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APPROVED FOR PUBLICATION

OPINION AND AWARD
IN ARBITRATION PROCEEDINGS
PURSUANT TO A
COLLECTIVE BARGAINING AGREEMENT

In the Matter of a Controversy Between	)	
	)	
Oakland Unified School District, Employer	)	
and	)	2016-2017 Salary Grievance
Oakland Education Association, Union	)	

APPEARANCES:

For the Employer: Roy A. Combs, Attorney
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For the Union: Becky Flanigan, Regional Uniserv Staff
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PROCEDURAL BACKGROUND

The above-referenced matter was processed through the grievance procedure contained in the collective bargaining agreement (CBA) between the parties. Remaining unresolved, it was submitted to final and binding arbitration. The undersigned was selected as the arbitrator by mutual agreement of the parties. The matter was heard on May 8 and 9, 2017 in Oakland, California.

The parties stipulated that the matter is properly before the arbitrator. The parties also stipulated that the arbitrator retains jurisdiction over the remedy in the event that the arbitrator grants in whole or in part the union grievance.

Both parties were afforded full opportunity to present documentary evidence and to examine and cross-examine witnesses. Both parties were ably represented by their respective representatives. At the conclusion of the hearing, the parties chose to conclude their presentations by written briefs. The briefs were received on July 7, 2017, and the matter was submitted for decision.

ISSUE

The parties stipulated to a statement of the issue. The issue is as follows:

> Did the District violate Article 24 of the CBA when it calculated and implemented the salary increase for OEA unit members for the 2016-2017 school year? If so, what is the remedy?

RELEVANT CONTRACT AND POLICY PROVISIONS

Agreement Between Oakland Unified School District and Oakland Education Association – July 1, 2005 through June 30, 2008

Article 24.1 (See attachment to this Opinion and Award)

FACTS

Background on the District and the Bargaining Unit: The District is a K-12 public school district in the East Bay of the San Francisco Bay Area. Its boundaries coincide with the city of Oakland, CA. It has a student enrollment of approximately 35,000, and approximately 4,700 employees. The District experienced serious financial difficulties in the late 1990s and early 2000s. As a condition of receiving a large loan from the State of California, the District was placed under a state-administered trusteeship. The District is still paying back the loan, and the trusteeship continues, in a modified form, to

this day. The current trustee, Carlene Naylor, has the authority to stay or rescind spending decisions made by the elected Board of Education.

The Oakland Education Association (OEA) is affiliated with the California Teachers Association (CTA) / National Education Association. It is the exclusive representative for a bargaining unit of teachers, counselors, nurses, psychologists, librarians, speech pathologists, social workers and substitute teachers in the Oakland Unified School District. OEA has approximately 2,700 members. The cost of a 1% salary increase for the OEA bargaining unit is approximately $1.8 million, including statutory benefits such as retirement and workers' compensation costs.

The Parties Reached a Tentative Agreement on their Collective Bargaining Agreement on May 13, 2015: The parties began exchanging salary proposals for a new agreement in April 2014. At that time, the OEA was proposing salary increases for the 2013-2014, 2014-2015, and 2015-2016 school years. As negotiations continued for many months, the parties became focused on the 2014-2015, 2015-2016 and 2016-2017 school years. As of February 2015, the Association had set aside its proposal for a 2013-2014 salary increase and had added the 2016-2017 year to its proposal. The District was amenable to this approach.

The parties homed in on the use of a salary formula to determine the salary in the second and third years of the agreement. The increase for the first year – 2014-2015 – would be a fixed percentage increase. The "out" years' salary increases would be based on the increase in funding received by the District from the state. Known as the Local Control Funding Formula (LCFF), this formula sets the amount of one-time and ongoing funding the District receives.

After many proposal iterations, "what-if" exercises, bargaining subcommittee meetings, and late-night negotiations, the parties finally came to agreement on May 13, 2015. The tentative agreement on teacher compensation, as signed by the negotiators and later ratified by the Union members and the school board, is attached to this arbitration award.

The agreement was also signed off by the state trustee and given a nod of approval by the Alameda County Office of Education.

