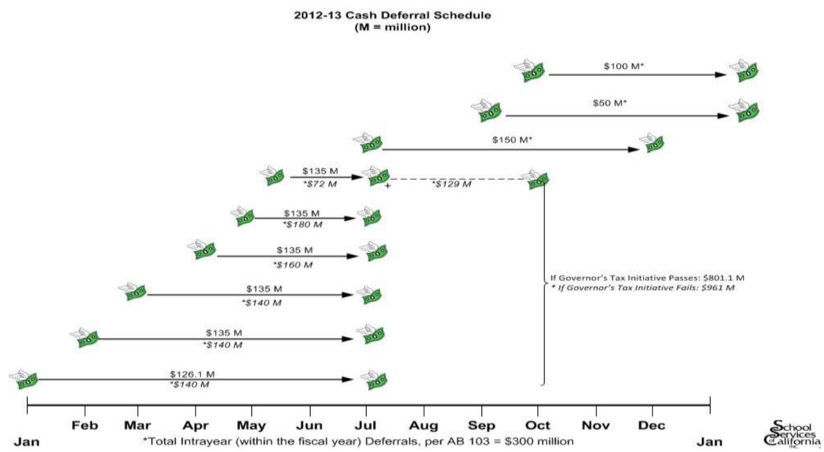
2011-12 Apportionment Deferrals



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Cash and Credit

- On the natural, higher ending balances are needed for the cash cushion because of deferrals
  - If you run out of cash, there are several options for borrowing cash
    - Unfortunately, temporary borrowing for cash flow purposes has become a normal routine
    - And it is short term – it has to be paid back typically within a year
  - What if you can't borrow because you can't prove you can pay it back?
    - It's game over – the state takes over and you lose local control

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Cash and Credit

- Do multiyear budget projections
  - And take early action to maintain adequate reserves
- Do cash projections as well to plan for:
  - When you need to borrow
  - How much you need to borrow
  - How long you need to borrow
  - What your borrowing options are
    - And prepare ahead for the best borrowing options available to you

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The Collective Bargaining Process

Overview

- The Negotiations Process
- Preparing for Negotiations
- Fiscal Aspects of Negotiations

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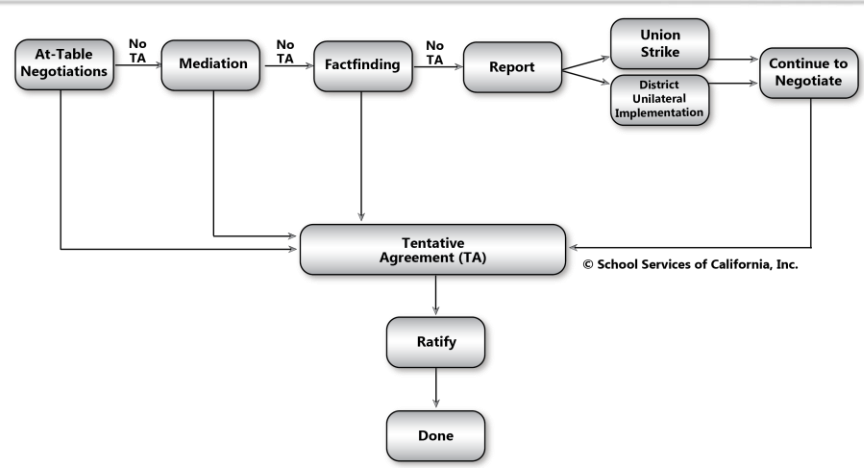
The Negotiations Process

Negotiations Process



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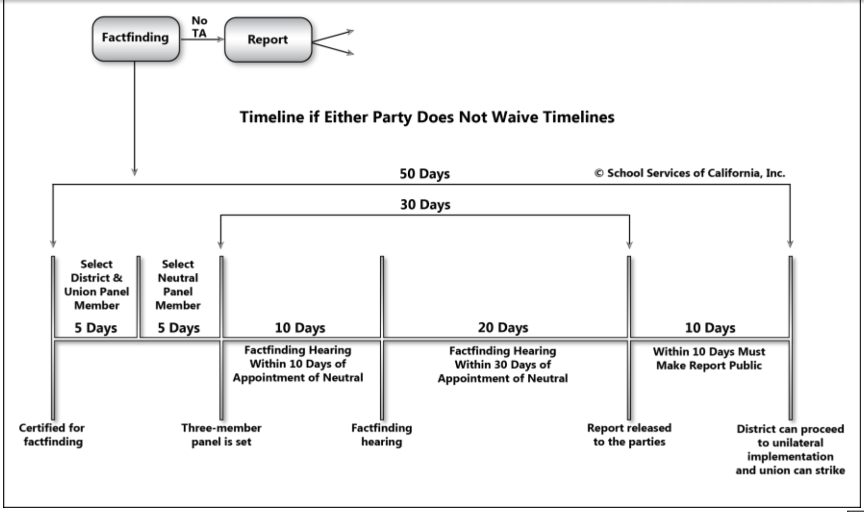
Negotiations Process Timelines



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K-14 Education Mediation Requests, Factfinding Requests, Appointments, and Reports Issued: 1996 – 2011

(includes EERA/HEERA activity through June 30, 2011)

