

**MINUTES OF THE SPECIAL MEETING/EXECUTIVE SESSION/SINGLE GROUP DUE PROCESS HEARING
OF THE BOARD OF TRUSTEES
POCATELLO/CHUBBUCK SCHOOL DISTRICT NO. 25
BANNOCK COUNTY – IDAHO**

**Highland High School Auditorium
Tuesday, May 25, 2010
4:30 p.m.**

BOARD MEMBERS/SUPERINTENDENT PRESENT:

Marianne Donnelly, Chair	John Sargent, Member
Janie Gebhardt, Vice Chair	Jackie Cranor, Member
Frank Rash, Clerk	Mary M. Vagner, Superintendent

OTHERS PRESENT:

Marvin Smith, Smith & Banks, PLLC, Hearing Officer,
Beverly A. Benjamin, M&M Court Reporting Services, Inc., CSR No. 710, RPR
John Rumel – Idaho Education Association Legal Counsel
Kelly Kumm – Kumm Law Offices, PLLC – Judy Kumm Legal Counsel
Aaron Thompson – May, Rammell & Thompson, Chartered – American Federation of Teachers Legal Counsel
Bart Reed, District Witness
Carl Smart, District Witness
Rena Johnson, Board Secretary

Welcome, Call to Order and Statement of Purpose

Chair Donnelly called the Special Meeting to order at 4:50 p.m. and said the purpose of the meeting was to conduct a Single Group Due Process Hearing.

Approval of Agenda

A motion was made by Ms. Gebhardt and seconded by Mr. Sargent to approve the agenda as presented.

Introduce Hearing Officer

Chair Donnelly introduced Mr. Marvin Smith as the hearing officer for the Single Group Due Process Hearing. Mr. Smith said the procedure for the Single Group Due Process hearing was per Idaho Code 33-515(7). He said the Court Reporter would transcript the hearing and asked the crowd to keep the volume down. He said crowd noise during testimony would not be allowed. He asked that persons cross examining a witness refrain from talking over the witness and vice-versa. He asked those speaking to do so at a steady pace and not speak too quickly. He asked everyone to be patient and respectful. He said theatrics were to be kept to a minimum. He said legal arguments would be presented first with opening statements for Mr. Julian and Mr. Rumel to follow. He said after the opening statements evidence would be presented pursuant to pre-hearing confidence. He said the District's administration would begin with its evidence and Mr. Rumel, Mr. Kumm and Mr. Thompson's to follow. He said all parties would have three days following the hearing to submit Findings of Fact and Conclusions of Law to Ms. Johnson at the District Office. He said the Board of Trustees would summarize the Findings of Fact, Conclusions of Law and Decision within seven days of the hearing.

If Necessary, Adjourn to Executive Session in Accordance with Idaho Code 67-2345 (1) (f) – To communicate with legal counsel for the public agency to discuss the legal ramifications of and legal options for pending litigation or controversies not yet being litigated but imminently likely to be litigated; The Board did not adjourn to Executive Session at the time of the meeting.

If Necessary, Return to Open Session

The Board did not need to return to open session at the time of the meeting.

Convene Single Group Due Process Hearing

a. Docket No. 10-29

Mr. Smith convened the Single Group Due Process Hearing and explained the hearing protocols.

Mr. Julian said there was not a lot of court precedence for a declared state-wide financial emergency but the legislature had given school districts a short time period to reach an agreement with teachers or to impose a last best offer. He said the financial emergency timeline began when the Governor signed the financial emergency legislation into law on March 31, 2010. He said the Board of Trustees had been unable to reach an agreement with the PEA through meet and confer which made the Single Group Due Process Hearing necessary. He said the next step was for the Board to consider reductions to the current agreement. He said the PEA was recognized as the exclusive agent representing all teachers including non-members. He said the Board could not negotiate individual contracts. He said it was the position of the District and its legal counsel that only the PEA representative be allowed to call witnesses and present evidence. Mr. Rumel said he agreed the PEA was the exclusive bargaining representative for all teachers. He said the PEA was entitled to represent teachers and the Board was only required to negotiate with it. He said the issue was the fact that no agreement had been reached and legislation said anyone affected was entitled to a hearing. Mr. Rumel said as much as the PEA would like to offer its services to all teachers, the teachers should be allowed to choose any counsel they wished. He said he would agree with the District's counsel if an agreement had been reached, but it had not and teachers could not be forced to have a particular counsel. Mr. Kumm said he was there on behalf of his wife, Judy Kumm, a certified teacher at Jefferson Elementary. He said he concurred with Mr. Julian and Mr. Rumel that she was bound by PEA negotiations but as there was no agreement and this process was created by the legislature to allow for someone like his spouse to ask questions in addition to legal counsel and to be provided individual due process rights. He said there was no such thing as a "group" due process hearing and each individual should be able to pursue their due process rights and be afforded individual counsel. Mr. Thompson said he represented the American Federation of Teachers Union. He said due process was a fundamental right. He said clients needed to be heard and echoed the comments of Mr. Rumel and Mr. Kumm. Mr. Smith said he would allow the representation of Mr. Thompson and Mr. Kumm. He said Mr. Julian could begin. Mr. Julian said this was one of the less desirable roles he took. He said he would like to set the tone as the process could become adversarial and it was easy to lose sight of the objectives. He said it was the administration's position that it was not without empathy for anyone's salary being altered. He said the law provided for a single group due process hearing and for the District's administration to make recommendations for alterations to the master agreement. Mr. Rumel said there is no master agreement and the PEA was the only organization the Board should talk to. Mr. Julian said he would present evidence of the dire economic situation and the options the District considered and why it decided to retain certain funds and not spend them down to a zero balance. He said the District went through the process in good faith and had to make decisions based on fiduciary responsibility. Mr. Smith said the Due Process Hearing was held in public, but was not a public hearing and clapping, sneers and cheering would not be tolerated.

Mr. Rumel said he would provide a roadmap of the proof that would be presented in the case. He said he would show that notwithstanding the presentation of finances, the District had the ability to meet and fulfill its operational responsibilities and compensate teachers fairly. He said he would show the history of bargaining. He said a Governor's holdback seemed to be the administration's prime argument as to the need for significant reductions. He said he would present information that would show the financial facts were not indicative of severe salary reductions. He said he believed the evidence would show that the District bargained in bad faith which would stop the Board from imposing a last best offer. He said he

would present evidence that the District's negotiating team said they did not have the authority to make an offer. He said the evidence would show how the process should be used. He said the evidence would show the economic affect the pay cuts would have on the community and that there was no need for the proposed cuts. He said the statute was not designed to make permanent changes and no restructuring of the salary schedule was necessary. He said the PEA's evidence included the offers that were presented to the District's bargaining team. He said there were trust issues in addition to financial issues between the PEA and the District's bargaining team that the Board would have to address.

Mr. Julian admitted the financial evidence of the administration and called Mr. Reed to the witness stand. Mr. Reed was sworn in. He stated his full name and spelled his last. Mr. Julian asked him to identify himself and state his title. Mr. Reed identified himself and said he was the Director of Business Operations for the District. Mr. Julian asked if he was familiar with the District's finances. Mr. Reed said yes. Mr. Julian asked Mr. Reed to provide a statement regarding the District's finances, the projected changes and the impact those changes would have on the District. Mr. Reed said he had prepared a statement. He said the message was the same as in the past and was consistent with the information that had been shared at various previous meetings. He said for six months the District's administration had struggled with balancing the budget on the heels of a financial emergency the year before. He said funding to public education had never been worse. He said due to the actions of the Idaho State Legislature to not fund education, the District had to gut its operational budget for FY 2010. He said it was a bare bones budget. He said while the administration tried its best to maintain programs, the District would look different. He said the District had already cut \$2 million in one-time reductions. He said the need to eliminate 22 classified positions was very unfortunate. He said there had also been reduction to hours or benefits to 65 other positions. He said the administrators and classified staff had been noticed of a 6.91% salary reduction. He said the administration had explored every option and had received input from staff members and the public. He said every suggestion had been given consideration and some were included in the budgeting process. He said there was a small glimmer of hope when the March revenue numbers came in but then fell short by over \$50 million in April. He said income tax had come in below expectations. He said there was still a \$13.5 million deficit. He said the District was still waiting on May's revenue numbers. He said there were some that believed no reductions were necessary to balance the budget, but the fact remained that the state had made permanent funding reductions to salaries at 6.6% to certificated staff and 11.5% for administrators. He said there was \$6.7 million loss in revenue over the past year which equaled 10% of the general fund on top of increased enrollment. He said the legislature had prohibited the use of discretionary funds to supplement salaries and required Districts to report its expenditures. He said an attempt to increase the Supplemental Levy had failed with patrons later approving a levy at the maintained rate of \$6 million. He said there were no more resources. He said the District was beyond its ability to pay for expenditures in light of an uncertain financial future. He said the District could not afford to drain its reserves which only equaled 18 days of operations. He said further reductions to the reserve fund were not recommended. He said the community had approved the passage of the School Plant Facilities Levy on the basis that funds would be used for building maintenance and not for salaries. He said he would summarize the facts. He said first: revenues were down \$3 million, \$3.6 million of the fund balance had been used to balance the current school year and only \$3.8 million remained, since using the reserve fund to balance, further reductions had been made, revenues for FY 2011 were down \$3.7 million and did not include an anticipated Governor's holdback. He said the holdback could reach 5.5% which equaled \$3 million to the District. He said interest earnings had been down the past two years for a total of \$825,000. He said salary apportionment was \$2.4 million less for two years in a row. He said the base salary level had been reduced to the same level of funding as FY 2001. He said discretionary funding had been reduced to the same level of funding as FY 2000. He said current revenue was at \$61 million and after expenditures was \$5 million short without the one-time cuts or the use of the reserve fund. He said there was no increase in funding to cover the cost of inflation. He said reductions would have been even deeper if the District's medical premiums had increased. He said thankfully there was a 2% reduction in premiums due to staff participation in the District's wellness plan.