The Agreement Included a Fixed Increase for 2014-2015 and a Salary Formula for the 2015-2016 and 2016-2017 School Years: For the first year of the agreement – 2014-2015 – the parties agreed to across-the-board increases of 2%, 1%, and 2.5% staggered throughout the year. In addition, the parties agreed to a one-time payment to unit members, to be paid on or before October 31, 2015. This

payment was based on a calculation derived from the difference between the unrestricted funds reported in the third interim budget for 2014-2015 and the "2014-15 unrestricted funds" from the 2015-16 budget signed by the governor.[1] The amount of this one-time payment, if any, was not evident from the record.

For the second year of the agreement – 2015-2016 – the parties agreed to a fixed 2.5% salary increase, contingent on agreed-upon changes in another section of the agreement. In addition to the fixed increase, the agreement also included a complex formula-based ongoing increase. The essence of the formula was to calculate the additional state funding granted to the district and apply a formula to determine how much of the additional funding would be provided to OEA unit members in the form of ongoing increases and one-time payments.

In the "2015-16" section of the article, a definition of "unrestricted funds" was included that applied to the remainder of the article. Many witnesses testified to meaning of this clause. Its meaning became a key component of the dispute that followed. It reads as follows:

> For the balance of this Article, "unrestricted funds" means all funds granted to Oakland Unified School District (OUSD) by the state on an on-going or one time basis which are legally available for use as salary compensation to all unit members including, but not limited to, all increases in Local Control Funding Formula (LCFF) components including the base grant, concentration grant, supplemental grant and grade span adjustment, but excluding state lottery funds and mandated cost reimbursements.

The parties agreed to derive some of the financial information necessary to make these calculations from certain public documents that the District was required to produce. One was the third interim report, issued at the end of May and recording revenue and expenses through April 30. The figure derived from that report would serve as the comparison to the projected unrestricted funding for the next fiscal year.

The second information source was to be the District's new "budget adoption," issued at the end of June, shortly after the governor signed the state budget. The figure to be derived from that document was the projected LCFF revenues based on any increases in the signed state budget. The wording in the parties' tentative agreement on this key figure for the 2015-2016 increase was as follows:

> …the unrestricted funds provided as per the State Budget allocation for the 2015-2016 school year by the budget passed into law and signed by the Governor for the 2015-2016 school year.

[1] Since the District has been under state financial supervision, it is required to submit a third interim budget each May.

For the disputed year of 2016-17, a formula was also devised. However, the contract language was somewhat different. It identified the source of the information as follows:

> …the 2016-17 on-going unrestricted LCFF funds provided as per the State Budget passed into law and signed by the Governor for the 2016-17 school year.

The resulting formula calculations for 2015-16 and for 2016-17 were designed differently. For the 2015-16 year, 39% of the new unrestricted money was to be used for compensation increases. In 2016-17, an even more complex formula was introduced. It began with the increase in unrestricted funding. But the next step was to deduct the cost of health benefit increases. After that, a calculation was bargained that the negotiators informally referred to it as the "layer cake." 30% of the first $5 million in new revenue, 42% of the next $4 million, 48% of the next $5 million, and 39% of any remaining new revenue was to be applied to salary increases.

A key feature of the formulas, for the purposes of the instant grievance, was the "90%" clause. In the wording for 2016-17 (similar wording was in place for 2015-16), the language read as follows:

> 90% of this increase shall become effective July 1, 2016 in order to assure that the expected funding is realized. Example: 3.72% x 90% = 3.35%. The balance of the 2016-17 salary schedule increase or portion thereof, if any, shall be determined through the following calculation:…

The agreement goes on to spell out how the remaining 10%, to be implemented on January 1, 2017, is to be calculated. The key concept for this grievance is that the parties were to use the "first interim report," published on or about December 15, 2016, to calculate the unrestricted funding available for the remainder of the salary increase.

Doug Appel is a member of Regional Uniserv staff for the CTA. He was on the bargaining team for the 2015-2018 contract negotiations. He was involved in all the sessions involving salary. He recalled that it was the District that first proposed the idea of holding back 10% of the salary increase until later in the year.

Documents support Mr. Appel's recollection. Proposals and counterproposals from the salary negotiations indicate that a "90%" contingency example was first introduced in a November 6, 2014 District proposal. The Association first included a "90%" concept in one of its bargaining documents in a May 11, 2015 "what-if" framework document.[2]

[2] Toward the latter weeks of bargaining, the parties ceased exchanging formal on-the-record proposals and began characterizing their bargaining ideas as "what-if" concepts.

