IN ARBITRATION PROCEEDINGS

BEFORE ARBITRATOR KENNETH PEREA

In the Matter of a Controversy Between **SACRAMENTO CITY TEACHERS ASSOCIATION, CTA/NEA**, **and** **SACRAMENTO CITY UNIFIED SCHOOL DISTRICT.** **Re: Salary Schedule Grievance.**	AAA Case No. 01-18-003-4761

POST-HEARING BRIEF OF

SACRAMENTO CITY TEACHERS ASSOCIATION, CTA/NEA

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I. INTRODUCTION

In its March 5, 2019 Prehearing Brief, the Sacramento City Teachers Association, CTA/NEA ("SCTA") explained what the record evidence to be developed at hearing would show. SCTA promised that this evidence would show that when SCTA and the Sacramento City Unified School District ("District") negotiated their November 5, 2017 Framework Agreement, SCTA explained its salary schedule proposal in detail, and that the District knew or should have known that SCTA was proposing that the District adopt SCTA's proposed salary schedule in the 2018-19 year, subject to a 3.5% cap in that year alone. SCTA promised that the evidence would also show that in the weeks between the Parties' execution of their Framework Agreement and their final ratification of the 2016-19 collective bargaining agreement, SCTA repeatedly explained these terms to District administrators, including in writing. Finally, SCTA also promised that the evidence would show that if there was a mistake here, it was the District's and the District's alone, and not for lack of conspicuous effort on SCTA's part.

As explained more fully below, SCTA kept its promises, and then some. The record evidence here permits but one conclusion: that the Parties contracted to adopt the SCTA-proposed salary schedules starting in the 2018-19 year, subject only to a 3.5% cap in that year alone. By failing to adopt these specific schedules at the start of this current school year, the District has violated the Parties' contract. SCTA's grievance must be sustained.

II. STATEMENT OF THE ISSUES

The Parties stipulated that the lower steps of the contractual grievance procedure have been met or waived; that the matter is properly before the Arbitrator for final and binding resolution; and that the Arbitrator is to retain jurisdiction in the event that he sustains the grievance in whole or in part and any dispute arises concerning the implementation of, or compliance with, his award. (Procedural Stipulation [Proc. Stip.] Nos. 1-2.)

The Parties were not, however, able to agree upon a joint statement of the issues. SCTA submits that the statement of the issues should be:

> Whether the District violated the Tentative Agreement signed by District Superintendent Jorge Aguilar and Sacramento City Teachers Association President David Fisher on December 4, 2017, and subsequently ratified by the District governing board and the Sacramento City Teachers Association membership; and if so, what shall be the remedy?

(Hearing Transcript ["Tr."] Volume 1 ["v.1"] 9:4-12.)

III. RELEVANT CONTRACT PROVISIONS

Tentative Agreement 11/29/17

With the support of Sacramento Mayor Darrell Steinberg, the Sacramento City Unified School District (hereafter "the District") and the Sacramento City Teachers' Association (hereafter "SCTA") reached a tentative framework agreement on November 5, 2017, on several outstanding issues.

In addition, there remained several open, unresolved issues on which the parties have since reached agreement. These additional agreements are set forth as attachments to this document. Together with the November 5, 2017 framework agreement, as well as the previously agreed upon tentative agreements, these documents collectively encompass the overall Tentative Agreement between the District and the SCTA that will be presented to the Sacramento City Unified School Board and the members of SCTA for ratification and approval.

* * *

3. Athletic Director Prep Period
    a. The Parties agree to increase the stipends of Athletic Directors from Category B to Category A, and additional per diem compensation equivalent to one prep period.

(Joint Exhibit ["JX"] 2, p.1.)

Framework Agreement – Sac City Unified School District [and] Sacramento City Teachers Assn

1. Salary agreemt
   July 1, 2016 – June 30, 2019

	7/1/16 – 6/30/17	7/1/17 – 6/30/18	7/1/18 – 6/30/ [2019]
Salary increase	2.5%	2.5%	2.5%
Adjustment to salary schedule – Union's proposed structure			3.5% maximum District expenditure

(JX 1, p.1.)

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IV. STATEMENT OF FACTS

A. Background: The Parties' 2016-17 Bargain

This case arises from the Parties' extended and hard-fought contract bargain that stretched some fifteen months from October 2016 until December 2017. (Factual Stipulation ["Fac. Stip."] Nos. 1, 7.) In April 2017, after months of bargaining, the Public Employment Relations Board certified the Parties to impasse. (Fac. Stip. No. 2.) Following several unsuccessful mediation sessions, the Parties proceeded to Factfinding. (*Id*.) The Parties' Factfinding Panel held a hearing on October 2, 2017 and issued its report on November 1.[1] (*Id*.) The Parties were unable to reach a settlement based on the Factfinder's Report. (*Id*.) At approximately the same time, the SCTA membership voted overwhelmingly to authorize their Union to call a strike. (Tr. v.1 221:23-222:5 [Fisher].) SCTA called a strike for the second week of November. (Tr. v.1 40:16-20 [Borsos].)

As if often the case in bargaining, salaries was among the many issues over which the Parties struggled to reach agreement. (Tr. v.1 21:17-20 [Borsos].) From the start, SCTA proposed across-the-board salary increases and revised salary schedules. (Tr. v.1 22:4-5 [Borsos]; Tr. v.1 189:2-16 [Fisher].)

SCTA sought a comprehensive reform of the certificated salary schedules.The District has four certificated salary schedules: one each for K-12 teachers, psychologists, program specialists, and adult education teachers. (Tr. v.1 26:8-25 [Borsos].) Believing that these schedules required a thorough overhaul, from the start of bargaining SCTA proposed the Parties adopt specific revised schedules for each classification. (Tr. v.1 23:25-24:19, 26:12-26 [Borsos].) As SCTA Executive Director John Borsos, the Union's lead negotiator, put it, the revision of the salary schedules was one of SCTA's "primary" goals. (Tr. v.1 21:24-225 [Borsos].) In December 2016, SCTA presented the District with proposed salary schedule structures for these classifications. These set forth the proposed structure of the new salary schedules—identifying the number of steps and columns; the education requirements for each column; and the percentage increase between each step and each column. The individual cells, reflecting the specific dollar amount of each salary, remained empty, because it was not then known on what existing salary schedule these new structures would be based. (*See, e.g.*, Tr. v.1 35:19-36:15 [Borsos].)

[1] Unless otherwise specified, all dates are in 2017.

Over the course of the bargain, SCTA modified its proposals for across-the-board salary increases. (Tr. v.1 28:1-5 [Borsos]; Tr. v.1 189:20-25 [Fisher].) However, it never budged from its demand that the District agree to adopt the specific salary schedule structures that SCTA had first proposed in December 2016. (Tr. v.1 28:6-11 [Borsos]; Tr. v.1 189:20-190:3 [Fisher]; Tr. v.3 558:6-10 [McArn].) While willing to move on the extent of the across-the-board raises, SCTA was adamant throughout the bargain that any deal must include the SCTA-proposed salary schedules.

B. <u>The Sacramento Mayor's November Offer To Assist The Parties</u>

By early November, the Parties' labor dispute had become acute. The Factfinder's Report had not formed the basis for a negotiated agreement. (Fac. Stip. No. 2.) SCTA was only days away from taking its members out on strike. (Tr. v.1 40:16-20 [Borsos].) In a last-ditch bid to broker a deal and avert a strike, Sacramento Mayor Darrell Steinberg convened two meetings with the Parties at his house during the weekend of November 4-5. (Fac. Stip. No. 3.) The Saturday November 4 meeting was spent covering preliminary issues; actual negotiations occurred the following day. (Tr. v.1 44:21-45:10 [Borsos].)

Both sides understood that these face-to-face discussions were the last, best chance to break the bargaining logjam and avoid a work stoppage. (Tr. v.2 347:13-24 [Aguilar].) How the Parties responded could not have been more different, however.

SCTA came prepared for real and serious negotiations. It was represented by its leadership and bargaining triumvirate: President Fisher, First Vice-President Milevsky, and Executive Director Borsos. (Tr. v.1 44:6-9 [Borsos].) These three not only had settlement authority, but they had all actively participated in the Parties' contract negotiations, and well understood the course of the Parties' 2016-17 bargain, the outstanding issues, and the Parties' respective positions. (Tr. v.1 15:16-23, 16:15-16:10, 18:1-10 [Borsos]; Tr. v.1 187:5-23 [Fisher]; Tr. v.1 225:16-21 [Milevsky].) Borsos came prepared with his bargaining binder, which included the Parties' current proposals and counter-proposals. (Tr. v.1 52:10-53:2 [Borsos].)

By contrast, District Superintendent Jorge Aguilar chose to attend and participate by himself. His decision was surprising, to say the least. By his own admission, Aguilar had no experience—none—in collective bargaining. (Tr. v.2 338:18-20 [Aguilar].) At the time, he had been on the job for just over four months, having started in July 2017, months into the Parties' bargain. (Tr. v.2 337:7-9 [Aguilar].) He had never attended, let alone meaningfully participated in, any bargaining session with SCTA. (Tr. v.2 308:4-7 [Aguilar]; *see also* Tr. v.1 21:8-16 [Borsos].)

He had not even attended all the Parties' Factfinding Hearing the month before, contenting himself with "stopping by and making sort of an introductory statement…" (Tr. v.2 338:24-25 [Aguilar]; *see also* Tr. v.1 29:13-14 [Borsos].) Indeed, Aguilar did not, as he went into these weekend meetings at Mayor Steinberg's house, even have a solid understanding of SCTA's salary proposals. (Tr. v.2 345:1-4 [Aguilar].)

Aguilar did not change course even after the Saturday meeting. By that point, he knew that SCTA was represented by a team comprising its three most senior negotiators, all of whom were well-versed in collective bargaining generally and the Parties' 2016-17 bargain specifically. He knew, too, that with the preliminary discussions behind them, the Sunday meeting would be spent in actual negotiations with the goal of drafting a document for execution. (Tr. v.2 348:24-349:1 [Aguilar].) Despite all of this, Aguilar again chose to represent the District by himself and forego the support and expertise of any of the District's principal labor negotiators. (Tr. v.2 349:4-12 [Aguilar].) And it was not only the direct support of the District's labor experts that Aguilar decided he could do without. He did not prepare for this critical Sunday meeting even by conferring with the District's negotiators. (Tr. v.2 346:9-12 [Aguilar]; v.3 562:14-20, 564:9-15 [McArn].) Aguilar went into the Sunday meeting alone and unprepared.

C. The Sunday, November 5 Meeting At The Mayor's House

The upshot of the Parties' Sunday, November 5 negotiations at Mayor Steinberg's house is not in dispute: the Mayor prepared the handwritten Framework Agreement, which Aguilar and Fisher then signed. (Fac. Stip. No. 4.) Beyond this bottom-line result, there is considerable disagreement about what, exactly, was discussed across the Mayor's dining table. The SCTA witnesses' consistent, credible testimony that Borsos proposed that the District adopt the SCTA-proposed salary schedules in 2018-19, subject to a 3.5% cap in that year only; that Aguilar accepted this proposal; and that the Mayor then reduced this agreement to writing in the Framework Agreement must be credited. The District's contrary evidence is scanty, unelaborated, contradictory and—most importantly—undercut by Aguilar's own repeated admissions that he did not understand the proposal to which he agreed.

1. The SCTA Witnesses' Testimony

All three SCTA participants in the November 5 meeting testified in detail about the Parties' negotiations that day. All three took contemporaneous notes, subsequently admitted into the hearing record, that support their testimony. (Association Exhibit ["AX"] 4, 13, 17-18.)

The SCTA leaders testified that after discussing and reaching tentative agreements about the other issues on the table, the Parties finally turned to the thorny issue of salaries. (Tr. v.1 54:6-7 [Borsos].) All testified that Borsos drove these salary negotiations, first setting out SCTA's proposal, and then explaining the proposal in considerable detail. (Tr. v.1 3-7 [Borsos]; Tr. v.1 192:3-6 [Fisher]; Tr. v.1 230:18-20 [Milevsky].)

The salary negotiations that day proceeded from the starting point that a deal, if one was to be had, would come at a total District payroll increase of not more than 11% over the life of the contract. (Tr. v.1 49:1-18 [Borsos]; Tr. v.1 231:15-16 [Milevsky].) The 11% figure was derived from the recently-released Factfinder's Report, which had proposed a total salary increase of 11%. (Tr. v.1 48:10-17, 49:1-18 [Borsos]; Tr. v.1 195:2-9 [Fisher].) Aguilar in particular felt constrained by this 11% figure. (Tr. v.1 195:6-9 [Fisher]; Tr. v.1 236:4-14 [Milevsky].) As Milevsky's contemporaneous notes reflect, Aguilar expressed that the "challenge" he faced with Board politics was to "stay w/in the Fact finders [sic] report," which had recommended "11[%] over 4 [years]." (JX18, p.2; Tr. v.1 235:12-19 [Milevsky].) Given these constraints, Aguilar explained, he could recommend a deal to his Board if it did not exceed "11[%] over 3 [years]." (JX 18, p.2.)

Borsos set out the terms by which SCTA could accept a salary agreement at an 11% cost. (Tr. v.1 54:9-12 [Borsos].) He explained that SCTA's offer had two components: across-the-board salary increases, and a comprehensive revision to the certificated salary schedules. (Tr. v.1 192:14-193:8 [Fisher].) With respect to the across-the-board increases, Borsos explained that SCTA proposed 2.5% raises on the existing salary schedules in each of the three years of the contract, 2016-17, 2017-18 and 2018-19. (Tr. v.1 54:17-55:9 [Borsos]; Tr. v.1 193:3-6 [Fisher].) With respect to the salary schedule revisions, Borsos was clear that SCTA insisted on the adoption the overhauled salary schedules that SCTA had proposed throughout the bargain. (Tr. v.1 58:8-14 [Borsos]; Tr. v.1 192:14-21 [Fisher]; Tr. v.1 230:23-231:231:12 [Milevsky].) There could be no deal without the SCTA-proposed salary schedules. (Tr. v.1 58:19-24 [Borsos].)

Borsos did not present Aguilar with physical copies of SCTA's proposed salary schedules. (Tr. v.1 61:24-62:1 [Borsos].) This was for the simple reason that they did not exist at that point. Full schedules, complete with the specific salary to be paid in each cell, could not be prepared until and unless agreement was reached as to the earlier across-the-board increases on the old certificated salary schedules. This was because, as Borsos explained at hearing, the new salary schedule was to be based on the immediately preceding old schedule, starting with the most highly

compensated cell (i.e., the cell appearing in the bottom right corner of the schedule) and revising the other cells based on the new schedule's uniform step and column increments. (Tr. v.1 35:19-36:15, 61:24-62:6 [Borsos].)

However, at that meeting, Borsos did describe the SCTA-proposed salary schedule structure in considerable detail. For starters, he explained that SCTA was demanding the salary schedules that it had proposed, without change, all throughout the Parties' bargain. (Tr. v.1 58:11-13, 59:4-6 [Borsos]; Tr. v.1 230:23-25, 231:6-12 [Milevsky].) Beyond this, Borsos also explained the nature of the changes that SCTA was proposing. (Tr. v.1 58:15-59:8 [Borsos].) He detailed how the SCTA-proposed schedules would be compressed both horizontally and vertically. He explained how the increments between steps and columns would be rationalized and made consistent. (Tr. v.1 23:25-24:19 [Borsos].) And he explained how the new, SCTA-proposed salary schedule would add a BA+60 column and remove the old BA+103 column.

In providing these descriptions of the changes to the salary schedules, Borsos also explained in detail their necessity. He explained that the current salary schedule was structurally uncompetitive especially for educators in the middle of the schedule. SCTA had analyzed District personnel records and discovered that the District had difficulty retaining experienced educators, who found that after approximately a decade of service they could receive a sizable salary increase by moving to neighboring school districts. (Tr. v.1 24:15-25:13, 25:24-26:7 [Borsos].) The SCTA-proposed salary schedules addressed this structural weakness by strengthening the middle cells of the schedule. (Tr. v.1 24:15-25:13 [Borsos].)

