

and fairly represented throughout the proceedings by SCTA, certified as their exclusive bargaining representative by State of California's Public Employment Relations Board ("PERB"), in accordance with the Educational Employment Relations Act ("EERA").¹

SCTA was represented at the hearing by Jacob F. Rukeyser, Staff Attorney, California Teachers Association, 1705 Murchison Drive, Burlingame, California 94010 and SCTA Executive Director John Borsos, 5300 Elvas Street, Sacramento, California, 95819. The appearances on behalf of SCUSD were made by Sloan R. Simmons and Erin M. Hamor, Lozano Smith, Attorneys at Law, One Capitol Mall, Suite 640, Sacramento, California 95814.

The issues presented for adjudication in the instant proceedings may be stated in the following terms:

1. Did SCUSD and SCTA lack mutual assent or commit mutual error concerning the intended meaning of the terms of a salary schedule structural adjustment ("SSA") in their December 4, 2017 Tentative Agreement ("TA") approved by SCUSD's Board of Education and SCTA's Membership, respectively, on December 7 and 11, 2017?
2. If Issue No. 1 above is answered in the negative, did SCUSD breach the SSA terms of the TA during the July 1, 2018 - June 30, 2019 school year?
3. If Issue No. 2 above is answered in the affirmative, what shall the appropriate remedy be?

¹ California Government Code section 3540 et. seq.

A. Negotiations Regarding Certificated Employees' Compensation

SCUSD and SCTA are parties to a long-term collective bargaining relationship under authority of the EERA. On June 10, 2016, SCUSD and SCTA achieved agreement to extend their collective bargaining agreement ("Agreement") through December 1, 2016.

On October 11, 2016, SCUSD and SCTA commenced negotiations upon a successor Agreement. Between October 17, 2016 and March 9, 2017, the parties met on 16 occasions in their futile attempt to reach a successor Agreement.

Pursuant to one such negotiating session in December 2016, SCTA tendered to SCUSD a "package proposal" including its proposed SSA.² In January 2017, however, SCUSD "costed-out" SCTA's SSA proposal, concluded it exceeded a 3.5% salary schedule increase and was thus unaffordable for SCUSD if implemented retroactively to July 1, 2016 as proposed by SCTA.³

On March 13, 2017, SCTA

successor Agreement and on May 18, 2017, SMCS certified the matter for factfinding proceedings in accordance with the EERA's dispute resolution procedures.

Pending commencement of factfinding proceedings, however, in September 2017, SCTA tendered a second package proposal to SCUSD which, in relevant part, proposed two consecutive 3.5% across-the-board salary schedule increases, effective July 1, 2017, and July 1, 2018, and a 4.0% SSA retroactive to July 1, 2016. SCUSD, however, declined to accept SCTA's second package proposal and the matter proceeded to factfinding.

On October 2, 2017, a three-member factfinding panel ("Panel"), chaired by Arbitrator Andrea L. Dooley ("Chair Dooley")

In October 2017 and before issuance of the Factfinding Report, SCTA's membership voted to authorize a strike in support of their collective bargaining demands following exhaustion of mandatory impasse procedures under the EERA should the parties continue to be unable to reach closure on a successor Agreement. Following issuance of the Factfinding Report, on November 2, 2017, SCTA publicly

concerning the agreed-upon elements of the parties' Framework Agreement, including its terms of salary schedule increases. Superintendent Aguilar thus informed SCUSD's leadership the parties had achieved agreement on certificated salaries through the 2018-19 school year, a component of which included a maximum SCUSD expenditure of 3.5% to address SSA and rectify the existing salary schedule's least competitive columns. The strike scheduled to commence three days later had thus narrowly been averted.

C. *The Parties' Subsequent Communications Concerning the Framework Agreement.*⁴

In the intervening month between signing the Framework Agreement on November 5, 2017, and ratification of a subsequently prepared TA approved by SCUSD's Board of Education and SCTA's membership, respectively, on December 4 and 11, 2017, the parties engaged in a series of communications in person and by email regarding the Framework Agreement and its SSA components. Just as with the November 5, 2017 negotiations themselves, however, disagreement remains regarding the substance of some of those post-Framework Agreement communications.

