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ARBITRATION PROCEEDINGS

- - -



SACRAMENTO CITY TEACHERS)
ASSOCIATION, CTA/NEA)

) Case No.
) 01-18-00034761

Grievant,)

vs.)

SACRAMENTO CITY UNIFIED)
SCHOOL DISTRICT,)

Employer/Respondent)
-----)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

VOLUME III

SACRAMENTO, CALIFORNIA

MARCH 13, 2019

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ARBITRATION PROCEEDINGS

- - -

SACRAMENTO CITY TEACHERS)
ASSOCIATION, CTA/NEA)
) Case No.
) 01-18-00034761
 Grievant,)
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 SACRAMENTO CITY UNIFIED)
SCHOOL DISTRICT,)
)
 Employer/Respondent)
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TRANSCRIPT OF ARBITRATION PROCEEDINGS, Taken at
5300 Elvas Avenue, Sacramento, California, Commencing At
9:41 a.m., WEDNESDAY, MARCH 13, 2019, Before Wendy
Harrity, CSR No. 11494.

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A P P E A R A N C E S

ARBITRATOR:

KENNETH PEREA, ARBITRATOR
P.O. Box 2788
Del Mar, California 92014-5788

FOR The CALIFORNIA TEACHERS ASSOCIATION:

By: JACOB F. RUKEYSER, ESQUIRE
1705 Murchison Drive
Burlingame, California 94010

FOR THE SACRAMENTO CITY UNIFIED SCHOOL DISTRICT:

LOZANO SMITH ATTORNEYS AT LAW
By: SLOAN SIMMONS, ESQUIRE
By: ERIN M. HAMOR, ESQUIRE
One Capitol Mall, Suite 640
Sacramento, California 95814

ALSO PRESENT:

JOHN BORSOS, CANCY McARN, NICOLE MILEVSKY

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I N D E X

EXAMINATION

WITNESS NAME:	CANCY McARN	PAGE
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DISTRICT EXHIBITS RECEIVED

X	Declaration of Matt Phillips	631
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ASSOCIATION EXHIBITS RECEIVED

21	2016 Tentative Agreement	589
22	Screen Shot	360

1 SACRAMENTO, CALIFORNIA; WEDNESDAY, MARCH 13, 2019;

2 9:41 A.M.

3

4 THE ARBITRATOR: We are back on the record.

5 Good morning, ladies and gentlemen.

6 We're at the sole of District's Case in Chief.

7 I have, I believe, two more witnesses, the first of whom

8 is Ms. Cancy McArn, M-c-A-R-N; is that correct?

9 THE WITNESS: Correct.

10 THE ARBITRATOR: Would you please raise your
11 right hand and I'll get you sworn under oath? Do you
12 swear to tell the truth, the whole truth and nothing but
13 the truth?

14 THE WITNESS: I do.

15 THE ARBITRATOR: Thank you.

16

17 DIRECT EXAMINATION

18

19 BY MR. SIMMONS:

20 Q. Ms. McArn, before we start, good morning.

21 A. Good morning.

22 Q. Just a reminder, per stipulations and
23 discussions with opposing counsel and the Arbitrator
24 last week, that my questioning of you today will presume
25 that all answers, which I -- which I -- all questions

1 which I ask you that relate to matters occurring outside
2 of closed-session proceedings, there is a narrow
3 exception that the Arbitrator has carved out here, which
4 I will assert is over my objection, but that
5 Mr. Rukeyser may ask specific questions where he says --
6 he asks you directly whether or not a specific subject
7 was -- I don't know how to correctly phrase this, but
8 was the subject matter, one which was raised in closed.
9 And that's the full scope of what he is permitted to
10 ask; am I correct in stating that?

11 THE ARBITRATOR: That's a fair summary, yes.

12 BY MR. SIMMONS:

13 Q. Ms. McArn, I'll remind you that we have a court
14 reporter here, so verbal answers as much as possible to
15 make sure we have a clear and complete record when we
16 are done with your testimony today.

17 Can you state your position with the District,
18 please?

19 A. I am a Chief Human Resource Officer.

20 Q. Prior to holding that position, what position
21 did you hold with the District?

22 A. This position had a couple different names,
23 Assistant Sup. at one point, but prior to that, I was HR
24 director and prior to that, I was the coordinator of the
25 Teachers Support Department, which works with what was

1 then BTSA, as well as --

2 THE ARBITRATOR: What was the last?

3 THE WITNESS: BTSA, BTSA, Beginning Teachers
4 Support and Assessment and intern. Then prior to that,
5 I was a teacher.

6 THE ARBITRATOR: All that's been with the
7 District?

8 THE WITNESS: All with the district.

9 BY MR. SIMMONS:

10 Q. And first year of teaching with the district,
11 was which year?

12 A. February of '97.

13 Q. And you said your current position previously
14 had a different title of Assistant Sup.?

15 A. Yes.

16 Q. How many years have you been in this position
17 whether title of assistant sup. or Chief Human Resources
18 Service Officer?

19 A. I think since about 2013.

20 Q. Ms. McArn, did you submit a declaration for
21 this proceeding?

22 A. I did.

23 Q. And you understand that having submitted a
24 declaration for this proceeding, Mr. Rukeyser will not
25 only be able to cross-examine you on questions I ask you

1 today, but any of the contents within the declaration?

2 A. Right.

3 Q. Do you recall about when you reviewed and
4 signed that declaration?

5 A. Last week, I think it was Wednesday.

6 Q. Before you is a copy of that declaration. Is
7 there anything within that declaration that, as you are
8 here presently to testify today, that you would like to
9 clarify or correct?

10 A. Yes, there was one portion in there -- I can
11 look through it.

12 Q. Yes.

13 A. There was one portion that was not -- that
14 needs to be corrected and it's on page 4, paragraph 15.
15 That's my fault and I missed that. It says, "Prior to
16 the first date of Superintendent Aguilar's meeting with
17 SCTA and Mayor Steinberg on November 4th, 2018," which
18 really should be following. It wasn't happening before
19 the meeting with the Mayor and Superintendent, but
20 after. The rest of that sentence, "the District made a
21 separate agreement with SCTA to give current and former
22 certificated employees unlimited experience credit for
23 purposes on placement on the certificate and salaried
24 schedule," and not former employees, but future
25 employees. So both following the meeting, there was an

1 agreement reached on unlimited years that ultimately
2 went to the board and then for current and future
3 employees regarding the unlimited years.

4 THE ARBITRATOR: So I struck the word prior and
5 inserted following. And then on the third line under
6 item 15, I struck former and inserted future.

7 THE WITNESS: Yes. And the last thing I would
8 say is the last sentence of that paragraph, "The
9 District's plan to apply such unlimited experience
10 credit in or about January to February," I don't think
11 it's accurate to have the time -- date there, January to
12 February. I mean the District did plan to apply
13 unlimited experience, but not necessarily those dates.

14 BY MR. SIMMONS:

15 Q. Ms. McArn, is there anything else in your
16 declaration that you would modify or correct?

17 A. No, that is what I noticed.

18 Q. At times, just so it doesn't get monotonous,
19 can I refer to you Cancy, but I'll go back and forth
20 with Ms. McArn and Cancy. Okay?

21 A. Whatever you want to do.

22 Q. Cancy, what is your understanding of SCTA's
23 Grievance in this matter?

24 A. SCTA Grievance is that the District has not yet
25 implemented the 3.5 related salary structure that is

1 noted in the Framework.

2 Q. What was your understanding as to the
3 District's -- recognizing that it is more complicated
4 than the general overview -- what would you say the
5 District's primary responsibility is as to the
6 Grievance?

7 A. That the salary structure was supposed to be --
8 with the SCTA salary structure, we were supposed to have
9 additional conversation to work out something mutually
10 agreeable and that this 3.5 percent noted was meant to
11 be an ongoing expense.

12 Q. To the extent that the District's view of 3.5
13 percent was an ongoing expense, how would that impact
14 this Grievance?

15 A. That the salary schedule as we know it cost
16 more than 3.5 percent.

17 Q. Ms. McArn, when a Collective Bargaining
18 Agreement term expires, what happens to the term of the
19 Collective Bargaining Agreement?

20 MR. RUKEYSER: Objection; calls for a legal
21 conclusion.

22 THE ARBITRATOR: I suppose perhaps it is legal
23 -- this is definitely a legal issue.

24 MR. SIMMONS: I would say that Ms. McArn, as
25 Chief Officer, I can ask what her understanding is.

1 THE ARBITRATOR: I think that's appropriate, I
2 understand you are not an attorney, but you can offer
3 your understanding. You've been doing this at least --
4 you said you were prior HR director?

5 THE WITNESS: Uh-huh.

6 THE ARBITRATOR: So you weren't -- were you an
7 HR director before 2013?

8 THE WITNESS: Yes.

9 THE ARBITRATOR: When did that begin?

10 THE WITNESS: I think that was around 2008
11 maybe.

12 THE ARBITRATOR: So since you've been in this
13 business, at least as HR director, you then had
14 certificated employees under your --

15 THE WITNESS: Certificated and classified.

16 THE ARBITRATOR: Okay. So witness has been in
17 this business since -- for a decade roughly. And so you
18 can offer your understanding of what happened when the
19 CBA expires. Is there an expiration date in this
20 agreement?

21 THE WITNESS: This agreement was a three-year
22 agreement, 2016.

23 THE ARBITRATOR: Same date in the Framework or
24 in any of the other attached --

25 THE WITNESS: I think it said June 30th.

1 THE ARBITRATOR: June 30th, 2019?

2 THE WITNESS: Uh-huh.

3 THE ARBITRATOR: Coming up very quickly?

4 THE WITNESS: Yes, quickly.

5 THE ARBITRATOR: All right. So give us your
6 understanding, please.

7 THE WITNESS: My understanding is that when a
8 contract ends, if you have not been able to reach an
9 agreement with the partner, that essentially most
10 provisions just roll over. We continue to pay people,
11 for example, for whatever it was that was agreed upon or
12 we continue like the same hiring practices following
13 what's in the contract.

14 BY MR. SIMMONS:

15 Q. Ms. McArn, having heard your explanation of
16 your understanding, what is your view as to why that is
17 relevant to this Grievance?

18 MR. RUKEYSER: I'm going to object on relevance
19 grounds. Her personal view is immaterial to the issues
20 that are presented to you, Mr. Arbitrator.

21 MR. SIMMONS: I would say her view, as the
22 Chief Human Resources Officer of the District, as to the
23 import of that understanding of how a CBA is directly
24 relevant to the issue in the Grievance, she is the
25 position within the District who would -- who can and

1 should best testify as to the District's position in
2 that regard.

3 THE ARBITRATOR: Yeah, I'm not sure that -- I
4 understand where the question is going. I will overrule
5 the objection and allow you to answer it.

6 THE WITNESS: Okay. Sorry, the question?

7 BY MR. SIMMONS:

8 Q. Ms. McArn, you testified, as to your
9 understanding, what happens to a CBA in terms of once it
10 expires. You testified to your understanding, as the
11 Chief Human Resources Officer, of what that means if
12 there has not been a newly negotiated CBA. I'm asking
13 you, again in your role for the District, what is the
14 relevance -- importance of that concept as it relates to
15 this Grievance?

16 A. As it relates to this Grievance, the salary
17 related amounts that were agreed to would continue and
18 roll on into next and future years, that it wouldn't
19 just end.

20 Q. I will let that answer stand at this pointed.
21 I think we will come back around to questions that maybe
22 will provide further context.

23 Ms. McArn, can you turn to the Joint Exhibit
24 binder turn to Joint Exhibit 1? Ms. McArn, are you
25 familiar with the document entitled the Framework

1 Agreement?

2 A. Yes.

3 Q. Can you explain, based upon page 1 of the
4 Framework Agreement, what your understanding was of the
5 terms of the Framework Agreement as it relates to
6 salary?

7 MR. RUKEYSER: Objection; foundation.

8 BY MR. SIMMONS:

9 Q. So when did you first -- strike that question.
10 We'll come back around.

11 When did you first learn of the results of the
12 negotiations from November 4th and 5th?

13 A. There was a phone call on Sunday evening
14 sometime, where I learned that an agreement had been
15 reached.

16 Q. Who reported that an agreement had been
17 reached?

18 A. Superintendent.

19 Q. What do you recall from that report the
20 Superintendent was covering?

21 A. I joined a little late. I had some family
22 things. But what I remember from that call was that an
23 agreement had been reached, that there was 2.5, 2.5, 2.5
24 percentage increases and 3.5 related to the salary
25 structure. The only other thing I remember is that an

1 agreement had been reached on the calendar.

2 Q. Based upon that report from the Mayor -- not
3 the Mayor, pardon me -- strike that.

4 From the Superintendent, do you recall the
5 Superintendent indicating that the 3.5 cap would come off
6 after '18/'19?

7 A. No, I do not.

8 Q. So based upon that update and your -- well,
9 let's come back. I don't want -- I understand that
10 opposing counsel, how he wanted --

11 THE ARBITRATOR: Can you tell me who was in
12 this call besides yourself, of course?

13 THE WITNESS: From what I remember and, again,
14 I joined late, so I didn't hear introductions. But from
15 what I can remember, it was Superintendent. There were
16 a number of board members, Deputy Superintendent. I
17 don't know if -- that's what I remember.

18 THE ARBITRATOR: Was the Mayor?

19 THE WITNESS: The Mayor.

20 THE ARBITRATOR: The Mayor was there?

21 THE WITNESS: I think the Mayor was on there
22 too.

23 THE ARBITRATOR: Okay. Thank you.

24 BY MR. SIMMONS:

25 Q. Following that update, was there a point in

1 time where you also discussed the Framework Agreement
2 with the Superintendent?

3 A. The first real conversation -- I mean, I think
4 things happened so quickly. I think the next day was
5 the press conference where the Mayor and -- well, a
6 press conference to share that an agreement had been
7 reached, which was very timely given, that there was a
8 strike pending, I think to start maybe that Wednesday or
9 sometime later that week, very shortly after.

10 We did sit down and in depth go through it. I
11 think the first time I remember that happening was
12 towards the end of the week. It was maybe -- I don't
13 know, towards the end of the week. I don't know if it
14 was Thursday or Friday.

15 Q. We will talk about the meeting you had
16 November 8th with SCTA and put into context the
17 chronology of how that occurred.

18 A. Yes.

19 Q. And I think that as a matter of sequence and
20 foundation, we'll come back to this Exhibit 1 in just a
21 moment.

22 Did you meet with SCTA representatives on
23 November 8th?

24 A. Yes, that would have been the Wednesday after,
25 I think, one of the regularly scheduled meetings, HR

1 SCTA meetings.

2 Q. And it's at that meeting, as we've heard, that
3 you received a copy for the first time of the Framework
4 Agreement?

5 A. I did.

6 Q. Can I have you turn to the District's Exhibit
7 C, Ms. McArn, please?

8 A. These are the same ones.

9 THE ARBITRATOR: Exhibit what?

10 MR. SIMMONS: District Exhibit C.

11 THE ARBITRATOR: C, okay.

12 BY MR. SIMMONS:

13 Q. Are you familiar with this document, Cancy?

14 A. Yes, this is an e-mail summary that I sent to
15 the Superintendent on Thursday, November 9th.

16 Q. What did -- what is included within this e-mail
17 summary; what is this summarizing?

18 A. It's summarizing the conversation that one of
19 my directors and I had in the November 8th meeting with
20 SCTA.

21 Q. Who was in the meeting with SCTA that day?

22 A. It was Cindy Nguyen, my employee relations
23 director, John Borsos, Nikki Milevsky and David Fisher.

24 Q. During that meeting, did you, in fact, discuss
25 the salary schedule components of the Framework

1 Agreement?

2 A. Yeah, in part, we did.

3 Q. Can you review the second paragraph of
4 Exhibit C there? You don't have to read it into the
5 record, but if you would read the second paragraph.

6 A. Okay.

7 Q. Based upon what you knew to date as of
8 November 8th, is that summary of what was shared at that
9 meeting with SCTA consistent with what you understood in
10 terms of the Framework Agreement?

11 THE ARBITRATOR: Can you be more specific in
12 your question?

13 BY MR. SIMMONS:

14 Q. Let's do this: Maybe it's -- by not reading
15 the record, it may be more ambiguous for the record. So
16 I'll ask you to read that second paragraph, Cancy,
17 please, out loud into the record?

18 A. "They went through what their understanding is
19 of the "Framework Agreement." In parenthesis they said
20 Framework a number of times as implying that the details
21 needed to be filled in, end of parenthesis. "They
22 shared that you and the Mayor didn't have time to get
23 into the weeds/details and the agreement signed over the
24 weekend was a Framework and now needed details to be
25 addressed."

1 Q. As of November 8th, based upon what you knew
2 about the Framework Agreement, is that summary in your
3 discussions with SCTA, was that consistent with your
4 understanding that details still needed to be worked out
5 as to the Framework Agreement?

6 A. Yes.

7 Q. Can you also turn down to the paragraph which
8 follows the bullet point list in your November 9th
9 summary?

10 A. Okay.

11 Q. Can you review that paragraph?

12 A. Yes.

13 Q. Ms. McArn, based upon the review of that
14 paragraph, what do you recall was the nature of your
15 discussion with SCTA on November 8th regarding the
16 salary structure component of the Framework Agreement?

17 A. It was a conversation. There was, I think,
18 John did most of the talking. I think there was someone
19 on the board trying to illustrate what it would look
20 like. I recall that it was -- that we had questions and
21 certainly the employee -- District's Employee Relations
22 Director was asking questions about pieces as we went
23 along. I was asking questions and what I remember most
24 is that it was almost like a thinking out-loud session.
25 I mean, the conversations got down to like the cells and

1 how it would work and, I mean, just general information
2 like that. That's what I remember.

3 Q. Based upon that discussion, did you understand
4 at that point that there had been any final agreement
5 reached as to the nature of the salary schedule
6 adjustment called for on the Framework Agreement?

7 A. No, it was -- to me it was clear we had a lot
8 of details to work out.

9 Q. During the November 8th meeting with SCTA, was
10 it ever stated to you that after '18/'19, the 3.5 cap
11 would be removed as to the salary structure adjustment?

12 A. No.

13 Q. As of 11/8, you understood that there were
14 still terms which needed to be worked out and finalized
15 as to the salary structure adjustment called for in the
16 Framework Agreement?

17 A. Yes.

18 Q. After your meeting with SCTA on November 8th,
19 did you have a further meeting with the Superintendent
20 to discuss the Framework Agreement?

21 A. Yes, after that meeting.

22 Q. And based upon your meeting on or around the
23 same day, November 8th or following your November 9th
24 summary e-mail, to the best of your recollection?

25 A. I think it was after my e-mail summary of the

1 prior day.

2 Q. And by that time, do you recall whether or not
3 you had ultimately received a copy of the Framework
4 Agreement from the Superintendent having already
5 received it for the first time from SCTA?

6 A. I received it when we met -- actually gave a
7 copy, but I already said that SCTA gave me a copy.

8 Q. During that meeting, did the Superintendent
9 summarize for you his views of what the meaning of the
10 Framework Agreement was?

11 MR. RUKEYSER: Did he establish when the
12 meeting with the Superintendent was?

13 THE ARBITRATOR: I know you said it was
14 afterwards. Was it the same day of the e-mail of
15 November 9th or was it a different day?

16 THE WITNESS: I can't really recall. It was
17 either that same day, Thursday, or the next day. It was
18 definitely after the e-mail. That's the e-mail --

19 THE ARBITRATOR: This e-mail is early in the
20 morning, 7:02 a.m.

21 THE WITNESS: Yes.

22 THE ARBITRATOR: But you can't --

23 THE WITNESS: So it was the same day or the
24 next day. It was one of the two.

25 THE ARBITRATOR: Okay.

1 BY MR. SIMMONS:

2 Q. And based upon that further meeting with the
3 Superintendent, was it -- did he explain to you his
4 understanding of the Framework Agreement and the salary
5 structure component?