He said typically insurance premiums increased on average by 6% over a 9 year period. He said materials for daily operations had already been reduced by 25%. He said this was on top of reductions made to balance the current year. He said FY 2011 had been stripped of almost all operational costs. He said 75% of those costs were fixed and could not be reduced. Mr. Julian asked Mr. Reed to briefly review the remaining financial data. Mr. Reed said the State Distribution Factor History showed a 14.4% reduction in state funding. He said the State Base Salary and School District No. 25 State Funded Salary History showed a 4.03% reduction for classified, 4.08 for certified and 6.52% for administrative. He said it also showed that only 82.81% of the certified staff salary was reimbursed by the state, 69.24% for classified and 93.13% for administrative. He said the 2010-2011 State Funding Estimate showed that District discretionary funds were down by \$1.9 million and about \$4.1 million less in overall support. He said if a 5.5% holdback occurred it would equal another \$2.9 million which would put the District down over \$7 million overall. He said over a two year period the cumulative salary reduction was 11.5% for administration and 6.63% for classified and certificated staff. He said revenue projections showed the District was \$3.6 million short for the upcoming school year. He said the last two attachments showed reductions that had been taken out of next year's budget with approximately \$1,264,475 in non-personnel reductions and \$1,398,682 in personnel related reductions. He said the District had to reduce its budget by \$4,358,689 to consider balancing the budget for the upcoming school year. He said \$2,048,723 had been cut out of the purchased services and supplies budget which equaled a 25.37% reduction. He said the last attachment showed 2009-10 budget reductions at over \$4 million to balance the current year.

Mr. Thompson said he wanted to talk about a "potential" Governor's holdback. He asked how the District's administration was made aware of a potential holdback. Mr. Reed said in many ways. He said there had been discussion from the State Department of Education, the legislature and from the House of Representatives. Mr. Thompson asked if Mr. Reed if he was aware of the letter that the House of Representatives sent warning Districts to prepare for a Governor's holdback. Mr. Reed said yes. Mr. Smith asked Mr. Thompson to provide a copy of the letter for the record. Mr. Thompson provided the letter. Mr. Thompson asked Mr. Reed if the letter stated the possibility of a 3.5% - 5.5% holdback and instructed Boards to negotiate up front based on that holdback. Mr. Reed said the letter stated a holdback was a distinct possibility. Mr. Thompson asked if the letter said Districts would not be held harmless if a holdback occurred. Mr. Reed said it did. Mr. Thompson asked Mr. Reed if the District's administration was relying on the instruction from that letter in its budgetary decisions. Mr. Reed said the administration was relying on the letter, the ISBA, the IASA and the State Department of Education advising that Districts should prepare for a potential holdback. Mr. Thompson asked if there had been discussion regarding the Governor holding a special session this year. Mr. Reed said no. Mr. Thompson said that meant there would not be a holdback this year. Mr. Julian asked Mr. Reed if the District was prepared to address the issues if a holdback did not occur. Mr. Reed said the District had built in that possibility in its planning and was prepared to address various levels of a holdback from 0% - 2%. Mr. Thompson asked if money was being set aside. Mr. Reed said it was. Mr. Thompson asked if any general fund money was being carried over to the following year's budget. Mr. Reed said there was carryover that had been set aside to balance the budget. Mr. Thompson asked if the carryover amount was in excess of \$3.5 million. Mr. Reed said \$3.5 million was the amount that had been used out of the \$7.5 million in reserves to balance the budget. Mr. Thompson asked if there was \$3.5 million in the reserves for next year. Mr. Reed said the amount was slightly more than that. Mr. Thompson asked if there was \$2 million in the School Plant Facilities Levy. Mr. Reed said it was close to that amount. Mr. Thompson asked if legislation made it possible for the public to vote on a transfer of School Plant Facilities Levy money in the event of a financial emergency. Mr. Reed said it was a recent change but was a possibility. Mr. Thompson said he had no further questions.

Mr. Kumm said Mr. Reed previously stated the District was relying on various agencies for information on a possible holdback. He asked Mr. Reed if it were possible that various agencies were relying on the same letter from the House of Representatives. Mr. Reed said he did not know the source of information

other agencies were relying on. Mr. Kumm said Mr. Reed previously stated that discretionary funding was cut by 14.4%. He asked Mr. Reed to define discretionary funding. Mr. Reed said discretionary funding was money the District had always received in addition to money for salaries and benefits and was referred to as entitlement money. He said there was little discretionary money for the following year. He said the law was very clear that discretionary funds could not be used to augment salaries. He said the state would require Districts to track and report how discretionary funds were spent. Mr. Kumm asked Mr. Reed if the discretionary funds could not be used for salaries. Mr. Reed said the funds could be used to maintain salaries but not to augment them. Mr. Kumm asked Mr. Reed who prepared the District's Financial Exhibit. Mr. Reed said he and Mr. Smart with input from colleagues across the state relative to the state salary history and entitlement figures. Mr. Kumm asked if the financial information was prepared by the District's administration. Mr. Reed said it was. Mr. Kumm asked if some of the numbers were compiled from other sources. Mr. Reed said some of them were compiled by other Districts and the State Department of Education. Mr. Kumm asked if the reduction on the State Base Salary and Salary History spreadsheet was an estimate or a fact. Mr. Reed said it was the actual reduction amount. Mr. Kumm asked Mr. Reed if the legislature had reduced salary funding by 4.08% for the upcoming school year. Mr. Reed said yes. Mr. Kumm said Mr. Reed previously stated the \$3 million dollar shortfall was due to a possible 5.5% holdback. Mr. Reed said the Revenue Account document showed a \$3.66 million dollar reduction in total funds received and did not include a 5.5% holdback. Mr. Kumm asked if the Expenditure Reductions Necessary to Balance the 2010-11 General Fund Budget reflected reductions already made. Mr. Reed said it reflected the recommended reductions. Mr. Kumm asked if any of the recommendations had been acted upon. Mr. Reed said some of the recommendations were in motion. Mr. Kumm asked which recommendations were in motion. Mr. Reed said some non-personnel reductions, such as health insurance and the elimination of Kindergarten busing were in motion. He said a reduction in hours or benefits for 65 classified employees was also in motion. Mr. Kumm asked if any of the financial documents showed which recommendations had been acted on. Mr. Reed said there wasn't any way to tell from the document what had been acted upon. Mr. Reed said it was not listed. Mr. Kumm asked if the document was a complete listing of recommended reductions. Mr. Reed said to the best of his knowledge it was. Mr. Kumm asked if the recommended athletic reductions were listed. Mr. Reed said no. Mr. Kumm said he had no further questions.

Mr. Rumel asked Mr. Reed if he was on the District's negotiating team. Mr. Reed said he was on the District's Meet and Confer Committee. Mr. Rumel asked Mr. Reed if he had gone to the Meet and Confer Committee meetings armed with the same financial information that was being presented at this meeting. Mr. Reed said yes. Mr. Rumel asked Mr. Reed if any offers were made based on this financial information. Mr. Reed said yes. Mr. Rumel asked Mr. Reed if he had authority to make those offers. Mr. Reed said yes. Mr. Rumel asked if the PEA had asked the District's meet and confer team to make a last best offer. Mr. Reed said he did not recall specifically if the PEA had asked for a last best offer. He said he recalled the PEA asking for the definition of a last best offer. He said only the Board of Trustees could impose a last best offer. Mr. Rumel asked if there had been negotiations the day before. Mr. Reed said yes. Mr. Rumel asked if there were two sessions that day. Mr. Reed said yes. Mr. Rumel asked again if the PEA asked the meet and confer team to make them a last best offer. Mr. Reed said he recalled the PEA team asking if one of the District's offers was a last best offer. He said the District team told them it was the last offer it was authorized to make at that time and could not proceed further. Mr. Rumel asked if they had the authority to make that offer. Mr. Reed said yes. Mr. Rumel asked if the PEA team had accepted the offer would it have been final. Mr. Reed said it would have gone to the Board of Trustees for approval and then would have been final. Mr. Rumel asked if the District's bargaining team was not authorized to make offers and just the Board of Trustees. Mr. Reed said the District's bargaining team was authorized to make offers under the direction of the Board. Mr. Rumel asked if the term "last best offer" appeared in the financial emergency legislation. Mr. Reed said yes. Mr. Rumel asked Mr. Reed if the District's bargaining team could make a last best offer or just the Board of Trustees. Mr. Reed said the District's team came with the offers it was authorized to present and if the PEA team had accepted one of

them it would have gone to the Board of Trustees for ratification. He said the District's team was not authorized to impose a last best offer and only the Board of Trustees was authorized. Mr. Rumel asked to summarize the last offer the District's bargaining team had given to the PEA team. Mr. Reed said to the best of his knowledge the last offer given included a 5% permanent reduction, a number of furlough days, possibly 11, an escrow account to be distributed in the event no holdback occurred, the elimination of early retirement benefits and a reduction in extra-curricular salaries. Mr. Rumel asked if the total reductions proposed in the offer were around 5.5%. Mr. Reed said the reductions were around 5%. Mr. Rumel asked if the reduction amount was similar to the proposed 5.5% holdback. Mr. Reed said the amount was not intended to be the same. Mr. Rumel said he had no further questions.