Borsos also made several significant concessions in order to make the SCTA salary proposal fit within an 11% total cost over the life of the contract. First, Borsos offered that the new salary schedules be adopted during the last year of the three-year contract, not the first year as SCTA had demanded up to that point. (Tr. v.1 27:1-25, 28:12-15, 56:17-19, 74:6-18 [Borsos].) Because SCTA's revised salary schedules came at some additional cost to the District, this delayed adoption reduced the total cost of the proposed across-the-board raises, as these would now be made on the existing, cheaper salary schedules, not the new SCTA-proposed schedules. (Tr. v.1 55:22-23 [Borsos].)

Second, Borsos also offered to cap the cost of the SCTA-proposed salary schedules during the 2018-19 year. He proposed that during that final year of the contract, the cost of implementing these new schedules be capped at 3.5% of total District payroll costs. (Tr. v.1 56:1-8, 56:22-57:4

[Borsos]; Tr. v.1 193:6-14 [Fisher].) This cap ensured that the total cost of SCTA's salary proposal came in at the 11% figure so important to Superintendent Aguilar. At the same time, however, Borsos emphasized that this was a one-time cap and would apply only during the 2018-19 year. (Tr. v.1 66:1-8, 66:18-67:13, 174:11-22 [Borsos]; Tr. v.1 193:11-22 [Fisher]; Tr. v.1 232:11-25, 236:19-237:3 [Milevsky].) Borsos' explanation was again reflected in Milevsky's notes, which state, "Salary-fix in last year 3½% cap. The rest comes in the next year!" (AX18, p. 2; Tr. v.1 236:19-23 [Milevsky].)

Borsos provided concrete examples of how the Parties could implement this 3.5% cap in the 2018-19 year. (Tr. v.1 57:5-9 [Borsos]; Tr. v.1 232:2-13 [Milevsky].) He explained, based on his considerable labor negotiations experience, that there were at least two methods that would ensure the costs of the SCTA-proposed salary schedules did not exceed the proposed 3.5% cap in 2018-19. (Tr. v.1 60:23-61:14 [Borsos].) One would be to cap individual employees' pay for the 2018-19 year, on a cell-by-cell basis. (Tr. v.1 63:1-5 [Borsos].) The other would be for the District to delay implementing the salary schedules until some point into that 2018-19 year. (Tr. v.1 63:9-22 [Borsos].)

In this regard, Borsos also explained to Superintendent Aguilar that regardless of the approach used, the actual mechanics would need to be determined at some later date. (Tr. v.1 212:3-6 [Fisher].) This was because the precise cost of the SCTA-proposed salary schedules could not yet be calculated, due to the uncertainty about two important factual variables. (Tr. v.1 64:10-12, 65:4-9 [Borsos].) First, the number of employees to be placed in the new BA+60 column was unknown. (Tr. v.1 64:12-17 [Borsos].) Second, the effect of removing the cap on the number of years of creditable outside experience was also unknown. (Tr. v.1 64:18-24 [Borsos].) Until these two issues were better understood, it was impossible to know with certainty the exact cost of the SCTA-proposed salary schedules. (Tr. v.1 64:25-65:3 [Borsos].) And without that cost, it would be impossible for the Parties to agree either to a dollar value cap for each cell or a specific date for delayed implementation so that 2018-19 costs would not exceed 3.5%. Nonetheless, Borsos reiterated that SCTA was prepared to commit to that cap in the 2018-19 year, with an understanding that the specifics mechanics for ensuring that it would be met would be agreed upon at some later date.

The SCTA witnesses testified that Aguilar appeared to follow along as Borsos explained SCTA's salary proposal. He asked relatively few questions. Aguilar sought—and received—

assurance that the SCTA-proposed salary schedules addressed the structural mid-schedule weaknesses that SCTA had identified. (Tr. v.1 59:22-60:18 [Borsos].) Aguilar also wanted confirmation that during the contract, the District's fiscal "exposure" as a result of the SCTA-proposed salary schedules would be limited to 3.5%. (Tr. v.1 65:9-17, 67:14-18, 72:5-8, 174:5-10 [Borsos]; Tr. v.1 237:6-16 [Milevsky]; AX 18, p. 2.) SCTA provided that, confirming that it was proposing a hard cap of 3.5% for the 2018-19 year. (Tr. v.1 72:1-10 [Borsos].)

Beyond that, Aguilar did not actively engage with SCTA about its salary proposal. He certainly appeared to comprehend Borsos' detailed explanation of the proposal. He made eye contact, nodded along, and otherwise indicated that he understood what the Union was proposing. (Tr. v.1 193:23-194:7 [Fisher]; Tr. v.1 233:1-12, 237:2-3, 261:16-23, 262:11-16 [Milevsky].) He did not express any reservations. (*Id*.) Nor did he make any counter-proposal. (Tr. v.1 277:20-23, 278:12-21 [Milevsky].) From all of this, it was clear to the SCTA leadership that Aguilar had accepted the Union salary proposal. This was then confirmed when Mayor Steinberg said that it looked like the Parties had a deal, and Aguilar verbally agreed. (Tr. v.1 75:11-15 [Borsos].)

Following Aguilar's acceptance of the SCTA salary proposal, Mayor Steinberg drew up the handwritten Framework Agreement. (Tr. v.1 75:15-18 [Borsos].) The salary proposal that Borsos had just made and explained was the first item addressed in the Framework Agreement. (JX1, p. 1.) As the Mayor wrote out the SCTA salary proposal in schematic form, he verbally explained what he was doing, referencing Borsos' recent presentation. (Tr. v.1 76:21-25, 77:6-11 [Borsos].) Aguilar did not object or ask any questions. (Tr. v.1 77:12-15 [Borsos]; Tr. v.1 196:9-17 [Fisher].)

The Framework Agreement accurately reflected, albeit in abbreviated form, SCTA's salary proposal. (Tr. v.1 79:20-80:8 [Borsos].) SCTA's proposed across-the-board salary increases were indicated by the heading "salary increase." (Tr. v.1 80:18-24 [Borsos].) Beside this heading, Mayor Steinberg drew three columns, one for each of the years of the anticipated three-year contract, 2016-17, 2017-18, and 2018-19. (Tr. v.1 80:9-17 [Borsos]; Tr. v.1 197:12-20 [Fisher].) Under each column, the Mayor wrote 2.5%, reflecting SCTA's proposal that the District implement an across-the-board 2.5% raise on the existing salary schedule each year. (Tr. v.1 80:18-24 [Borsos]; Tr. v.1 197:19-23 [Fisher].) SCTA's proposed salary schedule revision was indicated by the heading "Adjustment to salary schedule – Union's proposed structure." (Tr. v.1 80:25-81:3 [Borsos].) This indicated that the salary schedules were to be adjusted as provided for in SCTA's proposed

structure. (Tr. v.1 184:15-18 [Borsos].) Next to this heading, Mayor Steinberg left the columns for 2016-17 and 2017-18 blank, indicating that there would be no adjustment to the salary schedules (apart from the across-the-board raises) in those years. (Tr. v.1 81:4-10 [Borsos]; Tr. v. 198:3-8 [Fisher].) Under the column for the 2018-19 year, Mayor Steinberg noted "3.5% maximum District expenditure," reflecting SCTA's proposed 3.5% cap that year. (Tr. v.1 81:11-18 [Borsos]; Tr. v.1 197:23-198:8 [Fisher].)

Once the entire Framework Agreement was drawn up, Superintendent Aguilar, President Fisher, and Mayor Steinberg initialed each page and signed the final page. (AX 1; Tr. v.1 79:10-19 [Borsos].) The deal was done. From start to finish, the meeting had taken less than an hour and a half. (Tr. v.1 51:17-19, 161:8-12 [Borsos]; *see also, e.g.*, Tr. v.1 211:9-10 [Fisher].)

2. Superintendent Aguilar's Testimony

In contrast to the SCTA witnesses' detailed testimony, Aguilar provided only the most abbreviated and unelaborated testimony about what transpired at the November 5 meeting at Steinberg's house. And significantly, when it came to the critical issue of the negotiations over the salary schedules, Aguilar testified very differently on cross-examination than on direct.

Aguilar's most detailed testimony concerned the location and timing of the November 5 meeting, not the substance of the negotiations. He testified that Steinberg has a fancy house and had just remodeled it. (Tr. v.2 312:16-18 [Aguilar].) He explained that he caucused with the Mayor in his den, and that the Parties met at his dining table. (Tr. v.2 312:11-15, 312:19-313:7 [Aguilar].) Aguilar also testified that he was certain that the meeting had lasted much longer than the approximately two hours that the SCTA witnesses had described. According to him, the meeting began at noon and lasted nearly three and a half hours. The bulk of this time, Aguilar testified, was spent discussing the salary issue. (Tr. v.2 314:17-22 [Aguilar].)

Aguilar did not, however, testify in any detail about what the Parties discussed during their apparently lengthy salary negotiations—and what testimony he offered was contradictory. On direct examination, Aguilar testified that there had been some discussion that the current salary schedules effectively pushed experienced educators to leave for more competitive school districts in the region. (Tr. v.2 314:23-315:7 [Aguilar].) He testified, also on direct examination, that the 3.5% cap would be the total cost to the District for addressing this structural salary schedule defect. (Tr. v.2 315:9-12 [Aguilar].) Aguilar also testified that there had been no discussion that the 3.5% cap was limited to the 2018-19 year, or that it would be removed thereafter. (Tr. v.2 315:13-20

[Aguilar]; District Exhibit ["DX"] S [Aguilar Decl.] ¶ 11.) Elsewhere, his testimony about what he understood the agreement to mean was offered only in general terms, without any explanation of how this understanding was based on what actually was said at the November 5 meeting.

On cross-examination, however, Aguilar told a very different story about the November 5 negotiations regarding certificated salary schedules. When pressed about discussions about the SCTA salary schedule, Aguilar testified that he could only remember the "spirit" of the discussion, by which he meant SCTA's assertion that "there were a group of teachers that were incentivized to leave the District." (Tr. v.2 353:7-15 [Aguilar].) This, Aguilar testified, was the *only* thing he could remember from the November 5 meeting regarding changes to the certificated salary schedules. (Tr. v.2 353:16-23 [Aguilar].)

On one thing, however, Aguilar was clear on both direct- and cross-examination: he neither carefully followed nor completely understood the SCTA salary proposal that he later accepted at the November 5 meeting. He was focused on avoiding a strike and ensuring that the total cost of the three-year contract did not exceed 11%. So long as those priorities were satisfied, the specific details of the deal were unimportant. Aguilar freely admitted this on direct examination:

> Q. So if you didn't have great detail about their salary structure, why would you still agree to it without having great total detail understanding about their salary strike [sic]?
>
> A. Well, what I was agreeing to was the maximum expenditure to the District. And I felt that again, given my conversation with the Mayor and the potential occurrence of a strike, that I was willing to, at that point, forego understanding the details, if you will, of a schedule and instead make sure that we could focus on the maximum expenditure to the District.

(Tr. v.2 315:25-316:10 [Aguilar].) Aguilar testified similarly on cross-examination:

> Q. It's your testimony that you didn't have full grasp of what that proposal was on November 5th, correct?
>
> A. At that point, again, I had agreed to do everything we could to avert a strike.
>
> Q. That's not my question. My question is: Your testimony was that you did not fully understand all the details of what the Union was proposing by way of a salary schedule on November 5th?
>
> A. Correct.

(Tr. v.2 378:25-379:6 [Aguilar].)

3. Superintendent Aguilar's Testimony About The November 5 Salary Negotiations Is Not Credible

Aguilar's testimony about the substance of the Parties' November 5 salary schedule negotiations should not be credited. It is riven with contradictions, undercut by his admissions of poor memory, and—most importantly—betrayed by Aguilar's frank concession that he had not really paid that much attention to what SCTA was proposing when he accepted the deal that day.

Much of Aguilar's testimony was not really his at all. His lengthy declaration was written by District counsel. (Tr. v.2 354:14-355:3 [Aguilar].) And while Aguilar claimed that he had reviewed this scripted testimony (Tr. v.2 355:1 [Aguilar]), he clearly did not do so carefully. The very same errors that marred Chief Human Resource Services Officer McArn's declaration also appear in Aguilar's. (Compare DX S [Aguilar Decl.] ¶ 12 and DX Y [McArn Decl.] ¶ 15; *see generally infra*, Section IV.D.1.c.) It is also notable that while Aguilar's ghost-written testimony is long on assertions about what he purportedly understood the Framework Agreement to mean, it is conspicuously short on what was said at the November 5 meeting at which that agreement was negotiated and signed.

Even more important, Aguilar's testimony about the salary schedule negotiations is inconsistent and contradictory. The most glaring example was noted above. While on direct examination Aguilar testified, albeit without detail or elaboration, about the Parties' discussion about the salary schedule overhaul and how the 3.5% cap related to this overhaul, on cross-examination he repeatedly admitted that he could only remember the general "spirit" of these discussions, by which he meant SCTA's identification of a structural weakness in the current schedules. (Tr. v.2 353:7-23 [Aguilar]; *see also* Tr. v.2 358:18-22 [Aguilar].)

Aguilar was just as contradictory on the issue whether the Parties ever discussed a salary schedule compression at their November 5 meeting. Aguilar's declaration states that "from our November 5, 2017 meeting, I only recalled SCTA's description of 'compressing' the salary schedule," and at hearing Aguilar initially testified that at that meeting "the conversations were such that I think I even used the analogy of an accordion" to describe the compression of the salary schedule. (DX S [Aguilar Decl.] ¶ 19; Tr. v.2 355:20-23 [Aguilar].) Aguilar later disavowed this testimony, stating in no uncertain terms that "there were no specific or detailed conversations about it," i.e., compressing the salary schedule. (Tr. v.2 356:6-7 [Aguilar]; see also Tr. v.2 358:9-17 [Aguilar].)

Aguilar's credibility is also undercut by his own candid admission that his recollection of the November 5 meeting was shaky even by later that same month. On cross-examination, Aguilar conceded that as early as November 17—less than two weeks after the meeting at which the Framework Agreement was negotiated and signed—the "only" thing he could recall about the salary negotiations that day was 'some SCTA description of compression" of the salary schedules. (Tr. v.2 356:10-17 [Aguilar].) In other words, Aguilar had just emerged from a high-stakes, eleventh-hour meeting at which key components of a successor contract had been hammered out and a threatened strike averted, and the only thing that he could remember about the negotiations over the key sticking point was some vague description of a salary schedule compression!

Nor did Aguilar's memory improve over time. As noted above, at hearing Aguilar admitted on cross-examination that the only thing he could remember about the salary schedule negotiations on November 5 was there general "spirit," by which he meant SCTA's explanation of the structural weaknesses of the current salary schedules. (Tr. v.2 353:7-15 [Aguilar].) Beyond this, Aguilar repeatedly conceded that he could not recall "any other discussion" about the salary schedule negotiations. (Tr. v.2 353:7-15 [Aguilar]; see also Tr. v.2 358:18-24 [Aguilar].) Balanced against these admissions of faltering memory and poor recall of any of the specifics of the November 5 salary negotiations, Aguilar's confident assertions on direct examination—to say nothing of those in his ghost-written declaration—about what was discussed and agreed to at that meeting should be disregarded.

But Aguilar's poor memory is not limited only to the substance of the negotiations at the November 5 meeting. Aguilar confidently testified that the November 5 meeting lasted several hours, claiming that it began at noon and did not end until approximately 3:30 p.m. or later. SCTA witnesses had earlier testified that the meeting was much shorter, lasting approximately an hour and a half. (Tr. v.1 51:14-19, 161:8-12 [Borsos]; *see also* Tr. v.1 211:9-10 [Fisher].) On rebuttal, SCTA demonstrated that its witnesses were correct and Aguilar incorrect. Text message printouts show that the Mayor did not invite SCTA to the Sunday meeting until 12:33 p.m., and that the invitation was for a 2:00 p.m. meeting. The District did not even attempt to controvert this evidence. Aguilar's mistaken recollection about the duration of the meeting further undermines his testimony about what was negotiated.