Vernon Hal is the senior business officer for the District. He too was deeply involved in the salary negotiations. He testified, as follows, about the concept of the 90/10 split:

> …the whole concept of this was based on actual revenues received. And the 90 percent / ten percent piece was basically to give room for adjustments that needed to be made, given that the data during the year changes…Because you do 90 percent and you do another 10 percent because…you have better data later in the year. So if ADA [average daily attendance] changes or if your LCFF percentages changes, then you have an opportunity to make adjustments for the other 10 percent.

According to chief business officer Hal, the District receives revenue "pretty much monthly" from the state, throughout the school year.

Due to the complexity of these formulas, and in an effort to avoid disputes about implementation, the parties wrote three hypothetical examples into the contract for both years. The three examples illustrated scenarios in which revenue met, exceeded, and fell short of projections. In all three examples for 2016-17, some increase took place both on July 1, 2016 and again on January 1, 2017.

Another key component of the salary formula was the "cost of 1%." The final step in the calculation of a percentage increase of the salary schedule was to divide the dollar amounts available for salary increases by the cost of providing the entire OEA unit with that 1% salary increase. The parties agreed that not only salary costs would be considered, but also the cost of "statutory benefits" such as workers' compensation premiums and retirement contributions made by the District.

Unlike other formula sections, the parties did not specify the designated source of information for calculating the cost of 1%. The agreement merely states the following:

> All calculations involving the cost of a 1% salary schedule increase shall be based on the cost of salary and statutory benefits for all Oakland Education Association (OEA) unit members at the time of the calculation. Therefore, although all examples below use $1.5 million as the cost of 1% salary and statutory benefits for all OEA unit members, this amount will change each year with the application of salary increases.

While this language implies that the calculation is to be made after application of that year's salary increase, it does not detail when exactly that calculation is to be made. Nor does it specify which documents are to be used to make the calculation.

Both the 2015-16 and 2016-17 years also included provisions for one-time off-schedule payments to unit members, in addition to ongoing salary adjustments. The 2016-17 section on one-time payments comes at page eight of the eight-page tentative agreement document. It reads:

> In addition, 30% of any unrestricted one-time funds will be provided to OEA members as a one-time payment using the same calculation as above and be paid effective January 1, 2017, provided however, the District shall receive for 2016-17 $5,000,000 in ongoing and/or one-time unrestricted funds net of any payments associated with Section A above prior to any one-time funds being allocated to OEA.

It is not clear from the text what the phrase "as above" refers to in the quoted language, line 2. Possibly, it refers to the language from the 2015-16 calculation. That language reads as follows:

> In addition, one-time restricted funds will be provided to OEA unit members as a one-time payment using the calculation below and be paid effective January 1, 2016. This calculation shall include solely those funds added subsequent to the Governor's January 2015 budget proposal. A one-time increase, if any, shall be determined through the following calculation:
>
> i. Subtract the 2015-16 one-time unrestricted funds projected in the 2014-15 third interim report from the actual 2015-16 one-time unrestricted funds in the 2015-16 first interim report (the "2015-16 One Time Difference");
> ii. Multiply the 2015-16 One Time Difference by thirty-nine percent (39%);
> iii. Divide the result of 3 above by the cost of 1%

The "as above" more likely refers to the calculation of the ongoing increase. This is the method that was employed by both parties later in calculating the one-time payment.

From Late June Through Late September 2016, the Association and District Exchanged Information and Proposals for the 2016-2017 Salary Increase and One-Time Payment: On June 30, 2016, Union representative Appel sent an email to District director of labor relations Jenine Lindsey. In the email, Mr. Appel presented his initial calculation of what he believed the salary increase should be for 2016-17. He concluded it should be 90% of 4.07%, or 3.67%. He stated that he used the information from the budget adopted at the prior evening's school board meeting.

He also stated that the cost of 1% figure "comes from figures presented to the parcel tax exploratory committee." He also indicates that the health benefit deduction figure comes from the "HBIC [Health Benefit Information Committee] computation of the dollar equivalent of the 5.6% base funding increase."

"This increase does not include the .04% already owed," the email adds.[3]

[3] The parties had previously agreed that the 2015-16 salary increase was short by .04% due to a rounding error. They had agreed to add this amount to the 2016-17 increase.

Finally, the email indicates that the Union had not yet calculated what the one-time payment amount should be.