Mr. Julian asked Mr. Reed what the escrow account was. Mr. Reed said an escrow account would be created to set aside money in anticipation of a holdback. He said the money would be used to offset a holdback if one occurred. He said if a holdback did not occur it would be distributed back to employees on a graduated scale from 0 – 2%. Mr. Julian asked if a contingency for a holdback was resolved with the escrow account. Mr. Reed said that was correct. Mr. Julian asked if the state salary base was the amount the state reimbursed the District for salaries. Mr. Reed said yes. Mr. Julian asked if the District paid a lot more out in salaries than it was reimbursed for. Mr. Reed said yes. Mr. Julian asked if the amount was around 17% over the amount it was reimbursed for. Mr. Reed said for certificated staff, yes. Mr. Julian asked if for example a teacher was paid \$50 then the state would only reimburse about \$43 of that amount with the rest coming out of the District's discretionary funds. Mr. Reed said yes. Mr. Julian asked if discretionary funds had been cut. Mr. Reed said yes. Mr. Julian asked if any of the discretionary funds had been earmarked. Mr. Reed said yes. Mr. Julian asked if the total overall reduction was around 32%. Mr. Reed said he was not sure of the exact number, but was around that amount. Mr. Julian asked if carryover and the reserve fund were necessary to balance the budget. Mr. Reed said the reserves were needed to balance the budget. Mr. Julian asked Mr. Reed if he was aware of an audit recommendation relative to a fund balance. Mr. Reed said yes. Mr. Julian asked Mr. Reed to explain. Mr. Reed said an audit recommendation was to maintain a 5% - 10% reserve balance, with 5% being the bare minimum. Mr. Julian asked if the reserve fund was used for cash flow. Mr. Reed said yes, it allowed the District to pay bills. Mr. Julian asked if any programs were paid in advance. Mr. Reed said yes. Mr. Julian asked if the District needed the reserve fund to pay bills at times. Mr. Reed said absolutely. Mr. Julian asked Mr. Reed if he was in favor of transferring funds from the School Plant Facilities Levy to the general fund. Mr. Reed said no. Mr. Julian asked why. Mr. Reed said the District had run a School Plant Facilities Levy Election in March which was critical to maintain facilities. He said the funds from the levy maintained building roofs, HVAC systems, boiler replacement and repairs, equipment and any other building needs. He said if the School Plant Facilities Levy Election had failed all of those costs would have to come out of the general fund. He said the District had utilized School Plant Facilities Levy funds for the past 60 years. He said it was always promoted to the public as building maintenance money and told the public it would not be used for salaries, benefit or supplies. He said the School Plant Facilities Levy Election had passed on the heels of a failed increased Supplemental Levy. He said he did not believe that the District going back on its word was the right thing to do. Mr. Julian asked if the District was obligated to the public to do what it said. Mr. Reed said he believed it was important for the District to do what it told the public it would do. He said the public passed the District's Bonds and Levies and agreed the District had an obligation to the public to do what it said it would do. Mr. Julian said he had no further questions.

Mr. Kumm asked Mr. Reed if Districts were supposed to follow the state's salary schedule. Mr. Reed said Districts determined their own budgets. Mr. Kumm asked if most Districts exceeded the salary schedule. Mr. Reed said a good number might, but not most. Mr. Kumm asked where the Pocatello/Chubbuck District ranked on that category. Mr. Reed said he did not know where the District ranked, but knew if paid 17% more than it was reimbursed. Mr. Kumm asked what auditor told the District to keep a 5% fund balance. Mr. Reed said it was not a specific auditor, but a general audit recommendation to maintain a 5%

- 10% reserve balance. Mr. Kumm asked if there were any specific recommendations in the District's audit. Mr. Reed said no. Mr. Kumm said he had no further questions.

Mr. Julian called Ms. Vagner to the witness stand. Ms. Vagner was sworn in. She stated her full name and spelled her last. Mr. Julian asked Ms. Vagner what her occupation was. Ms. Vagner said she was the Superintendent. Mr. Julian asked how long she had been the Superintendent. Ms. Vagner said she had been the Superintendent for four years in the Pocatello/Chubbuck School District. Mr. Julian asked Ms. Vagner if she had prior experience in other Districts. Ms. Vagner said yes. Mr. Julian asked if one of the duties of the Superintendent was to maintain a balanced budget. Ms. Vagner said yes. Mr. Julian asked if it was an obligation. Ms. Vagner said yes. Mr. Julian asked Ms. Vagner if the District had taken any position during the legislative session regarding budget cuts. Ms. Vagner said it had. Mr. Julian asked what the position was. Ms. Vagner said the District strongly opposed the proposed budget cuts to education and were in constant communication with House Education Committees, Senator, JFAC and the District's legislative representatives. Mr. Julian asked if after all of the communication the legislature made the cuts anyway. Ms. Vagner said yes. Mr. Julian asked if the reduced education budget was approved by Governor Otter on March 31, 2010. Ms. Vagner said yes. Mr. Julian asked Ms. Vagner if she understood the necessary steps to balance the budget in light of the reduced budget. Ms. Vagner said yes. Mr. Julian asked Ms. Vagner to explain. Ms. Vagner said budget reductions were passed on to school Districts, which were subject to maintain a balanced budget. She said thus the District would subsequently also have to make budget reductions. Mr. Julian asked if the District participated in Meet and Confer with the PEA. Ms. Vagner said yes. Mr. Julian asked if the meet and confer process had begun immediately. Ms. Vagner said the District began the process with the PEA on April 14, one week after it found out the financial emergency bill had been signed into law. Mr. Julian asked how many Interest Based Bargaining sessions were held. Ms. Vagner said there had been a delay at the PEA's request and 5 – 7 sessions had been held through May 24, 2010. Mr. Julian asked if the sessions were handled by the negotiating team for the District. Ms. Vagner said the District was represented by its Meet and Confer Committee. Mr. Julian asked if the Meet and Confer Committee had the parameters of authority. Ms. Vagner said several meetings of the Board of Trustees were noticed in which the District's Meet and Confer Committee met with the Board to discuss the meet and confer process and parameters of authority. Mr. Julian asked if a tentative agreement had been reached if it was up to the principals of the contract to ratify. Ms. Vagner said yes. Mr. Julian asked if principals could choose not to ratify. Ms. Vagner said it sometimes happened. Mr. Julian asked if the District's Meet and Confer Committee needed direction from the Board of Trustees to propose a last best offer. Ms. Vagner said only the Board could impose a last best offer. Mr. Julian asked if the District's Meet and Confer Committee had given a recommendation to the Board. Ms. Vagner said the Meet and Confer Committee made a recommendation right before the current meeting. Mr. Julian asked if the recommendation was brought to the meeting. Ms. Vagner said it was included in the packet. Mr. Julian asked if after being given a recommendation by the District's Meet and Confer Committee and holding a Due Process Hearing, the Board should determine its last best offer. Ms. Vagner said yes. Mr. Julian asked if individual notices were given to all teachers. Ms. Vagner said yes, all notices were individually delivered with the exception of a few that were delivered via certified mail. Mr. Julian asked what the District's recommendation to the Board was. Ms. Vagner said the District's team recommended no more than a 6.91% reduction in anticipation of a holdback with the possibility of a one-time non-renewable graduated stipend in the event no holdback occurred. Mr. Julian asked if there was additional financial information in the recommendation. Ms. Vagner said no. Mr. Julian asked if it was true that there was no reduction to the athletic program. Ms. Vagner said it was not true and athletics had been reduced in FTE, days and hours. She said the reductions equaled around \$400,000. Mr. Julian asked if any other options were considered. Ms. Vagner said yes. Mr. Julian asked Ms. Vagner if she thought it was advisable to deplete the reserve fund balance. Ms. Vagner said no. Mr. Julian asked why. Ms. Vagner said the state was facing uncertain times and revenues were down. She said the state was short \$13 million in anticipated revenues and the state was slow to rebound. She said the District was aware of the controversial letters from the House of