But most important of all is Aguilar's remarkable and repeated admissions that he never actually paid that much attention to SCTA's salary schedule proposal. As explained above, Aguilar

did not fully understand what SCTA was proposing by way of a salary schedule overhaul. Nor did he think that he needed to. He was, in his own words, "willing to, at that point, forgo understanding the details, if you will, of a schedule…" (Tr. v.2 316:7-9 [Aguilar].) So long as he was clear about the "maximum expenditure to the District," Aguilar was not going to be detained by the details of SCTA's proposal. (Tr. v.2 316:5-10 [Aguilar].) But there is more: Aguilar was not just willing to engage in discussions with SCTA without fully understanding what the Union was proposing, he was willing to enter into what he knew to be a binding agreement without understanding that to which he was agreeing. (Tr. v.2 315:25-316:10 [Aguilar]; DX S [Aguilar Decl.] ¶ 5 ["The Framework Agreement was meant to be a contractual agreement between the parties…"].)

Aguilar's hearing testimony about the specifics of the SCTA salary schedule proposal must be read in light of these remarkable admissions. There is no reason whatsoever to credit Aguilar's insistence that SCTA never made clear that it was proposing the District accept the SCTA-proposed salary schedule or that the 3.5% cap was only for the 2018-19 year. Aguilar admitted that he was focused only on the bottom-line cost of the contract and did not understand the specifics of SCTA's proposal.

4. The SCTA Witnesses' Testimony About The Salary Negotiations Is Credible

The SCTA witnesses' testimony could not be more different from Aguilar's—in quality no less than in substance. In contrast to Aguilar, much of whose testimony was written by District counsel and clearly not carefully reviewed in advance of the hearing, all of the SCTA witnesses testified live, and in their own words. Whereas Aguilar provided only the most general testimony about the substance of the Parties' November 5 negotiations, the SCTA witnesses testified in considerable detail. Aguilar's testimony was riven with contradictions, but each of the SCTA witnesses testified consistently. While Aguilar's memory of the November 5 negotiations was quite shaky, the SCTA witnesses' memories of these negotiations remained sharp. Further, when SCTA witnesses' memories did falter, it was over trivial details, and they freely owned up to these lapses of memory. (*See, e.g.*, Tr. 65:15-16 [Borsos did not recall the specific expression Aguilar used at November 5 meeting]; 228:18-20 [Milevsky did not remember to what the notation "VK" in her notes referred].) By contrast, Aguilar was forced on cross-examination to admit that he could barely remember the Parties' November 5 negotiations over the salary schedules, contradicting his earlier confident testimony on direct.

The SCTA witnesses also testified consistently with one another about what transpired at the November 5 meeting. Notably, they did so without having heard one another's testimony. That all three SCTA witnesses provided the same description of what was proposed, explained, and agreed to at the meeting lends credence to their testimony. Here, too, it is significant that the SCTA witnesses' testimony was buttressed by contemporaneous handwritten notes, something that Aguilar conspicuously lacked.[2] (*See, e.g.*, AX 4, 13, 17-18.) To be sure, only Milevsky's notes explicitly reflect discussion that the 3.5% cap was only for the 2018-19 year. (AX 18.) But none of the SCTA leaders were attempting to take verbatim notes. What is significant here is that all these notes support the SCTA witnesses' testimony about what was discussed, and none of the notes contradict the other SCTA witnesses' testimony or notes.

Further, the overall bargaining context itself buttresses the SCTA witnesses' consistent testimony that Borsos' November 5 salary proposal included both the SCTA-proposed salary schedules as well as a temporary, one-year cap for the 2018-19 year. For one thing, it is undisputed that throughout the entire lengthy bargain, SCTA had been wedded to its proposed salary schedule structure. (Tr. v.1 28:6-11 [Borsos]; Tr. v.3 558:6-10 [McArn].) The Union had originally proposed this in December 2016 and had not moved from this position. (*Id.*) While SCTA had scaled back its demands for across-the-board salary increases, it had refused to do the same with its demand that the District accept the SCTA-proposed salary schedule increases. (Tr. v.1 28:1-11 [Borsos].) There is no reason to think that SCTA would have abruptly abandoned this long-held and unwavering bargaining priority at the November 5 meeting, and for nothing more than an agreement to negotiate some new salary schedule at some point in the future. By contrast, SCTA's adamant insistence over twelve months of difficult bargaining that the District accept the specific SCTA-proposed salary schedules aligns perfectly with the SCTA witnesses' consistent testimony that Borsos had made clear that any salary deal struck at the November 5 meeting must include the SCTA-proposed salary schedules, and that the 3.5% cap was only for the final 2018-19 year. (*See, e.g.*, Tr. v.1 58:19-24, 66:22-67:3 [Borsos].)

The overall economics of the bargain also support this conclusion. The undisputed record evidence demonstrates that SCTA's November 5 salary proposal cost less over the life of the three-

[2] Aguilar testified that he took no notes at the November 5 meeting and could not recall whether he had taken any notes at the meeting the day before. (Tr. v.2 353:25-354:5 [Aguilar].) In any event, the District did not seek to introduce any notes from these meetings.

year contract than even what the District had just proposed by way of salaries a month earlier. Borsos' uncontroverted testimony was that the total cost of the District's salary proposal at Factfinding was $34 million over the three-year contract term, while the total cost of SCTA's November 5 salary proposal over the same three years was only $32 million. (Tr. v.1 81:19-85:4 [Borsos]; AX 5.) Borsos testified that the reason SCTA was willing to accept *less* than what the District had just offered—and what SCTA had just rejected—was because the proposal secured SCTA's top salary priority, namely the adoption of the SCTA-proposed salary schedules. (Tr. v.1 85:13-24; 175:9-15 [Borsos]; *see also* Tr. v.1 66:22-67:3 [Borsos].) Logically, this stands to reason. It beggars the imagination to suppose that having just rebuffed the District's Factfinding salary proposal, SCTA would have then made a proposal that was $2 million cheaper without getting anything in return. This fact, too, supports the SCTA witnesses' testimony that Borsos demanded the District accept the SCTA-proposed salary schedule, with a 3.5% cap only during the final 2018-19 year of the contract.

5. Conclusion: What Really Happened At The November 5 Meeting

From all of the above, a single, realistic portrait of the Parties' salary negotiations at the November 5 meeting at Mayor Steinberg's house emerges. All participants appreciated that this was the time to strike a deal and avert a strike.

SCTA entered the negotiations prepared. All three of its lead negotiators arrived, and with a clearly-thought out strategy. The SCTA team was focused on attaining the Union's bargaining priorities, key among which was securing the overhauled salary schedules that SCTA had been demanding all throughout the bargain. Borsos was prepared to set out a revised proposal that included this nonnegotiable demand while making significant concessions so that the total cost of the salary proposal over the three-year contract would not exceed the 11% target.

Aguilar entered the negotiations unprepared. He chose to exclude all of the District's lead negotiators, even once it became apparent that the Parties were going to try to hammer out a binding agreement. He was largely unaware of the specifics of the Parties' positions on salaries, including SCTA's proposed salary structure overhaul.

When the Parties finally turned to the salary issue, Borsos set out SCTA's proposal in detail. He explained that SCTA could live with the 11% total cost over the life of the contract, but only if the SCTA-proposed salary schedules were adopted. These could be adopted in the final year of the contract, he explained—a significant concession from SCTA's earlier proposals. After

he explained at length the need for these new schedules, Borsos turned to the question of costs. He explained that SCTA proposed three annual 2.5% across-the-board increases to the existing certificated salary schedules, for a total of 7.5%. Acknowledging that the new SCTA-proposed salary schedules could push the total costs over the 11% figure under which the Parties were operating, Borsos proposed that the actual cost of implementing these schedules during the 2018-19 year be capped at 3.5%. The cap, he explained, would ensure that the District's exposure in 2018-19 for the new salary schedules would not exceed 3.5%, and for the entire salary proposal over the life of the contract would not exceed 11%. The specific mechanics of how this cap could be implemented would necessarily have to be negotiated at some later date. This was because the number of educators to be placed in the BA+60 column was unknown, as were the placement of educators to be credited with additional years of outside experience. Finally, Borsos further clarified that the cap was only for the final year of the contract and would come off once the contract expired.

Aguilar followed the general contours of this proposal, but only to the extent of assuring himself that the total cost of the salary proposal would come in at the politically-expedient 11% figure. So long as this figure was not exceeded, the specific details of the SCTA proposal were of no real concern to Agular. He understood that SCTA was proposing some kind of a new salary schedule, one that would address the structural weaknesses that he had heard plagued the current schedule. He understood, too, that there would remain some work to be done related to the salary schedules even after the contract was ratified, though he did not understand exactly what that work would be. This was enough for him: a deal could be reached at an acceptable total price tag and a strike thereby avoided.

Notably, Aguilar never let on that he was not focused on, or entirely comprehending, Borsos' detailed salary proposal. He nodded along and appeared to understand the SCTA proposal. Aguilar asked a few questions, but only a few. Preoccupied with the total cost of the salary proposal, Aguilar sought reassurances that the 3.5% cap in the 2018-19 year was firm and that the new salary schedules would not exceed this cost during the contract term. Borsos reassured him that this was exactly what SCTA was proposing. Unfamiliar with SCTA's proposed salary schedules but having now repeatedly heard that the current schedule incentivized experienced educators' departure to neighboring districts, Aguilar also wanted to confirm that the SCTA

schedules would address this issue. Borsos confirmed that the new schedules addressed this structural problem.

With these questions answered to his satisfaction, Aguilar was ready to accept SCTA's salary proposal. Steinberg drew up the Framework Agreement. He started with the salary issue. He narrated the document as he prepared it. His schematic representation accurately reflected the Parties' agreement. No one objected or raised any questions. The deal was signed at just before 3:30 that afternoon.

D. The Parties' Subsequent Communications Regarding The Framework Agreement

In the weeks between the signing of the Framework Agreement and the final ratification of the Tentative Agreement on December 4, the Parties had numerous communications, in person and by email, regarding the Framework Agreement and its salary provision. Just as with the November 5 negotiations, there is disagreement about the substance of these communications. And just as with the November 5 negotiations, the SCTA witnesses' testimony about the substance of these communications should be credited. The evidence shows that throughout, SCTA repeatedly explained that the Framework Agreement reflected the Parties' agreement to adopt the SCTA-proposed salary schedules starting in the 2018-19 year, subject to a 3.5% cap during that year only. The evidence likewise shows that the District never once objected to SCTA's repeated explanations of the terms of the deal.

1. The Parties' November 8 Meeting

On November 8, the SCTA leadership met with District Human Resource Services Officer Cancy McArn and her deputy, Director of Employee Relations Cindy Nguyen. (Tr. v.1 89:8-11, 89:23-24 [Borsos].) The SCTA representatives were shocked to learn that even at this late date, days after the Parties had signed the Framework Agreement, McArn had still not seen the actual document. (Tr. v.1 90:24-25 [Borsos]; Tr. v.1 238:9-21 [Milevsky].) This was telling: Aguilar had not seen fit to provide his top HR administrator with a copy of the Parties' deal. The SCTA leadership shared the Framework Agreement with McArn and Nguyen and walked them through its key terms. (Tr. v.1 90:2-5, 90:25-91:7, 91:14-16 [Borsos].)

a. The SCTA witnesses all testified that on the issue of salaries, Borsos explained to McArn and Nguyen that the Framework Agreement memorialized the Parties' agreement to adopt the SCTA-proposed salary schedules in the 2018-19 year. (Tr. v.1 91:24-92:1 [Borsos]; Tr. v.1 200:1-11 [Fisher]; Tr. v.1 238:24-239:2 [Milevsky].) He was clear that these were the same salary

schedules that SCTA had proposed from the very beginning of the bargain. (Tr. v.1 92:3-7 [Borsos].) As reflected in Fisher's contemporaneous notes, Borsos explained that the Parties agreed to "our structure of salary schedule." (AX14; Tr. v.1 200:1-8 [Fisher].) Milevsky's contemporaneous notes similarly reflect Borsos explaining that the "salary schedule issue got resolved [with] our salary schedule structure for all the salary schedules." (AX 19; Tr. 240:4-13 [Milevsky].) The District administrators acknowledged this. As reflected in Milevsky's notes, McArn confirmed that Borsos was referring to the "December structure," i.e., the salary structure that SCTA had first proposed in December 2016. (AX 19; Tr. 240:14-22 [Milevsky].)

Borsos further explained that the Parties had agreed that during the final 2018-19 year of the contract, the total cost to the District of implementing the new SCTA-proposed salary schedules would be capped at 3.5%, but that this cap was only for that 2018-19 year. This, too, was reflected in the SCTA witnesses' notes. Fisher, for example, noted that Borsos explained that the Parties had agreed to implement "Our structure of salary schedule with a 3.5% cap in 18/19." (AX 14; Tr. v.1 200:1-8 [Fisher].) Milevsky's notes show the same. Milevsky recorded that Borsos explained that the full cost of the SCTA-proposed salary schedules exceeded 3.5%: "you can't fully load for 3.5%." (AX 19; Tr. 240:23-241:1 [Milevsky].) Borsos continued that the Parties had "agree[d] to only spend 3.5%." (AX 19, p.1; Tr. 240:23-241:1 [Milevsky].) Her notes then make clear that Borsos explained that this cap was only for the 2018-19 year. She noted, for example, that while a hypothetical employee's salary in 2018-19 might be capped at 12%, "it is in the next year you get fully loaded," meaning the full SCTA-proposed salary schedule. (AX 19, p.2; Tr. v.1 242:11-23 [Milevsky].)

Borsos then turned to how this 3.5% cap in 2018-19 could be implemented as a technical matter. As he had on November 5, Borsos explained that he could envision two different methods for ensuring the cap: capping individual employees' pay in the 2018-19 year, or delaying the actual implementation of the SCTA-proposed salary schedules until sometime into the 2018-19 year. (Tr. v.1 91:24-92:1, 93:21-25 [Borsos].) Regardless of the approach, Borsos again explained that a final decision about how to cap the salary costs in 2018-19 could not be resolved immediately. The full cost of the SCTA-proposed salary schedules could not be calculated, Borsos explained, until the number of employees on the BA+60 column and the precise placement of employees to be credited with additional years of experience were both known. (Tr. v.1 95:10-20 [Borsos]; Tr. v.1 200:14-201:1 [Fisher]; Tr. v.1 243:12-25 [Milevsky].)

Neither McArn nor Nguyen expressed any concern—to say nothing of any objection—to Borsos' explanation of the Framework Agreement's salary provision. (Tr. v.1 94:10-25 [Borsos]; Tr. v.1 245:12-17 [Milevsky].) As noted above, McArn clarified that the SCTA-proposed salary schedules to which the District had agreed starting in 2018-19 were the ones that SCTA had first proposed in December 2016. Nguyen's only objection related to Borsos' explanation of the possible mechanics for implementing the new salary schedule in the 2018-19 year under the 3.5% cap. (Tr. v.1 92:13-19, 93:17-22 [Borsos].) She explained that Borsos' suggestion that the 3.5% cap in 2018-19 could be accomplished by capping individual employees' pay was unworkable. (*Id*.) Neither disputed Borsos' explanation that the Parties had agreed to adopt the SCTA-proposed salary schedules starting in 2018-19, or that the 3.5% cap was only for that 2018-19 year.

b. At hearing, McArn disputed this description of the November 8 meeting, although with little in the way of specifics. She denied in conclusory fashion that SCTA ever stated that the 3.5% cap would be removed after the 2018-19 year. (Tr. v.3 499:9-12 [McArn].) She claimed not to have taken any notes from this meeting and did not offer anything in the way of corroborating evidence to support this assertion.