Throughout the communications at issue, SCTA's leadership asserted to SCUSD's various representatives that the handwritten Framework Agreement, as memorialized in Mayor Steinberg's hand on the afternoon of November 5, 2017, reflected the parties' agreement to adopt SCTA's proposed SSA beginning in the 2018-19 school year, subject to a 3.5% "cap" for the 2018-19 school year. To the contrary, SCUSD maintains it was the parties' intent to adopt an SSA which would not exceed a 3.5% maximum salary schedule increase or "cap" for both the 2018-19 school year and ongoing for all school years in the future as well.

⁴ Contemporaneous communications, both oral and written, between the parties' representatives following execution of the Framework Agreement on November 5, 2017 and TA ratification on December 4 and 11, 2017, have been received and considered for purposes of determining the parties' intent *at the time of entering into* the foregoing written understandings. Documents prepared by School Services of California, Inc. ("SSC") on behalf of SCUSD to "cost out" SCTA's proposed SSA as referenced in the Framework Agreement, however, were prepared *after* the parties entered into the Framework Agreement and TA and were thus unknown to the parties, including Superintendent Aguilar and SCTA's leadership, when entering into those understandings.

1. The November 8, 2017 Meeting

Immediately following execution of the Framework Agreement, SCTA's leadership met with SCUSD's Human Resource Services Officer Cancy McArn ("HRSO McArn") and Director of Employee Relations Cindy Nguyen ("DER Nguyen") on Wednesday, November 8, 2017. SCTA's representatives were thereupon surprised to learn neither HRSO McArn nor DER Nguyen had yet seen a copy of the Framework Agreement entered into two days earlier on the afternoon of Sunday, November 5, 2017. SCTA leadership thereupon shared its copy of the Framework Agreement with HRSO McArn and DER Nguyen and walked them through its key provisions.

On the issue of certificated salaries, Executive Director Borsos explained the Framework Agreement memorialized the parties' adoption of SCTA's proposed SSA to become effective in the 2018-19 school year. Executive Director Borsos then stated these were the same salary schedules for K-12 Teachers, School Psychologists, Program Specialists and Adult Education Teachers which SCTA had been proposing since the beginning of negotiations.

As reflected in President Fisher's contemporaneous handwritten notes, Executive Director Borsos explained the parties had agreed to SCTA's proposed SSA. Vice-President Milevsky's contemporaneous handwritten notes likewise reflect Executive Director Borsos' explanation the salary schedule issue was resolved with SCTA's proposed SSA for all certificated salary schedules. As further reflected in Vice-President Milevsky's notes, HRSO McArn verbally confirmed she understood Executive Director Borsos was referring to the "December structure," meaning the SSA proposal which SCTA initially tendered to SCUSD in December 2016.

Executive Director Borsos furthermore explained during the November 8, 2017 meeting the parties had agreed in the Framework Agreement that during the final 2018-19 school year SCUSD's total cost for implementing SCTA's proposed SSA would be capped at 3.5% for the 2018-19 school year. President Fisher's contemporaneous handwritten notes furthermore reflect Executive Director Borsos explained the parties had thus agreed to implement "Our

structure of salary schedule with a 3.5% cap in 18/19." Vice-President Milevsky's notes also recorded Executive Director Borsos' explanation that if implemented effective July 1, 2018, the full cost of SCTA's proposed SSA would exceed 3.5% and thus: "you can't fully load for 3.5%."

Executive Director Borsos then explained to HRSO McArn and DER Nguyen the parties had accordingly "agree[d] to only spend 3.5%." Vice-President Milevsky's notes memorialized that Executive Director Borsos explained the "cap" was only for the 2018-19 year. She thus noted that while a hypothetical employee's salary in 2018-19 might be capped at 12.0%, "it is in the next year [2019-20] you get fully loaded."

Executive Director Borsos then turned to how the 3.5% cap in school year 2018-19 could be implemented. As he had done on November 5, 2017, during the parties' Framework Agreement negotiations, Executive Director Borsos explained he could envision two different methods for ensuring the 3.5% cap would not be exceeded: (1) by capping individual employees' pay for the 2018-19 school year; or (2) by delaying the actual implementation date of SCTA's proposed SSA until sometime midway into the 2018-19 school year. Regardless of which approach was used, explained Executive Director Borsos, the final decision about how to cap SSA salary costs in the 2018-19 school year could not be finally resolved until (a) the number of employees to be placed in a new BA+60 column and (b) the precise placement of employees who would be credited ws

was unworkable. Neither HRSO McArn nor DER Nguyen, however, disputed Executive Director Borsos' explanation the parties had agreed to adopt SCTA's proposed SSA beginning in the 2018-19 school year or that the 3.5% cap was for the 2018-19 school year.