Representatives and the response from Senator Cameron. She said the Governor had not provided any leadership regarding the budget issues. She said the District was strongly advised by the ISBA, IASA and the State Department of Education to prepare for up to a 5.5% holdback. She said the fund balance might be necessary to cover increased costs and emergency expenditures that were not budgeted for FY 2011 as the operational budget had been stripped. Mr. Julian asked if every bit of excess operational funds had been stripped to a bare bones budget. Ms. Vagner said yes. Mr. Julian asked if the District did not prepare for a holdback and one occurred if the fund balance would be zeroed out. Ms. Vagner said it would be depleted completely. Mr. Julian asked if that were to happen would the District pay custodians. Ms. Vagner said the District would not be able to pay anything. Mr. Julian asked if Ms. Vagner felt the recommendation to the Board was the best alternative. Ms. Vagner said yes. Mr. Julian asked if there was an ulterior motive for reducing salaries. Ms. Vagner said absolutely not. She said the District had lost permanent funding for salaries. She said the District worked hard to maintain teacher's salaries above the state minimum and considered furlough days to maintain the daily rate. Mr. Julian asked if there were obligations under state law for a District to propose its budget in public and have the budget approved by the Board. Ms. Vagner said yes and the public hearing was scheduled for June 15, 2010. Mr. Julian said he had no further questions.

Mr. Rumel asked Ms. Vagner if she was familiar with the proposals discussed at the beginning of negotiations. Ms. Vagner said she was aware the Meet and Confer Committee proposed a 6.91% salary reduction. Mr. Rumel asked Ms. Vagner if she was present during Mr. Reed's testimony. Ms. Vagner said yes. Mr. Rumel said Mr. Reed previously stated that the last offer made to the PEA was a 5% salary reduction. Ms. Vagner said the proposal was the last discussion at the close of meet and confer and no agreement had been reached. Mr. Rumel said the final recommendation was identical to the proposal made at the first meet and confer session and was 2% more than the offer made the night before. Ms. Vagner said the 2% would depend on the year the percentage was taken from. Mr. Rumel asked if the 5% reduction was before or after the previous 1% reduction to salaries. Ms. Vagner said it was before for a total of 6%. Mr. Rumel asked what the difference was from the original proposal of 6.91% from the current recommendation. Ms. Vagner said it was the same. Mr. Rumel asked if the offer made the night before was better or worse than the current proposal. Ms. Vagner said there was a .91% difference from the night before. Mr. Rumel asked if there was a request to extend the timeframe during the course of meet and confer. Ms. Vagner said the Board of Trustees received a letter from the IEA requesting mediation which was denied. Mr. Rumel asked if there was also a request to extend the timeline. Ms. Vagner said the Board only received a letter requesting mediation. Mr. Rumel said a letter requesting an extended timeline was sent May 8, 2010. Ms. Vagner said if he could produce the letter she could confirm if the District received a copy. Mr. Rumel did not have the letter. Mr. Rumel said he had no further questions.

Mr. Kumm said he appreciated the difficult job the Superintendent had and knew it was even more difficult after the actions of the state legislature and did not think the District had any ulterior motives for the reductions. He said the Superintendent previously indicated the operational budget had been stripped. He asked Ms. Vagner if that meant there were no other alternatives available other than imposing a 6.91% salary reduction. Ms. Vagner said all other alternatives were examined by the Board and were ruled out, such as a 4 day school week. She said there was discussion regarding an increased Supplemental Levy which was an alternative to be determined by the voters. She said the discussion was not substantive as an increased Supplemental Levy had a negative reaction from the community the year before and the District had just passed its School Plant Facilities Levy only months before with an understanding that the levy would not be used for salaries. Mr. Kumm asked if there were other recommendations that could have been made. Ms. Vagner said the options were discussed and the Board took action to provide direction on which options it would and would not pursue such as a 4 day school week and the transfer of School Plant Facilities Levy money to the general fund. Mr. Kumm asked Ms. Vagner if she provided guidance on those issues. Ms. Vagner said she recommended that the Board not pursue either of those options. Mr.

Kumm asked if the Board adopted her recommendation. Ms. Vagner said the Board discussed the options extensively and made its own decision. Mr. Kumm asked when the Board made the decision. Ms. Vagner said several weeks ago. Mr. Kumm asked if it was at the May 11, 2010 Board meeting. Ms. Vagner said it could have been at the May 11, 2010 Board meeting. Mr. Kumm asked if the Board was obligated to act in favor of the District's recommendations. Ms. Vagner said no. Mr. Kumm asked if the Board could listen to recommendations from other sources. Ms. Vagner said the Board listened to a lot of other recommendations from different sources. Mr. Kumm said there were still alternatives. Ms. Vagner said the only other alternatives would be to eliminate all extra-curricular as it was the only expense not required by law and was paid for out of discretionary funds. Mr. Kumm asked Ms. Vagner what the state revenue numbers for March and April were. Ms. Vagner said she did not know the amounts but knew that February and April numbers came in below projections. Mr. Kumm asked what the proposed extra-curricular reduction was. Ms. Vagner said it was a 40% reduction. Mr. Kumm asked if the reduction was to the athletic program. Ms. Vagner said no, it was to the entire extra-curricular program budget which was \$1.1 million. Mr. Kumm said he had no further questions.

Mr. Thompson asked if Ms. Vagner agreed the District opted-in to a financial emergency status. Ms. Vagner said yes, the Board opted-in to the declared state-wide financial emergency. Mr. Thompson asked what the requirements were for a District to opt-in for a second year in a row. Mr. Julian said that was a legal question and Ms. Vagner was not a legal expert. Mr. Smith agreed and withdrew the question. Mr. Thompson asked Ms. Vagner if she was knowledgeable of Idaho Code Section 33-522. Ms. Vagner said she had some knowledge. Mr. Thompson asked if a District could declare a financial emergency the second year in a row. Mr. Julian said the Idaho State Legislature declared the financial emergency for all Idaho Districts and an individual District opting-in was irrelevant. Mr. Thompson said the Pocatello/Chubbuck District did individually opt-in. Mr. Julian said the District opting-in was a courtesy. Mr. Thompson asked Ms. Vagner why the District was making permanent salary reductions now. Ms. Vagner said the state had made permanent salary reductions. Mr. Thompson asked Ms. Vagner if she was familiar with Key Communicators. Ms. Vagner said yes. Mr. Thompson asked if the group made any budget recommendations. Ms. Vagner said yes. Mr. Thompson asked if the group recommended using the fund balance and frozen set asides. Ms. Vagner said yes. Mr. Thompson asked if the group made a recommendation to reduce non-personnel expenses by \$1.2 million. Ms. Vagner said she did not recall an amount and the group made several recommendations. Mr. Thompson said the group made \$3.8 million worth of reduction recommendations. Ms. Vagner said she did not know an exact number but all recommendations had been given to the Board. Mr. Thompson asked if the recommendations were rejected by the Board. Ms. Vagner said a number of the recommendations were considered. Mr. Thompson provided a copy of the Key Communicators document to Ms. Vagner. He asked her if she was familiar with the document. Ms. Vagner said she was familiar with the document. She said the reductions that were taken to the Board were reviewed with the Key Communicators which concurred with the reductions for personnel and non-personnel. Mr. Thompson asked why the Key Communicator proposals were rejected by the Board. Ms. Vagner said the document did not say the proposals were rejected it said that in anticipation of the magnitude of losses alternatives and input from staff and the community was received and considered. She said the document summarized the recommendations. She said it stated that projections did not meet the projected shortfall and reductions would have to come from salary and extra-curricular. Mr. Thompson said Mr. Reed previously stated there was \$2 million remaining in the School Plant Facilities Levy. He asked Ms. Vagner if she agree there was \$2 million in that account. Ms. Vagner said she thought it was close. Mr. Thompson asked if the primary reason the District did not want to take the transfer of School Plant Facilities Levy Election to the public was because it promised the community the funds would not be used for salaries. Ms. Vagner said that was one reason and the other was that a request for an increased Supplemental Levy had just been rejected by the community. Mr. Thompson asked when the Supplemental Levy Election was held. Ms. Vagner said it was held in February, 2009. Mr. Thompson said a lot had changed since that time. Ms. Vagner agreed that conditions had worsened. Mr. Thompson asked Ms. Vagner if she thought that due to a failed increased Supplemental Levy

Election in 2009 that voters would reject a transfer of School Plant Facilities Levy under the current conditions. Ms. Vagner said the District also had to prepare to run another Supplemental Levy in 2011. She said the Supplemental Levy had been frozen at \$6 million for four years. Mr. Thompson asked if there was \$3.5 million in a carryover account. Ms. Vagner said it was the fund balance. Mr. Thompson asked Ms. Vagner if she was surprised to know that March revenue numbers were up. Ms. Vagner said the state's current revenues were down overall. Mr. Thompson said he had no further questions.