Beyond this, McArn merely suggested that the SCTA leaders had led her to believe that the Framework Agreement reflected the Parties' agreement to negotiate *a* salary schedule at no more than an additional 3.5% cost. Notably, however, while hinting at this, McArn neither stated so explicitly, nor ever testified to what, exactly, the SCTA leaders purportedly said. Thus, for example, McArn's declaration states that the November 8 meeting "was consistent with [her] understanding" that the Parties "had agreed to restructure the salary schedule in a manner not yet determined … [and] in an amount not exceeding a maximum cost adjustment of 3.5% implemented over the full 2018-19 year." (DX Y [McArn Decl.] ¶ 17.) She does not, however, explain what was said to lead her to this conclusion.

Similarly, McArn testified that "based on" the November 8 discussion, she understood that there had not been "any final agreement reached as to the nature of the salary schedule adjustment called for on [sic] the Framework Agreement" and that "it was clear we had a lot of details to work out." (Tr. v.3 499:3-8 [McArn].) She also stated as of that November 8 meeting she "understood that there were still terms which needed to be worked out and finalized as to the salary structure adjustment called for in the Framework Agreement." (Tr. v.3 499:13-17 [McArn].)

c. The SCTA witnesses' testimony about the November 8 meeting should be credited over McArn's. The SCTA witnesses testified, consistently and in considerable detail, about the substance of the Parties' discussion on November 8. Their testimony was corroborated by Fisher's and Milevsky's contemporaneous notes.

The same cannot be said of McArn. Her testimony regarding the November 8 meeting was conclusory and conspicuously lacking in detail. Unlike the SCTA witnesses, who provided detailed notes of the Parties' discussion that day, McArn could not corroborate her testimony with any notes. In fact, McArn claimed not to have taken any notes at all in that meeting. (Tr. v.3 558:20-23 [McArn].)

Further, apart from the lack of detail in and corroboration of her testimony, McArn was not a credible witness. She conceded that she signed not one, but two, declarations under penalty of perjury without having carefully reviewed them. The declarations that District counsel prepared for McArn's signature in both this arbitration as well as the earlier court litigation were marred by multiple factual errors, all of which escaped McArn. (Tr. v.3 487:6-488:13, 554:17-556:14 [McArn].)

It is also clear that these were not the only factual errors in McArn's sworn declaration testimony. She claimed that "At the December 7, 2017 [Board] meeting, I gave an on-camera PowerPoint presentation to the Board and public regarding, in relevant part, Agenda Item 8.4 and the salary package agreed to by the District and SCTA." (DX Y [McArn Decl.] ¶ 22.) This is incorrect. While McArn did introduce the PowerPoint presentation regarding the Parties' Tentative Agreement, she did *not* present that portion that addresses the Parties' salary agreement. As is plain from the video record of this presentation, that portion was presented by District administrator Ted Appel. (JX 6 at 2:21:46-2:22:36.)

Additionally, McArn's claim not to have taken any notes at the November 8 meeting also calls her credibility into question. The following day, McArn sent a lengthy email to Aguilar briefing him, in considerable detail, the substance of the Parties' discussions. Her claim to have written this email based only on her memory and that of Nguyen's is not believable.

It is also significant that the District failed to call Nguyen as a witness. It is undisputed that Nguyen participated in the November 8 meeting. She would, therefore, have been well-placed to have testified about what was discussed at that meeting. Nguyen remains a District employee, and the District could easily have called her to testify. Its failure to do so raises the inference that her

testimony would have been adverse to the District. (*See generally* ELKOURI & ELKOURI, HOW ARBITRATION WORKS (8th ed.) ["ELKOURI & ELKOURI"] 8-51 ["The failure of a party to call as a witness a person who is available to it and who should be in a position to contribute informed testimony may permit the arbitrator to infer that had the witness been called, the testimony adduced would have been adverse to the position of that party."].)

2. The Parties' November 9 Emails

Emails sent the next day also corroborate the SCTA witnesses' testimony about their November 8 meeting, and further undermine McArn's claims.

a. Shortly before noon, Borsos sent emailed McArn and Nguyen "following up [on] our discussion yesterday." Regarding the salary issues, Borsos reiterated his request to meet with then-District CBO Gerardo Castillo "to discuss how the union proposed salary schedules that go into effect in July 1, 2018, will be implemented to fit within the 3.5% total certificated payroll cost." (JX 11, p.11.)

This email confirms that SCTA had made clear at the November 8 meeting that the Parties had agreed to adopt not just any salary schedule in the 2018-19 year, but rather the "union proposed salary schedules." And indeed, McArn conceded on cross-examination that that is exactly how she understood this email. (Tr. v.3 560:17-561:5 [McArn].) Further, Borsos' email also made clear that these specific salary schedules would need to be implemented in a way to fit within the 3.5% cap—not that some new salary schedule would be negotiated within the constraints of a 3.5% total expenditure amount. Neither McArn nor Nguyen ever responded to this email, demonstrating that Borsos' summary did not strike them as inaccurate or otherwise objectionable. (Tr. v.1 99:19-100:16 [Borsos]; v.3 561:6-10 [McArn].)

Significantly, McArn's hearing testimony on this point cannot be squared with her sworn declaration. Her declaration states that she read Borsos' November 9 email as "consistent with" her own purported understanding that "the parties agreed to restructure the salary schedule in a manner not yet determined…" (DX Y [McArn Decl.] ¶¶ 17-18.) Yet at hearing she conceded that she understood Borsos' November 9 email to reflect SCTA's statement that the Parties *had* agreed to adopt a specific salary schedule, namely the salary schedules that SCTA had been proposing consistently all throughout the bargain. (Tr. v.3 560:25-561:5 [McArn].) These assertions are incompatible, meaning either that McArn's declaration testimony is inaccurate, or her hearing testimony is. Either way, this demonstrates that she is not credible.

b. Later that same afternoon, Borsos forwarded his email to Aguilar. Unlike McArn, Aguilar did respond. However, apart from referencing the overall 11% salary increase, Aguilar did not respond to Borsos' statements about the salary deal. Notably, Aguilar did not remark at all on Borsos' reference to "the union proposed salary schedules that go into effect in July 1, 2018." Aguilar's silence here speaks volumes. It demonstrates either that Aguilar believed that Borsos' statement accurately reflected the Parties' agreement struck days earlier at the Mayor's house, or that once again Aguilar was focused only on the bottom-line cost of the three-year contract and did not concern himself with the specifics of the deal he had signed.

c. Earlier that day, McArn sent a lengthy email to Aguilar summarizing her meeting with the SCTA leaders the previous day. In that email, she wrote that the SCTA leaders "…walked through their ideas for implementing the 3.5% … into the salary schedule—a salary schedule that would utilize the salary schedule framework agreement that they proposed in December 2016." This contemporaneous acknowledgment that the SCTA leaders had made clear at the November 8 meeting that the Framework Agreement would "utilize" the SCTA proposed salary schedule also refutes McArn's sworn declaration testimony that she understood from the November 8 meeting that the Parties had merely agreed to implement *a* salary schedule.

3. Borsos' November 13 Email

On November 13, Borsos emailed McArn regarding a "proposed draft TA on Article 12." (Tr. v.1 100:17-101:16 [Borsos]; AX 6.) Attached was a proposed draft tentative agreement for the Parties' salaries article. (*Id*.) Borsos testified that he prepared this tentative agreement to address the outstanding issue of crediting employees with unlimited years of experience. (Tr. v.1 101:1-7 [Borsos].) Ultimately, once it became clear that Aguilar, not McArn, would be driving the District's further negotiations, this document ended up not being used. (Tr. v.1 102:8-21 [Borsos].)

But notably, Borsos' draft also referenced the Parties' November 5 salary schedule agreement. It stated, "The parties agree that this article will need to be revised and reformatted to incorporate the Union's proposed and agreed upon new salary structure as set forth in the settlement framework agreement dated November 4 [sic] 2017." (AX 6.) Significantly, McArn never questioned, much less specifically disputed, Borsos' statement that the Parties had agreed to adopt the STCA-proposed salary schedule structure. (Tr. v.1 101:25-102:7 [Borsos].) She did not because Borsos' assertion was utterly unremarkable—and indisputably correct.

4. The Parties' November 17 Emails

A November 17 email exchange between Aguilar and Borsos underscores the Parties' understanding that the Framework Agreement committed the District to adopt the SCTA-proposed salary schedules in 2018-19.

a. On the morning of November 17, Aguilar emailed Borsos regarding the Parties' efforts to finalize a tentative agreement. (JX 11, pp. 6-9.) Aguilar addressed numerous loose ends but mentioned the salary schedule issue only in passing. (*Id.*, p. 7.) He sought clarification from Borsos about the mechanics of the salary deal that SCTA had proposed and that he had accepted nearly two weeks earlier. He did so, he explained, "[t]o ensure that there is no misunderstanding between our team and your team's interpretation of *SCTA's proposed salary schedule* as we move to conclude this matter," and because he could "only recall your description of 'compressing' the schedule." (*Id*. [emphasis added].) This statement makes clear that as of November 17, Aguilar well understood that the Parties had agreed to adopt "SCTA's proposed salary schedule." Aguilar still did not grasp all of the details of the schedules, but there was no question what those schedules were.

b. Borsos responded by email in the mid-afternoon. (JX 11, pp. 4-5.) He was concerned that Aguilar did not seem fully to understand the details of the Framework Agreement's salary deal. (Tr. v.1 104:19-22 [Borsos].) Borsos was eager, however, to help Aguilar understand them, and offered that "[w]ith regard to the new salary schedules we will bring our salary schedules when we meet on November 27th and walk you through how to make the dollars work within the parameters of our November 5th agreement." (JX 11, p. 4.) In other words, Borsos promised to explain "the new salary schedules" by walking Aguilar through "our [i.e., SCTA's] salary schedules." He thus confirmed not only that there were indeed "new salary schedules," but that these were the SCTA-proposed schedules. Aguilar did dispute Borsos' characterization of the Parties' salary agreement.

5. The Parties' November 27 Meeting

The SCTA leadership—Fisher, Milevsky, and Borsos—met with Aguilar and District Deputy Superintendent Lisa Allen on November 27 to discuss the many issues that needed to be resolved before a tentative agreement could be finalized. (Tr. v.1 105:12-19 [Borsos].) The Parties discussed salaries, but only briefly. (Tr. v.1 108:1-2 [Borsos].) According to the SCTA witnesses, the Parties did not discuss the substance of their salary agreement. Rather, Aguilar repeated his

request that SCTA prepare an explanation of how the new schedules would work and how they would benefit employees in the middle ranges of the existing schedule. (Tr. v.1 105:20-24, 107:16-108:2 [Borsos]; Tr. v.1 202:12-22 [Fisher]; AX 15.) Borsos offered to meet in closed session with the Board to explain the Parties' salary deal. (Tr. v.1 105:24-106:2, 108:2-6 [Borsos].) Aguilar said that he appreciated Borsos' offer but did not take him up on it. (Tr. v.1 106:3-5 [Borsos].) And although Borsos was to repeat this offer, Aguilar never invited him to meet with the Board. (Tr. v.1 106:6-10 [Borsos].)

Aguilar did not dispute the SCTA witnesses' description of the November 27 meeting. Rather, he only testified that there was no discussion at that meeting of the 3.5% cap being removed after the 2018-19 year. (Tr. v.2 321:23-322:1 [Aguilar].) This is hardly surprising, though, as it is undisputed that the Parties did not discuss at this meeting the substance of the deal that they had struck earlier. (Tr. v.1 107:16-21 [Borsos].) Instead, their discussion focused on Aguilar's continued confusion about how to describe the effects of the new salary schedules to his Board, and how SCTA could assist him in this regard.

6. The Parties' November 29 Emails

a. In the early evening of November 29, Aguilar emailed Borsos and others regarding the many loose ends that needed to be resolved before a tentative agreement could be signed. (JX 12, pp. 7-13.) Regarding the salary agreement, Aguilar thanked Borsos "high level overview of the proposed salary schedule adjustment," and again asked for an explanation for the "compression" that Borsos had first described to him on November 5. (*Id*. at p. 8.) Aguilar acknowledged that Borsos was "still unable to provide more exact information about how the 3.5% maximum expenditure will be utilized." (*Id*.) And Aguilar again requested that SCTA provide him with a written description of the Parties deal that he could "use to brief our Board prior to finalizing the TA agreement [sic]." (*Id*.)

This email is entirely consistent with the Parties' November 5 salary agreement, as well as their intervening communications. Far from indicating that he believed that the Framework Agreement committed the Parties to negotiating *a* salary schedule at some point in the future, this email demonstrates that Aguilar understood that the Parties had agreed to implement the SCTA-proposed salary schedules, but that the precise mechanics of the 3.5% cap in 2018-19 remained to be determined. Aguilar acknowledged the Parties' discussion of the SCTA-proposed salary schedules and indicated that he had questions about how exactly they would work. He did not,

however, consider those schedules to be merely an opening proposal by SCTA to which the District would later respond. Aguilar needed to understand the SCTA salary schedules because, as he made clear in this email, he needed to be able to explain them to the Board "prior to finalizing the TA." In other words, Aguilar needed to understand the SCTA-proposed schedules because they would be presented to the Board as part of the Parties' TA.

Aguilar's description of these new schedules as the "SCTA proposed salary schedule adjustment" does not indicate otherwise. The schedules that the Parties had agreed to adopt starting in 2018-19 were those that SCTA had proposed; for this reason, referring to them as "SCTA proposed salary schedules" or the "SCTA proposed salary schedule adjustment" made perfect sense. It also corresponded to the terms used in the Framework Agreement, which referred to the "Union's proposed structure."

Nor does Aguilar's email reflect any confusion about the nature of the 3.5% cap. Aguilar's statement that Borsos was "still unable to provide more exact information about how the 3.5% maximum expenditure will be utilized," is clearly a reference to Borsos' repeated explanations that the precise mechanics of implementing that cap could not be finalized until the total cost of the new salary schedule was known. Likewise, Aguilar's expectation that the Parties would "have to continue the conversation about the reduction of years of service and column adjustment post ratification / approval," can only be understood as responding to Borsos' explanation that the final costing of the new salary schedules would take some time and require a more complete understanding of employee salary schedule placement in light of the new schedules' changes. By the same token, Aguilar's statement that the District would need to do its "own costing projections to present to our Board for their consideration" plainly referred to the need for the Board to approve any final decision about the mechanics of implementing the 3.5% cap.

b. Clearly frustrated by Aguilar's attempt to resolve the many outstanding items through email, Borsos responded that "unfortunately this effort to negotiate via email is not working." (JX 12, p. 6.) Given the shortness of time, Borsos requested that the Parties meet in person and work through the remaining issues face-to-face. (*Id*.) The next morning, Aguilar and Borsos agreed to meet later that same morning at the Capitol Garage restaurant. (*Id*.)

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7. The Parties' November 30 Meeting

Called, as it was, to resolve the many outstanding "loose ends" that stood in the way of a tentative agreement, the Parties' November 30 meeting at the Capitol Garage, like their meeting three days earlier, did not focus on the already-settled salary issue. (Tr. v.1 108:21-109:3 [Borsos].) This is clear from all the witnesses' testimony. Borsos recalls that one of the District representatives—either Aguilar or Allen—again requested a written description of the Parties' salary deal, to which Borsos responded by again offering to join Aguilar at a closed-session Board meeting to explain the salary agreement. (Tr. v.1 108:24-109:13 [Borsos].) Fisher recalls that Borsos again explained that the Parties would need additional information before they could determine precisely how to implement the new schedules at a 3.5% cost during the 2018-19 year. (Tr. v.1 204:2-10 [Fisher].) Aguilar initially could not recall the meeting at all. After District counsel refreshed his recollection that the Parties had in fact met that day, Aguilar did not testify about what was discussed, apart from saying that he could not recall whether there was any discussion about the 3.5% cap being removed after the 2018-19 year. (Tr. v.2 324:12-325:16 [Aguilar].) Allen did not testify at all.