6 A. What he shared around the salary structure at
7 that time was that 2.5, 2.5, 2.5 in the years, this 3.5
8 -- what I remember him emphasizing is that it needed to
9 stay within the 3.5 and that we needed to work to
10 address the middle of the salary columns we were
11 discussing earlier. That was the main focus.

12 Q. Do you recall, during that discussion with the
13 Superintendent, there being any indication that the 3.5
14 cap within the Framework Agreement was intended to go
15 away after '18/'19?

16 A. No.

17 Q. So let's turn back to Joint Exhibit 1, which we
18 stopped on briefly. We can now better describe how you
19 came into your understanding of it. So having had a
20 discussion with SCTA and the Superintendent and, as you
21 sit here today, what is your understanding of the salary
22 component or components of the Framework Agreement,
23 page 1 of Joint Exhibit 1?

24 A. That we were to implement and increase to 2.5,
25 2.5, 2.5 in each year and that there would be a brand

1 new salary structure with the maximum of 3.5 District
2 expenditures based on SCTA's proposed structure.

3 Q. So as to the 2.5, 2.5 and 2.5, which I've
4 gotten my math wrong already a couple times in this
5 arbitration, but I believe that totals 7.5. So those
6 amounted to -- what would you describe those as part of
7 the nature of that 7.5 increase, if we characterize it
8 as the type of salary increase it is?

9 A. The 7.5 that was added and, in some cases
10 retro, would be ongoing as would the 3.5. So in
11 totality, we would be looking at 11 percent.

12 Q. Based upon your understanding of how a CBA
13 works, upon expiration of the present CBA, those costs
14 would continue forward?

15 A. Yes.

16 Q. What was your understanding of the date upon
17 which the 3.5 salary schedule adjustment would go into
18 effect?

19 A. July 1, 2018.

20 Q. And is there anything, in your mind, within the
21 Framework Agreement that would indicate a different
22 commencement or implementation date?

23 MR. RUKEYSER: Objection; vague. Objection;
24 calls for speculation. Irrelevant.

25 THE ARBITRATOR: I suspect it is going to be

1 no. But you can just rephrase the beginning of it.

2 MR. SIMMONS: All right.

3 BY MR. SIMMONS:

4 Q. Is there anything -- I've asked this question
5 before and I anticipate counsel will say this document
6 speaks for itself, but I will ask anyway. Is there any
7 -- is there any expressed implementation date noted on
8 the Framework Agreement as to the 3.5 maximum district
9 expenditure?

10 MR. RUKEYSER: I will, in fact, raise that
11 objection.

12 THE ARBITRATOR: It does speak for itself.
13 It's not in the document, obviously. Did you want to
14 follow-up?

15 MR. SIMMONS: No, that's fine.

16 BY MR. SIMMONS:

17 Q. Bear with me for just a second. Cancy, could
18 we move to Joint Exhibit 11, please? This Joint Exhibit
19 is a series of e-mails, Ms. McArn. Are you familiar
20 with these e-mails?

21 A. Yes.

22 Q. They are entitled, Loose Ends; is that correct,
23 the title of the e-mail chain?

24 A. Yes.

25 Q. Can I have you turn all the way back to the

1 first e-mail in the chain that is joint Exhibit 11?

2 A. All the way to the back.

3 Q. It's actually page 11.

4 A. Okay.

5 Q. Page 11 is where the first e-mail starts.

6 A. Okay.

7 Q. The e-mail is addressed from who to who?

8 A. It is from John Borsos to me.

9 Q. The date of that message?

10 A. It is November 9th.

11 Q. So this was the day following your November 8th
12 meeting in which you met with Mr. Borsos?

13 A. Right.

14 Q. And can you read into the record the second
15 sentence within Mr. Borsos's original Loose Ends e-mail?

16 A. We identified the need to meet with Gerardo to
17 discuss how the proposed salary schedule that will go
18 into effect in July 1, 2018, will be implemented to fit
19 within the 3.5 percent total certificated payroll cost."

20 BY MR. SIMMONS:

21 Q. Cancy, was Mr. Borsos's reference of July 1,
22 2018, effective date in Joint Exhibit 11, consistent
23 with your understanding of the intent of the Framework
24 Agreement as it relates to the salary structure
25 adjustment?

1 A. Yes.

2 Q. What, in your mind -- what, in your experience,
3 is the significance of the July 1, 2018, date in terms
4 of costing out an intended salary structure adjustment?

5 A. That would be looking at the whole year. We
6 would be looking from July 1st until June 30th of the
7 year.

8 Q. Was the 3.5 percent reference in Mr. Borsos's
9 November 9th e-mail consistent with your understanding
10 as to the intent of the Framework Agreement in relation
11 to the salary structure adjustment?

12 A. Yes.

13 Q. Do you recall whether in this e-mail or in any
14 of the other exchanges in Joint Exhibit 11 with regard
15 to Loose Ends ever stated that the 3.5 cap would be
16 removed after '18/'19?

17 A. Not that I recall.

18 Q. Did you respond to Mr. Borsos's November 9th
19 e-mail?

20 A. I didn't respond to him, no.

21 Q. Can you turn to Joint Exhibit 12, Ms. McArn?
22 Again, a chain of e-mails which we discussed in fair
23 detail. Are you familiar with this chain of e-mails
24 entitled, Tying Up the Last Loose Ends?

25 A. Yes.

1 Q. And what do you understand this e-mail chain to
2 reflect?

3 A. This was nearing the end of the conversations
4 that were taking place between Superintendent and SCTA
5 leadership. And some of the loose ends as noted in
6 here, some areas around Article 5 and Article 17 and
7 some areas around Appendix D were noted in what
8 eventually was agreed to.

9 Q. If you were to describe Joint Exhibit 11 and
10 Joint Exhibit 12 together, what would you describe your
11 -- what they reflect?

12 A. They really do reflect a number of details that
13 hadn't been worked out or covered in the Framework
14 Agreement that were ultimately agreed to and presented
15 to the board in December.

16 Q. Were there discussions within Joint Exhibit 11
17 and 12 as to salary structure issues?

18 MR. RUKEYSER: I will object. The documents do
19 speak for themselves.

20 THE ARBITRATOR: Yeah, the documents speak for
21 themselves.

22 MR. SIMMONS: All right. That's fine.

23 BY MR. SIMMONS:

24 Q. Who was -- I think you already testified to
25 this, but who was responding on behalf of the District

1 in terms of the Joint Exhibits 11 and 12?

2 A. Superintendent.

3 Q. Were you involved in assisting the
4 Superintendent in preparing responses in relation to
5 Joint Exhibits 11 and 12?

6 A. Some of it, yes.

7 Q. Although I think Mr. Rukeyser will again raise
8 his similar objection, I'm going to ask it anyway. I
9 think it is important to have an answer to this. Based
10 upon your understanding of Joint Exhibits 11 and 12, did
11 anywhere in those documents the Superintendent agree to
12 a final mutually agreed upon salary schedule adjustment
13 on behalf of the District?

14 MR. RUKEYSER: Same objection.

15 THE ARBITRATOR: Since it is subject to
16 interpretation, I'll allow the witness to answer.

17 THE WITNESS: There was not a -- I can repeat
18 it. There was not a salary schedule agreement structure
19 that -- I'm sorry, repeat it.

20 BY MR. SIMMONS:

21 Q. I will ask it again. I apologize. That's what
22 I get for long, run-on questions. Based upon your
23 familiarity with Joint Exhibits 11 and 12, is anywhere
24 within them that the Superintendent, in writing,
25 indicates an agreement to a final mutually agreed upon

1 salary structure adjustment?

2 A. No.

3 Q. Ms. McArn, can I have you turn to page 2 of
4 Joint Exhibit 12, please? There at the top, there's a
5 November 30, 2017, 11:58 time stamp. Are you familiar
6 with this communication within this Joint Exhibit 12
7 e-mail chain?

8 A. Yes.

9 Q. Based upon that chain, what's your recollection
10 of that -- what do you recall about, if anything, that
11 November 30, 2017, e-mail?

12 A. The majority of this on page 2 actually became
13 what was agreed to and signed off on.

14 Q. Ms. McArn, can I have you read item 6-A in that
15 November 30th e-mail exchange?

16 A. Okay. It says, salary schedule adjustment 6-A
17 says, "Within 30 (45 days) of the Tentative Agreement
18 approval, the parties agree to finalize a mutually
19 agreeable adjustment to the salary schedule for the
20 2018-19 that does not exceed a total District
21 expenditure of 3.5 percent."

22 Q. Ms. McArn, do you recall whether this November
23 30th e-mail in item 6-A were ultimately made part of the
24 Tentative Agreement that was approved by the District's
25 governing board on December 7th, 2017?

1 A. Yes, this was one of the parts included.

2 Q. Can I have you turn to the Joint Exhibit 8,
3 please? I will ask you to turn to page 3 of 83. Is
4 this that e-mail which we just discussed, Ms. McArn?

5 A. Yes.

6 Q. Who do you understand to have initialed this
7 e-mail?

8 A. Superintendent Aguilar and David Fisher.

9 Q. It is your understanding that this was made
10 part of having been approved by SCTA and ultimately the
11 District's governing board?

12 A. Yes.

13 Q. Did you have any conversation with Mr. Borsos
14 or exchange any type of communication with Mr. Borsos
15 with regards to this 45-day time line?

16 A. I do remember, as I was preparing the
17 PowerPoint and working on those pieces, that there was
18 some -- I was confused, 35 versus 45 -- 30, I'm sorry,
19 30 versus 45 and wanted to ensure that whatever was put
20 up on the PowerPoint wouldn't later be a problem. I
21 remember talking to John to see if he had an indication
22 one way or the other, 30, 45 and ultimately ended up
23 putting in 45.

24 Q. So in terms of chronology, Superintendent
25 Aguilar's e-mail is November 30th. We know the board is

1 preparing materials for the board meeting December 7th.
2 I believe if you turn to page 1 of Joint Exhibit 8, the
3 date which shows it was signed was the 4th of December.
4 Based upon those kind of bookends, what would you --
5 what is your recollection as to the date in which you
6 and Mr. Borsos are having that discussion?

7 A. It was either the day before the board meeting
8 or the day of the board meeting and it was just a quick
9 phone conversation.

10 Q. Cancy, did you meet with SCTA on December 1st,
11 2017?

12 A. Yes.

13 Q. Leading up to that meeting, between November
14 8th and November 30th, 2017, had you had any further
15 face-to-face direct meetings with SCTA on the Framework
16 Agreement?

17 A. No, I don't think so.

18 Q. As of November 30th, 2017, having been familiar
19 with and assisted on responses for Joint Exhibits 11 and
20 12 as you testified, what was your understanding of the
21 Framework Agreement salary structure component as of
22 November 30th, 2017?

23 A. Essentially what it says in here, that we were
24 to look at a new salary schedule structure with the
25 maximum expenditure of 3.5 and that Superintendent

1 wanted Deputy Superintendent Allen and I to meet to make
2 sure that we had a clear sense of what was meant by that
3 schedule.

4 BY MR. SIMMONS:

5 Q. So is it safe to say that based upon the 45-day
6 time line, as of November 30th, you had no expectation
7 that a final agreed upon salary structure adjustment
8 would be reached before the board took action on
9 December 7th?

10 A. No, I mean, it's parameters, right, but that we
11 had a final salary schedule to present to the board, no.

12 Q. So let's go back to your December 1st meeting
13 with SCTA. Who was present at that meeting?

14 A. It was me, Lisa Allen, John Borsos and David
15 Fisher.

16 Q. Do you recall what was discussed at that
17 meeting?

18 A. What I remember from that meeting is that SCTA
19 shared the number of documents on the table, different
20 schedules, different things were lined up on the table.
21 John did most of the talking. Lisa and I asked
22 questions. I remember at the beginning of the meeting,
23 Lisa saying that we're here on behalf of the
24 Superintendent and that we weren't agreeing to anything,
25 but it was our job to better understand.

1 I remember asking lots of questions about what
2 was meant and what it would be with regards to the
3 salary schedule to the implementation. I remember at
4 one point John saying this is good because this is going
5 to be -- help my questions. This will be good. It was
6 going to be helpful as they explained it to their
7 membership and others. I remember just seeking --
8 asking questions.

9 Q. Did you or Ms. Allen indicate during that
10 meeting to the SCTA representative that you were going
11 to or consenting to any final salary structure or salary
12 structure adjustment within the confines of that
13 meeting?

14 A. No. As a matter of fact, that's how Lisa
15 started the meeting. We were here on behalf of the
16 Superintendent to get a better understanding that there
17 were no agreements. We were seeking to understand so
18 that we could later explain it.

19 Q. Did you, during that meeting, indicate to SCTA
20 that you would make the documentation provided to you
21 that day part of the public agenda item for actions
22 before the board on December 7th?

23 A. No.

24 Q. So your overall understanding of the purpose of
25 the December 1st meeting with SCTA, was what?

1 A. We were trying to make sure that we understood
2 it enough to be able to say what SCTA thought it meant,
3 if that makes sense.

4 Q. There is an -- I phrase it this way because you
5 were sitting here as the testimony was given, but there
6 has been testimony as to you rehearsing during that
7 meeting. What do make of that proposition?

8 A. I don't know that it was rehearsing. I was
9 asking questions because I didn't know that we would --
10 I mean, specifically we were there to be able to tell
11 the Superintendent what they meant -- Superintendent and
12 others. So I wanted to make sure that I was going to be
13 able to speak to whatever it is that they were sharing.
14 So as we went and debriefed the Superintendent to say,
15 you know, this is what is meant.

16 Q. So following the December 1st meeting, there's
17 a board meeting scheduled for December 7th, correct?

18 A. Right.

19 Q. So already agendized by December 1st, but --
20 already been a scheduled meeting as of December 1st?

21 A. Goes out the Friday before, so whatever the
22 date was.

23 Q. Cancy, can I have you turn to the Union's
24 binder, the white one, and Union Exhibit 10?

25 A. Yep.

1 Q. Are you familiar with that document?

2 A. Yes.

3 Q. Do you recall seeing that document before
4 December 7, 2017?

5 A. Before December 7th, yes.

6 Q. So it was transmitted from Mr. Borsos on what
7 date?

8 A. December 6th.

9 Q. What did you understand import to be of this
10 document received from Mr. Borsos?

11 A. When it was shared with me, what I understood
12 is based on the meetings that Lisa and I had with John
13 and David and, at the Superintendent's request, there
14 was -- originally, I think, there would be something
15 joint put together, but essentially that John was
16 putting together a narrative, an explanation of the
17 salary schedule.

18 Q. What did you believe -- to the extent that you
19 testified to that on November 30th, there was an
20 agreement to have a mutually agreed upon salary
21 structure adjustment in 45 days, how does that match up
22 with this December 6th narrative?

23 A. The December 6th narrative was, I think, SCTA
24 explaining essentially some of what had been talked
25 about. They talked about the going from 26 to 20 and

1 the columns. So I think it was them describing how they
2 anticipated or how they saw it. And your question,
3 sorry, was how that relates to what I understood on the
4 30th.

5 Q. Yes.

6 A. Yes, I mean, it was a work in progress, I
7 guess.

8 Q. What, as of early December, were, in your mind,
9 the important costing issues that needed to be worked
10 out to the salary structure adjustment?

11 A. Like I said, speaks to the work in progress
12 negotiation. I think it was clear that we needed some
13 additional details to be able to effectively cost it
14 out. Details such as the unlimited years of experience
15 credits for current and future teachers coming into the
16 District, knowing what looks like would be important.
17 Knowing -- in our current salary schedule, we had
18 columns that were BA plus 45, and part of SCTA's set
19 salary schedule has a BA plus 60, so ours goes to BA
20 plus 45, the current. So BA plus 45 to BA plus 75, so,
21 obviously BA plus 60 is in between. So needing to know
22 how many of those would be in this new column. Things
23 like that would be part of a costing -- would be needed
24 to cost.

25 Q. Cancy, to the extent there's a 3.5 cap in

1 costing than not -- there wasn't added to the facts as
2 you're describing or information you had to cost out
3 proposed adjustment to the structure, as of
4 December 2017, was there a possibility that upon
5 costing, it would be hard or impossible to do an
6 adjustment within the 3.5 cap that had been agreed to in
7 the Framework Agreement?

8 A. We had not done the costing. We couldn't do
9 the costing yet. For example, the unlimited years, we
10 eventually did work out a process to use to try to
11 capture the unlimited years and a timeline for that.
12 And then the implementation of that, all of that which
13 was into the 2018 calendar year.

14 Q. We will come back to that in greater detail.
15 In your view, as of December 7th, 2017, could the
16 District have presented to the governing board a final
17 proposed salary structure adjustment within the 3.5 cap
18 of the Framework Agreement for board approval?

19 A. No.

20 Q. Let's turn to Joint Exhibit 4, please.
21 Ms. McArn, were you present the night of the District's
22 December 7th, 2017, board meeting?

23 A. Yes.

24 Q. Are you familiar with what Joint Exhibit 4 is?

25 A. Yes.

1 Q. Would you describe what Joint Exhibit 4 is?

2 A. It is the AB 1200 disclosure of cost and
3 approval of the Tentative Agreement with SCTA.

4 Q. That first page of that -- what is this in
5 relation to the board's agenda that night on
6 December 7th; is this the agenda packet?

7 A. This is the agenda packet. It has a cover
8 sheet and then it's followed by an executive summary.
9 And then it is followed by the AB 1200 and then,
10 finally, the agreement, the Tentative Agreement.

11 Q. This agenda item would be made available to the
12 public, correct?

13 A. Yes.

14 Q. And would have been before the District's
15 governing board?

16 A. Yes.

17 Q. Did you assist in preparing page 1 of this
18 document or did you prepare it?

19 A. I did assist in preparing page 1.

20 Q. Turning to the executive summary section of the
21 agenda item, did you prepare or assist in preparing that
22 portion of the agenda packet?

23 A. I did assist in preparing the executive
24 summary.

25 Q. Cancy, can you turn to page 4 of the executive

1 summary under the compensation section?

2 A. Uh-huh; yes.

3 Q. What do the first two bullets of the
4 compensation section of the executive summary reflect,
5 in your view?

6 A. The first bullet that the salary increases, the
7 2.5 '16/'17, 2.5 '17/'18 and 2.5 for '18/'19, if
8 approved, would go into play. The second bullet noting
9 that within 45 days of the approval, that we would be
10 meeting to finalize mutually acceptable adjustment to
11 the salary schedule that doesn't exceed the expenditure
12 of 3.5 percent effective July 1, 2018.

13 Q. Is that first bullet consistent with your
14 understanding?

15 THE ARBITRATOR: First bullet or second bullet?

16 MR. SIMMONS: First bullet.

17 BY MR. SIMMONS:

18 Q. Is the first bullet consistent with your
19 understanding with the Tentative Agreement that was
20 before the board for approval that night, including the
21 Framework Agreement, part of the Tentative Agreement?

22 A. Yes.

23 Q. And where would you -- based upon your prior
24 testimony and other documents we discussed, where do you
25 believe the 45-day time line from the second bullet is

1 derived from in the executive summary?

2 A. From the e-mail that we reviewed earlier.

3 Q. So is that second bullet, in your mind,
4 consistent with the documents and contents of the
5 Tentative Agreement, including the Framework Agreement
6 and the November 30th e-mail from Superintendent Aguilar
7 initialed by the parties?

8 A. Yes.

9 MR. RUKEYSER: Excuse me. At a convenient
10 time, can we take a short recess?

11 MR. SIMMONS: Sure.

12 THE ARBITRATOR: Is that all right? Do you
13 want to ask another question?

14 MR. SIMMONS: How quickly?

15 MR. RUKEYSER: Just want to rush to the
16 restroom.

17 MR. SIMMONS: Go ahead.

18 (Whereupon a recess was taken.)