Fiscal Year	Mediation Requests	Factfinding Requests	Appointments	Reports Issued
1996-97	170	32	27	10
1997-98	199	22	19	7
1998-99	178	37	32	19
1999-00	197	22	21	8
2000-01	226	44	31	14
2001-02	199	38	26	7
2002-03	155	34	33	9
2003-04	181	31	24	5
2004-05	179	25	22	3
2005-06	197	38	27	2
2006-07	203	25	20	3
2007-08	124	26	26	9
2008-09	95	27	23	7
2009-10	173	36	28	12
2010-11	110	41	33	11

Source: Public Employment Relation Board

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Preparing for Negotiations

Preparing for Negotiations

- The best way to stay out of factfinding is to prepare for it
  - If you end up in factfinding, you must show:
    - Comparability
    - Maintenance of effort (MOE)
    - And sometimes an inability to pay
- Comparability means your salary, benefits, and working conditions are within the normal expected range for your comparative group
  - District within normal commuting distance
  - Districts of similar size and funding level
  - You will be measured not just by what you can do, but also by what others are able to do

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Preparing for Negotiations

- MOE means that what you are offering will allow you to maintain relative comparability
- Inability to pay means you have special circumstances that prevent you from spending more
  - Declining enrollment, lower revenues, and other conditions may require discussion of the district's ability to pay more or inability to maintain the status quo
- Don't be afraid of impasse – insistence on a bargaining position does not constitute a refusal to bargain in good faith
- Factfinding isn't fun, but it's better than a bad agreement

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Notes

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Fiscal Aspects of Negotiations

Common Fiscal Principles for All Management Negotiators

- We negotiate total compensation
- We will share the district's dollar growth rather than match a percentage growth
- We expect a sharing of the "tough" times, as well as the "good" times
- If you are going to say "yes," say it early
- Build a firm foundation
  - Educate everyone on the fiscal squeeze (funding is finite)
  - Construct realistic and clear understandings of what you face
  - Build your instruction around total compensation
  - Our total compensation will compete in our comparative market

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Shared Interest in Collective Bargaining

- The economic realities of the last three years are taking a toll on the labor-management relationship
- A majority of districts continue to settle at the table, but of those who end up at impasse, a higher percentage are not settling in mediation
- Whether agreement is reached at the table, in mediation, or during factfinding, management and labor share an interest in:
  - The fiscal solvency of the LEA
  - Minimizing the impact of reductions on students and the instructional program
  - Maintaining fair compensation and safe working conditions

Management Interest

- With the majority of a district's unrestricted revenues dedicated to employee compensation, management has an interest in reducing personnel expenditures
  - Eliminating part-time faculty positions
  - Layoffs of permanent staff
  - Concessions from employees
    - Compensation (e.g., salary reduction, increase in health and welfare contributions)
    - Working Conditions
- Management will want some assurances if things get worse – and they could if the midyear cuts are triggered and the economics don't improve for next year
- In the end, it is management and the board that must ensure the fiscal solvency of the district

Union Interest

- The rising cost of health care has effectively reduced the take home pay of most employees
- Class sizes are already near the top and the levels of student support are near the bottom
- Many employee groups have made concessions and may be asked to make them again
- Employees will want changes in working conditions and/or workload in exchange for reductions in compensation
  - Furloughs result in a reduction in pay and a commensurate reduction in workload – but furloughs may not be enough
- The union will want some assurance that salary concessions and working conditions will be restored when revenues improve

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Our Advice . . .

- Use a collaborative, problem-solving bargaining style to meet both district and union needs
  - Good bargaining leads to a better outcome for both sides
- Be as candid when discussing potential restoration as when requesting concessions
- Maintain good lines of communication regarding both good and bad news
- Show the same respect at the table that you would like to see in return
- Remember: Public employees are getting hammered from all corners
  - They expect to be appreciated and respected by their employers
  - Good employers know that employees make or break the district's student achievement goals – be a good employer

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Be Aware of the Impact of Language Changes

- We are in uncharted territory and will, undoubtedly, ask employee groups for changes to language that affects our finances and our ability to manage in critical financial times
- Be careful about accepting language that limits management rights when negotiating in years where increases in salary and benefits are impossible
  - Restrictive language negotiated now will create future problems
  - Protect language that provides management with flexibility
  - Now may or may not be the time to negotiate out restrictive language
- How do you analyze proposals or existing language to determine if it is restrictive or to what extent it represents a risk to the district in terms of finances or management rights?

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Conducting a Collective Bargaining Agreement Risk Analysis

- A Collective Bargaining Agreement (CBA) risk analysis should include an review of the following
  - Working conditions
  - Management rights
  - Instructional time (certificated)
  - Productivity and time-on-task (classified)
- The CBA risk analysis should answer these essential questions:
  - Does language in the certificated or classified agreements provide the district with maximum flexibility in managing its resources while providing good working conditions for employees?

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CBA Risk Analysis

- Does language in the certificated and classified agreements safeguard the legitimate authority of management and the Board (e.g., the right to assign, hire, discipline employees), thereby providing the district with maximum flexibility in managing operations and the instructional program?
- Does certificated language maximize instructional time and minimize substitute costs or does it allow faculty to be out of their classrooms frequently, provide unlimited amounts of time for noninstructional activities or union business and/or take leaves of absence beyond those provided for in law?
- Does the classified agreement maximize productivity and promote efficient operations, or does it provide for unlimited amounts of time for other activities such as union business and/or leaves of absence beyond those provided for in law?

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