What can be said with certainty is that neither Aguilar nor Allen said anything at that meeting that indicated that the District misunderstood the Parties' salary agreement. Neither said that they believed that the Parties were to negotiate a new salary schedule for the 2018-19 year at some point in the future. Nor did either say that they understood that the agreed-upon 3.5% figure was a perpetual cap on the cost of the new salary schedule, effective the 2018-19 year and beyond.

8. Aguilar's November 30 Email

a. Late that same night, Aguilar emailed the SCTA leaders a summary of issues for inclusion in the tentative agreement. (JX 12, pp. 2-6.) Regarding the salary schedule, he wrote:

> Within thirty (45) days of the Tentative Agreement's approval, the Parties agree to finalize a mutually agreeable adjustment to the salary schedule for 2018-19 that does not exceed a total District expenditure of 3.5%
>
> I have asked Lisa [Allen] and Cancy [McArn] to make themselves available to meet with you so that you can discuss the "compression" concept of the salary schedule and jointly draft a written description. I need this to provide assurance to the Board that teachers in Columns B and C will be benefited the most and that there will not be unexpected fiscal impacts associated to this after implementing the 3.5% maximum expenditure. There will need to be something in writing by early next week that I can use to brief our Board prior to finalizing the TA agreement [sic].

(*Id*., pp. 2-3.) Aguilar and Fisher later initiated this first paragraph, along with the other items that Aguilar included in his email, and the initialed document was included in the Parties' December 4 Tentative Agreement. (JX 8, p. 3.)

b. The SCTA leaders understood this email to set out the anticipated time-frame for the Parties to cost out the agreed-upon SCTA-proposed salary schedules and then determine the mechanics for implementing that in 2018-19 within the 3.5% cap. (Tr. v.1 110:9-111:6 [Borsos]; Tr. v.1 205:14-25 [Fisher].) The District, by contrast, claims that this email reflects the Parties' agreement that their salary deal committed them to negotiating some new salary schedule at a cost not to exceed 3.5%. Read carefully and in context, the email supports SCTA's interpretation, not the District's. It demonstrates that the Parties agreed to an ambitious schedule to cost out the new SCTA-proposed salary schedules and agree to a specific method of implementing them in the 2018-19 year with a 3.5% cap.

c. Just as with his email the previous day, Aguilar's November 30 email demonstrates that he understood that the Parties had already agreed to a specific new salary schedule for 2018-19. This is clear from his second paragraph, in which Aguilar requests that SCTA discuss with Allen and McArn the "'compression' concept of *the* salary schedule." (JX 12, p. 3 [emphasis added].) Aguilar's use of the definite article "the" indicates that a specific new salary schedule existed and had been agreed to. This is also clear from Aguilar's request that SCTA work with Allen and McArn to "jointly draft a written description" of "the salary schedule." (*Id*.) Logically, the Parties could only "jointly draft a written description" of a salary schedule that already existed; one cannot draft a description of something that does not yet exist. It is also shown by Aguilar's insistence that he receive a written description "by early next week" so that he could use it to "brief our Board prior to finalizing the TA." (*Id.*) Had Aguilar believed that the new salary schedule would be negotiated after the tentative agreement was ratified, there would have been no reason to brief the Board on it in advance of ratification, even if it were possible for the Parties to describe something that they had not yet developed and to which they had not yet agreed. The only logical reason why Aguilar would need to brief the Board about the salary schedules is because he understood both that new schedules did exist and that they were part of the tentative agreement that the Board was set to consider in early December.

From all of this, the meaning of Aguilar's first paragraph becomes clear. When he referred to a "mutually agreeable adjustment to the salary schedule for the 2018-19 year that does not

exceed a total District expenditure of 3.5%" he could only have meant the specific mechanics of implementing the SCTA-proposed schedules in the 2018-19 year. As Borsos had first explained on November 5, there were at least two possible ways to implement the schedules at a cost of 3.5% in 2018-19, but both required an understanding of the total uncapped cost of the salary schedules. Deciding how the new schedules would be implemented in 2018-19 would require the Parties to cost out the new schedules, agree on a total cost, and then agree to the specific mechanics for implementation, such as a specific date for mid-year delayed implementation. Logically, it was this process—and only this process—to which Aguilar was referring to when he wrote that the Parties would finalize a mutually agreeable adjustment within thirty or forty-five days of the contract approval.

While this conclusion is clear enough from the face of the email itself, any possible doubt on this point is dispelled by the District's subsequent conduct. It is undisputed that the District did not, within thirty or forty-five days of the Parties' December 2017 contract ratification (or indeed long after that), ever attempt to negotiate a new salary schedule. (Tr. v.1 138:7-14 [Borsos]; Tr. v.3 561:11-562:1 [McArn].) The District did not propose a new contract or an adjustment to the existing contract. (*Id*.) Nor did it issue a counter-proposal to the SCTA-proposed salary schedules. (*Id*.) Nor, for that matter, did the District ever so much as invite SCTA to negotiate such matters. (Tr. v. 561:22-562:1 [McArn].) This undisputed failure to take *any* action to negotiate a new salary schedule in the months that followed the Parties' December 2017 ratification of the collective bargaining agreement gives the lie to the claim that Aguilar's November 30 email contemplated the Parties' negotiation of new salary schedule for 2018-19.

By contrast, the Parties *did* act within the agreed-upon forty-five-day window to begin resolving the specific mechanics for implementing the new salary schedules in 2018-19. As was well-understood, the essential prerequisite to agreeing to a specific implementation plan was an agreed-upon costing of the new schedules. And this, in turn, required an understanding of where SCTA unit employees would be placed after being credited with additional years of experience. By mid-December 2017, the Parties began working on this. (Tr. v.1 134:17-137:20; AX 12.) It immediately became clear, however, that the forty-five day window was overly-ambitious, and Nguyen informed SCTA that it would actually take until at least late February 2018 before the District could begin determining how employees' salary schedule placement would be affected by the newly-credited years of experience. (Tr. v.1 137:11-20 [Borsos].)

9. The Parties' December 1 Meeting

The SCTA leaders immediately followed up on Aguilar's request that they meet with Allen and McArn to discuss the salary schedules. Fisher and Borsos met with Allen and McArn the very next day. (Tr. v.1 111:19-23 [Borsos].) It is undisputed that at this meeting, Borsos provided the District administrators with the salary schedules that the Parties agreed to adopt in 2018-19, explained how these schedules could be implemented at a 3.5% cost in that year—and also stated unambiguously that that 3.5% cap would be removed after the 2018-19 year, at which point the full, uncapped schedules would apply.

a. The SCTA witnesses offered consistent testimony about the meeting. Borsos spoke for SCTA and walked Allen and McArn through the SCTA-proposed salary schedules and explained the mechanics of implementation at the agreed-upon 3.5% cap in detail. (Tr. v.1 112:4-14 [Borsos]; Tr. v.1 206:8-18 [Fisher].) Borsos provided Allen and McArn with several documents. (Tr. v.1 206:19-23 [Fisher].) He again gave them the SCTA-proposed structure for the K-12 teacher salary schedule, program specialist salary schedule, and psychologist salary schedules. (AX 7; Tr. v.1 116:15-117:25 [Borsos].) These documents, which SCTA had first prepared a year earlier at the outset of bargaining, reflected the overall structure of the schedules, indicating the number of steps and columns and the uniform increments between each. (*Id*.) Borsos also gave them final salary schedules, with each cell reflecting the actual salary, for K-12 teachers, program, specialists, psychologist, and adult education teachers. (AX 8; Tr. v.1 112:15-114:1 [Borsos].) SCTA was able to prepare these because by this point it knew when these schedules were to take effect (i.e, the 2018-19 year) and the specific salaries from which these schedules would be calculated (i.e., the existing salary schedule with 2.5% across-the-board increases for the 2016-17, 2017-18, and 2018-19 years). Finally, Borsos also gave Allen and McArn a chart showing the percentage increase that employees in each cell would receive once the new schedules took effect. (AX 9; Tr. v.1 118:8-25 [Borsos])

The final salary schedules that Borsos shared with Allen and McArn are particularly significant. Their titles—"2018-19 Uncapped [ ] Salary Schedule"—indicates that these schedules might be capped in some manner. This suggestion is confirmed by the detailed footnote that appears on each of the schedules, and which clearly explains exactly what the Parties had agreed upon during their November 5 negotiations.

The footnotes explain that "final implementation of this salary schedule may need to be modified to conform with the agreed-upon 3.5% additional 2018-19 salary increase cap available to effectuate this new and revised salary schedule." (AX 8.) They further explain that the precise implementation would necessarily depend on the application of unlimited years of service credit, which would be calculated at some point in the future. (*Id*.) The different possible mechanics of implementing these schedules in 2018-19 under the 3.5% cap are also spelled out: "Variation, if required, may include a modification of the implementation date, or a cap on the maximum increase any individual may receive in 2018-19." (*Id*.)

And all of this makes clear that the 3.5% cap was only to be in place in 2018-19. The footnote references the "2018-19 salary increase cap," and likewise explains that this cap may result in either a delayed implementation date during the 2018-19 year or "a cap on the maximum increase any individual may receive in 2018-19." (AX 8.)

Borsos walked Allen and McArn through these documents. (Tr. v.1 112:8-14 [Borsos]; Tr. v. 1 206:8-18 [Fisher].) He explained that these were the salary schedules that the Parties had agreed to implement in 2018-19. (*Id*.) Neither Allen nor McArn disputed this assertion. (Tr. v.1 114:22-115:3, 115:16-19, 167:12-13 [Borsos]; 207:2-6 [Fisher].) Quite the contrary, they responded by asking Borsos to prepare a narrative explaining the new schedules. (Tr. v.1 114:22-115:7 [Borsos].) Borsos also explained, with reference to the footnote, that the new schedules could fit within the 3.5% cap in the 2018-19 year if their implementation was delayed until midway through that year. (Tr. v.1 114:2-14 [Borsos].) By that time, and based on Nguyen's concerns at the November 8 meeting, Borsos was no longer focused on an individual cap, although that possibility was included in the footnote. (*Id*.)

Borsos specifically explained that the cap was only for the 2018-19 year, and that the full "uncapped" salary schedules would therefore remain in place starting the 2019-20 year. (Tr. v.1 120:1-8 [Borsos]; Tr. v.1 207:21-208:5 [Fisher].) Neither Allen nor McArn question or objected to this statement. (Tr. v. 1 120:9-17 [Borsos].) Borsos' explanation of this point is reflected in Fisher's contemporaneous notes, which state "2019-20 when caps come off..."[3] (AX 16.)

[3] The District may suggest that these notes demonstrate that December 1 was the first time that Fisher was aware that the 3.5% cap would be removed after the 2018-19 year. The evidence does not bear this out. On cross-examination, Fisher testified that December 1 was the first time he took notes that specifically reflected this fact—not that it was the first that he had heard of this concept. (Tr. v.1 213:2-8 [Fisher].) To

This is also corroborated by Milevsky's notes from a telephone conference immediately following the Parties' December 1 meeting, in which Fisher briefed her on what had occurred. The notes reflect that Fisher relayed to Milevsky that the Parties had discussed that the 3.5% cap was only for the 2018-19 year; that the District would bear the full, uncapped cost of the new schedules starting only in the 2019-20 year; and that Allen and McArn did not react to this explanation. (Tr. v.1 246:7-250:10 [Milevsky]; AX 20.)

b. Significantly, McArn did not deny *any* of the foregoing. She testified generally that the Parties discussed "what was meant and what it would be with regards to the salary schedule to [sic] the implementation," but notably did not provide any specifics about these discussions (Tr. v.3 512:1-3 [McArn].) She testified that she asked Borsos questions about the salary schedules, but notably did not testify about Borsos' answers. (Tr. v.3 511:21-22, 512:1-3 [McArn].) She testified that Borsos had shown her many documents, but notably did not testify about what those documents were. (Tr. v.3 511:18-20 [McArn].) And she emphasized that neither she nor Allen were authorized to reach any agreement with SCTA. (Tr. v. 512:9-18 [McArn].) This, though, is hardly surprising, given that the undisputed purpose of the meeting was not to negotiate or reach an agreement, but rather to review the details of a deal that had already been struck and to discuss the steps that would need to be taken in order later to agree to the specific mechanics for implementing the 3.5% cap in 2018-19. (Tr. v.1 167:15-19 [Borsos].)

Notably, McArn did not dispute that Borsos provided her with several documents detailing the SCTA-proposed salary schedules and clearly specifying that the 3.5% cap was for the 2018-19 year only; explained that the Parties would adopt those sechedules in 2018-19; explained how the Parties could implement them in the 2018-19 year within the 3.5% cap; and specifically stated that that cap would be removed following the 2018-19 year. Nor was McArn's conspicuous failure to testify about these matters due to any lack of notice. By the time that McArn testified on the final day of hearing, both she and the District's two attorneys had heard the SCTA witnesses' consistent testimony about what had occurred at the December 1 meeting. That even after having heard this testimony, McArn was never asked to, and never did, even attempt to refute it, demonstrates the indisputable accuracy of the SCTA witnesses' testimony.

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the contrary, Fisher testified clearly that Borsos had explained that the 3.5% cap was only for the 2018-19 year at the Parties' November 5 meeting. (Tr. v.1 193:11-22 [Fisher])

In this regard, it is also telling that the District did not call Allen to testify. Allen, a high-level District administrator who attended the Parties' December 1 meeting, would have been a natural witness to provide the District's version of what occurred at that meeting—if she disputed the SCTA witnesses' testimony. That the District did not call her raises the inference that if she had testified, her testimony would not have been favorable to the District. (*See, e.g.*, ELKOURI & ELKOURI, *supra*, p. 8-51.)

10. The Parties' Execution Of The Tentative Agreement

On December 4, Aguilar and Fisher signed the Parties' Tentative Agreement ("TA"). (JX 2; Fac. Stip. No. 6.) The TA incorporated the complete Framework Agreement. (*Id*.) It also included Aguilar's November 30 email, initialed and signed by the Parties. (JX 2.)

11. Borsos' December 6 Narrative

a. Shortly before three o'clock on the afternoon of December 6, Borsos emailed Aguilar and Allen a four and a half page "Narrative on Salary Schedules." (AX 10; Tr. v.1 125:20-126:3, 126:20-127:6 [Borsos].) Because Aguilar and other District administrators had requested a narrative that they could use in describing the Parties' salary deal to the Board, Borsos wrote the narrative from the District administrators' perspective. (Tr. 127:20-25 [Borsos].) The document again explains, in considerable detail, the salary agreement that the Parties reached on November 5, was included in the Tentative Agreement signed on December 4, and which would be presented to the Board and SCTA membership for ratification.

Borsos' narrative makes plain that the SCTA salary proposal that Aguilar had accepted on November 5 included the adoption in 2018-19, of the SCTA-proposed salary schedules. Throughout, it refers to "the new salary schedules," signifying that the Parties had already agreed to definite new schedules. And it makes plain, both in its explanatory narrative as well as the embedded schedules, that "the new salary schedules" are those that SCTA had proposed since at least December 2016. Thus, for example, the narrative includes the K-12 salary schedule structure that SCTA had first presented to the District in December 2016 and had included in all of its salary proposals thereafter. (*Compare* AX 10, p. 2 *and* AX 7.) It also includes the final K-12 salary schedule that SCTA had given to Allen and McArn on December 1. (*Compare* AX 10, p. 4 *and* AX 8.)

Borsos' narrative also explains the Parties' agreed-upon 3.5% cap. It is clear from the narrative that the 3.5% figure is not to be used to negotiate a new salary schedule. This is plain

from the narrative's repeated references to "the new salary schedules" and its detailed descriptions and illustrations of the new K-12 salary schedule. And it clearly explains this when it states, unambiguously, that "The parties have agreed to a maximum District allocation of 3.5% to implement the new salary schedule." (AX 10, p. 5; *see also, e.g.*, Tr. v.1 130:9-17 [Borsos].) The narrative then elaborates on how the 3.5% cap will affect the new salary schedules' implementation, explaining:

> If the cost of implementation is 3.5% or less then the salary schedules can be easily implemented. If the cost is higher than 3.5% then the parties will need to work out a method of implementation that falls within the 3.5% maximum district expenditure for 2018-19.