19 THE ARBITRATOR: Back on the record.

20 BY MR. SIMMONS:

21 Q. Ms. McArn, we left off on your summary of the
22 executive summary, item 4. Can I have you turn to Joint
23 Exhibit 5, the following document in that binder. Are
24 you familiar with Joint Exhibit 5?

25 A. Yes, it looks like the PowerPoint.

1 Q. And what was this PowerPoint used for?

2 A. The presentation to the board recommended that
3 they approve AB 1200 disclosure cost and approve the
4 Tentative Agreement with SCTA.

5 Q. Were you involved in the preparation and
6 determination of the contents of this PowerPoint?

7 THE WITNESS: I was involved, yes.

8 BY MR. SIMMONS:

9 Q. Can you turn to page 4 of Joint Exhibit 5?
10 What do slides 7 and 8 cover in the PowerPoint?

11 A. Article 12, which is the compensation article.

12 Q. And is it your testimony that this PowerPoint
13 presentation is consistent with the executive summary in
14 agenda item 8.4?

15 A. Yes.

16 Q. Did you present on agenda item 8.4 to the
17 District's governing board?

18 A. Yes, I was present first.

19 Q. There were others presenting with you?

20 A. Uh-huh; yes.

21 Q. And in your presentation to the governing
22 board, I assume that presentation, at least in terms of
23 compensation, covered the contents which is in this
24 PowerPoint of the executive summary?

25 A. Yes.

1 Q. Apart from the executive summary and agenda
2 item 8.4, Joint Exhibit 4, is there another document
3 within Joint Exhibit 4 that was also part of this agenda
4 packet? I'll have you turn back to Joint Exhibit 4.
5 We'll bounce back and forth.

6 A. The agenda item included a cover, the executive
7 summary, the AB 1200, as well as some signed agreement.

8 Q. So let's turn to what you referred to as
9 AB 1200 hundred, which is the first page following the
10 executive summary.

11 A. Yes.

12 Q. Are you familiar with this document?

13 A. Yes, I have seen it.

14 Q. Who prepared this document, as you recollect?

15 A. AB 1200s are prepared by our CBO.

16 Q. And signed off on just by the CBO or someone
17 else, as well?

18 A. I believe Superintendent also signs off on it
19 in addition to the CBO.

20 Q. Do you know who this document is submitted to
21 prior to it becoming part of the board packet?

22 A. The County Office of Ed.

23 Q. Did you have an understanding at the time what
24 the District's AB 1200 disclosure reflected in terms of
25 anticipated cost of the salary component of the

1 Tentative Agreement that was on the agenda for approval
2 by the board that night?

3 A. The AB 1200 has to take into account all of the
4 finances related to a contract. So the salary
5 increases, as well as anything else.

6 Q. What was your understanding, as of
7 December 7th, the District's AB 1200 disclosure form
8 represented was the cost of the salary components in the
9 Tentative Agreement before the board that night?

10 A. Yes, it has the 2.5, 2.5 and then it says 6
11 percent combining the 3.5 and the 2.5, for a total of 11
12 percent.

13 Q. Was there, to your knowledge, anything within
14 the AB 1200 disclosure that would have indicated the
15 cost for implementing the Tentative Agreement as to
16 salary would increase after the '18/'19 school year?

17 A. No, 11 percent ongoing.

18 Q. In your presentation to the board on agenda
19 item 8.44 and to the public that evening, did you
20 indicate to the board that the cost of this salary
21 structure, the Tentative Agreement would be 11 percent
22 through '18/'19, then would increase after '18/'19?

23 A. In our presentation -- well, the AB 1200 speaks
24 to ongoing costs. There is nothing to the say that it
25 ends.

1 Q. Apart from the District, you and the District's
2 administrative team, did the presentation you made to
3 the board that night in open session, did anyone else
4 present to the board that night on agenda item 8.4 that
5 you can recall?

6 A. Yeah, Superintendent Gordon presented -- made
7 remarks to the board.

8 Q. Do you recall in terms of County Superintendent
9 Gordon's remarks to the board, whether he had made the
10 assumption about the cost of the salary component of
11 this Tentative Agreement?

12 A. I believe he had issued warnings with regards
13 to the District's approving an agreement and he was very
14 clear that those were ongoing costs.

15 Q. Did anyone from -- to the best of your
16 recollection, did anyone from SCTA address the District
17 board the night of December 7th as it relates to agenda
18 item 8.4?

19 A. I don't know if it was at 8.4, I think that
20 leadership did say something about encouraging to
21 approve or something like that.

22 Q. Do you recall any member of SCTA leadership or
23 other SCTA member communicating to the board at the
24 meeting that night that the projected cost of the salary
25 components of the Tentative Agreement before the board,

1 as reflected in the AB 1200 disclosure, were inaccurate?

2 A. No.

3 Q. Did the governing board take action on
4 December 7th to approve the action under agenda item
5 8.4?

6 A. Yes.

7 Q. Do you recall whether SCTA membership approved
8 the Tentative Agreement before or after the District's
9 governing board?

10 A. It was after. They ratified after.

11 Q. Following the December 7th board meeting, what
12 was your recollection as to what needed to occur next in
13 terms of the salary structure?

14 A. That terms of the salary structure, there were
15 a number of pieces, like the unlimited years, like the
16 better understanding how it all fits together. It still
17 needed to be costed out from what I recall. Also the
18 column, the BA plus 60 -- conversation costing those
19 kinds of things still needed to take place.

20 Q. Ms. McArn, can I have you turn to District
21 Exhibit N, please? N as in noon. I'll ask you to
22 review that document. I just have a few brief questions
23 with regard to it.

24 A. Yes.

25 Q. Cancy, having reviewed that document, do you

1 recollect having sent that e-mail on December 14th,
2 which is Exhibit N?

3 A. Yes.

4 Q. What was the purpose of this e-mail?

5 A. To let principals and other District leaders
6 know about the details of the agreement that was
7 approved by the board. At an upcoming meeting, we would
8 be talking about and answering questions related to the
9 agreement that was approved and then a little summary of
10 each Article.

11 Q. So the summary is that which -- in terms of the
12 exhibit -- commenced after the e-mail stops?

13 A. Right, the attachment.

14 Q. The title of that being -- the title of the
15 attachment?

16 A. Summary of Tentative SCUSD Agreement with SCTA
17 12/14/17.

18 Q. Cancy, can you turn page 4 of that summary,
19 please? If you look at Article 12, Compensation,
20 subparts A, B, C and D, if you can review those, please?

21 A. Okay.

22 Q. Would you say your summary on A through D is
23 consistent or inconsistent with that which was before
24 the board on December 7th, as far as your executive
25 summary?

1 MR. RUKEYSER: I'm going to object on relevance
2 grounds, given this document post dates the ratification
3 of the Collective Bargaining Agreement by both parties.
4 To that extent, it's irrelevant.

5 MR. SIMMONS: I would say relevance to the
6 extent that parol evidence is to the understanding. And
7 meeting the terms is not only limited to communications
8 before, but also after. If this is a close-in-time
9 communication that continues to reflect the District's
10 understanding --

11 THE ARBITRATOR: That is a special situation,
12 so I'll allow the answer.

13 THE WITNESS: It is consistent.

14 BY MR. SIMMONS:

15 Q. I'll ask, is it consistent with the idea there
16 was still work to be done as to reaching a mutually
17 agreeable salary structure adjustment within the 3.5
18 cap?

19 A. It is consistent.

20 Q. You mentioned it and it may be a good place to
21 jump off to there, to subpart E of the summary. Can you
22 review that?

23 A. Yes.

24 Q. Maybe just for a better record in that respect,
25 let's go back to Joint Exhibit 4 again, the agenda item

1 and the executive summary. Again, on page 4 of the
2 executive summary, Cancy, under Compensation, I would
3 ask you to review the third and fourth bullet under that
4 portion.

5 A. Okay.

6 Q. Ms. McArn, what do those bullets in the
7 executive summary relate to?

8 A. Unlimited years of qualified experience,
9 seeking that we would now start accepted unlimited years
10 for new hires as they came into the District. And then
11 the next bullet with regards to current members --
12 current teachers.

13 Q. This, in part, is related to the paragraph
14 which you had some provisions in your declaration this
15 morning?

16 A. Right. After the meeting is when all of this
17 was agreed and taken to the board.

18 Q. Can you turn to Union Exhibit 12 in the white
19 binder, please? Can you review that two pages of
20 e-mails and then the attachment there, please?

21 A. Yes.

22 Q. What do the e-mails reflect, Ms. McArn?

23 A. Following a meeting we had with SCTA where we
24 were talking about how this would work, how unlimited
25 years would work, how much time do we need to process

1 the details around it. Cindy Nguyen, our employee
2 relations director, worked on a draft, sent it to the
3 Union. And then John responded, wanted to make sure it
4 was thoroughly vetted. Our people still needed to
5 review it, to which I responded that we would be good
6 with what was attached and asked if they had any
7 suggestions for consideration.

8 Q. Cancy, with that context, what does the
9 attached document reflect?

10 A. The process that we talked about using to try
11 to figure out who needed to be placed additionally for
12 the unlimited years of experience, so explaining to
13 people who would be eligible, what teaching experience
14 allied, all of those things met a long with the
15 timeline. Because in this case, we were going to depend
16 on teachers to come forward and share their information
17 with us. We set a deadline for that of February 15th,
18 noting it would be retro back and that anything that
19 came in after that would be processed as it came in.

20 Q. Ms. McArn, how would processing an unlimited
21 years of experience impact the determination of a final
22 salary structure adjustment?

23 A. Because for the salary structure adjustment,
24 you need to look at each cell, where they are with
25 regards to years, where they are with regards to

1 education. And since we knew there would be some
2 movement, didn't know exactly what it would look like,
3 but there would be some movement of people. Needing to
4 know this first, would allow for more accurate costing.

5 Q. Did, in fact, the District implement this
6 agreement with SCTA to memorialize this attached
7 document?

8 A. Yes.

9 Q. By what approximate date was the District able
10 to complete processing the steps necessary to finalize
11 application of those unlimited service credits?

12 A. For the ones that came in by this date -- there
13 were some that trickled in after, but I think, for the
14 most part, it was like end of March, beginning of
15 April-ish.

16 Q. Did the application of the unlimited service
17 credit component agreed to with SCTA result in an
18 increase or decrease in salary cost for the District?

19 A. An increase.

20 Q. Can you explain why that would be the case?

21 A. People were moving to higher -- to increase the
22 years on the salary budget, so they weren't moving
23 backwards. They were moving forward.

24 Q. Now, you've described that as part of the
25 costing component that would need to be accounted for

1 before attempting to the get a session of a final
2 adjustment. What is another factor, in your mind, that
3 needed to be accounted for and costed out before being
4 able to see what might work for a final salary
5 adjustment?

6 A. I think the notion of the columns that are the
7 BA plus 60, the additional columns that would be located
8 in -- because on the SCTA salary schedule, there would
9 still be five columns, but instead of going up to BA
10 plus 103, it would only go up to BA plus 90. But it
11 would create an additional column in there and we need
12 to know who was in there would be an important
13 consideration, as well.

14 Q. Do you recall a meeting with SCTA in May of
15 2018?

16 A. I do.

17 Q. Can I have you turn to District Exhibit O?

18 A. District Exhibit O?

19 Q. O?

20 A. Okay.

21 Q. Initially I'm just going to ask you to briefly
22 review that document, Cancy, starting at the June 11th,
23 2018, 10:00 a.m. line.

24 A. Okay.

25 Q. Cancy, I want to focus initially on the content

1 related to 5/24/18 as opposed to the one under the
2 header 6/8/18.

3 A. Okay.

4 Q. Do you recall the purpose of the meeting with
5 SCTA on 5/24/18?

6 A. I recall needing to talk about the salary
7 schedule.

8 Q. Do you recall what, in fact, was discussed
9 during that 5/24 meeting with SCTA?

10 A. We seemed to -- what I remember from that
11 meeting is that the 3.5 was commonly understood, as well
12 as a focus of middle of the salary schedule, in general
13 B.C., but middle of the salary schedule being most
14 impacted. SCTA did share some documents they shared
15 before in terms of their thinking and the salary
16 schedule that they were looking at and working towards.
17 And some questions back and fourth and then saying that
18 the next meeting, we needed to ensure the District had
19 costed it out.

20 Q. Did SCTA's representatives indicate to the
21 District at that meeting that they believed that the 3.5
22 cap would come off in '18/'19?

23 A. No, not that I recall.

24 Q. Did they -- did SCTA, based upon your notes and
25 recollection of that meeting, that they could not --

1 that there could not be an implementation of the SCTA
2 proposed salary structure effective for the entire year
3 that would remain under the 3.5 cap?

4 A. I do remember that at that meeting there was
5 conversation about -- I think at that time it was like a
6 November implementation date, something delayed to be
7 able to stay in the 3.5.

8 Q. Do you recall responding to the proposition of
9 a delayed implementation date raised by SCTA at that May
10 24th meeting?

11 A. We didn't make any agreements.

12 Q. Did you verbalize to SCTA an understanding
13 different from the concept of a delayed implementation
14 date?

15 A. No, I mean, just remember SCTA being very clear
16 that this is -- this was a part of the agreement and
17 that they felt -- I think it says in there -- that there
18 was no agreement on this and then there was no
19 agreement. They felt strongly about it.

20 Q. So can you go on page 2 there, I'll ask you to
21 read into the record the portion of your 5/24 summary
22 that starts at the first hyphen on page 2 of that e-mail
23 through the second hyphen of that e-mail?

24 A. Okay. "SCTA adamant that the Framework
25 Agreement was an agreement to go with SCTA's salary

1 schedule proposal. District's voiced District's
2 understanding that the details of salary schedule
3 structure were to be further negotiated. Components
4 SCTA believes were already agreed to in November are the
5 steps, decreasing the steps so it tops out at 20 rather
6 than 26. The columns, combining the last two columns D
7 and E and inserting a new column in the middle.
8 Education units, changing number of units required for
9 columns. Unlimited years of service in addition to
10 unlimited education units. SCTA shared that if there is
11 no agreement on this, then there is no agreement on the
12 contract."

13 Q. Who indicated that last line, if no agreement
14 on this, there would be no contract?

15 A. I remember John saying that.

16 Q. Do you recall responding to Mr. Borsos when he
17 said that?

18 A. I remember taking notes and noting it.

19 Q. Cancy, on December 7th, you testified the board
20 agreed or directed to the board general items and the
21 Tentative Agreement contains language regarding within
22 45 days reach a mutually agreeable salary structure
23 adjustment within the 3.5 cap. We're now in May of
24 2018. Between December 7th and now, had the parties
25 been able to reach a mutually agreed upon salary

1 structure adjustment within the 3.5 cap?

2 A. No.

3 Q. As a result of this meeting, do you recall
4 whether -- do you recall what the next steps that you
5 would have taken following this meeting and before we
6 lead into the 6/8 meeting that you've summarized here?

7 A. The District, we agreed to go back and cost out
8 what SCTA had prepared and that is something that the
9 CBO did.

10 Q. Turning to your e-mail with the 6/8/18 header.
11 I believe you've already reviewed it. If you haven't, I
12 want to have you review it again. What does this
13 portion of your e-mail under the 6/8/18 header reflect?

14 A. That we met again in June, beginning of June,
15 as a follow-up to the last meeting where we then had the
16 District's calculations.

17 Q. And the District's calculations as of
18 June 2018, as to the cost of SCTA's proposed salary
19 structure, had concluded what?

20 A. That the cost was about 7.09 percent, that's
21 \$11.7 million dollars to implement.

22 Q. And that's based upon an implementation
23 commencing on what date?

24 A. For the entire year, on 7/1/18.

25 Q. Did the District find this cost problematic?

1 A. Yes, because it was more than the 3.5 percent.

2 Q. Did SCTA, at the June meeting, propose what
3 they viewed as a potential solution to the cost problem?

4 A. Yes, I think the implementation date moved, so
5 the last meeting, it was November, and this one January,
6 February. The months moving so that the cost would
7 adjust, as well.

8 Q. And in your's and the District's view, is there
9 problems with that proposed solution?

10 A. Yes, because that certainly would be true for
11 the current year, but then the next year, there would be
12 all 12 months and it would be the full cost again.

13 Q. So let's stop there because we heard some
14 testimony in the last week that maybe wasn't entirely
15 clear. You're saying as of June 2018, that the District
16 had costed out implementation of SCTA's proposed salary
17 structure for a full year at 7 percent?

18 A. 7.09 is what it says.

19 Q. You say delayed implementation to limit to 3.5
20 is okay for one year, but not the next. Explain for us
21 and for the record how a 3.5 limit turns into a
22 potentially 7 the next year?

23 MR. RUKEYSER: Objection; relevance. We're
24 talking about the single contract that, by the witness's
25 own testimony, expired at the end of June 2019. The

1 witness's testimony about what the District thinks the
2 cost might be in a subsequent year after the contract
3 expires is in terms of --

4 MR. SIMMONS: Mr. Arbitrator, I could not
5 disagree more because what we're talking about is what
6 the parties perceived the value of that contract was and
7 if, in fact, SCTA's position is that the 3.5 limit is
8 not an ongoing restraint between the parties that goes
9 directly to what the board approved, it goes directly to
10 the concept of how CBA works once expired and absence
11 further negotiation in agreements with the parties, I
12 think it is central to the Grievance.

13 MR. RUKEYSER: Mr. Arbitrator, if the District
14 believes that this was relevant, could introduce
15 testimony which it has not, about the District's costing
16 and calculations at the time the contract was ratified.
17 What the District is now trying to do is introduce
18 evidence about calculations that were purportedly done
19 more than half a year after the contract was ratified.
20 Those calculations and any District concerns that might
21 have been raised at that point are really quite far
22 afield from the issue that is teed up in this Grievance
23 arbitration, which is what the parties agreed to in
24 November and December of 2017, not what the District may
25 have calculated cost -- ongoing costs might have been in

1 June of 2018.

2 THE ARBITRATOR: Let me ask this as a
3 foundation question: As of this 6/8/18 meeting, the
4 District had costed out what a one-year 3.5 -- well,
5 what a one-year salary adjustment pursuant to SCTA's
6 salary structure would cost out, correct?

7 THE WITNESS: Correct.

8 THE ARBITRATOR: And that was the
9 \$11.7 million?

10 THE WITNESS: Correct.

11 THE ARBITRATOR: And the foundational question
12 is: Had the District, prior to this meeting on 6/8/18
13 and before costing out the same subject of one year --

14 MR. SIMMONS: Mr. Arbitrator, may I add that
15 what Ms. McArn testified to is that you could not have
16 even done that.

17 THE ARBITRATOR: Well, I'm just asking --

18 MR. SIMMONS: I want to make sure it is clear
19 that there were steps that had to occur before you could
20 get to the cost out.

21 THE ARBITRATOR: So put it a different way, is
22 this the first time this costed that subject?

23 THE WITNESS: This is -- the first time it
24 costed what SCTA gave in May, but when the salary
25 schedule was presented in December 2016 for the first

1 time, there was a preliminary costing done then, but not
2 based on any of the specifications that were known then
3 in the spring of 2018.

4 THE ARBITRATOR: Is that in writing or do you
5 share the costing with anyone?

6 THE WITNESS: At the bargaining meeting.

7 THE ARBITRATOR: Okay. This was before the
8 meeting with the Mayor?

9 THE WITNESS: Oh, way before. It was
10 December 2016. It was almost a year before.

11 THE ARBITRATOR: All right. Well, I think
12 you're going to have to restate the question because I
13 interrupted you. I am sure I destroyed everyone's train
14 of thought. I'm going to overrule the objection. You
15 can answer the question. I am keeping this in mind,
16 though, in terms of sequence of events. I think
17 counsel's objection goes to that point, which is, it is
18 not a cost that was being costed out that was made at
19 the time when the parties entered into the contract,
20 whatever it may be. Okay, go ahead and restate the
21 question.