Getting no response from Ms. Lindsey, Mr. Appel wrote a follow-up email on July 13, 2016 asking that she get back to him with her "concurrence, or, if your computations differ, the manner in which you arrive at them so we can quickly resolve any disagreements." Later that day, Ms. Lindsey responded, thanking him for taking a "first stab" at the calculation. In a second email, she wrote as follows:

> We [sic] working on finalizing on our end, but we may need to wait for our Senior Business Officer to return from vacation before getting back to you (still determining the cost of 1%). Question – in your calculation, how did you determine the first figure – the LCFF increase of $22,473,897. Also, can you provide the slides from the Board presentation that you are referencing? This will speed up the process on our end.

On August 3, 2016, Ms. Lindsey emailed Mr. Appel the following:

> …I have a meeting with the finance team regarding the salary increases. It looks as though we are leaning towards waiting for the books to close to determine the cost of 1% - to avoid discrepancies. The books close on September 15th.

On August 10, 2016, the District came out with a public "revised budget." In that document, the projected revenue figure had been adjusted downward by $236,251 from the June 29 adopted budget.

As of August 31, 2016, the District filed its "unaudited actuals" report for the 2015-16 school year with the county office of education. It was presented to the school board on or before September 15, 2016. This is what Ms. Lindsey was referring to in her email (quoted above) about the "books" closing.

On September 16, 2016, Ms. Lindsey sent a draft calculation to Mr. Appel. It was attached to an email with the subject line "OEA Shared Revenue Model Increase 9 16.xlsx." The text of the email was "Just wanted to double check with you before formal document is sent!"

In the attached calculation, several differences are noted from Mr. Appel's original 6/30/16 calculation. One, Mr. Appel had made a math error, in the District's favor, of $1M. That was corrected in Ms. Lindsey's spreadsheet. Also, her revenue figure was based on the August revised budget, a reduction of $236,000. Finally, the cost of 1% was calculated by the District using the unaudited actuals. The amount was $1,824,406.

The result of this District recalculation was a District-proposed ongoing increase of 3.75% effective July 1, 2016, and a District-proposed one-time payment of 1.63%. A projected ongoing increase of .42% on January 1, 2017 was also included.

Mr. Appel testified that the Union did not dispute the new calculations done by the District in that September 16 spreadsheet. He agreed with the new calculation on the cost of 1%. And, while he objected to using the revised budget as the basis of computing the LCFF revenues, he was concerned about delaying the increase for unit members by engaging in a prolonged dispute. (He testified that, using the Union's original revenue number from June, the salary increase would have been .13% higher.) Mr. Appel, on behalf of OEA, agreed that the District could proceed with the proposed implementation.

Lower Enrollment Than Anticipated Prompts the District to Recalculate the Percentages for 2016-17; The District Unilaterally Implemented, Over the Union's Objection: Mr. Hal testified that, in the District's initial 2016-17 budget, District administrators had estimated that enrollment would increase by 345 students. Since California school districts are funded based on actual student attendance, a significant portion of the anticipated revenue increase for 2016-17 was based on this enrollment estimate.

In late September 2016, the District became aware that, contrary to its expectations, enrollment for the year was not meeting projections. It was basically flat, or even declining, from the prior year. The District did an analysis after the 20th day of school and made an assessment that enrollment would not reach projected levels.

According to Mr. Hal, at that juncture the District had to "stop the presses" with the human resources department preparing to implement the increases contained in Ms. Lindsey's September 13 spreadsheet. The District re-did the budget numbers, using the same ADA numbers from the prior year. Using new revenue projections based on lower enrollment numbers, the District calculated that the raise effective July 1, 2016 would be 3.07% (including the .04% held over from the prior year.) The salary increase on January 1, 2017 would be .34%. And the one-time payment would be 1.25%.

Ms. Lindsey had the unenviable task of sending this new calculation to Mr. Appel and characterizing it as the District's proposed implementation of Article 24.1 for the 2016-17 year. She did so in a September 26, 2016 email with the subject line "JL cant sleep." She testified that she wrote that in the subject line because she knew she was the "bearer of bad news."

Mr. Appel wrote back the following day, indicating that the Union disagreed with the Employer's new calculation. The District decided to proceed with an implementation of the proposal, despite the Union's objections. In October 2016 and January 2017, the following was implemented:

- 3.07% pay increase, paid in October 2016 and effective July 1, 2016
- .34% salary schedule increase, paid and effective January 1, 2017
- 1.25% one-time payment, paid on January 1, 2017

A Year Earlier, the Parties Had Successfully Reached Agreement on Implementing the 2015-2016 Increases and a One-Time Payment: No evidence was in the record regarding the calculation of the increase for the 2014-15 year, the first one of the agreement. However, the record was clear that the parties successfully implemented the second-year increase and one-time payment using the contract's formula.