Mr. Julian asked Ms. Vagner if April's revenues were short \$55 million. Ms. Vagner said she believed the amount was accurate. Mr. Julian asked if the sum was \$13 million short of the amount needed to balance. Ms. Vagner said she believed so. Mr. Julian asked if the Key Communicators group had seen these numbers and agreed with the recommendation to the Board. Ms. Vagner said yes. Mr. Julian asked if the recommendation addressed a future holdback. Ms. Vagner said a holdback was not addressed in the recommendation. Mr. Julian asked Ms. Vagner if the PEA's request for mediation was received one business day prior. Ms. Vagner said she thought it was received on May 21st or 24th. Mr. Julian asked Ms. Vagner if it was her understanding that the financial emergency process was required to be completed by June 6, 2010. Ms. Vagner said yes. Mr. Julian said the statute allowed 3 days for briefs to be received and 7 days for a decision. He asked Ms. Vagner if she believed the timeframe had been pushed out as far as it could be. Ms. Vagner said yes. She said the District had published the timeline on April 13, 2010. Mr. Julian asked if the decision on whether to hold a levy election had to be made by the Board. Ms. Vagner said yes. Mr. Julian asked if the transfer of School Plant Facilities Levy election was defeated would it be almost impossible to pass another Supplemental Levy. Ms. Vagner said she believed it would. Mr. Julian asked if the School Plant Facilities Levy Election was proposed to the community as not supporting salaries. Ms. Vagner said yes and it was made very clear to the public that it would not be used for that purpose. Mr. Julian asked if an attempt to increase the Supplemental Levy was defeated. Ms. Vagner said the District had requested an increase of \$1.5 million which was defeated and later passed at a frozen amount of \$6 million. Ms. Vagner said she believed strongly that the Supplemental Levy would help the District to weather current conditions. Mr. Julian asked if the Board took the current financial climate into consideration when considering whether or not to run a levy election. Ms. Vagner said yes. Mr. Julian asked if it was important to consider. Ms. Vagner said yes. Mr. Julian said he had no further questions.

Mr. Rumel said Ms. Vagner previously indicated the Governor announced a \$55 million shortfall. He asked Ms. Vagner if the Governor stated there would not be a holdback. Ms. Vagner said the Governor stated there would be no holdback ordered for FY 2010 which was less than two months away. Mr. Rumel said the Governor stated there would be no holdback for 2010-2011. Ms. Vagner said the statement only addressed FY 2010 which ended June 30, 2010. She said various entities including the ISBA, IASA and the Governor's office was clear that the Governor was not discussing FY 2011. Mr. Rumel said Ms. Vagner was not present at that discussion. Ms. Vagner said the information was received from the State Association. Mr. Rumel said he had no further questions.

Mr. Smith recessed the Due Process Hearing at 6:50 p.m.

Mr. Smith reconvened the Due Process Hearing at 7:03 p.m.

Mr. Rumel called Janet Flandro to the witness stand. Ms. Flandro was sworn in. She stated her full name and spelled her last. Mr. Rumel asked Ms. Flandro where she lived. Ms. Flandro said she live at 72 Rosewood Avenue, Pocatello, Idaho. Mr. Rumel asked Ms. Flandro if she was employed in District. Ms. Flandro said yes. Mr. Rumel asked how long she had been employed with the District. Ms. Flandro said she had been a teacher for 23 years and had been with the District for 20 years. Mr. Rumel asked Ms. Flandro if she was on the PEA negotiating team the year before. Ms. Flandro said she was not and had been looking forward to the IBB process. Mr. Rumel asked Ms. Flandro to tell the Board in her own words what she wished them to know. Ms. Flandro said she had been excited for the IBB process which

appealed to her because she was a problem solver. She said she believed in the scientific method. She said the Board and the PEA teams had both agreed to the IBB process. She said the District received grant funding to train in the IBB process and signed a document saying it would follow the process. She said she did not believe the Board's bargaining team honored the process. She said during the first session, the District's attorney, Mr. Mallea told the PEA team that the Board was offering a 6.91% reduction and that if the PEA team did not ratify then it would be imposed. She said the IBB process was supposed to have issues and solutions placed in the open by both teams to brainstorm and reach a solution to satisfy both parties and said she believed that process was violated. She said the facilitator asked the teams to consider trying the IBB process on easier issues first. She said the bargaining teams tried the process on two issues; 3 record days instead of two and early retirement. She said the teams were able to reach an agreement on both issues. She said the facilitator moved them to the harder issues and at first the teams were following the process and compromising until both groups came back from caucus. She said everything shut down from the Board's bargaining team which was right back to the 6.91% reduction offer. She said the facilitators tried to encourage the process to continue but could not get the Board's team back on track. She said the PEA asked for mediation after the process broke down and the Board's team stepped away from the IBB process. Ms. Flandro said she had minutes from the last bargaining session. She said Mr. Smart stated the Board's bargaining team could not negotiate a last best offer. Ms. Flandro said the PEA team bargained in good faith and came back three times with offers to cut salaries more deeply. Mr. Rumel asked Ms. Flandro to explain the difference between IBB and traditional bargaining. Ms. Flandro said IBB was a problem solving process that created effective solutions while improving relationships. She said she was excited for the process and believed it was something to strive for. She said with traditional bargaining two opposing sides presented proposals until the two sides could come to an agreement. She said it was essential for bargaining teams to lay out all of the information on the table and said the Board's team did not do that. She said the PEA team asked for a definition of "last best offer" and never received an answer. She said the PEA team asked the Board's team what was acceptable and they just repeated 6.91%. She said the PEA team asked the Board's team if they could propose a different offer. She said they were told the Board's team could not without consulting with the Board. She said Ms. Judy Harold finally asked them to call the Board to discuss additional offers. She said the team called the Superintendent. She said the Board's team told the PEA team that Board members were called individually but Ms. Flandro said the Board did not know what was discussed. Mr. Rumel asked Ms. Flandro if she believed the District bargained in good faith. Ms. Flandro said she did not believe it did. She said the Board's team was not open or honest and came to the bargaining sessions with no authority. Mr. Julian asked Ms. Flandro if this was her first year using the IBB process. Ms. Flandro said yes. Mr. Julian asked what her perspective of the process was. Ms. Flandro said based on the training teams were supposed to brainstorm and offer solutions. Mr. Julian asked if at one point both teams agreed IBB was not the best path. Ms. Flandro said no. Mr. Julian asked if the teams discussed it and the facilitator agreed not to use the IBB process. Ms. Flandro said that was the decision after the PEA team felt the District had abandoned the process. Mr. Julian asked her what solutions could be offered without money. Ms. Flandro said there were ideas that were not talked about enough. Mr. Julian asked Ms. Flandro if she understood the timeline. Ms. Flandro said she knew that if both parties agreed the timeline could be extended but the request had been denied. Mr. Julian asked if she knew this from the PEA team. Ms. Flandro said she believed it was from Idaho Code. Mr. Julian asked Ms. Flandro if she agreed with the statement from Ken Mallea that a last best offer could only be imposed by the Board after a Due Process Hearing. Ms. Flandro said she believed that both bargaining teams should have the authority to come to a tentative agreement. Mr. Julian asked Ms. Flandro if the Board had come in with an offer of 12% rather than 6.91% if moving back down to 6% would have been good faith bargaining. Ms. Flandro said good faith bargaining was being honest and putting the information on the table to come up with a win-win solution. Mr. Julian asked if she would expect the Board to not make an inflated offer for appearances. Ms. Flandro said she did not know. Mr. Julian said he had no further questions. Mr. Rumel asked Ms. Flandro if the PEA team was referred to Idaho Code to request an extended timeline. Ms. Flandro said yes, Maggie Calica referred the team to Idaho Code. Mr. Rumel asked Ms. Flandro if the parties could have consulted and agreed to

move the Due Process hearing to a later date. Ms. Flandro said yes. Mr. Rumel asked Ms. Flandro if she believed Mr. Mallea's statement regarding last best was accurate. Ms. Flandro said during the training teams were told power was given to each team to reach an agreement. Mr. Rumel said he had no further questions.