2. The Parties' November 9, 2017 Emails

Shortly before noon on November 9, 2017, Executive Director Borsos emailed HRSO McArn and DER Nguyen for purposes of "following up [on] our discussion yesterday." Regarding the salary issues discussed, Executive Director Borsos reiterated his request to meet with SCUSD's then Chief Business Officer Gerardo Castillo ("CBO Castillo") "to discuss how the union proposed salary schedules that go into effect on July 1, 2018, will be implemented to fit within the 3.5% total certificated payroll cost."

Neither HRSO McArn nor DER Nguyen, however, responded to Executive Director Borsos' email.

Later that same afternoon, Executive Director Borsos forwarded his November 9, 2017 email to Superintendent Aguilar. Unlike HRSO McArn and DER Nguyen, however, Superintendent Aguilar responded to Executive Director Borsos. Apart

Executive Director Borsos' November 13, 2017 Email

On November 13, 2017, Executive Director Borsos emailed HRSO McArn regarding a "proposed draft TA on Article 12." Attached thereto was a proposed TA draft for the parties' salaries article prepared to address the outstanding issue of crediting employees with unlimited years of experience.

Notably, Executive Director Borsos' draft TA pointedly referenced the parties' November 5, 2017 salary schedule agreement. As stated therein, "[t]he 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." HRSO McArn, however, never disputed Executive Director Borsos' statement the parties had agreed to adopt SCTA's proposed SSA.

4. The November 17, 2017 Emails

On the morning of November 17, 2017, Superintendent Aguilar emailed Executive Director Borsos regarding the parties' efforts to finalize a TA. While Superintendent Aguilar addressed numerous "loose ends," he only mentioned the salary schedule issue in passing. He sought clarification from Executive Director Borsos about the mechanics of SDT6T1-3(f201304.61484.87 Tr

you through how to make the dollars work within the parameters of our November 5th agreement.”

5. The November 27, 2017 Meeting

On November 27, 2017, SCTA's President Fisher, Vice-President Milevsky and Executive Director

precisely how to implement the new schedules with a 3.5% cap on costs during the 2018-19 school year.

Neither Superintendent Aguilar nor Deputy Superintendent Allen, however, said anything during the meeting indicating they misunderstood the parties' salary agreement. Nor did either state they believed the parties had intended to negotiate a new salary schedule for the 2018-19 school year at some unspecified future date. Nor did Superintendent Aguilar or Deputy Superintendent Allen state they understood the agreed upon 3.5% figure was to serve as a cap on the cost of the new salary schedule beginning in the 2018-19 school year and thereafter on an ongoing basis for all future years.

8. Superintendent Aguilar's November 30, 2017

Superintendent Aguilar and President Fisher and included as part of the parties' December 4, 2017 TA.

SCTA's leadership understood Superintendent Aguilar's email to set out the anticipated time-frame for the parties to "cost out" the agreed-upon SSA, including those certificated employees' placed on the new BA+60 column and precise placement of employees credited with additional years of teaching experience, and then determine the timing/mechanics for implementing the new schedules in school year 2018-19 within a 3.5% cap.

SCUSD, on the other hand, asserts the above email reflects the parties' understanding their salary agreement committed them only to negotiating at some future time an otherwise unspecified new salary schedule at a cost which did not exceed 3.5% on an ongoing basis.

In the second paragraph of Superintendent Aguilar's November 30, 2017 email he requests ST1 0 0 1 4495.Tf1 0 0 1 -7(e)5()] TJE4isBTIO0 0 1 4495.T4.vsBTIO0 0 1 4495.T4.v4.87129.388(d)] T.