22 MR. SIMMONS: Bear with me a minute. Ms. Court
23 Reporter, can we go don't back to the last question?

24 (Whereupon the record was read.)

25 MR. SIMMONS: Let me rephrase the question.

1 BY MR. SIMMONS:

2 Q. Prior to that, I asked you was it problematic
3 that SCTA's proposed solution to this problem as to cost
4 was a delayed implementation date. So would you say --
5 was SCTA's proposed delayed implementation date
6 problematic for the District?

7 A. Problematic for the District in that the
8 delayed implementation would satisfy a current year, but
9 it wouldn't satisfy the next year or future years
10 because you would be looking at all the months, not just
11 the cost of part of the months of the year.

12 Q. Right. And has the District -- well, again
13 going back to -- we don't have to cover ground, which I
14 think is fairly clear in the testimony. But as of the
15 December 7th, 2017, board meeting, what was your
16 understanding of the cost approved by the District's
17 governing board for implementation of this Tentative
18 Agreement?

19 A. It was 11 percent ongoing.

20 Q. Which accounted for how much in relation to
21 salary structure?

22 A. 3.5.

23 Q. And if the CBA expires without further
24 negotiations, does the cost of that Tentative Agreement
25 continue forward until a new agreement is reached?

1 A. Yes, we don't just stop paying people. It
2 continues on.

3 Q. Can you move an employee to a better place and
4 semantically, I may as it incorrectly -- can you move an
5 employee up on the structure and then the next year move
6 them right back down?

7 A. No, once the -- once the -- how the salary
8 schedule works is that wherever they are, it's an
9 ongoing cost. So while I think, you know, you can look
10 at it at any given year, the salary schedule does imply
11 that it goes forward until there's a change until it
12 says there is something else.

13 Q. Could you have costed out accurate costs for
14 any proposed salary structure adjustment prior to the
15 board taking action in December 7th and in light of the
16 fact that you still needed to apply unlimited service
17 credits?

18 A. Not really. And based on what was in the
19 e-mail, the very clear direction we had, that it was a
20 mutually agreeable -- that we're to come to something
21 mutually agreeable. We didn't have those conversations
22 to get to that point.

23 Q. Of the elements that you were directed to focus
24 on by the Superintendent and the board as far as a
25 salary schedule adjustment, what do you recall being

1 some of the intended points of emphasis in that
2 adjustment?

3 A. It was to stay within the 3.5 maximum
4 expenditure and to focus on the middle of the salary
5 schedule, B -- columns B and C.

6 Q. I want to take us beyond this June 8th meeting
7 with SCTA. I want to go to August of 2018.

8 A. Okay.

9 Q. I will ask you to turn to -- well, first let me
10 ask you this: As of August 2018, in your view, had the
11 District and SCTA come to an agreement on a mutually
12 agreed upon salary structure adjustment within the 3.5
13 cap?

14 A. No.

15 Q. Can I have you turn to District Exhibit J?
16 Review that briefly, Cancy.

17 A. Okay.

18 Q. Are you familiar with that document, Ms. McArn?

19 A. I did see this.

20 Q. Did you, to one degree or another, assist in
21 preparing the contents of this message?

22 A. With regards to -- yes, with regards to
23 potential salary structure, I was asked to do that.

24 MR. RUKEYSER: I'm going to object again on
25 this line of questioning. We're now -- the District is

1 now examining the witness about the document prepared in
2 August of 2018. This has no relevance now to the
3 substance of the parties' dispute or the merits of the
4 Grievance or the nature of the contract. We are talking
5 about something that happened -- we're closing in on
6 what, 10, 11 months after the contract was negotiated.

7 MR. SIMMONS: I think, Mr. Arbitrator,
8 certainly from SCTA's view, less relevant to their
9 theory of the case, but directly relevant to the
10 District's testimony and evidence as to their
11 understanding of the status of the finally agreed upon
12 -- mutually agreed upon agreement, adjustment to the
13 salary schedule. So that these discussions are ongoing
14 in August of 2018, not yet having reached a mutually
15 agreed upon adjustment, I think it's directly relevant
16 to what the District's understanding of the Tentative
17 as approved in December 2017 is not only then, but going
18 forward.

19 THE ARBITRATOR: Okay.

20 MR. SIMMONS: I'm not going to get terribly in
21 the weeds on this, to be honest. I am not spending a
22 lot of time.

23 THE ARBITRATOR: I understand this is post
24 negotiations of the ratified agreement. It's post that.
25 It's a mystery to me, but let's hear it.

1 MR. SIMMONS: I don't want to drag us down and
2 waste time, but I think it's relevant. But if the
3 parties are willing to stipulate that, in fact, as of
4 August 22, 2018, the Superintendent sent a communication
5 to the Mayor and Mr. Borsos in which it includes within
6 it a proposed modification to salary structure which the
7 District believed would be compliant with the Framework
8 Agreement and Tentative approved in December of 2017,
9 knowing that's the District's perspective, we want to
10 stipulate to that, then I won't ask questions on the
11 document.

12 THE ARBITRATOR: I think if I received the
13 document, the document speak for itself. This
14 apparently came from the Superintendent's address to the
15 maker and also to leadership of SCTA. I don't know if
16 this witnesses is going to add anything to the document.

17 MR. SIMMONS: I think she has in that she,
18 Ms. McArn, testified to having assisted in preparing the
19 contents here and I intend to ask her a few questions
20 about the District having had costed out what it
21 provided to SCTA by way of this communication.

22 THE ARBITRATOR: Let's go ahead and hear it.

23 MR. SIMMONS: Okay.

24 BY MR. SIMMONS:

25 Q. Ms. McArn, did you ask anyone to prepare a cost

1 analysis for purposes of what ultimately was
2 Superintendent Aguilar's August 22nd communication?

3 A. Yes, I was asked to help with that and give him
4 this costing and I reached out to School Services to ask
5 for their assistance.

6 Q. Who specifically at School Services did you
7 request assistance from?

8 A. Matt Phillips helped us.

9 Q. And in preparing -- in coordinating
10 Mr. Phillips in preparing a cost analysis for purposes
11 of this proposal, was it your view that what the
12 District was to propose by way of this August 22nd
13 message from the Superintendent was consistent with the
14 District's understanding of the Tentative Agreement
15 approved in December 2017?

16 A. Focusing on B and C columns for the teachers
17 and the maximum expenditure.

18 Q. Within a cost parameter?

19 A. Right, with a maximum expenditure of 3.5
20 percent.

21 Q. Do you recall what SCTA's response was to this
22 August 22nd proposal from the Superintendent?

23 A. No, sorry.

24 Q. Okay. We are nearly complete, Ms. McArn. Bear
25 with me a little bit longer. Again, I think subject to

1 some further back and forth, there will probably be some
2 fight on this too, but I'll ask the Arbitrator to bear
3 with me that I think there are further exhibits that I
4 want to introduce and have Ms. McArn talk about are
5 ultimately directly relevant to this case.

6 Q. I am going to hand out -- I haven't done very
7 good at keeping my papers sorted. These are documents
8 that are produced in the District's disclosure in
9 advance of the proceeding. I want to have you discuss
10 them, Ms. McArn, and then ultimately introduce as
11 District Exhibits X, Y and Z. There are three tables
12 there.

13 Before we get to them, let's start with in
14 January of 2019 -- by January of 2019, had the District
15 and SCTA yet been able to come to a final mutually
16 agreeable salary structure adjustment within the 3.5 cap
17 based on the Tentative Agreement from December 27th?

18 MR. RUKEYSER: Objection on relevance grounds.
19 We're now talking about something that happened well in
20 excess of the year after the contract was negotiated.
21 That has absolutely no relevance to the case that is
22 before you, Mr. Arbitrator. What the District's
23 calculations were, what the districts strategies were at
24 the time that we are now talking about January of 2019,
25 long after the Grievance was filed, long after the

1 matter was moved to arbitration, long after the District
2 filed this lawsuit in an attempt to avoid arbitration
3 after even SCTA's filing its motion in Superior Court to
4 compel arbitration, it is irrelevant.

5 MR. SIMMONS: First I would say,
6 Mr. Arbitrator, I think Mr. Borsos himself created a
7 chart with some costing, which was introduced as an
8 exhibit by SCTA, as to his view of certain proposals and
9 cost and SCTA's salary structure in terms of its cost,
10 no indication that it was prepared for purposes of this
11 arbitration, I would say this: Opposing counsel has his
12 arguments. We disagree with them. I would ask the
13 Arbitrator, in terms of the scope of relevance and the
14 nature of issues here that I be permitted to ask these
15 questions. These exhibits come in. Mr. Phillips will
16 also have testimony that relate to these directly as the
17 expert preparing these reports. I think that to the
18 extent opposing counsel wants to argue as to their
19 weight, he can do so, but I strongly oppose the idea
20 that this does not have relevance nor, in fact, has
21 material relevance to the end issues which this
22 Arbitrator will be asked to decide by way of proposed
23 hearing briefs.

24 MR. RUKEYSER: I will also object,
25 Mr. Arbitrator, on the grounds that we are now into the

1 third day of hearings. This is a -- the District is now
2 seeking to introduce this document and apparently others
3 as exhibits in this Case in Chief. No explanation of
4 why these documents were not previously included in the
5 District's exhibit binder.

6 MR. SIMMONS: So this agreement procedure, the
7 only limit on that --

8 THE ARBITRATOR: Let me just ask you this:
9 What I would see as the only area -- because my duty as
10 the Arbitrator, is to determine if there was an
11 agreement. And, two, if there was an agreement, what
12 mutual attempts of the parties was in the agreement. I
13 would only consider to be relevant, in terms of looking
14 back, if certain actions occurred between the parties.
15 That's the important part between the parties, which you
16 could judge and look at those actions and say
17 reasonably, would a person that had intent A have done B
18 six months later. Now, my concern is these were
19 prepared apparently in anticipation of litigation.
20 These were not documents that were shared.

21 MR. SIMMONS: I did not -- I'm not saying these
22 were prepared in anticipation of litigation.

23 THE ARBITRATOR: In January, I think,
24 somewhere.

25 MR. SIMMONS: Timing-wise and Ms. McArn can

1 testify to, you know, the District's work with School
2 Services and try to figure out ways in which offers
3 of --

4 THE ARBITRATOR: The point is, is this
5 something shared with one of the teachers and then was
6 discussed? As I said a moment ago, that would be
7 perhaps arguably relevant to determine what the parties
8 intent was back in December when the contract was
9 ratified, judging what their from intent was by virtue
10 of their actions going forward. But if there was no
11 interchange between the parties this is just something
12 very nicely done by the District, but nothing went from
13 the District to SCTA in this regard then. It doesn't
14 help me.

15 MR. SIMMONS: Mr. Arbitrator, based upon
16 Ms. McArn's testimony, on the record is the idea that as
17 of May 2018, it becomes clear to the District of what
18 appears to be diametrically opposite or different
19 understanding.

20 THE ARBITRATOR: Right, got that.

21 MR. SIMMONS: Directly relevant to the meaning
22 of the contract is the 3.5 cap, whether intended as SCTA
23 would purport to be something that comes off in '18/'19
24 or something with the District in a matter of certainty
25 and the matter of what the board approved being ongoing

1 consistent cost. The relevance at a minimum of what is
2 included in here as noted as No. 4, which is the cost of
3 SCTA's proposed structural without a limit and the total
4 percentage cost of that is directly relevant to the
5 District and board's understanding as to the cost
6 limitation and cap in place as of December 17th going
7 forward. It highlights how if you were to take SCTA's
8 proposed structure without limit, what would have been
9 being approved in December 2017, isn't even a
10 dramatically higher cost than what was expressly
11 included in the board agenda and the --

12 THE ARBITRATOR: I accept what you just said.
13 It is accurate it will be higher in cost, but unless
14 there's someone here -- see, the District had prepared
15 this cost analysis. And I know there were these
16 unanswered questions about the longevity and that type
17 of thing. If the district had prepared this in advance
18 somewhere, you know, certainly I would -- that would be
19 very relevant information. You can argue the District
20 could not conceivably had agreed to such a proposal
21 which would so dramatically blow out the budget. They
22 would just never have done that.

23 But, you know, there's no information I
24 received thus far that indicates there was any costing
25 out of this proposal to salary structure improvement

1 beyond the termination of the 2018/'19 school year.
2 That's -- unless this witness can say, yeah, we knew
3 when it would come in. We had an idea. And that's --
4 you could make the argument that it could not be
5 possible. That has not become clear to me at this point
6 that that was really explored.

7 Now, we're looking back and we're saying this
8 is horrible because look at the cost, but this is
9 something that School Services prepared. They have
10 tools to do it. Could have done it at the District's
11 request back in December or whatever. I don't know how
12 long it takes them to prepare something like that. I
13 imagine they have the tools. They can probably do it
14 pretty quickly. That's the problem I have. I'm willing
15 to accept post contractual conduct to assist me in
16 gauging what the parties' intent was. It has to be a
17 mutual kind of interplay between two parties to the
18 contract. I can then reach the conclusion, yes, they --
19 based upon that conduct, I can corroborate, yes, that
20 was their intent or based upon their conduct, no, that
21 could not have been their intent.

22 The problem is all of this is so far post
23 contract, that it has no meaning. I accept that's a
24 much different proposal for a year than it was for the
25 one year '18/'19. I understand that issue. Again, in

1 terms of receiving this --

2 MR. SIMMONS: How about this? I don't want to
3 dive in to it with this witness and these exhibits. I
4 think we will have the same back and forth shortly with
5 Mr. Phillips.

6 THE ARBITRATOR: Okay.

7 MR. SIMMONS: But I do -- in light of the
8 Arbitrator's view on this, there are -- let's go back to
9 Ms. McArn.

10 THE ARBITRATOR: Okay.

11 BY MR. SIMMONS:

12 Q. Ms. McArn, you testified earlier today that
13 SCTA had proposed a salary structure as of December of
14 2016?

15 A. Yes.

16 Q. You testified that as of December 2016 or close
17 there after, the District had conducted a cost analysis
18 of that salary structure.

19 A. Yes, I think it was closer to January, end of
20 January, but, yes, after December.

21 Q. Do you recall having costed out that salary
22 structure that it was -- the cost for implementing SCTA
23 proposed salary structure was below or above
24 3.5 percent?

25 A. It was above 3.5 percent.

1 Q. So as of November of 2017, the District was
2 already aware that simple implementation of SCTA's
3 proposed salary structure without further adjustment
4 could not be done under 3.5 percent for a full calendar
5 year?

6 A. Correct, based on information we had from the
7 January -- earlier that year.

8 Q. Okay. Just a few more questions, Ms. McArn,
9 and one more follow-up there. That information that you
10 just testified to would have been information known by
11 the District, including the Superintendent, correct, as
12 of November of 2017?

13 MR. RUKEYSER: Calls for speculation.

14 THE ARBITRATOR: Do you recall sharing that --
15 who provided the information or costed it out -- who was
16 it shared with? Do you have that information?

17 THE WITNESS: The CBO.

18 THE ARBITRATOR: The COB, okay.

19 THE WITNESS: Costed it out.

20 THE ARBITRATOR: Was his name Castillo?

21 THE WITNESS: Gerardo Castillo costed it out
22 and he shared with the Superintendent and the
23 negotiation team.

24 THE ARBITRATOR: And you were part of the
25 negotiation team so he shared that with you.

1 THE WITNESS: I was part of the negotiation
2 team.

3 THE ARBITRATOR: All right.

4 BY MR. SIMMONS:

5 Q. Last little -- just a little procedural piece,
6 Ms. McArn. Can you turn to Joint Exhibit 8? If I have
7 you -- if you can please turn forward to what is marked
8 page 38 of 83? I will ask you to briefly review pages
9 38 through 46.

10 A. All right. Okay.

11 Q. Ms. McArn, what do you understand pages 38
12 through 46 to be?

13 A. This is Article 4 in our Collective Bargaining
14 Agreement Grievance procedures.

15 MR. SIMMONS: No further questions.

16 THE ARBITRATOR: All right short break before
17 cross?

18 MR. RUKEYSER: Yeah, short break.

19 THE ARBITRATOR: Short break before cross. All
20 right. We're off the record.

21 THE ARBITRATOR: We're back on the record.
22 Cross-examine her.

23

24

CROSS-EXAMINATION

25

1 BY MR. RUKEYSER:

2 Q. Good morning, Ms. McArn.

3 A. Good morning.

4 Q. I will introduce myself for the record. I'm
5 Jacob Rukeyser, counsel for SCTA. I have some questions
6 for you. You were asked about the declaration that the
7 District submitted in this matter. You did not actually
8 write this declaration, correct?

9 A. Correct.

10 Q. Your attorneys -- the District's attorneys
11 wrote this?

12 A. Correct.

13 THE ARBITRATOR: She made the corrections.

14 MR. RUKEYSER: Yes.

15 THE ARBITRATOR: Yes.

16 BY MR. RUKEYSER:

17 Q. You were aware when you signed this declaration
18 that you are signing it under penalty of perjury,
19 correct?

20 A. Correct.

21 Q. You took it seriously when you reviewed it?

22 A. I did take it seriously.

23 Q. But you did not review it very carefully; did
24 you?

25 A. I definitely missed the point -- the part I

1 pointed out this morning.

2 Q. And you had submitted a declaration in the
3 Superior Court case on behalf of the District's
4 opposition to the Union's motion to compel arbitration,
5 correct?

6 A. Correct.

7 Q. And you also signed that declaration under
8 penalty of perjury, correct?

9 A. Yes.

10 Q. The same mistake that you identified earlier
11 today were included in that declaration too; aren't
12 they?

13 A. Potentially.

14 Q. Let's take a look, shall we?

15 A. Okay.

16 Q. I will -- I don't think we need to mark it as
17 an exhibit yet.

18 THE ARBITRATOR: Okay.

19 THE WITNESS: Thank you.

20 BY MR. RUKEYSER:

21 Q. Do you recognize this document, Ms. McArn?

22 A. Yeah, it looks like it.

23 Q. The declaration you submitted --

24 THE ARBITRATOR: I'm sorry, what was that?

25 BY MR. RUKEYSER:

1 Q. Do you recognize this document?

2 A. Yes, it looks like the same.

3 Q. And so let's turn to -- let's take a look at
4 paragraph 17, which is on page 4; do you see that?

5 A. Yes.

6 Q. The same language?

7 A. I see the same -- it starts the same way.

8 Q. There are the same mistakes that you identified
9 earlier?

10 A. Yep, instead of prior.

11 Q. You missed these mistakes, as well, when you
12 signed this document under penalty of perjury in the
13 Superior Court case?

14 A. Yeah, that should not -- it's the same one.

15 Q. Thank you. You testified earlier that you are
16 the District's Chief Human Resources Officer. Did I get
17 the title correct?

18 A. Yes.

19 Q. And prior to that, you had been -- the title
20 was different, but the position was largely the same?

21 A. Similar, yeah.

22 Q. Am I correct in understanding that as the Chief
23 Human Resources Officer, you are the, for lack of a
24 better word, the top HR administrator in the District?

25 A. In HR, yes.

1 Q. And in that capacity, you are the --
2 essentially the Superintendent, the top deputy when it
3 comes to human resource issues, correct?

4 A. In the HR world, yes.

5 Q. You sat on the District's Bargaining team
6 during the '16/'17 Bargaining we've been talking about?

7 A. Correct.

8 Q. And you attended every Bargaining session?

9 A. Yes, I think so.

10 Q. You attended the fact-finding hearing in early
11 October 2017?

12 A. I did.

13 Q. And just so the record is clear, the Union case
14 in that fact-finding hearing was presented by SCTA
15 President Dave Fisher and SCTA first Vice-President
16 Nikki Milevsky, correct?