Mr. Rumel called Wendy Shelman to the witness stand. Ms. Shelman was sworn in. She stated her full name and spelled her last. Mr. Rumel asked Ms. Shelman if she was employed in the District. Ms. Shelman said she had been a teacher for 17 years in a couple of Districts. She said she taught at Pocatello High School. Mr. Rumel asked if she was on the bargaining team. Ms. Shelman said she was and filled the capacity of spokesperson. Mr. Rumel asked if she had anything further to add to Ms. Flandro's statement. Ms. Shelman said she was excited to talk to Board. She said it was now the responsibility of the Board to make a decision. She said she felt during the bargaining process that the Board understood the numbers. She asked the Board to keep that in mind as they considered what the Superintendent was asking them to do. She said the legislature had handed down laws that gave Boards the advantage of power over negotiations. She said the law allowed Boards to take advantage of teachers. She said the Board was making proposals that if they were required to negotiate openly, teachers would never agree to. She said no teacher would ever agree to allow a Board to impose a last best offer. She said the Board's bargaining team offered an escrow account. She said teachers would ask for assurances that the money be given back in salary. She said the PEA proposal adamantly challenged the possibility of a holdback. She said the PEA bargaining team was willing to be realistic and if the District felt a holdback would occur then the PEA would support it just not at that level. She said there were rumors that there would not be a holdback but if one did occur it would be much lower than 5.5%. She said the PEA team was willing to plan for half that amount. She said teachers felt that planning for that high of a holdback was letting the legislature push teachers around. She said the PEA bargaining team made an offer relative to the holdback that was rejected without even being considered. She said the Board's bargaining team stayed with 5.5% and would not budge. She said it put her in the position of being responsible for finding solutions rather than having a last best offer imposed on teachers. She said the PEA bargaining team had made painful offers. She said she was in support of quality teachers and a fair market price and taking pay cuts was not something she embraced. She said however, as part of the PEA proposal they were willing to accept the situation. She said she did not feel the Board and the PEA were on separate sides of the issue and that they were all in the same boat. She said she supported some kind of a cut but the Board was taking advantage when it asked for a higher cut than the legislature was handing down. She said teachers would understand a 4% cut because it was equal to the shortfall. She said teachers did not understand a 6.91% cut. She said the Board was subsidizing classified, administrative and teachers all together. She said Mr. Sargent stated at a previous Board meeting that teachers were paid above the state's salary schedule. She said that could be addressed by changing the way the District did business. She said it could start by eliminating the Central Office. She said Directors could be eliminated. She said Principals and Administrators were 93% reimbursed. She said this was a false percentage with hidden salaries. She said the Assistant Curriculum Director's salary was one of the hidden salaries that were taken from other budgets to subsidize it. She said she did not want classified staff eliminated because it would hurt teachers and students. She said another problem with the District recalculating the salary base was that if it got in line with the state salary schedule the legislature would just lower it again. She said no teacher would agree with recalculating the salary schedule because it hurt tenured teachers. She said changing the salary damaged teacher retirement. She said in the future when the cost of living went up the Board would probably give Bart Reed and Carl Smart a raise. She said teachers did not get raises. She said it was also taking advantage of the law to not use furlough days. She said the District recommendation did not include furlough days. She said the PEA offered furlough days because it realized that it needed to come up with an offer that would maintain the daily rate. She said teachers would challenge the District's offers if they had a chance to negotiate. She said last year teachers agreed to a 1% reduction recognizing the importance of supporting the Board and the District. She said not only was the Board proposing a 6.91% pay cut this year but was also proposing a 40% reduction to the extra-curricular programs which would

only cut deeper into the stipend she received as a coach on top of creating more work to donate time to fundraise for programs. She said some employees were being asked to take pay cuts and double their work effort to support activities. She said if she had been allowed to negotiate she would have never agreed to those conditions and said the Board had taken advantage of the financial emergency. She said the way teachers do business in the District was by being collaborative. She said she loved that and trusted the calendar would be responsible for restructuring with furlough days but teachers needed assurances. She said last year there was an addendum to the contract that allowed teachers to renegotiate salaries at the end of the financial emergency and this year they did not have those assurances. She said the law did not address how teachers would be treated in the future and wanted to know how she was protected. She said she begged the Board to listen to the side of the people hired in the business world and the community. She said the District's most valuable commodity was its teachers and wanted to maintain the quality.

Mr. Rumel called Judy Harold to the witness stand. Ms. Harold was sworn in. Stated her full name and spelled last. Mr. Rumel asked Ms. Harold if she was employed with the District. Ms. Harold said she was a retired teacher. Mr. Rumel asked how long she had been a teacher. Ms. Harold said she taught for 24 years in Pocatello and retired in 2006. Mr. Rumel asked Ms. Harold if she had been trained as an IBB Facilitator. Ms. Harold said yes. She said she had gone to Boise in February and trained for 5 days, 8 hours per day. Mr. Rumel asked if she agreed to serve as an IBB facilitator for the District and the PEA. Ms. Harold said yes. Mr. Rumel asked if anyone else had been trained as a facilitator. Ms. Harold said yes, Pete Black. Mr. Rumel asked if she was chosen as the PEA representative with the District having its own. Ms. Harold said she did not know that at the time but that is how it happened. Mr. Rumel asked Ms. Harold to explain the process of an IBB facilitator. Ms. Harold said an IBB facilitator's duty was to remain neutral. She said the process was set up that way in order for a facilitator to assist both sides. She said she felt optimistic during the first session when the teams reached agreement on record days and early retirement. She said after the first two issues Mr. Mallea attempted to move away from the IBB process. Mr. Julian said Ms. Harold's testimony was in violation of a form of protocol. Mr. Rumel said Ms. Harold's testimony was best qualified to describe the process. Mr. Smith said usual course mediations were privileged information to the mediator. Mr. Smith asked Ms. Harold if she had been informed during her training or taken an oath to hold matters secret. Ms. Harold said no. Mr. Smith asked Ms. Harold to summarize her statement. Mr. Rumel asked Ms. Harold if she felt both parties were following the process. Ms. Harold said not after the first two issues. Mr. Rumel asked Ms. Harold why she felt the process was not being followed after the first two issues. Ms. Harold said the District's attorney attempted to impose a last best offer because it was the next logical step. She said the PEA team argued to salvage the IBB process. Mr. Rumel asked Ms. Harold if she felt the IBB process succeeded or failed. Ms. Harold said she felt the process succeeded through the first two issues and afterwards collapsed. Mr. Rumel asked if early retirement was eliminated. Ms. Harold said it was redirected. Mr. Rumel asked what happened to her status as facilitator when the process broke down. Ms. Harold said the PEA team made an offer towards the end of the session which was rejected by the Board's team. She said the Board's team then asked the PEA for another offer at which point she told Mr. Smart that he was attempting to get the PEA to bargain against itself. She said she tried to keep both parties at the table but the process broke down. Mr. Rumel asked Ms. Harold what her role in mediating was. Ms. Harold said on May 21, 2010 the Board's team did not have a proposal. She said Mr. Smart said he did not have the authority to make another proposal. She said she asked Mr. Smart to call the Board. She said she asked the teams if there was consensus to call the Board for direction at which point they voted. She said after Mr. Smart called the Board, the Board's team offered the PEA team a 5.5% salary reduction and then the IBB process was formally dismantled.

Mr. Rumel called Kristina Wilkinson to the witness stand. Ms. Wilkinson was sworn in. She stated her full name and spelled her last. Mr. Rumel asked Ms. Wilkinson where she lived. Ms. Wilkinson said she lived at 1427 Chantel Place, Pocatello, Idaho. Mr. Rumel asked Ms. Wilkinson if she was employed by

the District. Ms. Wilkinson said yes she was a teacher at Highland High School for about 20 years. Mr. Rumel asked Ms. Wilkinson if she was part of the bargaining team. Ms. Wilkinson said yes she was in charge of the budget. Mr. Rumel asked if she was present for the budgetary presentation. Ms. Wilkinson said yes. Mr. Rumel asked Ms. Wilkinson if she heard the District's proposal. Ms. Wilkinson said yes. Mr. Rumel asked Ms. Wilkinson to discuss the financial issues that she agreed with or disagreed with and what specific offers were on the table from the PEA team. Ms. Wilkinson said as a patron and a teacher she was closely involved in the budgeting process and had seen other options available to the Board that were met with resistance. Mr. Julian asked if Ms. Wilkinson could give her written statement to the Board to streamline the process. Mr. Smith said it was a valid objection and asked Ms. Wilkinson to summarize the specific proposals regarding the financial situation. Ms. Wilkinson said the first proposal that was not considered was the sale of Bonneville School. She said she also was a member of the budget committee and wanted to let the Board know they were misinformed about the amount of the School Plant Facilities Levy and the percentage that was allowed to be transferred. She said the PEA team asked the Board's bargaining team to use the reserve fund balance and were told the team was not authorized but would look into it. She said the PEA team asked for a report detailing the money that would be left in the budget after 2010. She said the Board's team explained there were too many line items to provide a projected carryover budget report for 2010. She said she thought if the District could project the budget for FY 2012 then it could provide a carryover projection for FY 2010. She said the District intended teachers to absorb 100% of the holdback even though they were never given an increase. She said the PEA team made an offer that both teams agreed would balance the budget as long as there was no holdback which was rejected by the Board's bargaining team. She said the PEA team said if a holdback occurred there were other resources the District could turn to but the Board's team rejected that option. She said there was no reason to start planning for FY 2012 right now. She said the bargaining teams could not negotiate for both years. She said there were also errors and overages in the District's budget. She said she was upset to find out the District had been working on the budget for 6 months when the Budget Committee had just started meeting in April. She said she would suggest the Budget Committee start meetings earlier in the following years. She said there were many errors in the District's line item budget. She said the District budgeted \$5,000 for AP Readers each year while no AP Readers had been contracted since 2006. She said \$23,000 was budgeted for graduation when the actual cost was only \$9,000. She said the District budgeted \$100,000 per year for legal services and only \$43,000 had been spent. She said that equaled 312 hours at \$160 per hour for attorneys. She said supply budgets at the schools had been cut, but not the District office supply budget. Mr. Rumel asked Ms. Wilkinson to talk about the PEA team's final offer. Ms. Wilkinson said the final offer of the PEA team was a 3.5% salary reduction that would have balanced the budget. She said teachers would only get reimbursed if a holdback was 2% or less with the rest going into the general fund. She said the Board's bargaining team would not agree to that. Mr. Rumel submitted an exhibit. There were no objections and the exhibit was admitted.