No dispute arose in 2015-16 regarding the LCFF revenue figure. No evidence was in the arbitration record that the District examined the 20-day enrollment figures in September 2015 prior to agreeing to implement a salary increase.

The record did include evidence that the parties delayed implementation of the increase until the unaudited actuals were released. The stated reason for this was to use that data as the basis for the calculation of the cost of 1%. The parties reached agreement on that number in October 2015, and a 2.74% increase (effective July 1, 2015) was implemented on October 30, 2015. The projected increase for the remaining 10% January 1, 2017 was .31%. Based on the data from the first interim budget report on December 15, 2015, the parties agreed that the January 1 increase would remain as originally projected.

The record was devoid of evidence that a one-time payment was also made on January 1, 2016.

The Union Filed a Grievance: The Union filed a grievance on October 12, 2016. The grievance asks that the District implement the following, in lieu of what was implemented by the District:

3.75% July 1, 2016

0.42% January 1, 2017 "if the expected funding is realized."

1.63% one-time off schedule increase

It is that grievance that is now before the arbitrator.

ASSOCIATION'S POSITION

The Union argues that the contract spells out the exact steps for the calculation of the salary increase, and the District did not follow those steps. The District did not use any of the required documents in its final calculation of the increase in September 2016.

The Union contends that the District acted in bad faith by ignoring the contractual requirements. The District "must not be allowed to make up revenue projections" contrary to the explicit CBA provisions. The District did not use a new budget projection as the basis for its recalculation of LCFF revenue.

The Union asserts that no discussion of enrollment took place in bargaining. The Union further contends that the District did not use the first interim budget report of December 2016 to calculate the remaining 10% of the increase. This was a violation of the explicit contract language.

The Association argues that the parties had reached agreement on September 16, 2016 that the one-time payment on January 1, 2017 would be 1.63%. Instead, the District implemented 1.25%.

The Association rejects the District's contention that only funds actually received can be counted in the formula. If this argument were taken to its logical conclusion, no increase would be paid until all funds had been received by the end of the school year. This was clearly not the intent of the parties.

Errors made by the District in its budgeting process, the Union asserts, do not relieve it of its responsibility to follow the contract. The District first proposed the concept of a 90% / 10% salary implementation, and must live with the consequences.

The Union concedes that no money is owed to the unit members from the January 1, 2017 ongoing increase. However, the District owes unit members at least .34% retroactive to July 1, 2016. If the actual language of the CBA were implemented, that amount would increase to .45%. And the District must pay an additional one-time payment of .38% to remedy the shortage in the one-time payment made on January 1, 2017.

EMPLOYER'S POSITION

The District contends that the Union bears the burden of persuasion in this matter, and has not met that burden.

The District argues that the meaning of Article 24.1 was premised on actual revenues received, not projected revenues. The wording "funds granted" and "legally available" are the key phrases that support the District's position in this grievance.

The Employer properly used the 20-day enrollment figures, because revenues were less than anticipated, as per the third hypothetical example in the CBA, the District asserts.

Even if the arbitrator concludes that the District should have paid the original projected increase on July 1, 2016, the result would have been a salary reduction on January 1, 2017, the District argues. It was better for all concerned to make the necessary adjustment prior to the first increase. The language in the agreement did not prohibit a salary reduction on the date of the 10% final adjustment. The proper total salary increase for 2016-17 was 3.41%, and that was what was implemented by the District.

The District contends that the state trustee would not have signed off on the collective bargaining agreement had she known that raises might be based on projected, rather than actual, revenues.

The parties' agreement on the 2015-16 salary increase was based on actual revenue, and this prior agreement bolsters the Employer's interpretation of the CBA, the District contends. Finally, the District points out that, as of the filing of briefs, the District's 2016-17 revenues are projected to decrease even further. This fact underscores the need for the arbitrator to deny the grievance.

The District contends that it has not violated the purpose, meaning and intent of Article 24.1. It asks the arbitrator to deny the grievance.