SCTA's SSA proposal was an agreed-upon costing out of the new schedules. This, in turn, required an understanding of where SCTA-represented employees would be placed of the salary schedule after (a) being credited with additional years of teaching experience and (b) determining which teachers would be placed on the new BA+60 column which had been agreed upon. Although the parties commenced the foregoing planning by mid-December 2017, it soon became clear that the before-mentioned "thirty" or "(45-days)" window period was overly ambitious. DER Nguyen, in fact, even advised SCTA it would take until at least late February 2018 before SCUSD could begin determining how employees' salary schedule placement would be affected by the newly agreed additional credit for years of teaching experience.

9. The December 1, 2017 Meeting

SCTA's leadership thereafter followed up on Superintendent Aguilar's November 30, 2017 request they meet with Deputy Superintendent Allen and HRSO McArn to discuss "the" salary schedules. President Fisher and Executive Director Borsos accordingly met with Deputy Superintendent Allen and HRSO McArn the very next day on December 1, 2017.

Executive Director Borsos thereupon walked Deputy Superintendent Allen and HRSO McArn through SCTA's proposed SSA and explained the mechanics of its implementation within the agreed-upon 3.5% cap. Executive Director Borsos provided Deputy Superintendent Allen and HRSO McArn with several documents including SCTA's proposed SSAs for K-12 Teachers, Program Specialists, School Psychologists and Adult Education Teachers. The foregoing documents, which SCTA first prepared a year earlier at the outset of negotiations, reflected the overall structures of the salary schedules, indicating the number of steps and columns and the uniform increments between them. Executive Director Borsos also provided SCUSD's administrators with final salary schedules, with each cell thereof reflecting the actual salary for K-12 Teachers, Program Specialists, School Psychologist and Adult Education Teachers. SCTA was able to prepare the foregoing documents since, by that point in time, it knew these

schedules were to become effective during the 2018-19 school year and the specific salaries from which these schedules would be calculated (i.e., the existing salary schedules with 2.5% across-the-board increases for the 2016-17, 2017-18 and 2018-19 school years). Finally, Executive Director Borsos also gave Deputy Superintendent Allen and HRSO McArn a chart depicting the percentage increase employees in each cell would receive once the new schedules were implemented.

Detailed footnotes appear on each of the foregoing schedules which explained 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." The footnotes furthermore explained that the precise implementation would necessarily depend on application of the newly agreed upon unlimited years of service credit, which would be calculated at some future point in time. The different possible mechanics for implementing these schedules in the 2018-19 school year under the 3.5% cap were also explained as follows: "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."

Executive Director Borsos walked Deputy Superintendent Allen and HRSO McArn through the foregoing documents. He explained that these were the salary schedules that the parties had agreed to implement in school year 2018-19. Neither Deputy Superintendent Allen nor HRSO McArn disputed

Director Borsos no longer focused on an individual cap mechanism, although that possibility was still in the footnotes.

Executive Director Borsos specifically explained the cap was only for the 2018-19 school year, and that fully "uncapped" salary schedules would thereafter begin with the 2019-20 school year. Neither Deputy Superintendent Allen nor HRSO McArn, however, either questioned or objected to Executive Director Borsos' foregoing statement. Executive Director Borsos' explanation of this point is reflected in President Fisher's contemporaneous handwritten notes of the meeting, which state, "2019-20 when caps come off . . ."

Vice-President Milevsky's contemporaneous handwritten notes from a telephone call immediately following the foregoing D

Education, Executive Director Borsos wrote the narrative from SCUSD administration's perspective.

The narrative document explained in detail the salary agreement the parties had reached on November 5, 2017, which was included in the TA signed on December 4, 2017, and which would be presented to SCUSD's Board of Education and SCTA membership, respectively, for ratification.

Executive Director Borsos' narrative furthermore explained that the salary agreement Superintendent Aguilar had accepted on behalf of SCUSD on November 5, 2017, in the Framework Agreement, included adoption the SCTA's proposed SSA in the 2018-2019 school year. Throughout, the narrative references "the new salary schedules" and adds, in its explanatory narrative as well as embedded schedules that "the new salary schedules" are those SCTA had proposed since at least December 2016. Thus, for example, the narrative includes the K-12 teacher salary schedule structure SCTA first proposed to SCUSD in December 2016 and had included in all its salary proposals thereafter. It also included the final K-12 salary schedule SCTA provided to Deputy Superintendent Allen and HRSO McArn one year later on December 1, 2017.