Mr. Rumel called James Ruchti to the witness stand. Mr. Ruchti was sworn in. He stated his full name and spelled his last. Mr. Rumel asked Mr. Ruchti his occupation. Mr. Ruchti said he was a State Representative from District 29 which was half of Bannock County. Mr. Rumel asked Mr. Ruchti if he resided in the area. Mr. Ruchti said he resided in Pocatello. Mr. Rumel asked him how long he lived in Pocatello. Mr. Ruchti said four years. Mr. Rumel asked if there was a process where stakeholders discussed financial emergencies. Mr. Ruchti said yes. He said in the legislature he assisted the House Leadership and was his job to pay attention to policy proposals and solutions. He said he met with the Governor and other entities and was in the loop. Mr. Rumel asked Mr. Ruchti if a negotiating session had taken place during the legislative session regarding the financial emergency statute. Mr. Ruchti said yes. He said representatives from the ISBA, IASA, IEA and legislators were a part of the negotiating session. Mr. Rumel asked Mr. Ruchti if he participated in the negotiating session. Mr. Ruchti said he was not involved in the negotiating session but was part of the group that received the reports. Mr. Rumel asked Mr. Ruchti what his view of the District's financial decisions was in light of the discussion and communications regarding a holdback. Mr. Julian said the witness' view was irrelevant as he could not

speak for the entire legislature. Mr. Rumel said Mr. Ruchti's background and involvement gave him a perspective that was valid and relevant. Mr. Smith asked Mr. Ruchti if he was going to speak to his own impression or the intent of the legislature. Mr. Ruchti said he was a policy maker and involved in the process and would give his opinion and let the Board decide. He said he felt the significance of the letter regarding a holdback was important and relevant. Mr. Smith told Mr. Ruchti to testify as to what the considerations were and to comment on the validity of the letter. Mr. Ruchti said the considerations were simple. He said the legislature was looking for a temporary solution to the economic downfall. He said no one believed the crisis would carry on for years. He said the problem with a short term solution was that the state was not producing enough jobs which meant patrons had less money, paid less income tax and spent less. Mr. Ruchti said the letter from the House of Representatives had no legal or policy effect and should be disregarded. He said the letter was the opinion of 4 out of 105 representatives. He said in order to pass legislation there must be 50 plus 1. He said the Idaho Constitution solely provide the Governor to call a special session of the legislature. He said the Governor would send a proclamation telling legislators to report to Boise to discuss items listed in the proclamation. He said the legislature was only allowed to consider issues listed in the proclamation otherwise discussion could only take place during the regular session. He said the gentlemen that wrote the letter had no authority to make such statements. He said the letter was later refuted by JFAC and Senators and the Governor had not spoken to the letter at all. He said holdbacks were generally proposed at the end of the fiscal year, not the beginning. He said revenue numbers went up and down but a financial emergency was not declared until all the data had been received. He said the letter stated a possible holdback announcement in September which was the second month of the new fiscal year. He said the letter was a run around of a well established constitutionally supported process. He said the process was very intense and discussion ranged from talking on cell phones while driving to K-12 education and budget meetings. He said for these gentlemen to disregard the process and send the letter was inappropriate. He said it would be the same as one of the School Board members who voted and lost going to the press and telling them their opinion was fact. He said many of the legislators were furious that the letter was sent. He said the other legislators had respect for the budgeting process. He said there was an economic outlook committee that heard testimony from various stakeholders and entities and predicted revenues for the coming year. He said the Governor budgeted \$82 million less than the committee recommended and the gentlemen that wrote the letter thought it should have gone another \$50 million less than that. He said those legislators worked to get people to accept a worst case scenario. He said those legislators had no data to support the worst case scenario and said they were going from their gut. He said by sending the letter those legislators were going around that process to get the number they wanted. He said current revenues were down but overall things were improving. He said policy makers needed to look at the big picture and see that sales tax and income tax numbers were showing positive signs. He said the state's economy was not all doom and gloom as those legislators would have everyone believe. Mr. Rumel asked Mr. Ruchti if he was present during the Superintendent's testimony. Mr. Ruchti said yes. Mr. Rumel asked Mr. Ruchti if he heard the Superintendent's comment on the Governor's statement. Mr. Ruchti said yes. Mr. Rumel asked Mr. Ruchti to tell the Board what the Governor said. Mr. Ruchti said the Governor had not said anything about a holdback. He said it was not addressed one way or the other. He said he was there when the Governor heard about the letter and the Governor had no reaction to it. Mr. Julian asked Mr. Ruchti if the Governor had guaranteed there would not be a holdback. Mr. Ruchti said he had not spoken to it but did not mean he would order one. Mr. Julian asked Mr. Ruchti if he thought that was for the current year or the following year. Mr. Ruchti said the Governor had not spoken to either. Mr. Julian asked Mr. Ruchti if the state was in a recession. Mr. Ruchti said the state of Idaho had struggled like everyone else in the nation and was coming out of a recession. Mr. Julian asked Mr. Ruchti if he could guarantee there would be no holdback. Mr. Ruchti said those responsible would need to prove a need for one and there was no data to support one. Mr. Julian asked Mr. Ruchti if the Governor ordered a holdback starting in September of 2009. Mr. Ruchti said he may have. Mr. Julian asked Mr. Ruchti if there was any rainy day fund. Mr. Ruchti said there was not much left. Mr. Julian asked Mr. Ruchti if the Governor might order a holdback in light of a lack of rainy day funds. Mr. Ruchti said maybe if the economy was in the same state as it was

one year ago but a holdback would need to be based on data and not gut instincts. He said many legislators were willing to look for other revenue enhancers and were very clear they would not go deeper into the budget. Mr. Julian asked why legislators did not go that route during the last session. Mr. Ruchti said there was a lot of pressure on the legislators that would not be there in the coming year. He said legislators were getting wiser as to outside influences and did not think it would be an issue during the next legislative session.

Mr. Smith recessed the Due Process Hearing at 8:32 p.m.

Mr. Smith reconvened the Due Process Hearing at 8:42 p.m.

Mr. Rumel called Kelley Ragan to the witness stand. Ms. Ragan was sworn in. She stated her full name and spelled her last. Mr. Rumel asked Ms. Ragan where she lived. Ms. Ragan said she lived at 6000 Arapahoe Street, Pocatello, Idaho. Mr. Rumel asked Ms. Ragan if she was employed with the District. Ms. Ragan said yes for 18 years. Mr. Rumel asked Ms. Ragan to speak to the Board but to avoid repetition. Ms. Ragan said she had been with the District for 18 years. She said she had PERSI. She said with PERSI if a teacher received a 0% increase it cut retirement benefits in half. She said she worked hard to get on her current pay scale. She said she had to work even harder to be fiscally responsible with insurance rates and bills increasing. She said the pay cut for her would mean not being able to pay her water, gas and electric and car insurance bills. She said she had saved the amount of money that she would be cut but could not live on that amount permanently.

Mr. Rumel called Maggie Calica to the witness stand. Ms. Calica was sworn in. She stated her full name and spelled her last. Mr. Rumel asked Ms. Calica what her occupation was. Ms. Calica said she was employed by the IEA. Mr. Rumel asked Ms. Calica if she was familiar with negotiations. Mr. Calica said yes. Mr. Rumel asked Ms. Calica to discuss her knowledge of negotiations. Ms. Calica said she worked with school districts in Idaho, Wyoming and Utah and had information to share regarding salary comparisons. She said she wanted to point out that the dollar difference between the PEA team's offer and the Board's team offer was \$483,484. She said it was a big difference. Ms. Calica reminded Mr. Sargent and Ms. Cranor that at the time of the Board opting-in to the financial emergency they asked teachers to trust them. She asked the Board to remember that they were discussing people whose lives were hanging in the balance. She said the concept of parity had not been part of the negotiating process until the last couple of session. She asked the Board if a 5% or a 6.91% cut across the board was parity. She asked why not reduce administrators by 12%, teachers by 3.5% and classified staff by 0%. She said the Board should look at what other comparable Districts had done. She said the Boise School District ratified its agreement weeks ago. She said the reduction was 2 furlough days with a 1% bonus if there was no holdback. She said the Meridian School District settled for a 3.6% reduction, 3 furlough days and 4 less training days. She said the Blackfoot, Oneida and Bear Lake School Districts settled on a salary freeze. She said the Marsh Valley School District took 5% salary reduction but the District paid the full insurance premium for an employee's entire family. She said the Cassia County School District took a 3% pay cut. She said the District's proposed salary was \$30,250 which was \$1,550 less than the Blackfoot School District's minimum salary of \$31,750. She asked what the District would do to attract new qualified teachers if it imposed a salary reduction without reaching an agreement. She said when other Districts froze salaries rather than reducing them they said they cared and thought teachers were a valuable resource. She asked the Board what they thought their valuable resource was. She asked the Board to look at the salary schedule of the Preston and Bear Lake School Districts. She said the District's proposal diminished the ability to attract qualified teachers. She said teachers were tax payers and parents and had needs to meet like everyone else but most of all they want what is best for students. She said the Board should consider cuts as far away from the classroom as possible. She said she had written down ideas for the Board and asked that they look at them and consider some of the options to maintain the best

possible salary for teachers. She asked the Board how it planned to work with staff on funding issues in the future if it imposed a salary for teachers rather than reaching an agreement.