(AX 10, p. 5.) This explanation makes clear that the new salary schedules will be subject to the 3.5% cap only during the 2018-19 year. As he had repeatedly before, in his narrative Borsos again explained the possible mechanics for ensuring that the new salary schedules' actual cost during the 2018-19 year not exceed 3.5%, outlining both the concept of a delayed implementation as well as a maximum individual increase cap. (*Id*.) That the 3.5% cap is temporary is also made clear from the narrative's inclusion of what it explicitly refers to as the "uncapped" salary schedule. (AX 10, p. 4.) If the cap were permanent, no purpose would be served by explaining unit employees' uncapped salaries.

Finally, Borsos' narrative also explained exactly what remained to be done on the issue of salaries: "credit for unlimited years of experience for current employees must be applied"; the number of "teachers currently at Step B[A]+45 [who] qualify to be placed at the new BA+60" column would need to be determined; the total cost of the new salary schedules would need to be calculated; and the specific mechanics of implementing the 3.5% cap in 2018-19 would need to be determined. (AX 10, p. 5.) Borsos had described all of these steps repeatedly before, starting at the November 5 meeting at the Mayor's house.

Significantly, the narrative also explicitly makes clear that it is these steps that the Parties agreed to take within the 45 day period that Aguilar referenced in his November 30 email, and which was later incorporated into the Tentative Agreement. Referring to the issues of the crediting of unlimited years of service and the new BA+60 column, Borsos explained, "Once these two variables are understood—*and we are working together to have this done within 45 days of*

ratification—then we can more accurately calculate the cost of implementation." (AX 10, p. 5 [emphasis added].)

Borsos' December 6 narrative thus explained, in writing and with considerable detail, the terms of the Parties' November 5 salary agreement. Its explanation was entirely consistent with Borsos' earlier explanations, both verbal and written. It also made perfectly clear that what the Parties agreed to finalize within forty-five days of the contract's ratification were the mechanics by which the new, SCTA-proposed salary schedules could be implemented at a 3.5% cost during the 2018-19 year.

b. Aguilar received Borsos' narrative, but never responded. (Tr. v.1 130:22-25 [Borsos] [Borsos]; DX S [Aguilar Decl.] ¶ 25.) For that matter, neither did Allen, or anyone else at the District. (Tr. v.1 131:12-15, 131:21-132:2 [Borsos].) It must be recalled here that Aguilar himself had repeatedly requested that SCTA prepare a narrative explaining the salary deal. Then, once presented with the requested narrative, Aguilar did not reply at all. The only conclusions to be drawn from Aguilar's silence are that either Aguilar understood and agreed with SCTA's detailed explanation of the Parties' salary deal, or he once again elected to proceed without fully understanding the agreement to which he was committing the District.

The District witnesses' testimony about their subjective understanding of Borsos' narrative does not change things. It is also contradictory and illogical. Thus, in the declaration that District counsel wrote for him, Aguilar asserts that he understood that the narrative set forth "SCTA's plans to develop a new salary structure…" (DX S [Aguilar Decl.] ¶ 25.) This claim cannot be squared with the plain text of the narrative, discussed above. Either Aguilar did not bother to read or understand the narrative; this assertion is yet another declaration error on the part of District counsel that the declarant failed to catch; or Aguilar is intentionally mischaracterizing the narrative. The same holds for Aguilar's conclusory assertion that Borsos' narrative does not indicate that the 3.5% cap would apply only in the 2018-19 year. (Tr. v.2 327:15-19 [Aguilar].) As explained above, this is plainly incorrect.

McArn, who claims to have received a copy of Borsos' email, presumably forwarded by Aguilar or Allen, also contradicts Aguilar's testimony of the purpose of this narrative. She testified that the narrative provided "an explanation of *the* salary schedule." (Tr. v.3 514:9-17 [McArn] [emphasis added].) She elaborated that in the narrative, SCTA was "explaining essentially some of what had been talked about" with respect to the salary schedule." (Tr. v.3 514:23-25 [McArn].)

And while McArn understood that work remained to be done, she was clear that this outstanding work related to the final costing of the SCTA-proposed salary schedules and the mechanics of implementing those schedules within the agreed-upon 3.5% cap in 2018-19. (Tr. v.3 515:8-24, 516:8-13 [McArn].)

Here, it is also significant that the District chose not to call Allen, the other District recipient of Borsos' December 6 email. The District's failure to do so strongly suggests that her testimony, had it been offered, would have been adverse. (*See, e.g.*, ELKOURI & ELKOURI, *supra*, p. 8-51.)

12. The Parties Ratify Their Tentative Agreement

The District's Board considered the TA at its December 7 meeting. (Fac. Stip. No. 7.) At that meeting, District administrators presented the Board with a PowerPoint summary of the TA's "highlights." (JX 5; *see id.*, Slide 2 [explaining that the presentation would cover the "highlights" of the deal].) As explained above, contrary to her sworn declaration testimony, McArn did *not* make the salary presentation to the Board. (*See supra*, Section IV.D.1.c.4.) District administrator Ted Appel did. His presentation briefly summarized the salary component of the TA, addressing the entire salary deal in under two slides. (*Id*., Slides 7-8.) The core salary agreement—the across-the-board raises and new salary schedules—was covered in in half a slide. (*Id*., Slide 7.) On the issue of the salary schedules, the presentation merely paraphrased Aguilar's November 30 email, later incorporated into the Parties' TA. (*Compare id*., Slide 7 *and* JX 2, p. DD 439.) This slides were read verbatim to the Board; there was no additional explanation provided regarding the Parties' salary agreement. (*See* JX 6, 2:21:46-2:22:36.)

For all the reasons explained above with respect to Aguilar's November 30 email, the SCTA representatives were not concerned by this presentation summary. It accurately, if briefly, summarized the November 5 salary deal and the Parties' later agreement to expedite discussions regarding the precise mechanics for implementing the SCTA-proposed salary schedules subject to the agreed-upon 3.5% cap in 2018-19. (Tr. v.1 209:1-11 [Fisher].) It is for this reason that the SCTA representatives present did not object to the summary of the salary deal.

E. <u>The District Later Reneged On The Parties' Deal</u>

It was only much later, in the Spring of 2018, that SCTA first began even to suspect that the District did not intend to adopt the SCTA-proposed salary schedules in 2018-19. Superintendent Aguilar confirmed SCTA's suspicion in August 2018. The District has never adopted the SCTA-proposed salary schedules as it promised to do in the Framework Agreement.

(Tr. v.1 138:21-23 [Borsos].) It is still paying SCTA unit employees under the old salary schedules. (Tr. v.1 138:15-20 [Borsos].) SCTA grieved this violation of the Parties' contract, and the grievance is now ripe for final and binding resolution by the Arbitrator. (Proc. Stip. 1.)

V. ARGUMENT

The Parties agreed to adopt the SCTA-proposed salary schedules starting the 2018-19 year, subject to a 3.5% cap in that year alone. This is the only reasonable conclusion to be drawn from the plain language of the Parties' Framework Agreement. It is confirmed by the overwhelming evidence that SCTA repeatedly and comprehensively explained its salary schedule proposal. SCTA first explained this on November 5, when it initially proposed, and when Aguilar agreed to, the salary schedule deal. In the weeks that followed, SCTA again repeatedly explained to high level District administrators exactly what the deal Aguilar signed entailed. On these facts, if a mistake was made regarding the terms of the Parties' salary deal, it was the District's and the District's alone. The contract is enforceable and the District's failure to adopt the SCTA-proposed salary schedules is improper.

A. The Parties Agreed To Adopt SCTA's Proposed Salary Schedules In 2018-19

Although not a model of contract draftsmanship, the Framework Agreement reflects the Parties' agreement that the District would adopt SCTA's proposed salary schedules in 2018-19, subject to a 3.5% cap in that one year only. This is apparent from the text of the agreement itself. And any doubt is dispelled with reference to the considerable, compelling evidence regarding the Parties' negotiations that day, as well as their subsequent pre-ratification communications.

1. The Framework Agreement's Plain Language Demonstrates That The Parties Agreed To Adopt SCTA's Proposed Salary Schedules In 2018-19, Subject To A Cap In That One Year Alone

The Framework Agreement's salary provisions are displayed graphically, with the Parties' agreement reflected in chart, rather than in narrative, format. With hindsight, the Parties would doubtlessly have substituted the more traditional narrative approach for this graphic representation. Still, read carefully, the Framework Agreement's chart adequately explains the terms of the salary deal the Parties struck on November 5. It demonstrates that the Parties agreed to: (a) adopt the SCTA-proposed salary schedules in the 2018-19 year; and (b) cap the cost of implementing those schedules at 3.5% of District payroll during that 2018-19 year.

The chart displays three categories of information. Its three columns reflect the three years of the contract, 2016-17, 2017-18, and 2018-19. Its two rows reflect the two species of salary changes to which the Parties agreed: across-the-board salary increases, and a structural adjustment to the salary schedules. The cells of the chart—the intersection of the chart's columns and rows—reflect the manner in which each of these species of salary changes will be implemented during each of these three contract years.

There is no dispute as to the first of the two species of salary changes. It is undisputed that the handwritten term "salary increase" refers to across-the-board increases to the existing certificated salary schedules. The chart then shows, under each of the three columns, how these across-the-board salary increases are to be implemented. In each cell at the intersection of the "salary increase" row and the school year column is the notation "2.5%." It is likewise undisputed that this notation of "2.5%" reflects the Parties' agreement that the District would implement an across-the-board raise of 2.5% during the school year in question.

The second of the two species of salary changes states, "Adjustment to salary schedule – Union's proposed structure." Logically, this can mean only one thing: an agreement to adjust the salary schedule by adopting the SCTA-proposed salary schedules. The first part of this phrase, "adjustment to salary schedule," makes plain that the Parties agree to adjust the certificated salary schedules. If it stood alone, this would suggest that the Parties agreed to some unspecified adjustment to the schedules. But it does not stand alone. It is immediately followed by a dash and then the second part of the phrase. This specific construction indicates a clarification or explanation: what follows the dash clarifies or explains what precedes it. And what follows is the clause "Union's proposed structure." This indicates, then, that the Parties agreed not to any "adjustment to [the] salary schedule," but to a *specific* adjustment: to adjust the schedule according to the "Union's proposed structure."

This language is simply not susceptible of the District's interpretation that the Parties only agreed to some unspecified changes to the salary schedules, with the details to be worked out at some unspecified point in the future. It completely ignores the second half of the phrase, "Adjustment to salary schedule – Union's proposed structure." Tellingly, no District witness was able adequately to explain what the clause "Union's proposed structure" could possibly mean if not an agreement to adopt the SCTA-proposed salary schedule structure.

When asked how he interpreted the phrase "Adjustment to salary schedule – Union's proposed structure," Superintendent Aguilar could only explain that he took this to mean "There was a proposal." (Tr. v.2 378:11-21 [Aguilar].) McArn also struggled. She claimed that she understood this to mean that the Parties would negotiate a new schedule "based on" the SCTA-proposal. (Tr. v.3 501:25-502:2 [McArn].) Of course, the phrase "based on" neither appears, nor is even hinted at, in this language. Tellingly, when McArn was asked about this on cross-examination, she misquoted the agreement as providing for an "adjustment to the salary schedule *per* Union's proposed structure." (Tr. v.3 582:25-583:1 [McArn] [emphasis added].) Whether intentional or not, this misquotation points out the flaws in McArn's proffered interpretation of the Parties' agreement.

Further, the District's preferred interpretation that the Parties agreed to negotiate the changes down the road finds no support in the Framework Agreement's text. Section 1 of the Framework Agreement does not say anything about future negotiations—nothing at all. By contrast, other provisions of the Framework Agreement specifically provide for future negotiations. Thus, Section 2 explicitly states that "Within 60 [15] days, the Parties agree to meet and confer about the school calendar for the next 3 years." (JX 1, p.2; *see also, e.g.*, Tr. v.1 86:14-87:2 [Borsos].) Similarly, Section 6 also clearly states that "The parties agree to negotiate permanent status for the District's CTE teachers." (JX 1, p. 6; *see also, e.g.*, Tr. v.1 87:3-8 [Borsos].) These provisions make clear that the Parties were perfectly capable of reducing to writing their agreement to negotiate matters in the future. That they did not include any such language in Section 1 demonstrates that there was never an agreement to negotiate the "adjustment to salary schedule" to which they had agreed in their Framework Agreement.

If the meaning of the phrase "Adjustment to salary schedule – Union's proposed structure" is plain, so is the Framework Agreement's provision addressing its implementation. Recall that the in the case of the across-the-board salary increases, the cells of the chart reflect when and how the increases are to be implemented. The same mechanics must apply in the case of the salary schedule adjustment. In other words, the chart's cells corresponding to the salary schedule adjustment row indicate when and how this adjustment is to be implemented. The cells corresponding to the columns for the 2016-17 and 2017-18 years are empty, indicating that there was to be no structural change to the salary schedules in those years.

There is text in the cell corresponding to the column for the 2018-19 year, indicating that the salary schedule adjustment would occur in that 2018-19 year. And just as with the across-the-board salary increases, the text appearing in that cell indicates how, specifically, that adjustment would be implemented. Recall here that in the case of the salary increase, the *type* of salary change (i.e., an across-the-board raise) was set out in the margin, while the chart's cells indicate *how* that change was to be implemented (i.e., a 2.5% raise). The same must perforce apply in the case of the salary schedule adjustment. The *type* of salary change is specified in the margin: adjusting the salary schedule by adopting SCTA's proposed salary schedules. The cell's text indicates *how* that change is to be implemented.

In the case of the salary schedule adjustment, the cell corresponding to the 2018-19 year states, "3.5% maximum District expenditure." This sets forth the terms by which the SCTA-proposed salary schedules are to be implemented in the 2018-19 year: they are to be implemented subject to a "3.5% maximum District expenditure." In other words, the full SCTA-proposed salary schedules are to adopted that year, but their implementation in the 2018-19 year will be subject to a 3.5% expenditure cap.

Here, too, the District's interpretation cannot be squared with the contract language. The District contends that the phrase "3.5% maximum District expenditure" refers to the total cost of a some new, as-yet unspecified salary schedule over which the Parties agreed to bargain in the future. But, as explained above, the Framework Agreement's Section 1 cannot be read as an agreement to negotiate new salary schedules. And because this phrase "3.5% maximum District expenditure" appears in the body of the chart, it can only reasonably be interpreted as indicating the method by which the substantive salary change is to be implemented in the 2018-19 year—not the parameters for future salary schedule negotiations.

2. The Record Evidence Of The Parties' Negotiations Confirms That They Agreed To Adopt SCTA's Proposed Salary Schedules In 2018-19, Subject To A Cap In That One Year Alone

While the Framework Agreement's text is only reasonably susceptible of the interpretation that SCTA urges, any doubt here is dispelled by the record evidence of the Parties' November 5 negotiations and subsequent discussions. As explained in detail above, this evidence demonstrates that the Framework Agreement can only reflect the salary proposal that SCTA made on November 5; Aguilar neither made his own salary proposal, nor ever made a counter-proposal. The evidence

also shows that Borsos explained exactly what SCTA was proposing, and at some length and in considerable detail. He made abundantly clear that SCTA was proposing that the District adopt the SCTA-proposed schedules in 2018-19, subject to a 3.5% cap in that year alone. Even if the Framework Agreement were found to be ambiguous, this considerable, credible evidence regarding the Parties' negotiations on November provides the necessary clarification about the Parties' intent and the Framework Agreement's meaning.