17 A. Correct.

18 Q. And the District's case was presented by John
19 Gray of School Services?

20 A. John Gray and our attorney.

21 Q. And Mr. Holbrook?

22 A. Scott Holbrook.

23 Q. You testified earlier that you were aware that
24 SCTA had proposed a revised salary schedule in December
25 of 2016. Do you remember testifying about that?

1 A. It wasn't revised at the time, but, yes, they
2 first shared a new salary schedule in December.

3 Q. And that was the Union's proposal to change the
4 salary schedule?

5 A. Yes.

6 Q. And that salary schedule structure that was
7 proposed in December of 2016, the Union never deviated
8 from that proposed amendment to the salary schedule
9 structure, did they, throughout the bargaining?

10 A. No, that was their proposal.

11 Q. Let's -- I'll jump around a little bit. Bear
12 with me, please.

13 You testified that on November 8th you met with
14 the SCTA leadership to talk about the Framework
15 Agreement?

16 THE ARBITRATOR: That would be '17, right?

17 MR. RUKEYSER: Yes, that's right,
18 Mr. Arbitrator, 2017.

19 BY MR. RUKEYSER:

20 Q. You didn't take any notes during that meeting;
21 did you?

22 A. I don't remember taking notes at that meeting,
23 no.

24 Q. And you testified that perhaps a day or two
25 later, you met with the Superintendent to discuss --

1 essentially have a follow-up meeting regarding the
2 Framework Agreement and your November 8th, 2017, meeting
3 with SCTA?

4 A. Yes, after I sent the summary, yes, I met with
5 the Superintendent after that summary.

6 Q. And you didn't take any notes in that meeting
7 that you had with the Superintendent; did you?

8 A. I don't remember taking notes with the
9 Superintendent.

10 Q. Certainly not in the records. Let's take a
11 look at District Exhibit C. It should be in the
12 District exhibit binder in front of you.

13 A. Okay.

14 Q. You sent this e-mail the day after the meeting
15 with the SCTA leadership, correct?

16 A. Yes, that's when I sent it.

17 Q. It's your testimony that you set forth this
18 summary of the meeting that you had with SCTA leadership
19 based solely on your memory of what was discussed the
20 day before?

21 A. Actually I started in the evening, but one of
22 the persons that was with me, my employee relations
23 director, we drafted in terms of what went through the
24 meeting and I sent it the very next morning.

25 Q. It was based on your conversations with your

1 deputy about the meeting, not based on any notes that
2 you or your deputy took?

3 A. When you say deputy, do you mean employee
4 relations director?

5 Q. Yes.

6 A. Okay, it's not the Deputy Superintendent.

7 Q. Just so we're clear, we are talking about Ms.
8 Allison?

9 A. No, Ms. Nguyen.

10 Q. Nguyen?

11 A. Yes, she and I were in the meeting together
12 with SCTA.

13 Q. Let's take a look at Joint Exhibit 11. If you
14 would turn to page 11, almost at the back of that joint
15 exhibit.

16 A. Page 11 of 11?

17 Q. Page 11 of 11, that's correct. Counsel asked
18 some questions of you about this document. It's an
19 e-mail that Mr. Borsos sent to you on November 9th. The
20 second sentence of the first paragraph says that, "We
21 identified the need to meet with Gerardo to discuss the
22 Union's proposed salary schedule that goes into effect
23 on July 1, 2018, will be implemented to fit within 3.5
24 percent certificated payroll cost."

25 You understood, didn't you, that when

1 Mr. Borsos read about the Union's proposed salary
2 schedule, he was talking about the same salary schedule
3 structure that the Union had been proposing all along
4 starting in December of 2016, correct?

5 A. Yes.

6 Q. And I believe that you testified about this,
7 but so we're all clear, you did not respond to
8 Mr. Borsos -- you did not respond to the November 9th,
9 2017, e-mail from Mr. Borsos?

10 A. I didn't respond to the e-mail.

11 Q. Okay. Thank you. It is true, isn't it,
12 Ms. McArn that in the 45 days after the Tentative
13 Agreement was approved by both parties, you did not
14 propose a change to the salary schedule to SCTA; did
15 you?

16 A. No.

17 Q. In fact, no one at the District made a proposal
18 to change the salary structure or salary schedule within
19 45 days of the parties ratification of the Tentative
20 Agreement, correct?

21 A. Not that I'm aware of.

22 Q. And in fact, not only was there no proposal,
23 but within 45 days of the parties ratification of the
24 contract, you didn't have any discussion with SCTA about
25 changing the certificated salary schedule; did you?

1 A. No. The conversation that I recall having --
2 the last conversation about any of this would be the day
3 of our -- the day before the board meeting when I had a
4 conversation with John about the 30 versus 45 days and
5 agreeing to put in the 45 days and saying, you know,
6 likely it will take longer, but I didn't have any
7 conversation until the next meeting.

8 Q. Simply for clarification and seeking
9 confirmation from SCTA that this confusion about 30 or
10 45 days could be resolved with the understanding that
11 45 days was going to be the window, not 30 days?

12 A. Forty-five days and it might take longer, but I
13 put 45 days in there.

14 Q. When did you learn that Superintendent Aguilar
15 was going to be meeting with SCTA at Mayor Steinberg's
16 house on Sunday, November 5th, 2017?

17 A. The Sunday that he met with them.

18 Q. So it's your testimony that you only learned of
19 this after the meeting had already concluded?

20 A. Yeah, I remember talking with -- sharing that
21 the Saturday meeting did not go well at all in terms of
22 negotiations and there would be follow-up, but I didn't
23 learn until after he met with them alone.

24 Q. Prior to the Saturday meeting, the November 4th
25 meeting, that your Superintendent had with SCTA, you

1 didn't brief the Superintendent on the status of the
2 parties' negotiation, did you, specifically with respect
3 to preparing the Superintendent for the November 4th
4 meeting?

5 A. We spoke to the Superintendent, but it was
6 about how the morning session where both teams met, both
7 negotiation teams met at the District office and that
8 was not a successful encounter.

9 Q. So I gather.

10 THE ARBITRATOR: So you were present at that
11 meeting?

12 THE WITNESS: At the Saturday morning meeting,
13 uh-huh.

14 BY MR. RUKEYSER:

15 Q. To be clear, there was a negotiation session
16 between SCTA and the District the morning of Saturday,
17 November 4th at the District office?

18 A. Yes.

19 Q. After that meeting, you informed the
20 Superintendent the meeting had not been productive?

21 A. Right.

22 Q. At that time when you briefed the
23 Superintendent that this meeting had not been
24 successful, did you know that the Superintendent would
25 later that day be meeting with SCTA leadership at the

1 Mayor's house?

2 A. The conversation was like immediately after. I
3 don't think everybody was out of the building.

4 Q. After that --

5 THE ARBITRATOR: The phone conversation.

6 THE WITNESS: It was a phone conversation, he
7 wasn't there. He was not present.

8 BY MR. RUKEYSER:

9 Q. After that phone conversation that you had with
10 the Superintendent immediately after the parties failed
11 the negotiation session Saturday morning, did you have
12 any other conversations with the Superintendent on
13 Saturday, November 4th, before he went into this meeting
14 at the Mayor's house?

15 A. No.

16 Q. Now, after that November 5th meeting, the
17 meeting in which parties signed this Framework Agreement
18 document, the first you learned of the details of that
19 Framework Agreement was when you met with the SCTA
20 leadership on November 8th, correct?

21 A. In its entirety, yes.

22 Q. Before that -- before this November 8th meeting
23 you had with SCTA, you were only aware that the parties
24 had agreed to an 11 percent increase in payroll during
25 the term of the contract, but beyond that, no specifics?

1 MR. SIMMONS: Objection; misstates testimony.

2 THE ARBITRATOR: All right. Rephrase it.

3 BY MR. RUKEYSER:

4 Q. Prior to the meeting that had you on
5 November 8th with SCTA, did you know anything about the
6 Framework Agreement salary provision apart from the fact
7 that the parties agreed to spend 11 percent more on
8 payroll during the life of the contract?

9 A. I knew that it was 2.5, 2.5, 2.5 and 3.5. I
10 knew that there was a portion about calendar. I knew --
11 oh, you're only asking about the salary.

12 Q. Only about the salary.

13 A. Yes, 2.5, 2.5, 2.5, yes.

14 Q. And that was based on this telephone
15 conversation that you had joined late with the
16 Superintendent?

17 A. Yes, that is where I first heard it.

18 Q. And just so I have the chronology straight,
19 that occurred sometime on November 5th, correct?

20 A. Yes.

21 Q. And you met with SCTA leadership on
22 November 8th?

23 A. Wednesday.

24 Q. On November 6th, did you have any conversations
25 with the Superintendent about the terms of the Framework

1 Agreement?

2 A. The conversations we had -- that he shared with
3 some individuals was that an agreement was reached.
4 There was the press conference. He wanted us to attend
5 and be present and that there were a number of pieces
6 related to it. We needed to talk about the 2.5, 2.5,
7 2.5, 3.5 and what that meant for what we needed to do
8 with regards to what we were preparing for the strike
9 because that was supposed to happen Wednesday. So we
10 were shifting our focus.

11 Q. Let's look again at District Exhibit C. This
12 is your November 9th e-mail to Superintendent Aguilar,
13 Ms. Allen and Mr. Castillo?

14 A. Uh-huh.

15 Q. In that first paragraph, you say that in the
16 third sentence, "They," meaning SCTA "wanted to know our
17 thoughts. I shared we don't have a copy of it, but saw
18 it in the Mayor's hand as he waived it at this press
19 conference and understand the calendar increase is
20 11 percent."

21 A. I'm sorry. Are you reading -- oh, okay. Got
22 it.

23 Q. Do you see that in front of you?

24 A. Yes.

25 Q. Is it your testimony that although you said in

1 your e-mail to Superintendent Aguilar that you
2 understood the salary increase was 11 percent, that
3 actually you understood even before the meeting with
4 SCTA on November 8th exactly how that 11 percent would
5 be broken down?

6 A. 2.5, 2.5, 2.5, 3.5. I understood that.

7 Q. Let's take a look at your declaration. If we
8 can turn to page 3, paragraph 12.

9 A. Page 3?

10 Q. Sorry, paragraph 13, rather.

11 A. Uh-huh.

12 Q. You testified that "Superintendent Aguilar
13 informed me and I understood this was necessary because
14 during the November 5, 2017, meeting, both the District
15 and SCTA just agreed they would meet at a later date and
16 time to be determined."

17 A. I'm sorry, are you looking at 13 -- 12, I'm on
18 the wrong one.

19 Q. I'm sorry. This is your declaration that was
20 submitted in this arbitration, not the court proceeding?

21 A. Oh, okay.

22 MR. SIMMONS: The witness has a copy.

23 THE WITNESS: I'm sorry. I was looking at what
24 you handed me.

25 MR. RUKEYSER: No problem.

1 BY MR. RUKEYSER:

2 Q. Page 3.

3 A. Okay.

4 Q. Paragraph 13.

5 A. Paragraph 13, got it.

6 Q. That first sentence.

7 A. Okay.

8 Q. And you testified here that Superintendent
9 Aguilar informed you of this fact. And you say, "and I
10 understood." I just want to get some clarification.
11 It's true, isn't it, that as of November 8th, your
12 understanding about subsequent discussions between the
13 parties, you didn't have that understanding when you
14 went into the meeting with SCTA; did you?

15 A. Sorry, I am confused. Did I understand?

16 Q. You testified about -- just moments ago -- your
17 understanding of the salary agreement. You testified
18 that you understood that it was 2.5, 2.5, 2.5 and then a
19 further 3.5 percent?

20 A. Correct.

21 Q. You testified that was the extent of your
22 understanding. My question here is -- your testimony in
23 this declaration is that, "Superintendent Aguilar
24 informed me and I understood this was necessary because
25 during the November 5, 2017, meeting, both the District

1 and SCTA discussed and agreed they would meet at a later
2 date and time to be determined after the November 5,
3 2017, meeting and after the Framework Agreement was
4 signed to confirm and attempt to reach an agreement
5 regarding the specifics of the new certificated salary
6 schedule structure."

7 It's true, isn't it, that you did not have any
8 understanding that the parties were going to discuss
9 anything down the road on November 5th, correct?

10 A. On November 5th, did I know that there was more
11 to be discussed?

12 Q. Yes.

13 A. Is that the question?

14 Q. That is the question. Thank you for asking it
15 in a much more succinct manner than I was able to.

16 A. I was just trying to follow along. So when
17 there was an agreement that was 11 percent max of what
18 should be expended and then based on a later
19 conversation, right, that there was an actual Framework,
20 that there's a salary schedule that needed to be
21 mutually agreed upon, which is what the Superintendent
22 wrote in his e-mails.

23 Q. My question is, it's true that as of the end of
24 the day on November 5th, you didn't have any
25 understanding that the parties, in your view, were going

1 to discuss anything more about salary?

2 A. The 3.5 was a different piece.

3 Q. But on November 5th, you didn't have any
4 understanding that anything remained to be discussed
5 between the parties regarding the 3.5 percent cap; did
6 you?

7 MR. SIMMONS: I would -- to the extent that the
8 question assumes that the paragraph or surrounding
9 paragraphs of the declaration are tied to a November 5th
10 date, I think the question is vague and ambiguous. I
11 think there is an assumption underlying this question
12 that can't make sense.

13 BY MR. RUKEYSER:

14 Q. Let me --

15 THE ARBITRATOR: Restate the question.

16 BY MR. RUKEYSER:

17 Q. You testified moments ago that your
18 understanding before SCTA showed you the Framework
19 Agreement, your understanding about the Framework
20 Agreement salary provision was limited to the fact that
21 the parties agreed to 2.5 across-the-board increase for
22 the first year of the contract, a further 2.5 percent
23 across-the-board increase for the second-year of the
24 contract and a further 2.5 percent across-the-board
25 increase for the third year. And also agreed to a 3.5

1 cap in the last year of the contract, totaling
2 11 percent. As of the time you went to sleep on
3 November 5th, you didn't have any understanding, did
4 you, that anything remained to be discussed between the
5 parties regarding the salary issue?

6 A. By the time I went to sleep on November 5th
7 with lots of exciting news what happened on that day,
8 not having seen it, but just had conversations -- the
9 conversation, it was very clear that it was a 3.5 -- I'm
10 sorry, that it was 11 percent and the 11 percent moving
11 forward, that a 3.5 was a salary structure.

12 I mean, I assumed, actually when I heard about
13 it, that there would be other things to talk about
14 because there were some things that I didn't hear
15 anything about like Appendix B, as in A, B, C, D. I
16 didn't hear anything, but I wasn't asking questions
17 during that conversation. So I did assume that there
18 would be things that we would have to talk about further
19 with regards to whatever the agreement was that happened
20 over the weekend.

21 Q. With respect to the salary agreement alone, I
22 want to focus only on salary. Let's ignore Appendix D
23 and all of the other non-salaried issues. With respect
24 to the salary issue, apart from your understanding about
25 these percentages, as of November 5th, you didn't have

1 any understanding, did you, that the parties had agreed
2 to negotiate anything else with respect to salary?

3 MR. SIMMONS: I again object to the extent this
4 is being tied to the paragraph in the declaration that
5 is the November 5th date creates a vague ambiguity as to
6 the question that was being asked.

7 MR. RUKEYSER: And thank you for the
8 clarification.

9 BY MR. RUKEYSER:

10 Q. This is not tied to paragraph 13 or anything
11 else in your declaration. I just want to get the
12 chronology for the record. Do you remember the question
13 or should I ask it again?

14 A. Please?

15 Q. By the time you went to sleep on November 5th,
16 you didn't have any understanding, did you, that in the
17 Framework Agreement, the parties agreed to discuss
18 anything else with respect to salary at some later date?

19 A. As of that evening, I think what I understood
20 was it's 2.5, 2.5, 2.5 and 3.5 related to the salary
21 structure.

22 Q. At some point -- you testified that at some
23 point you came to the understanding that there were
24 issues relating to salary on which the parties were
25 going to discuss at some later date. My question is:

1 When did you learn this?

2 A. As it started to unroll -- unravel really
3 because when I saw the agreement on Wednesday, I guess
4 it was on the 8th, and it does say Framework Agreement.
5 We've all seen and talked about a lot here, 3.5 maximum
6 expenditure, which I remember 3.5 maximum expenditure
7 and the SCTA salary -- Union proposal as it was framed,
8 yes, I thought, okay, that SCTA proposal, it's a maximum
9 of 3.5. We are clearly going to need to talk about that
10 and have an additional conversation, which we did have
11 additional conversation.

12 Q. Your testimony that is the first that you
13 learned -- the first that you came to an understanding
14 that the parties were going to discuss something related
15 to salary at some later date was on November 8th when
16 SCTA presented you with a copy of the Framework
17 Agreement?

18 A. Well, that's the first I saw it. I don't know
19 that it's the first because at the press conference,
20 there was conversation about 2.5, 2.5, 2.5, 3.5 in the
21 salary schedule, right, something that would look
22 different. But the first time I saw and it started to
23 visually process what that might look like was at the
24 SCTA meeting.

25 Q. Bear with me one minute. Let's take a look at

1 Joint Exhibit No. 10. Do you have that in front of you,
2 Ms. McArn?

3 A. I do.

4 Q. It is the October 10, 2018, District's response
5 to the SCTA Grievance, the Grievance that we are now
6 arbitrating today, correct?

7 A. I'm --

8 MR. SIMMONS: Object to the extent it calls for
9 a legal conclusion, as to the dispute between the
10 parties as to what issues are before the Arbitrator here
11 today.

12 THE ARBITRATOR: I understand you might have a
13 disagreement in terms of content. We will respond to a
14 Grievance -- or a Grievance is certainly subject to that
15 caution.

16 MR. SIMMONS: Sure.

17 THE ARBITRATOR: Go ahead. That's fine. So
18 you're looking at Joint Exhibit 10?

19 MR. RUKEYSER: Yes.

20 THE WITNESS: The first allegation is refusal
21 to implement the Union's proposed salary structure.

22 BY MR. RUKEYSER:

23 Q. You drafted this document?

24 A. I signed this document.

25 Q. It was not drafted by you?

1 A. I think -- I helped draft it.

2 Q. Okay. And it's true, isn't it, that you
3 addressed in this document that you signed -- let's
4 strike that.

5 You signed this document, right? That's your
6 signature on the second page?

7 A. Yes, that's my signature.

8 Q. And I'm assuming that you reviewed this before
9 your electronic signature was affixed to it and was
10 transmitted?

11 A. Uh-huh.

12 Q. And it's true, isn't it, that this Level 1
13 Grievance response addresses a dispute about the
14 athletic director stipend?

15 A. I have not reviewed this in a while.

16 Q. I will direct your attention to the second
17 page, the paragraph -- fourth from the bottom. It
18 begins, "To the extent SCTA."

19 A. Uh-huh.

20 Q. Do you see that addresses the issue of the
21 stipend paid to athletic directors, correct?

22 A. Yes.

23 Q. Thank you. Let's now turn back in the binder
24 to Joint Exhibit No. 4. This is the AB 1200 disclosure
25 document about which you offered testimony earlier. If

1 I could have you turn to the first page of the public
2 disclosure Collective Bargaining Agreement form. Do you
3 see that in front of you?

4 A. First page of the AB 1200?

5 Q. Of the form -- yes, the AB 1200 form?

6 A. Yes.

7 Q. The form that is titled, "Sacramento County
8 Office of Education, Public Disclosure of Collective
9 Bargaining Agreement."

10 A. Got it.

11 Q. Did you review this document before it was
12 finalized?

13 A. I did review the document. Not that I
14 necessarily recall before it was finalized, no. I mean,
15 it was part of the board presentation.