Mr. Rumel called Bonnie Bakes to the witness stand. Ms. Bakes was sworn in. She stated her full name and spelled her last. Mr. Rumel asked Ms. Bakes where she lived. Ms. Bakes said she live at 3800 Silver Sage Lane, Pocatello, Idaho. Mr. Rumel asked Ms. Bakes if she was employed with the District. Ms. Bakes said no, she was a parent. Mr. Rumel asked Ms. Bakes to give her perspective on the budget cuts. Ms. Bakes said she felt there were other viable options and cuts were not a necessity. She said the proposed cuts were a severe overreaction that would send a message to the legislature that the District was willing to dig deep. She said she believed it would negatively affect the education of her children. She said the District would be unable to attract and retain qualified teachers. She said the District should not guess at the legislature's future actions or how the community would vote. She said she believed the District could pass both the transfer of School Plant Facilities Levy money to the general fund and the Supplemental Levy.

Mr. Rumel called Mark Echohawk to the witness stand. Mr. Echohawk was sworn in. He stated his full name and spelled his last. Mr. Rumel asked Mr. Echohawk where he lived. Mr. Echohawk said he lived at 9234 N. Sunset Avenue, Pocatello, Idaho. Mr. Rumel asked Mr. Echohawk if he had children in the District schools. Mr. Echohawk said yes he had 5 children in the District. Mr. Rumel asked Mr. Echohawk to speak to Board regarding his concerns as a parent. Mr. Echohawk said his first concern was that the real question was not being considered. He said the question was not if teachers were getting their Due Process rights, the question was whether or not the District's proposals were fair. He said it should not become a matter of procedure but a matter of right or wrong. He said the problem was not the lack of money; the problem was having the wrong priorities. He said he believed the District had scoured the budget thoroughly but it had done so with the wrong priorities in mind. He said cutting salaries was not the right thing to do. He said everyone would be hurt. He said parents would know that teachers were not a priority to the District. He said the legislature would know the District was okay with cutting education. He said by cutting salaries the District would slight teachers and students would know that teachers did not deserve respect. He said the Board needed to answer the real questions as to whether what was being proposed was right. He said the Board needed to send a strong message about where their priorities were. He said the Board needed to send a message that it had high regard for teachers and let the legislature know that the District is not okay with cutting education. He said by doing this it would increase the ability to demand greater performance. He said students were still deciding what they wanted to be when they reached adulthood and now was the time to attract the best and the brightest and to show the community that the District cares. He said regard for a teacher was a lost tradition. He asked the Board not to make a decision that would decrease the regard for teachers further. He said cutting salaries would compel the best teachers to look elsewhere for work. He said if the District did not pay teachers what they were worth someone else would benefit from their experience. He said he knew the financial situation was difficult but there were other options to be considered. He said cutting salaries would not solve the long term problems. He said if the District cut salaries it would lose qualified teachers and would then lose money by not meeting AYP. He said teachers that were paid less would do less and the District would not be able to demand performance. He said cutting salaries only took away motivation and passion. He said most teachers did not get to see the fruit of their labors but do what they do because they are motivated and passionate. He said his daughter loved to read because of her teacher's passion for reading. He said his son developed diligent study habits because of his teacher and his oldest son had a passion for physics, not because of his but because of his teacher. He said cutting teachers' pay would cut that enthusiasm and passion. He said teachers should not be asked to bear the burden of an underfunded educational budget. He said the Board needed to find somewhere else to cut and options were out there. He said there were better options than cutting the heart of education. He said kids did not need new parking lots or books if they had the best teachers. He asked the Board to not only consider the procedure

but to consider whether or not it was right. He said the District needed to find a way to show students that teachers deserve respect.

Mr. Rumel called Curtis Smith to the witness stand. Mr. Smith was sworn in. He stated his full name and spelled his last. Mr. Rumel asked where Mr. Smith lived. Mr. Smith said he lived at 1400 Colton Place, Pocatello, Idaho. Mr. Rumel asked Mr. Smith what his occupation was. Mr. Smith said he worked for the City of Pocatello and the Pocatello Fire Department. Mr. Rumel asked Mr. Smith to talk about the proposals from the Key Communicators meeting. Mr. Smith said he attended a Key Communicators meeting in April. He said 30-40 community members were present. He said the District's administration presented its position and explained the possibility of a 5.5% holdback. He said the Superintendent also explained they received correspondence from people saying there would not be a holdback. He said the District's administration asked those present to provide feedback on the proposals. He said the proposals included salary reductions, transferring School Plant Facilities Levy money, running a Supplemental Levy and cutting extra-curricular programs. He said the group was adamant that salaries should be the last option. He said it was ironic that the legislature had other options and chose not to use them and now the School Board was doing the same thing. He said he felt the community was not being heard or listened to. He said the input they gave fell on deaf ears. He said there were a lot of good proposals and a lot of options from the group that the District's administration would not listen to or accept. He said the patrons want to know why the rainy day funds are not being used when it's pouring out. He said on top of everything else a holdback may not even happen.

Mr. Rumel said he had no further witnesses.

Mr. Kumm recalled Superintendent Vagner. Mr. Smith said Ms. Vagner was still under oath. Mr. Kumm said that during the course of examinations Mr. Julian asked Ms. Vagner about a legal obligation to balance the budget. Mr. Julian said Mr. Kumm already had a chance to cross examine the witness. Mr. Smith asked Mr. Kumm if he had any new information. Mr. Kumm said he had new information and was just refreshing Ms. Vagner's memory. Mr. Kumm asked Ms. Vagner if she had to wear many hats as a Superintendent. Ms. Vagner said yes. Mr. Kumm asked Ms. Vagner if she had to interpret statutes and be an educator. Ms. Vagner said yes. Mr. Kumm asked Ms. Vagner if she was aware of an amendment of the legislature to establish and maintain a uniform system of public schools. Ms. Vagner said yes. Mr. Kumm asked Ms. Vagner if she had an opinion as to whether the District could provide free schooling under the proposed budget restrictions. Mr. Julian said it was a legal conclusion and Ms. Vagner was not a legal expert. Mr. Kumm asked Ms. Vagner if she had an opinion as the Superintendent and not a legal expert. Ms. Vagner said the District would provide a thorough educational system based on the revenues from ten years ago. Mr. Kumm asked if her answer was yes based on the money the District received. Ms. Vagner said the District could not provide services on money it did not receive. Mr. Kumm asked if the sale of Bonneville Elementary School was included in the District's financial exhibit. Ms. Vagner said the money from the sale of Bonneville Elementary School went into the School Plant Facilities Levy. Mr. Kumm asked Ms. Vagner if the Board had the authority to impose a 2% pay cut rather than the proposed 6.91% pay cut. Ms. Vagner said a last best offer was the decision of the Board. Mr. Kumm said he was referring to the Board's authority at the hearing and not a last best offer. Ms. Vagner said they did. Mr. Kumm asked Ms. Vagner if she was responsible to balance the budget if the Board decided on a 2% salary reduction. Ms. Vagner said she would be responsible for providing a recommendation for balancing the budget to the Board. Mr. Kumm said he had no further questions.

Mr. Thompson said he intended on calling witnesses but all of the previous testimony answered his questions.

Mr. Smith said attorneys had until Friday, May 28, 2010 by 12:00 p.m. to submit Findings of Fact and Conclusions of Law. He said the Board of Trustees had 7 days from the date of the Hearing to declare a decision.

Close Single Group Due Process Hearing

Chair Donnelly closed the Single Group Due Process Hearing at 9:23 p.m.

Summarize Decision Making and Timeline

Chair Donnelly said the Board would meet to summarize the Findings of Fact and Conclusions of Law submitted by all parties and the timeline at the Saturday, May 29, 2010 Special Meeting. She said Findings of Fact and Conclusions of Law were due to the Assistant Board Clerk no later than Friday, May 28, 2010 by 12:00 p.m.

Adjourn

A motion was made by Ms. Gebhardt and seconded by Mr. Sargent to adjourn the Single Group Due Process Hearing. The voting was unanimous in the affirmative. The Board adjourned at 9:25 p.m.

APPROVED ON:

MINUTES PREPARED BY:

Secretary, Board of Trustees

BY:

Chair

ATTESTED BY:

Clerk