Far from changing things, consideration of the Parties' subsequent communications only confirms this interpretation of the Framework Agreement. The relevant facts are also discussed at length above and will only be summarized here. In the weeks following their November 5 agreement, the Parties engaged in numerous communications about their salary schedule deal, both in-person and in writing. Throughout, SCTA made clear that the Parties agreed to adopt the SCTA-proposed salary schedules in 2018-19, subject to a 3.5% cap in that year alone. The only work that remained to be done, SCTA repeatedly explained, was to decide on the precise mechanics for implementing the new salary schedules in 2018-19 at a total additional cost of 3.5%. The District never questioned these explanations, much less directly disputed them. This evidence, then, demonstrates that when the Parties signed their final Tentative Agreement on December 4 they knew exactly to what they were agreeing.

The District will presumably again point to Aguilar's November 30 email, which the Parties subsequently initialed and incorporated into their Tentative Agreement, as evidence of a contrary understanding of the salary deal. The email's statement that the Parties would later "finalize a mutually agreeable adjustment to the salary schedule for 2018-19 that does not exceed a total District expenditure of 3.5%," the District will claim, shows that the Parties agreed to negotiate some new salary schedule with a total cost of 3.5%. But as is explained above, this email is not susceptible of such an interpretation. Read in context, as it must, the email can only reasonably be read as reflecting the Parties' agreement that they would need to agree to the precise mechanics by which the SCTA-proposed salary schedules could be implemented in 2018-19 at a cost of 3.5%.

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B. If There Was A Misunderstanding About The Salary Agreement, It Was Unilateral And On The Part Of The District—And Therefore Does Not Excuse The District's Failure To Adopt The SCTA-Proposed Salary Schedules In 2018-19

Just as it did in its failed bid to litigate this dispute in Superior Court, the District again contends that the Framework Agreement's salary provisions are unenforceable due to mutual mistake. In the District's telling, the Parties hopelessly talked past each other in their November 5 negotiations. The upshot, according to the District, was that SCTA emerged believing the Parties had agreed to one salary deal, while the District believed that they had agreed to something entirely different. There was, the District asserts, no "meeting of the minds," and the Parties' mutual mistake renders the entire salary deal unenforceable. (*See* District Prehearing Brief pp. 15-16.) It is a neat story—but one that finds absolutely no support in the record evidence or the governing principles of contract interpretation. Quite the contrary, the evidence shows that if there was a mistake here, it is chargeable to the District and the District alone. As such, the salary agreement remains enforceable.

1. Of Mistakes Mutual And Unilateral

The District is correct, of course, that a contract may be unenforceable if *both* parties labored under a mistaken understanding of its terms. However, this rule applies only when the mistake is truly mutual. As the leading labor arbitration treatise explains, "The voidability of a presumed contract arises only in the limited circumstances where neither party knew, or should have known, of the meaning placed on the term by the other party, or where both parties were aware of the divergence of meaning and assumed the risk that the matter would not come to issue." (ELKOURI & ELKOURI, *supra*, p. 9-2.) When, on the other hand, the fault lies only with one party, the mistake is unilateral. And "a unilateral mistake by one party does not provide a sufficient basis for contract reformation." (*Id*., p. 9-12.) As an oft-cited labor arbitration decision explains, "The rule which has been hammered out through centuries of litigation is that if the alleged 'mistake' is on the part *of only one* of the parties to the agreement, and it is not so gross as to indicate to the opposite party that an error has been made, no relief can be accorded the mistaken party."[4] (*Pillowtex Corp.*, 92 LA 321, 325 (Goldstein, 1989) [emphasis in original].)

[4] The District is just plain wrong in insisting that the fact that the Parties now disagree about the meaning of the Framework Agreement's salary provision proves that there was no "meeting of the minds." The Elkouri treatise makes plain that such a suggestion is nonsensical: "When the parties attach conflicting

This approach to unilateral mistake is longstanding and has been applied in numerous published labor arbitration decisions. From these decisions, two key principles are clear, as is intimated by the selections from the Elkouri treatise quoted above. First, in order to be unilateral, the mistake must be made by a party that had actual or constructive knowledge of the meaning ascribed to a contract term by the other party. (*See, e.g.*, *Tecumseh Local Board of Education*, 2009 WL 9412743 (Goldberg, 2009); *Pillowtex Corp.*, *supra*, 92 LA 321; *see generally*, ELKOURI & ELKOURI, *supra*, p. 9-2.) Second, in order to be unilateral, the mistake must also not have been apparent to the other party at the time the deal was struck. (*See, e.g.*, *Puget Sound Energy, Inc.*, 2001 WL 36586142 (Snow, 2001); *Pillowtex Corp.*, *supra*, 92 LA 321.) If both of these requirements are met, then the mistake is truly unilateral and the mistaken party will not be excused from its contractual obligations.

These principles are well illustrated in the *Tecumseh Local Board of Education* case, which is closely on point. There, the parties disagreed how to interpret an agreement that provided for a 3% raise effective January 1, 2009. (2009 WL 9412743, at *1.) The union argued that this required that all paychecks issued after the first of the year be increased by 3%, while the district contended that the 3% raise needed to be based on a pro rata calculation that resulted in a smaller actual increase per paycheck. (*Id*. at *2.) The evidence showed that when this agreement was negotiated, the union's representatives repeatedly explained to the district negotiators their understanding that the raise would result in a hypothetical $100 paycheck being increased effective January 1 to $103. (*Id*. at *4.) The district negotiators expressed their understanding and assent, and then signed the deal. (*Id*.) On these facts, Arbitrator Mitchell Goldberg found that if there was a mistake here, it was unilateral and on the part of the district and could not excuse the district's non-compliance. (*Id*. at *5 ["Even if it could be argued that the Board representatives were mistaken in their understanding of the implementation method, such a unilateral mistake would not be sufficient to set aside the agreement…"].)

2. The District Made A Unilateral Mistake Regarding The Framework Agreement's Salary Provisions

Under these well-settled principles, there is no question that if there was a mistake, it was unilateral and on the part of the District. The record evidence demonstrates that the District knew

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meanings to an essential term of their putative contract, is there then no 'meeting of the minds' so that the contract is not enforceable against an objecting party? Hardly." (ELKOURI & ELKOURI, *supra*, p. 9-2.)

or should have known the salary terms that STA proposed and that it accepted. The evidence also shows that SCTA was never put on notice that the District had misunderstood the deal it accepted.

a. SCTA explained its salary schedule proposal explicitly, repeatedly, and in considerable detail. The evidence of this is discussed at length above and will only be summarized here. At the November 5 meeting, SCTA explained exactly what it was proposing. Speaking on behalf of SCTA, Borsos proposed that the District adopt the SCTA-proposed salary schedules in the third year of the contract, with a 3.5% cap on District expenditures for that 2018-19 year alone. Just like the teachers' union in *Tecumseh Local Board of Education Case*, SCTA made perfectly clear what it was proposing and how its proposal would work.

These terms would have been clear to anyone who was listening. The problem was that Superintendent Aguilar was not. By his own repeated admission, Aguilar neither had, not believed he needed to have, a complete understanding of SCTA's proposal. He was concerned *only* about the total cost of the three-year contract and assuring himself that the new salary schedules would address the structural weaknesses of the existing schedules. Aguilar simply could not be troubled to focus on the specifics of SCTA's proposal, including what schedules SCTA was proposing, what the 3.5% cap meant, or how that cap could be implemented. Aguilar accepted a proposal that he did not fully understand.

What is more, Aguilar never indicated that he had failed to understand SCTA's proposal. The uncontroverted evidence is that at the December 5 meeting, Aguilar appeared to follow alone with Borsos' explanation of the SCTA proposal. He asked relatively few questions, and none about what salary schedules SCTA proposed the Parties adopt, what the 3.5% cap meant, how it was to be implemented, or its term. Aguilar never said anything indicating he believed either that SCTA was proposing to negotiate the new salary schedules at a later date, or that SCTA was proposing that the cost of the new schedules be forever capped at 3.5%.

Thus, by the time that the Parties signed the Framework Agreement just before 3:30 that Sunday afternoon, Aguilar had made a unilateral mistake about the terms of the salary agreement to which he had just agreed. And there was no reason whatsoever for SCTA to suspect that Aguilar had misunderstood the deal.

b. And while the final contract deal was not signed until a month later, nothing occurred in the intervening weeks to make clear to SCTA that Aguilar had unilaterally misunderstood the salary deal. As is explained above, the record evidence demonstrates that at no time during this

period did Aguilar or any other District administrator inform SCTA that it understood that the Parties were to negotiate a new salary schedule within a 3.5% cap. Quite the contrary, the evidence demonstrates precisely the opposite: that Borsos informed multiple District administrators of the terms to which the Parties had agreed at the November 5 meeting. He did so both verbally and in writing, including in his detailed December 6 narrative.

In the absence of any evidence that District officials ever verbally expressed a contrary understanding of the Framework Agreement's salary provisions so as to put SCTA on notice of Aguilar's mistake, the District will presumably play up Aguilar's November 30 email summarizing the Parties' salary agreement. If nothing else, so the argument will go, this email should have put SCTA on notice that Aguilar misunderstood the Parties' salary deal as providing for the subsequent negotiation of a new salary schedule for the 2018-19 year that would not cost more than 3.5%. But as explained above, Aguilar's email is entirely consistent with the proposal SCTA made and the deal that the Parties' struck on November 5.

Even at that November 5 meeting, SCTA had understood—and had also made explicitly clear to Aguilar—that there *would* need to be further negotiations and agreements relating to the 3.5% cap. The actual mechanics of implementing the cap had yet to be decided, though Borsos had outlined two possible mechanisms for ensuring that not more than 3.5% was spent on the SCTA-proposed salary schedules in that final 2018-19 year. Regardless of the mechanism, though, the specifics of implementation would depend on the final calculation of the cost of the new salary schedules, and it was always understood that those calculations would take time. Not only would the District need to determine the number of employees to be placed in the new BA+60 column, as well as their specific cell placement, but it would also need to determine how the unlimited years of experience would affect the placement of an as-yet unknown number of employees with uncredited outside experience. Once these were determined,

So even *if* his November 30 email was the product of Aguilar's mistaken understanding of the Parties' salary deal, that email did not telegraph that misunderstanding to SCTA. Quite the contrary. SCTA understood this email merely to reflect Aguilar's understanding that, as SCTA had explained at the November 5 negotiations and repeatedly thereafter, the mechanics of implementing the new SCTA-proposed salary schedules would need to be hammered out, and ideally within a relatively short thirty or forty-five day window. Even if Aguilar intended his reference to a "mutually agreeable adjustment to the salary schedule" to refer to the negotiation of

a brand new salary schedule, this was not clear, and SCTA reasonably interpreted this as referring to the need mutually to agree to a particular set of mechanics for meeting the 3.5% cap in 2018-19.

By the same token, nothing that the District administrators presented to the Board at its December 7 meeting would reasonably have put SCTA on notice that the District had misunderstood the salary deal. The AB 1200 Disclosure packet and the administrators' PowerPoint presentation merely quote from Aguilar's November 30 email, later incorporated into the Parties' Tentative Agreement. (*See* JX 4, Executive Summary, p.4; JX 5, Slide 7.) Because that underlying email could not have alerted the SCTA leadership to any confusion on the part of the District, neither could the District's reference to it in these later communications.

C. Even If There Was A Mutual Mistake About The Salary Agreement, The Risk Was Borne By The District—And Therefore Does Not Excuse Its Failure To Adopt The SCTA-Proposed Salary Schedules In 2018-19

Even assuming for the sake of argument that both Parties somehow shared in the mistake, this would not change the outcome here because the District bore the risk of mistake. This is because Aguilar chose to participate in the November 5 negotiations on his own, and despite his own admitted lack of experience and familiarity with the Parties' negotiations, and further signed the Framework Agreement without understanding it.

Under well-established common law contract principles, even a mutual mistake does not void a contract where one of the parties to that contract bears the risk of mistake. As Arbitrator Carlton Snow explained, quoting the Restatement (Second) of Contracts:

> Where a mistake of both parties at the time a contract was made as to a basic assumption on which the contract was made has a material effect on the agreed exchange of performances, the contract is voidable by the adversely affected party unless he bears the risk of mistake under the rule stated in Section 154.

(*Puget Sound Energy*, *supra*, 2001 WL 36586142 at *10.) Section 154 provides that a party bears the risk of a mistake when, among other things, "He is aware, at the time the contract is made, that he has only limited knowledge with respect to the facts to which the mistake relates but treats his limited knowledge as sufficient." (Restatement (Second) of Contracts, Rule 154(b); *see also, e.g.*, *Puget Sound Energy*, *supra*, 2011 WL 36586142 at *11.)

Arbitrator Snow applied these principles in *Puget Sound Energy*, which is instructive here. That case involved a dispute over an agreement that the employer was to make a 1% contribution to employees' 401(k) accounts. The union contended that the 1% should be calculated on all hours worked, while the employer believed that it should be calculated only on straight-time hours excluding overtime. In resolving the dispute, Arbitrator Snow emphasized that at the negotiations, the employer's representative had misrepresented to the union that the 1% was based on all hours worked. Critically, the arbitrator emphasized the fact that the employer representative did so even though "she knew she had only limited knowledge but treated it as sufficient." (*Id*. at *11.) On these facts, the arbitrator concluded, the employer representative "saddled the Company alone with responsibility for the mistake." (*Id*.)

Precisely the same holds here. Even if the Parties were somehow both mistaken in their negotiations, the District alone bore this risk. It did so because Aguilar concededly signed off on the Framework Agreement's salary provisions without understanding its terms. Aguilar's frank admission of this point cannot be over-emphasized: at the time that he agreed to the SCTA salary proposal, Aguilar *knew* that he did not fully grasp the terms of that agreement. Just as with the employer representative in *Puget Sound Energy*, Aguilar "knew [he] had only limited knowledge but treated it as sufficient." (*Id*.) And just as in that case, by doing so Aguilar "saddled the [District] alone with responsibility for the mistake." (*Id*.)

And Aguilar did not just knowingly sign a contract that he did not understand. He also repeatedly rebuffed SCTA's offers to explain that same contract to the Board. It is undisputed that Borsos offered at least twice to accompany Aguilar to a Board meeting, walk the Board members through the salary agreement and answer any questions the Board members might have. Aguilar said that he appreciated the offer, but never took Borsos up on it. Having first signed a contract he did not fully understand, Aguilar thus also declined SCTA's repeated offers of assistance in explaining that same contract to the Board. In this way, Aguilar decided that his Board could also "forgo understanding the details" of the contract he negotiated and signed. (Tr. v.2 316:7-10 [Aguilar].)

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D. The District's Anticipated Defenses Are Meritless

The District will presumably return to the various purported defenses it previewed in its March 5, 2019 Prehearing Brief. None have merit. None excuse the District's failure to honor its contractual obligations to adopt the SCTA-proposed salary schedules in 2018-19, subject to a 3.5% cap in that year only.

1. The District Administrators' Subjective Understandings Of The Framework Agreement's Salary Provisions Are Immaterial, Because They Were Never Communicated To SCTA

The District's evidence regarding the purported meaning of the Parties' salary agreement is largely limited to its witnesses' testimony about either their subjective understandings of the deal or their communications with other District representatives. This evidence is entirely irrelevant to the resolution of this grievance.

As a matter of well-settled labor arbitration and contract interpretation principles, neither a party's undisclosed subjective understanding of, nor internal communications between the party's representatives regarding, a contract term's meaning have any relevance in a contract dispute case if they are not shared with the other party. "[A] party's 'mental processes' are irrelevant; what a party may have privately intended the words that are the subject of the dispute to mean plays no role in the interpretive process if the intended meaning has not been communicated." (ELKOURI & ELKOURI, *supra*, p. 9-7.) "The intent manifested by the parties to each other during negotiations by their communications and their responsive proposals—rather than undisclosed understandings and impressions—is considered by the arbitrators in determining contract language." (*Id.*, pp. 9-29 – 9-30, quoting *Kahn's & Co.*, 83 LA 1225, 1230 (Murphy, 1984).