16 Q. Isn't it true -- strike that.

17 In your role as the District Chief Human
18 Resources Officer, you have an understanding of what this
19 AB 1200 disclosure, why it's made, correct?

20 A. Generally.

21 Q. This is to inform the Sacramento County Office
22 of Education about the anticipated costs of a Collective
23 Bargaining Agreement before the District approves it,
24 correct?

25 A. Correct.

1 Q. And at the risk of asking a very obvious
2 question -- bear with me. The contracts that the board
3 was considering on December 7th, 2017, that was a
4 contract for the term July 1, 2016, to June 30, 2019,
5 correct?

6 A. That was the contract.

7 Q. Yes, thank you. And it was that contract that
8 is addressed in this AB 1200 report, correct?

9 A. The Tentative Agreement we were bringing
10 forward is the one that's addressed in the AB 1200.

11 Q. I have a question about the first page of this
12 AB 1200 public disclosure form. In the chart on the
13 first page, the chart under the heading A, Proposed
14 Change in Compensation," under -- strike that.

15 Under item No. 2, there is a line item that
16 says, Description of Other Compensation and then in
17 parenthesis, years of unlimited experience.

18 THE ARBITRATOR: I'm not following you.

19 MR. RUKEYSER: Sorry, Mr. Arbitrator. We are
20 on the first page of the document, item No. 2 and then
21 the line item immediately above item No. 3.

22 THE ARBITRATOR: Description of Other
23 Compensation (years of unlimited experience).

24 MR. RUKEYSER: That's correct.

25 THE ARBITRATOR: Okay.

1 BY MR. RUKEYSER:

2 Q. Ms. McArn, this reflects the District's costing
3 of the parties' agreement to provide certificated
4 employees unlimited or credit for unlimited years of
5 experience on the salary schedule, correct?

6 A. That's my assumption.

7 Q. And in -- under the column's heading, heading
8 Years Two and Three, there's a dollar value for the cost
9 of that unlimited years of experience. Do you see that?

10 A. Yes, I do.

11 Q. Do you know why, Ms. McArn, these figures are
12 different from the District's calculation of the cost of
13 unlimited years of experience that the District
14 presented at fact-finding?

15 A. No.

16 Q. I will offer you a document. Ms. McArn, this
17 is a page from the District's fact-finding presentation.
18 I will make that representation to you.

19 A. Uh-huh.

20 Q. And I will note that in the text box at the
21 bottom, the text box near that line that was written in,
22 it says that the District's costing of the proposal and
23 the cost of unlimited years of experience estimated
24 2.5 percent at nearly \$4.9 million. Do you have any
25 understanding of why this value, the estimated cost of

1 the unlimited years of experience, dropped so
2 significantly between early October 2017 and early
3 December 2017?

4 A. No.

5 Q. Okay. Do you recognize this document?

6 A. Uh-huh.

7 Q. This is, in fact, a page from the District's
8 fact-finding presentation, correct?

9 A. It looks to be.

10 Q. Okay. Did you, Ms. McArn, direct any District
11 employee or agent to recalculate the cost of unlimited
12 years of experience between fact-finding and early
13 December 2017 when the AB 1200 documentation was put
14 together?

15 A. No.

16 THE ARBITRATOR: Do you know if the AB 1200, is
17 that done internally? Was this -- all these figures
18 were just internally done by the business office?

19 THE WITNESS: Yeah, I think it is completed by
20 the business office and in collaboration with the
21 County.

22 MR. RUKEYSER: Thank you.

23 BY MR. RUKEYSER:

24 Q. Ms. McArn, you were asked some questions about
25 the discussion that the District had with SCTA in May

1 and June of 2018 regarding the issue of the salary
2 provisions of the Framework Agreement. Take a look at
3 District Exhibit O. You testified that at the June 8,
4 2018, meeting, the District shared with SCTA its
5 calculation that the SCTA salary schedule would cost out
6 at \$11.7 million if implemented in full, correct?

7 A. Correct.

8 Q. It's true, isn't it, Ms. McArn, that you knew
9 at that time that SCTA was not -- had not taken the
10 position that its salary schedule should be implemented
11 in full during the '18/'19 year; didn't you?

12 A. Yeah. The meeting before, they mentioned the
13 November and I think in this meeting, they said January,
14 February in terms of the implementation date.

15 Q. And Ms. McArn, it's true also, isn't it, that
16 the parties, meaning SCTA and the District, had
17 previously agreed to a salary increase that took -- that
18 had delayed implementation that took effect the middle
19 of the year; hadn't they?

20 A. Yeah, that previous contract.

21 Q. Yes, a previous bargaining?

22 A. Not with this one.

23 Q. And that a 2.5 percent raise was implemented at
24 the beginning of July 2015 and that a further
25 2.5 percent raise then kicked in on January 1st, 2016,

1 correct?

2 A. Yes, 5 percent ongoing, but it was split up
3 differently in the first year.

4 Q. And this was a way to implement changes to the
5 salary schedule while keeping the out-of-pocket costs to
6 the District in a given year limited -- or capped or
7 limited?

8 A. Yeah, I mean, that in that situation, it was
9 2.5, 2.5 split over a year. So in one year, you didn't
10 have as much impact or financial -- didn't cost as much,
11 but then it was 5 percent moving forward.

12 Q. Let's take a look at Joint Exhibit 12. Counsel
13 asked you questions about this lengthy e-mail thread
14 that bears the subject, Tying up the Last Loose Ends.
15 Take your time to look through it. But it's true,
16 Ms. McArn, that you were not a recipient of the e-mails
17 in this e-mail thread; were you?

18 A. The Superintendent shared. I am not listed as
19 a recipient on any of them.

20 Q. You testified to a December 1st meeting that
21 you had with the SCTA Executive Director and President,
22 you didn't take any notes at that meeting; did you?

23 A. No, I was asking lots of questions.

24 Q. And you were in that meeting with Ms. Allen?

25 A. Yes.

1 Q. And she didn't take any notes; did she?

2 A. I don't recall if she took notes.

3 Q. During your time at the District, when the
4 District -- when it cuts to time to bargaining a new
5 Bargaining Agreement -- strike that.

6 It's your understanding, isn't it, Ms. McArn,
7 when bargaining something or of a Collective Bargaining
8 Agreement, an employer can propose cuts to compensation,
9 can't they?

10 A. Sure.

11 Q. And nothing would prevent the District from
12 proposing cuts to certificated employee compensation if
13 the District believed that was a bargaining position
14 that it wanted or needed to make, correct?

15 A. The District can, at the negotiations table,
16 propose cuts.

17 Q. I think I'm nearly done, Ms. McArn. Let's take
18 a look at Joint Exhibit 1, the Framework Agreement
19 itself. In response to questions by counsel, you
20 testified, I believe, that it was your understanding
21 that the Framework Agreement salary provision provided
22 that there would be a brand new salary schedule based on
23 the SCTA proposed schedule. Do you recall testifying to
24 that effect?

25 A. Yeah, adjustment to the salary schedule per

1 Union's proposed structure.

2 Q. It is true, isn't it, the word "per" does not
3 appear on this first page of the Framework Agreement.
4 It doesn't say "Per Union's proposed structure," does
5 it?

6 MR. SIMMONS: Objection. The document speaks
7 for itself.

8 THE ARBITRATOR: As long as I can read it.

9 MR. RUKEYSER: I think I am done. If I can
10 have just a moment?

11 THE ARBITRATOR: Just a moment. Sure.

12 (Whereupon a recess was taken.)

13 THE ARBITRATOR: On the record.

14 MR. RUKEYSER: I have nothing further.

15 THE ARBITRATOR: Redirect?

16 MR. SIMMONS: Very briefly redirect.

17

18 REDIRECT EXAMINATION

19

20 BY MR. SIMMONS:

21 Q. You testified before the cross about
22 participation in negotiations or involvement in
23 negotiations in December, at least initial proposal of a
24 salary structure by SCTA in 20 -- December 2016. Then
25 Mr. Rukeyser asked about your involvement on the

1 bargaining team throughout -- all the way up to
2 November 2017, correct?

3 A. Yes.

4 Q. At any point in time during those negotiations,
5 did SCTA offer of the Union's proposed salary structure
6 come coupled with a 3.5 maximum expenditure?

7 A. No.

8 Q. So as of the Framework Agreement, it was the
9 first time which you had seen and needed to consider the
10 Union's proposed salary structure coupled with a 3.5
11 maximum cap?

12 A. Yes.

13 Q. When a CBA -- in your experience, you testified
14 as to your long-time experience and role within human
15 resources. When a CBA envisions a delayed
16 implementation date, is that date usually expressed
17 within the CBA?

18 A. Yes, in what's agreed to, signed and approved,
19 it usually has specific dates. Does what would --
20 strike that.

21 Mr. Rukeyser asked you questions about a prior
22 agreement in which the District agreed to a delayed
23 implementation date?

24 A. Yes.

25 Q. Sorry, Cancy.

1 A. Sorry.

2 Q. Did I understand your testimony to be correct
3 that at the time of approving that agreement, you were
4 aware of what the total ongoing cost would be going
5 forward?

6 A. Yes, it would be 5 percent going forward.

7 Q. So the contract itself expressly indicated that
8 the ongoing cost would be percent?

9 A. 2.5, 2.5 with ongoing 5.

10 Q. Joint Exhibits 11 and 12, Loose Ends, Tying Up
11 Loose Ends, apart from the original communication from
12 Mr. Borsos to you, opposing counsel asked were you a
13 expressed recipient here. Did I hear you correctly
14 testify that the Superintendent was forwarding these to
15 you?

16 A. Superintendent shared some of them. I did see
17 them.

18 Q. Do you recall it being generally
19 contemporaneous upon the Superintendent's receipt or at
20 some future later date?

21 A. Within around -- I mean, it wasn't many days
22 later on anything, but I don't know if it was that exact
23 moment.

24 Q. Contemporaneous as to the time when received by
25 the Superintendent?

1 A. Yes, sure.

2 Q. To the extent the District would be permitted
3 to and subsequent negotiations proposed a decrease in
4 salary to SCTA, would SCTA be obligated to agree to
5 those proposed reductions in salary?

6 A. It would go through the negotiation process.

7 Q. And would SCTA be ultimately required or
8 compelled to agree to what the District offered?

9 A. No, it would have to go through the negotiation
10 process.

11 Q. Has the District set aside funds to cover the
12 3.5 percent anticipated for the '18/'19 salary structure
13 adjustment?

14 A. Yes.

15 Q. And has it set aside funds in excess of 3.5
16 percent for that purpose?

17 A. No.

18 Q. Has the District set aside funds for 1920 for
19 purposes of salary structure adjustment?

20 A. I believe what's been set aside is 11 percent
21 moving forward, like all increases considered.

22 THE ARBITRATOR: When you say set aside, you
23 haven't actually set it aside? You have a proposed
24 budget, right?

25 THE WITNESS: Some things had been paid. Some

1 was retro. 2.5, 2.5, 2.5 had already been implemented.

2 THE ARBITRATOR: I just want to be clear in the
3 language. When you say set aside, you don't have funds
4 that you actually put in a safe somewhere?

5 BY MR. SIMMONS:

6 Q. I'm not -- in a way, I think that's what I'm
7 asking. Let me try to clarify.

8 THE ARBITRATOR: Okay.

9 BY MR. SIMMONS:

10 Q. Is it your understanding that in terms of the
11 District's budget, there actually has been planning for
12 and for that planning purpose, dollars that have been
13 set aside, i.e. reserved for the cost of implementing a
14 3.5 adjustment to the salary structure in '18/'19?

15 A. That's my understanding.

16 Q. And prospectively, in this terms of budget
17 planning, the District has also done so in a way for
18 anticipated salary structure adjustment going forward,
19 as well?

20 A. That's my understanding.

21 Q. And at what cost?

22 A. Total of 11 percent, so 3.5 ongoing for the
23 structure.

24 MR. SIMMONS: No further questions.

25 THE ARBITRATOR: Cross?

1 MR. RUKEYSER: Just a couple.

2

3 RE CROSS-EXAMINATION

4

5 BY MR. RUKEYSER:

6 Q. You testified just moments ago that with
7 respect to the e-mails and the e-mail thread regarding
8 Tying Up Last Loose Ends, that the Superintendent had
9 shared some of them with you. He did not share all of
10 them with you; did he?

11 A. I don't know what else he shared. Sorry if I'm
12 not answering your question.

13 Q. Strike that. I think the record is clear
14 enough.

15 Counsel asked you questions about the earlier
16 agreement in which there was a delayed implementation of
17 the salary provision. I would like to show you the
18 document here.

19 A. Thank you.

20 Q. Do you recognize this document, Ms. McArn?
21 This is, in fact, that agreement about what you
22 testified earlier regarding a delayed implementation?

23 A. Yeah, this looks like our 2016 agreement.

24 Q. And that is your signature there for the
25 District up at the top of the first District signature

1 on page 4?

2 A. Yes, one of. The first one is mine.

3 Q. Thank you. At this point, I would move the
4 admission of this document as Association Exhibits 21.

5 THE ARBITRATOR: All right. No objection.
6 This is what was brought up here in your testimony.

7 MR. SIMMONS: What I would say is that I noted
8 all of the documents which the District had utilized,
9 both in cross and on direct, have been documents
10 previously exchanged between the parties in advance of
11 the hearing in which were Bates stamped and noted. Was
12 this document included in the documents provided by SCTA
13 in advance of the hearing?

14 THE ARBITRATOR: It was not.

15 MR. SIMMONS: I would object on that basis,
16 that it is something beyond which the parties worked
17 hard to get to each other in advance of the hearing.

18 THE ARBITRATOR: Both parties worked so well
19 together bring this matter to the Arbitrator. I'll go
20 ahead and receive 21 on the basis that it might fall
21 within the exception. It may not have been anticipated
22 in advance of the direct examination, where the witness
23 was asked about having made those adjustments just mid
24 year. 21 is received.

25 (Whereupon Exhibit No. 21 was received.)

1 MR. RUKEYSER: No further questions. Thank
2 you.

3 THE ARBITRATOR: All right. You want me to ask
4 you some questions now? Just teasing.

5 THE WITNESS: Do I have to answer that one?

6 THE ARBITRATOR: Anything else?

7 MR. SIMMONS: I have nothing further.

8 THE ARBITRATOR: All right. Thank you. You're
9 excused. We will recess for a break and then the next
10 witness is due her at 1:30. However, if he's earlier,
11 we can start earlier. We're off the record.

12 (Whereupon a recess was taken.)

13 THE ARBITRATOR: All right. We are on the
14 record. Thank you. Sir, would you state your name for
15 the record?

16 THE WITNESS: My name is Matt Phillips.

17 THE ARBITRATOR: Mr. Phillips, raise your right
18 hand, please. Do you solemnly swear to tell the truth,
19 the whole truth and nothing but the truth?

20 THE WITNESS: I do.

21 THE ARBITRATOR: Thank you.

22 MR. SIMMONS: Mr. Arbitrator, I'll indicate for
23 the record that the declaration, which was delivered to
24 all parties, the hard copy has been handed out to
25 opposing counsel and to yourself, that copy was not

1 included in the master binder of declarations that you
2 gave earlier, but that the copy of the declaration is
3 submitted.

4
5 DIRECT EXAMINATION

6
7 BY MR. SIMMONS:

8 Q. Mr. Phillips, how are you?

9 A. Very well. How are you?

10 Q. Thank you for your making the trek. I know you
11 were out of town this morning and trying to be back here
12 today. Did you submit a declaration for this
13 proceeding?

14 A. I did.

15 Q. Do you recall about what date you signed that
16 declaration?

17 A. The preceding Wednesday.

18 Q. Have you since -- well, I'll ask you this:
19 Were you involved in reviewing and revising that
20 declaration?

21 A. Yes, I was.

22 Q. Since the point in time when you signed it and
23 before you arrived here today, is there anything within
24 that declaration which you would request a change?

25 A. Yes, in reviewing the declaration this morning

1 and in anticipation of this, I did note that there was
2 an error in paragraph 5. I stated that I presented the
3 fact-finding case in 2017. I did assist in preparing,
4 but I did not facilitate the presentation. My error
5 occurred because I presented the fact-finding case in
6 the previous year.

7 Q. Mr. Phillips, anything else within that
8 declaration that you would request be changed or
9 corrected in any way?

10 A. No.

11 Q. Have you submitted that declaration, as well as
12 based upon the questions I ask you this afternoon, you
13 will be subject to cross-examination by SCTA counsel
14 that can pertain to anything in your declaration which I
15 ask?

16 A. Okay.

17 Q. Mr. Phillips, what's your current position?

18 A. I am a Director of Management Consultant
19 Services for School Services of California.

20 Q. How long have you held that position?

21 A. It's been about three and half years and my
22 four-year anniversary will occur in July.

23 Q. Congratulations.

24 A. Thank you.

25 Q. Do you hold any degrees or certifications?

1 A. I do. I graduated from CSU Chico with a
2 bachelor's degree with an emphasis in accounting. I
3 hold my Certified Public Accountant certificate.

4 Q. Before your current role of School Services,
5 did you perform fiscal services for a public school
6 district?

7 A. I did.

8 Q. What district was that?

9 A. Rocklin Unified School District.

10 Q. What was your position there?

11 A. Director of Fiscal Services.

12 Q. What were your duties and roles in that
13 position for Rocklin Unified?

14 A. My duties were -- included, but not limited to,
15 the development of budget on behalf of the District,
16 processing and monitoring of payroll on a monthly basis,
17 the collection of cash receipts, processing cash
18 disbursements for the District and also providing
19 support for negotiations on behalf of the District.

20 Q. Your current role of School Services is
21 director of management consulting services. What do
22 those duties entail?

23 A. Those duties include, but are not limited to,
24 support for negotiations with school districts and the
25 mediation and fact-finding processes, organizational

1 reviews on behalf of school districts, impartial budget
2 reviews on behalf of school districts.

3 Q. Specifically, in relationship to negotiations,
4 Mr. Phillips, what is your role in terms of services you
5 provide as to negotiations?

6 A. Sure. So our firm typically gets involved in
7 negotiations that have moved on to the impasse process
8 either in mediation or in fact-finding. And services
9 range from, but not -- include also the preparation of
10 fact-finding materials, compilation of District facts,
11 also reviewing budget assumptions that the District has
12 compiled through for validity and accuracy.

13 Q. Thank you, Mr. Phillips. And that is my error.
14 I did not remind you to slow your pace. Ms. Court
15 Reporter is trying to get all of your testimony on the
16 record.

17 You provide fiscal services to the Sacramento
18 City Unified School District?

19 A. Yes, I do.

20 Q. For how long have you been doing that for Sac
21 City Unified?

22 A. I have been working with the District since
23 about 2016.

24 Q. In addition to Sacramento City Unified, do you
25 work with other districts?

1 A. I do.

2 Q. Approximately how many other districts do you
3 provide your services to?

4 A. Over the first three and a half years with the
5 company, I would estimate about 150 school districts.

6 Q. Mr. Phillips, before you, you have several
7 binders. I'm going to ask you to turn to the white
8 binder before you and what's marked as Union Exhibit 3
9 behind the third tab there. You just clarified that you
10 didn't, quote, unquote, present the case for the
11 District in fact-finding in 2017, but can you expand on
12 your role in preparing the District's case for
13 fact-finding in 2017?

14 A. Sure. So as an employee of School Services,
15 the information that was included in the 2017
16 fact-finding binder, as prepared by the District, was
17 largely compiled by School Services, chiefly with
18 myself. So the compilation of all District facts, the
19 compilation of District's position and reasons that were
20 included within the binder, I played a large role in
21 developing and inserting those into the finding.