Executive Director Borsos' narrative furthermore explained the parties' agreed-upon 3.5% cap. According to the narrative, the 3.5% increase makes repeated references to "the new salary schedules" and its detailed descriptions and illustrations of the new K-12 salary schedule. It furthermore explained, "[t]he parties have agreed to a maximum District allocation of 3.5% to implement the new salary schedule." The narrative then elaborates on how the 3.5% cap will affect the new salary schedules' implementation, explaining as follows:

If the cost of implementation is 3.5% or less than [sic] 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.

As Executive Director Borsos had done before, his narrative explained the possible mechanics for ensuring the new salary schedules' actual cost when implemented during the 2018-19 school year would not exceed 3.5% by outlining both the concepts of a delayed implementation as well as a maximum individual employee increase cap. The narrative furthermore included salary schedules prepared in terms of both percent changes from 2017-2018 to an "uncapped 2018-2019 salary schedule" and annual dollar amounts for a "2018-2019 Uncapped Teacher Salary Schedule."

Finally, Executive Director Borsos' narrative explained what remained to be done on the issue of salaries: (1) "credit for unlimited years of experience for current employees must be applied"; (2) 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; (3) the total cost of the new salary schedules would need to be calculated; and (4) the specific mechanics for implementing the 3.5% cap in 2018-19 school year would need to be determined.

The narrative made clear that it is the foregoing steps which the parties agreed to take within a 45-day period referenced in Superintendent Aguilar's November 30, 2017 email, and which was later incorporated into their December 2017 TA. Referring to the issues of crediting unlimited years of service and a new BA+60 column, Executive Director Borsos explained, "Once those two variables are understood—and we ar

Superintendent Aguilar received Executive Director Borsos' narrative but never responded to it either in writing or verbally. Nor did Deputy Superintendent Allen or anyone else in SCUSD's administration respond to Executive Director Borsos' narrative.

12. The Parties Ratify Their TA

SCUSD's Board of Education considered the TA at its December 7, 2017 meeting. At that meeting, SCUSD administrators presented the Board of Education with a PowerPoint presentation summarizing the TA's "highlights." SCUSD's Assistant Superintendent for Labor Relations Ted Appel's presentation briefly summarized the TA's salary component, addressing the entire salary understanding on two PowerPoint slides. The core salary agreement, including both the across-the-board raises and SSA, was covered in one-half of a slide. On the issue of SSA, the presentation paraphrased Superintendent Aguilar's November 30, 2017 email which had thereafter been incorporated into the parties' TA.

On December 7, 2017, SCUSD's Board of Education unanimously approved the parties' TA. On December 11, 2017, the TA was likewise approved by vote of SCTA's membership.

At long last,

upon implementation of unlimited teaching experience credits. At no time during the meeting, however, did the parties discuss the agreed-upon 3.5% cap for SSA. During the meeting, SCTA suggested the possibility of a delayed implementation date for SSA in order to stay within the 3.5% cap as had been earlier discussed on November 5, 2017, during negotiations leading to the Framework Agreement.

When HRSO McArn expressed concerns regarding a delayed implementation of SSA in order to stay within the TA's 3.5% cap, Executive Director Borsos responded that unless there was agreement concerning implementation of SSA then there was no agreement on a contract.

Following the May 24, 2018 meeting, SCUSD engaged the services of SSC to perform a detailed "costing out" of SCTA's proposed SSA. SSC did so and concluded the full cost of SCTA's proposed SSA if implemented on July 1, 2018, and effective for the full 2018-19 school year would equate to a 7.09% certificated salary cost increase and thus exceed the agreed upon 3.5% cap.

On August 8, 2018, Superintendent Aguilar met for discussions with Mayor Steinberg and SCTA's leadership which Superintendent Aguilar thereafter memorialized in an August 22, 2018 email. In his email, Superintendent Aguilar summarized he, for the first time, provided SCTA with SCUSD's proposed SSA which had been prepared by SSC and provided salary improvements to bargaining unit members in Columns B and C thereof while staying within a maximum 3.5% cap on an ongoing cost expenditure basis.

Recognizing SCUSD was now asserting it had never agreed to implement SCTA's proposed SSA during the 2018-19 school year, on September 12, 2018, SCTA ini1 342.53 657TJETBT1 0 0

SCTA's grievance was thereafter processed through the offices of American Arbitration Association and was ultimately referred for final and binding adjudication before Impartial Arbitrator Kenneth A. Perea.