2. The District's Arguments Regarding Its Governing Board Are Meritless

The District makes three related arguments regarding its Board of Trustees, which ultimately approved the Parties' Tentative Agreement. First, the District contends that the Board itself believed that the Framework Agreement merely provided for the Parties to negotiate some new salary schedule within a 3.5% cap. This, the District continues, means that if there is a salary deal, it must reflect the Board's understanding of those terms. (*See* Prehearing Br., pp. 10-11.) Second, the District argues that even if SCTA were right about the Framework Agreement's salary provisions, the Arbitrator lacks the authority to enforce that deal, because the Board did not

approve those terms. (*Id*., pp. 11-12.) Third, the District asserts that if SCTA were right about the salary deal, that deal would be "per se invalid" because the Board had never considered it. (*Id*., pp. 13-15.) None of these arguments have merit.

a. That the Board allegedly misunderstood the terms to which it agreed is irrelevant. The Board did not negotiate the contract. It delegated that function to the Superintendent. (Tr. v.2 446:14-20 [Ryan].) And while Board President Ryan may now profess not have been concerned that Aguilar, a collective bargaining neophyte, undertook to bargain the Framework Agreement by himself (Tr. v.2 428:15-429:1 [Ryan]), the Board must now live with the consequences of Aguilar's decisions to negotiate a contract single-handedly and without the support of his experienced labor relations experts, and then to sign off on a salary deal that he did not fully understand.

The Board's function here was to ratify the contract that its agent negotiated, and it is undisputed that it did so. (Fac. Stip. No. 7.) The statutory requirements were thus met: the Parties' contract was "approved or ratified by the governing board." (Cal. Educ. Code § 17604.) The Board ran the risk that Aguilar would sign an agreement that he knew he did not understand, and would misinform his subordinates, who would then in turn fail to share all the pertinent details of the agreement with the Board. The Board may well wish to take up this matter with Aguilar, but its failure fully to understand the details and implications of the contract that it ratified does not have any bearing on the enforceable terms of that contract.

Here, Arbitrator Eliott Goldstein's seminal decision in *Pillowtex Corp.* is directly relevant. (92 LA 321.) That case involved a dispute over a new contract provision addressing incentive payrates for a class of workers at a pillow and bedding factory. The union contended that due to a variety of factors, at the time they voted to ratify the contract, its members did not understand that this provision would have a negative effect on the fiber closers' pay. Arbitrator Goldstein rejected this argument and held that "the discussion at the Union ratification meeting is largely irrelevant to whether in fact a binding contract exists." (*Id*. at 324.) This was because "[w]ith reference to the actual binding agreements of the parties, the only factors that are crucial and material to the entire bargain are those that are *mutually undertaken* and involve both sides." (*Id*. at 325.) As there was no evidence that the employer was aware of the union members' misunderstanding, or that the employer ought to have corrected it, the arbitrator concluded that the contract was binding. (*Id*.)

Precisely the same applies here. The Board may indeed have misunderstood the terms of the contract it ratified, but this mistake cannot be attributed to SCTA. As explained above, SCTA was neither responsible for the District's mistake, nor ever aware that the District had misunderstood the salary deal. Here, it is also worth observing that it is undisputed that Borsos repeatedly offered to explain that deal to the Board. Aguilar never took Borsos up on this offer, despite knowing that he (Aguilar) had signed that deal without knowing what it meant. In other words, SCTA offered to go above and beyond what was required of it and walk the Board through the terms of the agreement that Aguilar negotiated and signed. The District must live with Aguilar's inexplicable decision to ignore Borsos' offers, just as it must live with the consequences of Aguilar's equally inexplicable decision to sign a contract he did not understand.

b. Nor is it the case that the Board's ignorance strips the Arbitrator of authority to enforce the terms of the agreement that the Parties negotiated, and the Board then approved. The District here relies on a California case construing labor arbitrators' authority under the Dills Act. (*California Department of Human Resources v. Service Employees International Union, Local 1000* (2012) 209 Cal.App.4th 1420 ["*Cal. DHR*".) This case is inapposite and does not avail the District.

This case is irrelevant because it turns on a completely different public-sector labor relations statute than applies to the Parties here. Whereas the Parties here are governed by the Educational Employment Relations Act, California Government Code section 3540 et seq., *Cal. DHR* concerns state employees governed by the Dills Act, California Government Code section 3512 et seq. The distinction is critical, because the *Cal. DHR* based its holding on the peculiarities of the Dills Act—peculiarities that are *not* found in the EERA.

Notably, the District repeatedly misstates *Cal. DHR*'s holding through selective and misleading quotations. The court did not, as the District claims, hold that "'an arbitrator cannot order a remedy in a public employee contract dispute if it compels payment of funds not expressly approved' by the public entity's governing body." (Dist. Prehearing Br., p. 11; *see also id*. at p. 12 [inserting misleading bracketed text].) The court's holding was much narrower. It held that "an arbitrator cannot order a remedy in a public employee contract dispute if it compels payment of funds not explicitly approved *by the Legislature*." (*Cal. DHR*, *supra*, 209 Cal.App.4th at 1436 [emphasis added], citing *California Statewide Law Enforcement Association v. Department of Personnel Administration* (2011) 192 Cal.App.4th 1, 5-6, 19, and *Department of Personnel*

Administration v. California Correctional Peace Officers Association (2007) 152 Cal.App.4th 1193, 1202-1203.)

And this holding is specific to, and explicitly rooted in the statutory peculiarities of, the Dills Act. That statute contemplates contract negotiations be conducted between unions and the Governor (Cal. Gov't Code § 3517), but then requires that all negotiated contracts be approved by the Legislature. (*Id*. § 3517.5.) Permitting a labor arbitrator to issue any award that would require contract performance that the Legislature had not considered and approved would, the courts ruled, improperly deprive a "third party"—the Legislature—of its express statutory right to consider and approve the collective bargaining agreements under the Dills Act. (*Cal. DHR*, *supra*, 209 Cal.App.4th at 1431, citing *CCPOA*, *supra*, 152 Cal.App.4th at 1200.)

These concerns are simply not present here. The District's Board is not a "third party" that is authorized to review the Parties' contract. Quite the contrary, it *is* the District. (*See, e.g.*, Cal. Gov't Code § 3540.1(k) [defining "public school employer" or "employer" as, among other things, "the governing board of a school district"].) The Board delegated its bargaining function to Superintendent Aguilar, and then duly ratified the contract that he negotiated. An award requiring compliance with the deal thus struck would merely hold the Board to its contractual obligations.

Further, even *if* these court cases construing the very different Dills Act had any relevance here (and they plainly do not), they would still not strip the Arbitrator of his authority here to enforce the Framework Agreement's salary provisions. This is because enforcement of these provisions will not come at *any* additional cost to the District during the life of the contract that the Board considered and approved. The Board, after all, considered and approved a three-year contract, and was assured that the total cost of the salary agreements over this term was equal to 11% of total payroll, with the new salary schedule costing only 3.5% during the 2018-19 year. All of this is correct. If the Arbitrator sustains the grievance, these costs during the life of the contract will not change.

c. The District's final argument regarding the Board—that the Framework Agreement is "per se invalid" under Education Code section 17604—is even more risible than the others. It is undisputed that the Board ratified the Parties' Tentative Agreement, which included the Framework Agreement and its salary provisions. The District stipulated to this fact. (Fac. Stip. No. 7.) The requirements of Education Code section 17604 are therefore met. The case to which the District cites—*Santa Monica Unified School District v. Persh* (1970) 5 Cal.App.3d 945—is beside

the point, because unlike the Board here, the school board in that case did *not* ratify the contract in question. (*Id*. at 952.) Nor, as explained above, does it matter that the Board may not fully have understood what it was approving on December 7 when it voted in favor of the Tentative Agreement.

3. The District's Arguments Regarding The Sacramento County Office Of Education Are Meritless

The District emphasizes its AB 1200 disclosure to the Sacramento County Office of Education and County Superintendent David Gordon's subsequent statements regarding the Parties' contract. These do not avail the District, and for multiple reasons. First, the AB 1200 disclosure is not inconsistent with the Parties' salary agreement. It addressed the contract term of 2016-17, 2017-18, and 2018-19, and accurately reflected that the total cost of the salary agreement over this three-year term was 11%. (JX 4, Public Disclosure of Collective Bargaining Agreement, p.1, Section A, subsection 1].) Second, if the District had relayed inaccurate information regarding the salary deal to the County Office, this would be irrelevant, for all the reasons explained above with respect to the purported internal District communications. Third, neither the County Office nor its Superintendent were involved in approving the Parties' contract. Superintendent Gordon explained that he and his staff reviewed the anticipated costs of the contract and offered opinions about whether the District could afford those costs and, if not, advise the District that it would need to adjust its budget in order to afford the contract. (Tr. v.2 395:9-12, 399:14-400:6 [Gordon].)

4. The Parties' Salary Agreement Is Not An "Agreement To Agree"

The District contends that as interpreted by SCTA, the Parties' salary agreement was merely an unenforceable "agreement to agree." (Dist. Prehearing Br., pp. 12-13.) Not so. Contrary to the District, none of the "essential elements" of this deal were "reserved for the future agreement of both parties." (*Id*. at 12, quoting *Copeland v. Baskin Robbins USA* (2002) 96 Cal.App.4th 1251, 1253.)

As explained at length above, the deal that SCTA proposed and that Aguilar accepted on November 5 addressed *both* the specific structure of the salary schedules to take effect in the 2018-19 year (i.e., that which SCTA had consistently proposed throughout bargaining) *and* the total cost to the District of implementing those schedules that year (i.e., 3.5%). And while the specific schedules—as opposed to their specific structure—had not been shared that day, it is undisputed that they were prior to the Parties' December 4 execution of their Tentative Agreement. SCTA provided the District with completed schedules by December 1.

To be sure, some of the details remained to be hammered out. The Parties did not know either the total cost of the salary schedule or the mechanics for implementing those schedules in 2018-19 at a cost of 3.5%. But while important, these details were hardly "essential" so as to render the Framework Agreement's salary provisions illusory. The Parties knew exactly what salary schedules would be adopted in the 2018-19 year, as well as the total cost to the District for implementing those schedules that year.

5. The SCTA Emails Do Not Refute SCTA's Position

The District will also likely point to internal SCTA emails as proof that the Parties only ever agreed to negotiate some new salary schedule subject to a total expenditure cap of 3.5%. They show nothing of the sort—particularly when balanced against the record evidence, discussed at length above, showing that SCTA explained its salary schedule proposal to Aguilar on November 5 in considerable detail, and thereafter consistently, repeatedly, and comprehensively explained the Parties' deal to multiple District administrators.

Immediately following the November 5 signing of the Framework Agreement, SCTA sent out two email updates to its members. Both quickly summarized the deal. (DX T, DX U.) To be sure, neither email specifically stated that the 3.5% cap would be removed after the 2018-19 year. This is hardly surprising. SCTA rushed to send these emails to apprise its members of the most immediately salient aspects of the Parties' Framework Agreement.[5] And with respect to the salary schedule issue, the bottom-line takeaway that SCTA needed to communicate was that in 2018-19 the District committed to spending an additional 3.5% on the new salary schedule. Any ambiguity here is thus explained with reference to these emails' specific context. When SCTA later prepared a comprehensive summary of the full Tentative Agreement for its members' review, it clearly spelled out the precise terms of the Parties' salary deal. (AX 11, p. 3, Section 2.d.)

The same holds for Fisher's November 14 email to an Arizona educator thinking of applying to the District. (DX V.) Fisher did not explain the Parties' salary schedule in detail to this prospective District employee. Why would he? He relayed the most immediately relevant and understandable facts so that this employee could better understand approximately what his salary might be were the District to hire him for the 2018-19 year. (Tr. v.1 215:6-13 [Fisher].)

[5] The haste with which SCTA prepared these emails is indicated in their typographical errors. Thus, for example, the first email begins, "This morning out bargaining approved an agreement…" (DX T, p. 1.)

6. The District's Claims Of Financial Exigency Are Irrelevant

Finally, the District will presumably plead penury in a bid to excuse its failure to adopt the SCTA-proposed salary schedules in 2018-19. Even *if* the District were truly experiencing acute financial distress—and it is far from clear that it is—this would be irrelevant to the issue raised here, namely whether the Parties' most recent contract provided for the adoption in 2018-19 of the SCTA-proposed salary schedules. Simply put, the District's current financial position may be relevant to the Parties' upcoming bargain, but it cannot be used retroactively to justify the District's failure to abide by its current contract.

What is more, SCTA does not seek any expenditures during the life of the current contract beyond those that the District even now freely offers to make. To state the obvious: SCTA agrees that the cost of adopting the SCTA-proposed salary schedules during the current contract term of July 1, 2016 through June 30, 2019 will be capped at 3.5%. The District acknowledges that it can afford, and is prepared to pay, this cost. What occurs beyond this contract term is not only beyond the scope of this arbitration, it is also entirely up to the Parties. The District can always propose cost-saving measures if it believes this is necessary. (Tr. v.3 582:6-16 [McArn].)

E. The District Improperly Refused To Provide Athletic Directors With Retroactive Stipend Payments

The Tentative Agreement also provided that "The Parties agree to increase the stipends of Athletic Directors from Category B to Category A." (JX 2, p. 1, Section 3.) It is undisputed that the District implemented this increase effective the date the contract was ratified. (Tr. v.1 122:16-19 [Borsos].) The District was required, however, to implement this retroactively to July 1, 2016, the start of the contract's three-year term. This is clear from the face of the Tentative Agreement itself. Its provisions regarding doctoral stipends and additional credit for years of experience all have an explicit effective date of July 1, 2017. (JX 2, p. 1, Sections 2, 4.) This shows that the Parties could, when they wished, specify a particular effective date later than the start of the contract term. That they did not in the case of the Athletic Director stipend must, therefore, be significant. Lacking any specified effective date, this provision can only be interpreted as taking effect upon the contract's starting date, which the Parties agree is July 1, 2016. (Tr. v.2 370:16-18 [Aguilar].)

Although decidedly a secondary issue, overshadowed by the Parties' salary schedule dispute, the Athletic Director stipend is properly raised in this proceeding. SCTA raised it in its

Grievance. (JX 9; Tr. v.1 122:23-123:12 [Borsos].) It is undisputed that the District fully understood that SCTA was grieving the District's failure to pay Athletic Directors the higher Category A stipend retroactive to July 1, 2016. The District specifically addressed this issue in its October 10, 2018 Level 1 response. (JX 10, p. 2; Tr. v.3 575:8-22 [McArn].) For these reasons, the District cannot now complain of surprise—it has known from the very start that this grievance encompassed the Athletic Director stipend dispute.

VI. REMEDY

The District contracted to adopt the SCTA-proposed salary schedules starting in the 2018-19 year. It has failed to abide by this contractual obligation. Accordingly, the Arbitrator should order that the District adopt the SCTA-proposed salary schedules included in the record as Association Exhibit 8 effective July 1, 2018. However, and also pursuant to the Parties' agreement, the total additional cost of implementing these new salary schedules in this current 2018-19 year may not exceed 3.5% of District payroll. Because, as explained above, the Parties' agreement always contemplated further negotiations regarding the specific mechanics by which the SCTA-proposed salary schedules would be implemented under this 3.5% cap, the Arbitrator should also order the Parties to negotiate over this implementation.

The District also contracted to pay Athletic Directors the higher Category A stipend effective July 1, 2016. It has failed to abide by this contractual obligation as well. The Arbitrator should order that the District immediately make whole all Athletic Directors who were not paid this Category A stipend during the period July 2016 through December 2017.

VII. CONCLUSION

For all the foregoing reasons, the District violated the Parties' contract when it refused to adopt the SCTA-proposed salary schedules starting this current 2018-19 year, and when it refused to pay Athletic Directors the Category A stipend retroactive to July 1, 2016. The grievance must be sustained.

DATED: April 2, 2019

Respectfully submitted,

s/ Jacob F. Rukeyser
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TEACHERS ASSOCIATION, CTA/NEA