22 Q. Thank you, Mr. Phillips. Are you familiar with
23 what is marked as Union Exhibit 3?

24 A. Yes, I am.

25 Q. What is this document?

1 A. This is the report submitted by the neutral
2 third-party chairperson from the fact-finding panel,
3 Andrea Gould.

4 Q. Do you recall in or around what date this
5 report was issued by neutral?

6 A. I believe it was November of 2017.

7 Q. At the beginning of November. How about I have
8 you turn to the last page and see if that refreshes your
9 recollection as to the issue by the neutral.

10 A. Yes.

11 Q. What is that in terms of your recollection
12 having looked at the last page?

13 A. That confirms my recollection.

14 Q. Can I have you turn to page 11 of the report in
15 terms of Article 12, Compensation. Have you been
16 involved in fact-finding proceedings apart from those
17 involved at Sacramento City Unified?

18 A. Yes, I have.

19 Q. About how many would you estimate you have been
20 involved in?

21 A. Ten to 15.

22 Q. What is your experience in terms of the neutral
23 fact-finding recommendation juxtaposed with a District
24 and Union proposal?

25 A. My experience with the fact-finding process is

1 the neutral goal to achieve a settlement and also to be
2 invited back to future fact-finding. And so generally
3 speaking, the neutral will attempt to recommend
4 something that is in between both the District's
5 proposal and the Association's proposal.

6 Q. So do you recall reviewing the neutral report
7 before you in Exhibit 3 when it was issued by the
8 fact-finding in 2017?

9 A. I have seen this before in the past, yes.

10 Q. Based upon page 11, how would you characterize
11 the cost of the compensation proposal as a percentage
12 recommended by the fact-finder for years 2016/'17
13 through 2018/'19?

14 A. Based on my review of the recommendation, it
15 appears that the neutral has recommended a composite 9%
16 salary increase over the three years.

17 Q. Through the inclusion of '18/'19?

18 A. That's correct.

19 Q. Can you review the next line following that
20 chart of the Fact-Finder's recommendation? Can you read
21 that into the record?

22 A. "The parties should endeavor to make a second
23 2 percent salary schedule adjustment in 2019/2020."

24 Q. So if, in fact, the parties were able to make
25 that further adjustment, what would the value of the

1 neutral's recommendation as to salary be effective
2 '19/'20 as proposed in this report?

3 A. Includes above the additional 2 percent in
4 '19/'20, the total ongoing cost would be an 11 percent
5 increase.

6 Q. Based upon your experience and expertise, would
7 you assume this recommendation from the fact-finder was
8 a consistent or steady cost of 11 percent going forward
9 or one which would increase after '19/'20?

10 A. It would be steady at the 11 percent.

11 Q. Mr. Phillips, I will ask you to turn to Joint
12 Exhibit 1. Bear with me. Mr. Phillips, in your
13 provision of fiscal services to school districts
14 including within the negotiation context, what is your
15 understanding of what occurs with regard to the terms in
16 the Collective Bargaining Agreement when the term of
17 that agreement expires?

18 A. My understanding is when a Collective
19 Bargaining Agreement expires, that the status quo
20 prevails. That is always the stronger provision in
21 fact-finding, so when a Collective Bargaining Agreement
22 prevails, until the parties come to an alternative
23 agreement, that still prevails, the preceding Collective
24 Bargaining Agreement.

25 Q. And the cost which was agreed to in it?

1 A. That's correct.

2 Q. Turning to Joint Exhibit 1, page 1, have you
3 seen that document before, Mr. Phillips?

4 A. Yes, I have.

5 Q. Are you familiar with what it is?

6 A. Yes, I am.

7 Q. Could you describe what you understand that to
8 be in terms of page 1?

9 A. My understanding is this is the agreement that
10 was reached in the Mayor's office subsequent to the
11 fact-finding hearing and their Framework that was agreed
12 to by the party.

13 Q. Based upon your experience, what would you
14 assume the cost for the salary component of the
15 Framework Agreement to be as of '18/'19 as memorialized
16 on page 1 of the Framework Agreement?

17 MR. RUKEYSER: Objection; foundation. Calls
18 for speculation.

19 MR. SIMMONS: I'm asking for the expert's
20 opinion and having been involved in great experience in
21 terms of providing fiscal services and reading and
22 understanding CBAs as to what he would understand the
23 contents of page 1 of Joint Exhibit 1 to be in terms of
24 a cost in his experience.

25 MR. RUKEYSER: Mr. Arbitrator, there was no

1 foundation laid as to witness's expertise, let alone a
2 significant expertise in negotiating Collective
3 Bargaining Agreement construing them. There's been no
4 foundation as to when he saw this document, in what
5 context, whether he was in any position to opine about
6 what the document says and he wasn't there when it was
7 negotiated --

8 THE ARBITRATOR: I think counsel is being
9 technical and I -- you have every right to be technical
10 in that sense. I think we can probably establish a
11 foundation for this witness's answer to the last
12 question. But you did say you served as the
13 fact-finding panel member in a prior fact-finding to
14 this particular dispute, correct?

15 THE WITNESS: That's correct.

16 THE ARBITRATOR: Then you subsequently served
17 as the fact-finding panel for the District in this
18 particular fact-finding --

19 MR. SIMMONS: Testifying to have been --

20 THE ARBITRATOR: He also prepared --

21 (Simultaneous discussion; reporter
22 interruption.)

23 THE ARBITRATOR: He also prepared the
24 documentation and whatever was entered into the record
25 and the fact-finding.

1 Is that the extent of your experience with this
2 District, the two fact-findings?

3 THE WITNESS: With respect to the negotiations,
4 the two fact-findings in preparation of the case.

5 THE ARBITRATOR: What did you -- what documents
6 did you review in those two episodes of fact-finding?

7 THE WITNESS: So in the compilation of the
8 fact-finding binder on behalf of the District, there is
9 a number of facts that we have included in there,
10 including but not limited to, the cost of 1 percent for
11 the District, the cost of the second column for the
12 District, the allocation of resources based on state
13 certified data.

14 THE ARBITRATOR: Okay.

15 THE WITNESS: Comparative information showing
16 total compensation that the District provides as
17 compared with neighboring districts.

18 THE ARBITRATOR: All right. He can offer an
19 opinion. That's all it is. I'm not asking you to
20 accept the opinion as being accurate. But based upon
21 the witness's experience in the District, I think he
22 established a foundation to answer the last question.
23 But you're going to have to repeat the last question.

24 BY MR. SIMMONS:

25 Q. Mr. Phillips, looking at page 1 of the

1 Framework Agreement, what would your view be as to the
2 cost of the salary component agreed to on page 1 of the
3 Framework Agreement?

4 THE ARBITRATOR: Are you talking about in
5 percent?

6 MR. SIMMONS: As a percentage.

7 THE ARBITRATOR: Okay.

8 THE WITNESS: Based on my review of the
9 Framework Agreement, it is 2-1/2 percent effective
10 July 1, '16; 2-1/2 percent effective July 1 of '17;
11 2-1/2 percent effective July 1 of '18, so the total of
12 those three would be 7-1/2 percent. And as I reviewed
13 the 3-1/2 percent in addition, absent any other date, I
14 would assume that would go into effect July 1 of 2018,
15 as well, which would be a total ongoing cost of
16 11 percent.

17 BY MR. SIMMONS:

18 Q. What do you mean by a total ongoing cost of
19 11 percent?

20 A. Meaning that when the calendar rolled over to
21 July 1 of 2019, the 11 percent would remain in force
22 from the preceding three years.

23 Q. Why would, in your experience, would you assume
24 that?

25 A. Because there's no date that explicitly states

1 that any of these percentages would go into effect other
2 than July 1st.

3 Q. In your experience with working with other
4 Districts, if there's a delayed implementation date, is
5 the norm for there to be an expressed identification of
6 that belated implementation date within the agreement?

7 A. Yes.

8 Q. Mr. Phillips, after the weekend of November 4th
9 and --

10 THE ADMINISTRATOR: Before you move to the last
11 question, based upon your experience -- because there
12 was some discussion, I think, very early in John's
13 testimony about SCTA's frustration about the 1 percent
14 dollar value, correct? So based on all of your
15 experience and you've studied this and it's what you do,
16 what is 1 percent in this District?

17 THE WITNESS: The 1 percent, based on my most
18 recent knowledge of the District's position is about
19 \$2 million for SCTA.

20 THE ARBITRATOR: All right. Thank you. Sorry
21 I interrupted.

22 MR. SIMMONS: Not a problem.

23 BY MR. SIMMONS:

24 Q. Mr. Phillips, after the weekend of November 4th
25 and 5th and the signing of this Framework Agreement

1 which is the fact that the parties stipulated to
2 occurred with SCTA, the Mayor and the Superintendent
3 Aguilar, did anyone from the District reach out to you
4 to request you to do any costing in relation to a
5 certificated salary schedule?

6 A. Yes.

7 Q. Who reached out to you?

8 A. Mr. Gerardo Castillo.

9 Q. What did he ask you for your analysis of a cost
10 of?

11 A. Mr. Castillo asked me to cost out a salary
12 schedule that was provided to him by Mr. John Borsos of
13 SCTA to determine what was the total cost of the salary
14 schedule B if it -- period.

15 Q. Do you recall whether -- because I want to make
16 sure that what you just testified to is as accurate as
17 it can be. Do you recall Mr. Castillo telling you that
18 Mr. Borsos had given him a schedule? Do you recall that
19 explicitly?

20 A. I don't recall that explicitly.

21 Q. But you understand it to be a schedule that was
22 derived from or originated with SCTA?

23 A. That's correct.

24 Q. And when you ran the cost analysis --

25 THE ARBITRATOR: Let me be sure I am being

1 clear on this. In this document in these binders -- and
2 I didn't carry them back with me, so I have not gone
3 through them all. There is the actual schedule that, I
4 think, Mr. Borsos provided at one point; is there not?
5 I recall there being a schedule.

6 MR. SIMMONS: There is. There's --

7 THE ARBITRATOR: I just want to find out what
8 the witness's calculations were based on.

9 MR. SIMMONS: And I'll get there. It's
10 separate and apart and there is no nexus to the
11 documentation. It's separate and apart from the
12 testimony. I don't want to be testifying. Jacob,
13 please tell me if you disagree? There was
14 testimony from Mr. Borsos having given District staff,
15 including Ms. McArn and Ms. Allen certain schedules.
16 That's far beyond --

17 THE ARBITRATOR: All I want to know is what he
18 based it on. Show him a document, look at it, tell us
19 if that's the document you based your calculations on,
20 I'm happy. I just don't want to be ambiguous.

21 MR. SIMMONS: I'm with you, Mr. Arbitrator.

22 BY MR. SIMMONS:

23 Q. So Mr. Phillips, having been involved in the
24 fact-finding, which has resulted in the neutral
25 recommendation as of November 1, 2017, were you familiar

1 with a salary structure proposed by SCTA in
2 fact-finding?

3 A. Yes.

4 Q. And when Mr. Castillo asked you to cost out the
5 Union's salary structure, was it that which you were
6 familiar with in the fact-finding process?

7 MR. RUKEYSER: I'm going to object on
8 foundation grounds. There is -- I don't believe it's
9 been established when this occurred. That date is going
10 to be relevant, I think, to possible other --

11 THE ARBITRATOR: You need to find out what he
12 is basing his figures on. When was it given -- let's
13 see the documents so we all know that we are talking
14 apples to apples.

15 BY MR. SIMMONS:

16 Q. Let me start this way: Do you remember the
17 approximate date when Mr. Castillo asked you to run this
18 cost report?

19 A. It was in November of '17.

20 Q. All right.

21 THE ARBITRATOR: Was that before the
22 fact-finding report came back or afterward? Must have
23 been after the fact-finding report?

24 THE WITNESS: November 1st was the
25 fact-finding.

1 THE ARBITRATOR: Right, so if it is November,
2 it had to have been after the report?

3 THE WITNESS: Right.

4 THE ARBITRATOR: Sometime in November.

5 BY MR. SIMMONS:

6 Q. To the best of your recollection, do you recall
7 it being fairly close to the time -- to the November 4th
8 and 5th negotiating with the Mayor or do you recall it
9 being closer to the November 7th board action approving
10 the parties' Tentative Agreement?

11 A. My recollection it was closer to the former.

12 Q. All right. And so Mr. Castillo reaches out to
13 you, asks for you to run a cost report based upon the
14 Union's proposed salary structure?

15 A. That's correct.

16 Q. And as of early November 2017, would you have
17 had an understanding of what SCTA had previously
18 proposed as its proposed salary structure?

19 A. I had an understanding of what was in the
20 fact-finding binder as prepared by myself.

21 Q. And can you describe in general terms what that
22 proposed structure -- the components of that proposed
23 Union structure as you understood it to be?

24 A. From the salary schedule that was provided?

25 Q. Right.

1 A. So the components of the salary schedule
2 provided by the Association, included a compression in
3 two directions. The first compression was decreasing
4 the number of steps on the salary schedule from 26 to
5 20. And then also compressing the number of educational
6 units that it took to obtain the 5th column, decreasing
7 it from 103 units down to 90 units. Then the inclusion
8 of another middle column representing 60 educational
9 units.

10 THE ARBITRATOR: That is referred to as BA plus
11 60?

12 THE WITNESS: That's correct.

13 THE ARBITRATOR: That was in addition?

14 THE WITNESS: I would say replacement.

15 THE ARBITRATOR: Oh, replacement. They lapped
16 off the one at the far right?

17 THE WITNESS: So the original schedule had five
18 columns and the schedule provided by SCTA had five
19 columns. The schedule provided by SCTA, I believe it
20 was a column for bachelor's, a column for bachelor's
21 plus 45, bachelor's plus 60, bachelor's plus 75 and
22 bachelor's plus 90.

23 THE ARBITRATOR: The old schedule or
24 preexisting schedule, wasn't there a bachelor's plus
25 1-something?

1 THE WITNESS: Yes, so the schedule that's
2 currently in effect, the first column is bachelor's and
3 then bachelor's plus 45, bachelor's plus 75, bachelor's
4 plus 90 and bachelor's plus 103.

5 THE ARBITRATOR: Okay.

6 BY MR. SIMMONS:

7 Q. Mr. Phillips, does your cost analysis include
8 that that structure could be run under -- within and
9 without going over 3.5 cap?

10 A. Not for an entire fiscal year.

11 Q. And you communicated that to the District?

12 A. Yes, I did.

13 Q. What was -- to the extent it could done within
14 3.5 cap, did you have an understanding as to what the
15 District's next step needed to be for implementing the
16 Framework Agreement?

17 A. No.

18 Q. If you can recall?

19 A. No.

20 Q. I want to move forward, Mr. Phillips, to --
21 subject to potential objections by SCTA counsel here,
22 but there was testimony earlier today as to a meeting
23 which occurred between SCTA and the District in May of
24 2018. Do you recall in May 2018 being asked to run cost
25 analyses for the district?

1 A. Yes.

2 Q. Who requested you to run those analyses?

3 MR. RUKEYSER: I will object on the same
4 grounds that I objected to earlier. Communications that
5 District may have had with Mr. Phillips, numbers that
6 Mr. Phillips may have crunched in May of 2018 are
7 irrelevant to the matter that is before you,
8 Mr. Arbitrator.

9 MR. SIMMONS: I would say in addition to what I
10 said earlier, another critical aspect here is we're
11 talking May of 2018. The implementation commencement
12 date of the Framework Agreement, as to salary schedule,
13 was July 1, 2018. So this is, at a point in time, where
14 efforts still could and were being made to attempt to
15 find a way to implement what the District believed was
16 the agreement as the salary structure or to work through
17 how to get to a place to effectively implement that
18 agreement and it's occurring before the July 1 date. I
19 think it is relevant to whether or not the District was
20 asking, consistent or inconsistent with its stated
21 understanding of the Framework Agreement and Tentative
22 Agreement in December and efforts moving forward to try
23 to get to a place where the parties could implement a
24 mutually agreed upon salary adjustment within the 3.5
25 cap.

1 MR. RUKEYSER: Mr. Arbitrator, if I may
2 respond? With respect to the dispute concerning the
3 salary provision of the Framework Agreement that were
4 incorporated into the parties' Collective Bargaining
5 Agreement, the issue before you is whether --
6 potentially whether there was an agreement and if so,
7 what was agreed to. There is no dispute, but that the
8 District has not implemented a new salary schedule in
9 this '18/'19 school year. I would submit that testimony
10 at this point about what may or may not have been going
11 on within the District's -- the District Administrator's
12 mind in May or June of 2018 is immaterial.

13 THE ARBITRATOR: Was it explained to you and --
14 there is no attorney-client privilege or anything. Was
15 it explained to you? The District came to you, I
16 presume. This is all post fact-finding saying we need
17 you to cost a salary schedule?

18 THE WITNESS: That's correct.

19 THE ARBITRATOR: Did they explain to you why
20 they were doing it?

21 THE WITNESS: They didn't explain per se, but
22 because of my preparation of the fact-finding binder, I
23 knew there was disagreement about what a '18/'19 salary
24 schedule was to look like.

25 THE ARBITRATOR: Okay. Do you know -- well,

1 you prepared this for the District, correct? This,
2 Counsel, is going back to my initial reflection on this
3 problem. This was information that the District held
4 close to its vest and did not communicate across the
5 table with the Association. I just don't see that
6 really is going to get us anywhere. If it's information
7 that was developed, I'm not sure what the District was
8 necessarily intending, but -- I mean, I don't think
9 there is any dispute that if it's going to be a lot less
10 expensive. Again, this is all undisputed. A lot more
11 expensive to implement or make it effective for an
12 entire year versus half a year or quarterly year or
13 whatever. So there's -- we know that the cost is at
14 3.5 percent for 2018/'19; we know that. So I just don't
15 know that costing it out at this late date -- unless it
16 was communicated to the Association. I have to look at
17 the Association and say, all right, you were given that
18 information. What was your response to it. I just
19 don't know it gets us anywhere.

20 MR. SIMMONS: Mr. Arbitrator, my offer of proof
21 would be this: I would say that if the testimony has
22 been clear from District witnesses, that they understood
23 when proposed through November up to December 7th when
24 the board took action, that there was an intended
25 adjustment to the salary structure that would remain

1 within the 3.5 cap, but further work had to be done.

2 Ms. McArn testified earlier today as to the
3 need to further cost items out and that those efforts
4 had to be done before reaching a point in time how do
5 you do a final mutually agreed upon salary structure
6 that's just within the 3.5 cap. And as of December 7th
7 when the board takes action, there was an
8 acknowledgement by both parties that it's going be at
9 least 45 days before we come to that agreement and
10 testimony which I heard as far as the parties saying
11 that it's probably going to take longer.

12 Then Ms. McArn testified it was by April, late
13 April or so, that the District fully has the unlimited
14 service credit components, then determines, which then
15 permitted the door to open up. And they say, okay, now
16 we can talk about what is the actual cost if we do your
17 structure without a 3.5 cap or if we do it in a way that
18 stays within the 3.5 cap. The discussion in May and
19 June, and for that matter, August 2018 are directly
20 relevant to and consistent with what the District had
21 said its understanding was as to the Framework Agreement
22 going back to all through November, into December and
23 then in the spring, summer of 2018.

24 MR. RUKEYSER: If I may respond,
25 Mr. Arbitrator. Without agreeing certainly to the

1 District's recitation of its understanding of the
2 Framework Agreement, it was clear that is the District's
3 position in this arbitration. The District has already
4 called a number of witnesses, district administrators
5 who testified about the communication that they believe
6 occurred during calendar year of 2018 with SCTA.
7 Testimony about those discussions were -- was admitted
8 over my objection. But what this witness, who is not a
9 District administrator and who apparently performed some
10 calculations at the request of the District, his
11 testimony does not address this issue of ongoing
12 communications between the parties in 2018.