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.

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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.

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

- 1. Salary agreement
July 1, 2016 – June 30, 2019

7/1/16- 6/30/17 7/1/17- 6/30/18 7/1/18- 6/30/ [2019]

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disclosure to SCUSD's constituents or the Sacramento County Superintendent of Schools as required by law of the meaning which SCTA now seeks to enforce. In so doing, SCTA seeks an award which is inconsistent with

directed to return to the bargaining table, the parties will need to negotiate *how* a salary schedule like that proposed by SCTA may be adjusted so that implementation can be achieved within the approved cost parameter of 3.5%. For these reasons and others, SCUSD has
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Framework Agreement, and thus there are no enforceable Agreement provisions regarding same which could potentially have been breached during the 2018-19 school year.

The conditions under which a putative contract's existence can be negated due to the parties' lack of mutual assent or mutual error were thoughtfully considered by Chief Judge Richard Allen Posner in *Colfax Envelope Corp. v. Graphic Communications Local 458-3M (Chicago)*, a matter bearing strong structural resemblance to the parties' current dispute.⁶ In *Colfax*, a collective bargaining agreement specified minimum-manning requirements for operation of the employer's printing presses, to wit, "4 C 60 Pres – 3 Men." The foregoing provision was interpreted by the employer to refer to four-color presses 60 inches *and over*. The Union, however, interpreted the same clause to refer to four-color presses 60 inches *and under*. In response to Colfax's suit pursuant to Section 301 of the Taft-Hartley Act seeking a declaration it had no collective bargaining agreement with the Union since the parties never agreed on an essential term – the manning requirements for printing presses – Judge Posner remanded the matter for adjudication through the parties contractually agreed upon arbitration procedures.

As Chief Judge Posner cogently explained:

...

When parties agree to a *patently ambiguous term* (emphasis added), they submit to have any dispute over it resolved by interpretation. That is what courts and arbitrators are *for* in contract cases – to resolve interpretive questions founded on ambiguity. It is when parties agree to terms that reasonably appear to each of them to be unequivocal but are not, cases like that of the ship *Peerless* where the ambiguity is buried, that the possibility of rescission on grounds of mutual misunderstanding, or, the term we prefer, *latent ambiguity* (emphasis added), arises. A reasonable person in Colfax's position would have realized that its intent

gamble on a favorable interpretation and, if that fails, repudiate the contract with no liability.⁷

Following the Impartial Arbitrator's deliberations, in hindsight it becomes apparent there may have been some degree of confusion in the mind of Superintendent Aguilar as he negotiated and ultimately agreed upon the terms of the November 5, 2017 Framework Agreement achieved with Mayor Steinberg's generous and capable assistance. Indeed, Superintendent Aguilar had only recently assumed responsibilities as SCUSD's Superintendent on July 1, 2017, and midway through the parties' contentious negotiations over a successor Agreement which he had not theretofore participated in. Moreover, the salary issues over which the parties remained deadlocked were complex, including SCTA's SSA proposal requiring a fundamental restructuring of SCUSD's certificated salary schedules in order to become more competitive with those of neighboring school districts to which its more experienced and coveted teachers were migrating for higher pay. To be clear, however, nothing in the evidence record suggests Superintendent Aguilar's possible confusion was made manifest to SCTA's leadership at any time prior to the parties' ratification of their TA.

Whatever the wisdom of hastily dispatching Superintendent Aguilar into the bargaining fray, alone and ill equipped with neither first-hand knowledge of the parties' complex salary negotiations nor technical assistance to readily understand them, the terms of

Under the foregoing circumstances, it must be concluded Superintendent Aguilar, on behalf of SCUSD, knowingly assented, albeit under challenging circumstances due to SCTA's looming strike, to the terms of the parties' Framework Agreement. If its terms pertaining to SSA were not clear and unambiguous at the time of entering into the Framework Agreement, they were at minimum patently ambiguous to a reasonable person under similar circumstances. Thus, as in *Colfax, supra*, the Framework Agreement's SSA terms are now subject to

First, it is clear from the entirety of the Framework Agreement's "Salary Agreement" section that no SSA was intended to be implement