DISCUSSION

The Language in Article 24.1 is Clear that the 10% Holdback Was the Negotiated Safety Valve in the Event that Revenue Did Not Reach Projected Levels: Article 24.1 is a complex eight-page agreement. It is the product of months of bargaining and major shifts in the positions of both sides in their quest to reach agreement. Ambiguity resides in the final agreed-upon language. Perhaps living with this ambiguity was necessary for both parties to sign off on the deal. That is often the way difficult bargaining is ultimately resolved. The challenge for the arbitrator is to examine the ambiguity and determine the most coherent overall interpretation of the language.

The District justifies its September 2016 recalculation of its revenues on the basis that the agreement allowed it to use actual received revenue figures, rather than projections. It relied heavily on the above-cited section of Article 24.1 that defines "unrestricted revenues" as funds "granted" and "legally available for use as salary compensation."

But revenue-based salary formulas in school districts are based on revenue projections. That is the very nature of revenue-based formulas – they are based on predicted or promised revenue. Business officer Hal conceded that state revenue comes into the District proportionally each month of the school year. Any formula that calls for a revenue-triggered salary increase at the beginning or even the middle of the school year of necessity relies on revenue projections before all funds are received.

The District implied that funds not actually received were not "legally available" for compensation. Yet no law was cited that might prohibit the District from paying salary increases based on projected revenue.

What is certainly valid about the District's viewpoint on this issue is that, as the school year goes on, the projections do become more and more accurate. Revenue gradually goes from "projected" to "realized." The District's bargaining proposals to OEA were, in part, based on this concept. Rather than pay 100% of a salary increase on July 1 of the school year, as the Association wanted, the District proposed to hold back 10% of that increase. The precise reason for this "hold back" was to allow the District to adjust its revenue projections as the year progressed.

The measuring stick the parties chose to use for this recalculation was the first interim budget report. This is a public report that comes out in December of each school year. The timing of the use of this report is evident – it provides timely data for any necessary January 1 adjustment.

The key Article 24.1 phrase in this regard is "90% of this increase shall become effective July 1, 2016 in order to assure that the expected funding is realized." Implicit in this wording is that, if the expected funding is not realized, an adjustment will be made on January 1. The agreement spells out that the first interim report is to be used for the recalculation.

The agreement is somewhat less clear on the source of the original revenue calculation for the July 1, 2016 increase. The actual language is to utilize "the 2016-17 on-going unrestricted LCFF funds provided as per the State Budget passed into law and signed by the Governor for the 2016-17 school year." Since the District adopted a public budget just days after the Governor signed the budget, the strong inference is that the District's adopted public budget (following the release of the signed state budget) was to be the source of revenue information.

It could also be logically argued that the revised budget, publicly adopted in August, would be a proper source for revenue projections. That is ultimately the document that the Association agreed to use for the calculation of the July 1, 2016 increase.

What is not consistent with the contract language, and what the District in fact did, was to pick an arbitrary date in September and adjust the revenue figure based on an unanticipated enrollment decline. No publicly verifiable document accompanied this District assertion. This action by the District departed

from the methods outlined in Article 24.1. The parties' salary formula agreement consistently relies on the use of publicly available District-generated budget documents for revenue projections.

The District bargained for and reached agreement on a "safety valve" clause. That clause provided a method for the parties to adjust the pay increase if expected revenue was not "realized." In September 2016, the District most likely regretted the overly optimistic ADA projections that it had made for the 2016-17 school year. It was apparent, by the end of September, that enrollment would likely be flat rather than show a significant increase, as had been forecast. Understandably, the Employer was concerned about going forward with the raise as negotiated. However, the 10% hold-back was the mechanism they had negotiated to deal with such a contingency. Making an adjustment to the ongoing salary increase based on some other non-negotiated mechanism was a violation of the agreement.

The Manner in Which the Parties Calculated the 2015-2016 Formula Increase Does Not Shed Light on the 2016-2017 Dispute: The District has made arguments in its closing brief that the implementation of the pay increase in the 2015-16 school year lends credence to the District's interpretation of the language. However, the issues that arose in that earlier year were different from those in the following year. It is not an apt comparison.

In 2015-16, the District and Association did not reach agreement on the July 2015 salary increase until October 2015. This bears some similarity to the timing in the year in dispute. However, the key difference is that the delays were occasioned by the District's proposal, and the Association's ultimate acceptance, of the use of the unaudited actuals for the cost of 1% figure. The record was devoid of evidence that the District proposed any revenue adjustment based on District-specific factors in 2015-2016. Nothing was in the record that the District even examined the enrollment figures in preparation for finalizing its proposal on the implementation of the 2015 increase.