13 THE ARBITRATOR: This is what concerns me
14 because I listened carefully to Ms. McArn and I'm going
15 to go back, of course. Now, I'll carefully review
16 everything, but it sounded like that meeting on May 8th,
17 was it, suddenly the light went off and Ms. McArn and
18 whoever else was there suddenly realized John was there.
19 We have a problem because we don't see this agreement
20 eye to eye with SCTA. Now, it kind of sounds to me --
21 I'll just put it out there. It kind of sounds to me
22 like at this point the District knows it has a problem.
23 They have to go back to their experts and try to figure
24 this out. I mean, the District obviously -- I'm not
25 saying the District wants to resolve it, but they have

1 to figure out how big a problem is this. So they go
2 back to the expert, cost this out and tell us what it's
3 going -- how bad a hit are we going to take if we
4 implement this. And now here we are because it's a big
5 hit.

6 So this doesn't have anything to do with the
7 negotiations, does it? Unless you brought it forward in
8 those discussions and said, look, John, here's the
9 problem, this is what it's going to cost. Now, that I
10 can -- and then I would be interested in what John's
11 response was to that. But unless there was that kind of
12 dynamic, of it's just prepared by the District and --
13 big problem here.

14 MR. SIMMONS: I think Ms. McArn testified to in
15 detail what occurred at the May 24, 2018, meeting. And
16 I don't think I would bicker with your representation
17 that it became clear at that moment that the parties
18 weren't seeing -- were clearly on different pages as to
19 what had been agreed to --

20 THE ARBITRATOR: Correct.

21 MR. SIMMONS: -- on the Tentative Agreement. I
22 think the fact that Mr. Phillips was asked to run a
23 report. Now having been provided the information that
24 SCTA gave the District in May of 2018, that permitted
25 the District to cost out what a full year's

1 implementation would be, unlimited service credit, et
2 cetera, having been accounted for is directly relevant
3 to the value for a full year's implementation. Now,
4 that's inconsistent with what the District thought it
5 was agreeing to or approving as of December 2017.

6 THE ARBITRATOR: It doesn't mean that I -- I'm
7 dismissing that fact that I know it's going to be a lot
8 more money. It's admittedly higher. It's going to be
9 virtually twice what the District is saying it thought
10 the deal was. But having those particular numbers in
11 hand -- I mean, it doesn't prove anything to me unless
12 we can use it to probe -- you know, here we have the
13 figures. John, what do you say to this? Is this the
14 deal that we had? Were you really proposing we spend
15 7.1 percent for the '19/'20 school year, that type of
16 thing? If we had a discussion like that, that flowed
17 from the document, I would say it's foundational to the
18 further discussions between the parties. But it doesn't
19 sound to me like from what you said, that's what I am
20 going to hear. I'm just going to get the expert's
21 opinion about how big a problem this is.

22 MR. SIMMONS: Right. Well, I would say to the
23 extent that the only thing if there was -- I think the
24 value of a full year implementation of SCTA's proposed
25 salary structure is definitely relevant when you

1 consider what the board said, what Mr. Ryan testified to
2 as to their process when they took action on
3 December 7th.

4 THE ARBITRATOR: I wish the board had had
5 School Services' cost analysis in front of them when
6 they were about to pass it. That would be interesting,
7 but six months later, it's just not. My job is to find
8 the intent. The parties hate this deal. What was in
9 their head? I could see now -- you know, we can use
10 facts, things that happened subsequent and see what
11 their reaction was, but it's looking back in time. You
12 know, by virtue of their actions later, you know, you
13 could examine what their intent was at the critical time
14 when they passed it, but this is just -- it's way down
15 the road. It's way down the road.

16 I have to say, Counsel, you know, even if I
17 were to receive it, it wouldn't be prejudicial to be
18 honest because I recognize what it is. It is what it
19 is. We can't change that. I recognize that, but I
20 think, you know, in a technical sense, it's not evidence
21 of intent. It's just not evidence. We can stipulate.
22 I know it's expensive.

23 MR. SIMMONS: I think if -- I'm certain that
24 Mr. Rukeyser would stipulate to exactly what I think the
25 District --

1 THE ARBITRATOR: It's double.

2 MR. SIMMONS: At least double.

3 THE ARBITRATOR: Yeah.

4 MR. SIMMONS: To me, that is derived from --
5 well, I base that off of the concept of a proposed
6 delayed implementation date. If delayed implementation
7 equals 3.5, then the employers --

8 THE ARBITRATOR: Well, 3.5, whatever you do
9 with it, wherever you slot it in, the year changes, of
10 course. If it's limited at 3.5, maybe you can't
11 implement until November or December -- who knows -- in
12 order to get that 3.5. But, you know, if you implement
13 it for the full year, I recognize that it's going to be
14 a lot more expensive. I thought I saw somewhere in the
15 documents 7.1. That's the figure I have in my head, 7.1
16 for a full year.

17 MR. SIMMONS: If the parties would stipulate to
18 that what you just described, I would forgo further
19 questioning of Mr. Phillips.

20 THE ARBITRATOR: I will.

21 MR. RUKEYSER: I will need another moment with
22 my client.

23 THE ARBITRATOR: We'll take a moment. We're
24 off the record.

25 (Whereupon a recess was taken.)

1 THE ARBITRATOR: Back on the record.

2 MR. RUKEYSER: So the Union can certainly
3 stipulate that the cost of the uncapped salary schedule
4 that the Union proposed and that is our contention was
5 agreed to in November, exceeds 3.5 percent of District's
6 payroll.

7 THE ARBITRATOR: I thought John testified to
8 this.

9 MR. RUKEYSER: Yes, he did.

10 THE ARBITRATOR: You might have been the one
11 that said 7.1. You weren't the one? All right.

12 MR. RUKEYSER: As to the exact amount by which
13 the salary schedule exceeds 3.5 percent, we cannot
14 stipulate to 7.1 percent. We submit that the exact
15 amount by which the salary schedule exceeds 3.5 percent,
16 in itself, is immaterial except to the extent that you
17 pointed out, Mr. Arbitrator, this was something that was
18 discussed in November and early December of 2017. And
19 as to that matter, I think the record does stand for
20 itself.

21 THE ARBITRATOR: Okay. This is not
22 fact-finding and I'm not here weighing one proposal
23 versus another proposal, trying to figure out what is
24 comparable. My job is straight forward. Whatever the
25 deal was, is the deal. And if it was a bad deal, if it

1 was a good deal, somewhere in between, that's not my
2 job. So to the extent that information is helpful in
3 determining the parties' mutual intent, not by hidden
4 agenda that somebody has, either SCTA or the District,
5 but a mutual intent. I am very traditional in my
6 approach to determining parties' intent. There were
7 various tools utilized, very standard and well-explained
8 in words, in text, that type of thing. This is not
9 going to be helpful in terms of determining parties'
10 intent for the reasons I have explained.

11 I will accept the stipulation that has been
12 offered and I think that I can look at all the
13 information I have, I can kind of extrapolate. I'm not
14 going to put 7 percent or 7.1 percent, but I think we
15 can all recognize the rub here is the fact that it's
16 more than 3.5. The District is telling me that's what
17 their deal was, 3.5 going forward. And obviously John's
18 testimony, it's not 3.5 because that's just for part of
19 the time. If we do it for the full time, full year, we
20 recognize it's going to be more than 3.5. That's where
21 the mystery falls. There it is. Whatever the cost,
22 that's what it is. That's the rub. I got it. You
23 know, I got that. Move on.

24 MR. SIMMONS: With that stipulation, I'm done
25 with direct from Mr. Phillips.

1 MR. RUKEYSER: Very limited cross.

2 THE ARBITRATOR: Have you been cross-examined
3 before?

4 THE WITNESS: No.

5 THE ARBITRATOR: Oh, my gosh. This is part of
6 your on-the-job kind of -- that's actually a great job
7 you're doing.

8 MR. RUKEYSER: Good afternoon, Mr. Phillips.

9 THE WITNESS: Good afternoon.

10

11 CROSS-EXAMINATION

12

13 BY MR. RUKEYSER:

14 Q. My name is Jacob Rukeyser. I'm the staff
15 attorney at the California Teachers Association
16 representing the Sacramento City Teachers Association.
17 I will try on keep this brief, but I do have questions.

18 Are you here under subpoena, sir?

19 A. No.

20 Q. Are you being paid by the District for your
21 appearance here?

22 A. I believe there is a financial arrangement,
23 yes.

24 Q. With your employer, School Services of
25 California?

1 A. That's correct.

2 Q. Do you understand what that financial
3 arrangement is?

4 A. No.

5 Q. How do you understand that there's a financial
6 arrangement?

7 A. It would be a contract between School Services
8 and the District.

9 Q. With respect to this declaration in front of
10 you, you did not actually write this declaration; did
11 you, sir?

12 A. That's correct.

13 Q. And the attorney who was examining you prepared
14 this document, to your knowledge, correct?

15 A. That's correct.

16 THE ARBITRATOR: Co-counsel.

17 THE WITNESS: That's my understanding. I did
18 review the document and signed the document.

19 BY MR. RUKEYSER:

20 Q. When did you -- when did it come to your
21 attention, sir, that there was an error in paragraph 5
22 of your declaration?

23 A. In my review this morning.

24 Q. Did counsel for the District point this error
25 out to you?

1 A. They did not.

2 Q. You did not catch this error when you reviewed
3 and signed the declaration on March 6th, last Wednesday,
4 correct?

5 A. That's correct.

6 Q. You testified earlier when District counsel was
7 examining you that you had at some point seen the
8 neutral Fact-Finder's report that is in the white binder
9 in front of you, Association Exhibit No. 3?

10 A. That's correct.

11 Q. When was that that you first saw this neutral
12 Fact-Finder's report?

13 A. I don't recall.

14 Q. Was it in calendar year 2017 or sometime later?

15 A. I don't recall.

16 Q. Had you reviewed this before -- had you
17 reviewed the Fact-Finder's report before it was agreed
18 and worked out that you would testify at this hearing on
19 behalf of the District?

20 A. Yes.

21 Q. You were also asked to render your opinion
22 about the Framework Agreement of this document that the
23 parties signed in November of 2017, Joint Exhibit 1.
24 When did you first see this document, sir?

25 A. In the 2018 year.

1 Q. Who showed it to you?

2 A. My recollection, it was my superior, John Gray,
3 the president of School Services.

4 Q. You also testified at some length,
5 Mr. Phillips, about your understanding of the SCTA
6 salary schedule proposal at fact-finders. You explained
7 how it was -- how the schedule was compressed on both
8 axis. Do you recall that testimony?

9 A. Yes.

10 Q. So that's your description, sir, of the Union's
11 proposed salary schedule structure, correct?

12 A. Correct.

13 Q. You also testified, Mr. Phillips, about your
14 understanding of contract language providing for a
15 delayed implementation of a salary provision. How many
16 contracts have you reviewed, Mr. Phillips, that include
17 a delayed implementation of a salary agreement?

18 A. Without putting an exact number on it, my own
19 personal review of contracts shows that it's the
20 exception to the rule that it would have a delayed
21 implementation date.

22 Q. That wasn't my question, Mr. Phillips. My
23 question is how many contracts have you personally
24 viewed that include such a delayed implementation?

25 THE ARBITRATOR: 50, 100?

1 BY MR. RUKEYSER:

2 Q. If you know?

3 A. Then I wouldn't be unable to provide an exact
4 number.

5 Q. You have never bargained a Collective
6 Bargaining Agreement, correct?

7 A. That's correct.

8 MR. RUKEYSER: I think I'm nearly done. May I
9 have a moment.

10 THE ARBITRATOR: A moment. Off the record.

11 MR. RUKEYSER: Thank you.

12 (Whereupon a recess was taken.)

13 THE ARBITRATOR: All right. Back on the
14 record.

15 MR. RUKEYSER: Mr. Phillips, thank you very
16 much. I don't have further questions.

17 THE ARBITRATOR: Redirect?

18 MR. SIMMONS: No redirect. We will -- the
19 District will rest the Case in Chief.

20 THE ARBITRATOR: Off the record. Take a short
21 recess. We'll begin with your rebuttal.

22 MR. RUKEYSER: Which I anticipate will be very
23 short.

24 (Whereupon a recess was taken.)

25 THE ARBITRATOR: We're back on the record.

1 Rebuttal.

2 MR. RUKEYSER: Mr. Arbitrator, the Union will
3 call Mr. John Borsos.

4 THE ARBITRATOR: John, I remind you that you're
5 still under oath.

6 THE WITNESS: Yes, can I stay here?

7 THE ARBITRATOR: As long as you're brief.

8

9 REBUTTAL

10

11 BY MR. RUKEYSER:

12 Q. Mr. Borsos, do you recall how you learned that
13 there was going to be a meeting on Sunday, November 5th,
14 2017, at Mayor Steinberg's house?

15 A. Yes, we exchanged text.

16 Q. You and the Mayor?

17 A. Yes.

18 Q. I will put in front of you a document that I
19 will mark as Association Exhibit 22. Do you recognize
20 this document, Mr. Borsos?

21 A. Yes, I do.

22 Q. What is this?

23 A. A screen shot from my phone with text exchanges
24 between Mayor Steinberg and myself.

25 MR. SIMMONS: So before we go down the road

1 with this, I will object to the extent this wasn't
2 provided with the Union's papers in advance of the
3 proceeding.

4 MR. RUKEYSER: It was not because until we
5 heard the District's Case in Chief, we had no idea that
6 this would be necessary.

7 MR. SIMMONS: I will say, Mr. Arbitrator, in
8 the terms in the Grievance proceedings themselves,
9 they're clear as --

10 (Reporter requests clarification.)

11 MR. SIMMONS: I apologize. That the Grievance
12 procedures themselves envision an exchange of
13 information relevant to the Grievance, so to the extent
14 this relates to the planning and occurrence of the
15 meetings on November 4th and 5th, I would say seems to
16 fall within at that scope.

17 MR. RUKEYSER: We agreed, District counsel and
18 I, to turn over all documents that we thought we would
19 be using as evidence and introduced as exhibits in our
20 case.

21 THE ARBITRATOR: Right.

22 MR. RUKEYSER: Until we heard the District's
23 Case in Chief, we began to formulate our rebuttal
24 strategy. There was no thought to introducing any
25 evidence like this. This is classic rebuttal evidence

1 that the utility of which only becomes apparent once the
2 other side's Case in Chief is heard.

3 THE ARBITRATOR: I agree with you. I think if
4 you're going to go the extra yard, though, once it
5 becomes clear that you got information that you will be
6 using, even though it's in rebuttal, I think it has to
7 go both ways, right? You should turn it over to counsel
8 since you have been turning everything over anyway. I'm
9 not going to consider it on that ground, but I'm giving
10 a heads up. What I would like to see -- that doesn't
11 necessarily mean the way it is, but what I would do is
12 the way of old style of arbitration. There is no cards
13 that are in the back pocket. At least turn it over. I
14 recognize it is rebuttal. It wasn't turned over in the
15 initial exchange of the documents, I fully understand
16 that. I would suggest that if the District has
17 documents, you say, hey, put this in the record.

18 I will overrule the objection. Do you want to
19 mark it?

20 MR. RUKEYSER: Yes, Association Exhibit 22.

21 BY MR. RUKEYSER:

22 Q. Mr. Borsos, just so the record is clear, there
23 is text in a gray shaded text box and also in blue. The
24 gray text is from who?

25 A. The gray is from the Mayor and the blue is any

1 response.

2 Q. Down at the bottom, there is text box under a
3 date. It says, "2 o'clock, my home. Let's go." This
4 was sent by?

5 A. Mayor Steinberg, 12:33 p.m. November 5, 2017,
6 setting up the 2 o'clock meeting an hour and a half
7 later.

8 Q. And just so we're clear, it is your testimony
9 that the meeting at Mayor Steinberg's house on
10 November 5, 2017, began approximately when?

11 A. Two o'clock.

12 Q. And it concluded -- what is your testimony
13 about when this meeting concluded?

14 A. The agreement was written up about 3:25 by the
15 document. I then went and made copies. The UPS store
16 at the strip mall was closed. I had to drive down to my
17 house and made copies at my house. And then I drove
18 back and it took me about an hour to do it because I
19 first went to the UPS store and had to make sure there
20 was paper in the copy machine and I came back.

21 MR. RUKEYSER: Thank you. Mr. Borsos. I have
22 no further questions.

23 THE ARBITRATOR: Cross?

24 MR. SIMMONS: No.

25 THE ARBITRATOR: All right. Thank you. 22 is

1 received.

2 (Whereupon Exhibit No. 22 was received.)

3 MR. RUKEYSER: Thank you.

4 THE ARBITRATOR: Anything else?

5 MR. RUKEYSER: Nothing further.

6 THE ARBITRATOR: Rebuttal?

7 MR. SIMMONS: No rebuttal, sir, while we're
8 here.

9 THE ARBITRATOR: All right. Then I'm going to
10 declare the proceedings closed except that I want to be
11 clear the documents that have been offered have been
12 received and I don't know --

13 MR. SIMMONS: We did.

14 THE ARBITRATOR: We have a few loose ends.
15 Where did I hear that phrase used before?

16 MR. SIMMONS: This would have been Mr.
17 Phillips' declaration that I provided to the parties in
18 advance to which he authenticated here today. I would
19 ask that that be entered in as District Exhibit X at
20 this point in time.

21 THE ARBITRATOR: Oh, you want to do that?
22 Okay.

23 MR. SIMMONS: Like we did with the other
24 declaration.

25 THE ARBITRATOR: All right. Exhibit X. No

1 objection, I presume?

2 MR. RUKEYSER: None beyond the relevance
3 objections that I raised.

4 THE ARBITRATOR: Right. X is received. What
5 did we mark Ms. McArn's?

6 (Whereupon Exhibit No. X was received.)

7 MR. SIMMONS: That has not -- let's make
8 that Y.

9 MR. RUKEYSER: Same observation, relevance.

10 THE ARBITRATOR: Y is received. Any other
11 loose ends here? I know there was another document.

12 (Whereupon Exhibit No. Y was received.)

13 MS. HAMOR: It's up here.

14 THE ARBITRATOR: Do you remember the
15 fact-finding 10/2/17, document? I don't know who
16 offered that.

17 MR. RUKEYSER: I offered that. I don't intend
18 to introduce that or anything else.

19 THE ARBITRATOR: Anything else? Any other
20 loose ends?

21 MR. SIMMONS: She has the master binder.

22 THE ARBITRATOR: Anything else?

23 MR. SIMMONS: No.

24 THE ARBITRATOR: All right. With that, I'm
25 declaring the proceedings closed. The parties agreed to

1 file post hearing briefs. Just a moment to be sure I
2 have an understanding of where we are with that. And
3 we've been going back and forth, but proceedings are
4 closed subject to receipt of post hearing briefs. I
5 want to thank all of you for your excellent
6 presentation, for your courtesy and your hospitality.
7 It's been wonderful. Nice to work you with. Off the
8 record.

9 (Concluded at 2:40 p.m.)

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1 REPORTER'S CERTIFICATE

2
3 I, WENDY HARRITY, CSR NO. 11494, Certified
4 Shorthand Reporter, certify:

5 That the foregoing proceedings were taken before
6 me at the time and place therein set forth;

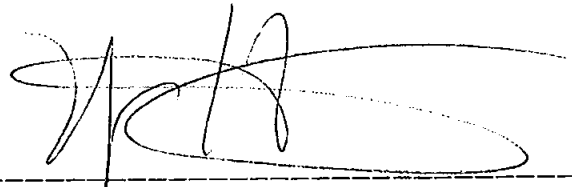
7 That the proceedings were recorded
8 stenographically by me and were thereafter transcribed;

9 That the foregoing is a true and correct
10 transcript of my shorthand notes so taken.

11 I further certify that I am not a relative or
12 employee of any attorney of the parties, nor financially
13 interested in the action.

14 I declare under penalty of perjury under the laws
15 of California that the foregoing is true and correct.

16 Dated this 18th day of MARCH, 2019.

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19 

20 WENDY HARRITY, CSR No. 11494

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