Aguilar, which the former thereafter repeated in later meetings with SCUSD administrators, that implementation of the "Union's proposed structure" at a "3.5% maximum District expenditure" could be mutually accommodated in the July 1, 2018 - June 30, 2019 school year if its implementation date was delayed until sometime mid-school year. Indeed, according to the testimony of Executive Director Borsos, this was precisely what was explained to

SCUSD, however, argues Superintendent Aguilar, as well as its fiscally conscious Board of Education members, were of the understanding the foregoing "3.5% maximum District expenditure" cap on SSA was applicable to *both* the July 1, 2018 - June 30, 2019 school year when implemented as well as all successive school years on an ongoing basis. It is, however, a well-accepted tenet of contract interpretation that one party's undisclosed understandings and impressions are not dispositive in determining the meaning of contract language. Thus, in *Kahn & Co.*,¹⁰ a case where a party never communicated the meaning it claimed in arbitration to have attached to a term during negotiations, Arbitrator John J. Murphy noted that although the evidence suggested the company's senior vice-president had been under the impression the company retained the right to take an employee off his job in order to make way for a partially disabled employee, his understanding was never communicated to the union. Arbitrator Murphy thus reasoned, "[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." (Emphasis added.)

The foregoing understanding by Superintenden

Because (a) the phrase "Union's propm[9(sche()-st(e)6(r)-uc)7-8(t)u36

"Union's proposed structure" midway during the 2018-19 school year at a cost not to exceed
"3.5% maximum District expenditure," in succeeding school years the "

several details, or "loose ends" as described in Superintendent Aguilar's November 30, 2017 email, did need to be finalized including (a) calculating the placement of teachers on "the salary schedule" in accordance with a newly agreed-upon BA+60 column and (b) granting unlimited credit for teaching experience, which, in turn, would determine the actual implementation date within the 2108-19 school year of SCTA's proposed SSA in order to stay within the agreed upon "total District expenditure of 3.5%." Finally, given the obvious importance and financial consequences of SCTA's proposed SSA, over which the parties had (a) been deadlocked for many months during protracted negotiations, (b) attended multiple mediation sessions with an assigned SMCS mediator, and (c) participated in factfinding proceedings and yet still further mediation efforts thereafter with Chair Dooley's assistance, to infer the parties' mutually understood that future negotiations concerning SCTA's proposed SSA were included within Superintendent Aguilar's November 30, 2017 email on the subject "Tying of the last loose ends," appears highly implausible.

Finally, although SCTA furthermore asserts SCUSD failed to award Athletic Director stipends in the manner provided in the Agreement, the Impartial Arbitrator concludes the latter issue was not explicitly addressed in SCTA's grievance nor fully reviewed and considered by the parties thereafter when processing the subject grievance through earlier steps of the Agreement's grievance procedure prior to referral to arbitration. The Impartial Arbitrator accordingly concludes he is jurisdictionally constrained from addressing the latter issue in its current procedural state. The foregoing is accordingly remanded to the parties for processing and potential resolution through the Agreement's grievance procedure.

1. SCUSD and SCTA did not lack mutual assent or commit mutual error concerning the intended meaning of the terms of a salary schedule structural adjustment ("SSA") in their December 4, 2017 Tentative Agreement ("TA"), ratified and approved by SCUSD's Board of Education and SCTA's Membership, respectively, on December 7 and December 11, 2017.
2. SCUSD did breach the parties' TA, as referenced in Paragraph No. 1 above, regarding SSA during the July 1, 2018 - June 30, 2019 school year.
3. As the appropriate remedy for the contractual violation found in Paragraph No. 2 above, SCUSD shall immediately implement the parties' December 4, 2017 TA, including SCTA's proposed SSA, on a date within the July 1, 2018 - June 30, 2019 school year so as not to exceed a 3.5% maximum SCUSD expenditure for the July 1, 2018 - June 30, 2019 school year with retroactive and prospective compensation paid to all certificated bargaining unit members in accordance with SCTA's proposed SSA.
4. The Impartial Arbitrator hereby retains jurisdiction for purposes of resolving any and all issues arising pursuant to implementation of the remedy specified in Paragraph No. 3 above.

Dated: May 2, 2019
Del Mar, California

Kenneth A. Perea