In sum, the experience of the parties in reaching agreement on the 2015-16 salary adjustments does not provide guidance on how this grievance should be decided.

The Contract Language Does Not Suggest that the Parties Negotiated the Possibility of a Pay Decrease: The District has argued that, even if the arbitrator finds that the originally calculated pay increase should have been implemented on July 1, 2016, then a pay reduction should be ordered for January 1, 2017. The language in Article 24.1 does not support this interpretation. None of the three examples included in the contract result in a pay reduction in January of either year. Even in the example that illustrates "less revenue is received than projected," the result is an increase, albeit a very small one.

Moreover, the entire eight-page article does not mention salary reduction. Only salary increases, "if any," are referenced. Something as consequential as a pay cut would have to be included by explicit

reference. The undersigned concludes that the parties did not negotiate for the eventuality of a pay reduction.

The Association Conceded the Use of the Revised Budget of August 2016 as the Basis for the Increases: The Association, in its closing brief, has suggested that the arbitrator should consider reverting to the original revenue calculation based on the adopted budget of June 2016. While there is some support for this concept in the text of the agreement, the Association conceded this point in September 2016. The changes to the District's budget from June to August were based on recalculating the impact of the state revenue allocation on this District, not on unverified enrollment projections. For this reason, this award will rely on the revenue calculations made by the District on September 16, 2016 as the basis for the July 1, 2016 ongoing salary increase.

The Association also conceded that the cost of 1% figure for 2016-17 could be derived from the unaudited actuals in September 2016. This concession is consistent with the contract. Article 24.1 does not identify the source for the cost of 1%. The District, beginning in 2015-16, waited until the September "closing of the books" for the 2015-16 school year to calculate what a 1% pay increase would cost in 2016-17. This decision in no way violated the agreement, and as such will also form a basis for the award in this matter.

Had the District Complied with the Formula, No Increase Would Have Been Implemented on January 1, 2017: Business officer Hal testified that, had the District implemented a 3.75% increase effective July 1, 2016, then under the agreement there would have been no increase on January 1, 2017. The Association concedes this point in its closing brief.

The reason for both parties reaching this conclusion is evident from the record. The 10% hold-back adjustment was supposed to be based on the first interim report, issued December 15, 2016. That report reflected, in a public document, the enrollment decline and lower ADA projection that the District had first become aware of in September 2016. Under the formula, the recalculation would have resulted in a zero adjustment on January 1, 2017 rather than the .34% the District implemented.

The District Appropriately Considered Declining ADA Prior to Determining the Amount of the One-Time Payment of January 1, 2017: The parties have focused most of their attention in this proceeding on the ongoing increases for the 2016-17 school year. They spent relatively little time and effort building their cases for their differing positions on the one-time payment made on January 1, 2017. Both sides seemed to assume that the same arguments applied to this one-time payment as applied to the ongoing increase. They found no need to argue the one-time payment as a separate issue.

A careful reading of Article 24.1, however, leads to the conclusion that the one-time payment is governed by different negotiated rules. The one-time payment language for 2016-17 is not clear on its face. But the context indicates that the District was correct in assuming that it could factor in the declining enrollment prior to implementing the lump sum payment.

The chief ambiguity in the one-time payment language is in the phrase "using the same calculation as above." The problem with this phrase is that there were several calculations "above" this sentence in Article 24.1. Both parties ended up using the same calculation formula they used for the ongoing increase to calculate the one-time payment. Based on that, the undersigned assumes that this is what the phrase "as above" was intended to mean.

Since the District and the OEA both used the same calculation method, the same disagreement emerged. The District used the new revenue projections made in September 2016 and later formally recorded in the first interim report. The Association used the original higher revenue projections from the revised budget in August 2016.

A fundamental difference between Article 24.1 language on ongoing increases versus one-time payments presents itself. The one-time payment, unlike the ongoing increase, had no "safety valve" or "hold back." And, of critical importance, it was scheduled to be paid out after the first interim budget report. It was timed to be paid at the same time as the second installment of the ongoing increase.

No testimony was in the record about why the one-time payment was scheduled for January 1. The implication is that information would become available between July 1 and January 1 that could change the amount of the payment. That information, consistent with the parties' agreement on using publicly available documents, was the first interim report.

Article 24.1 does not explicitly call for the use of the first interim budget report as the basis for calculating the revenue source for the one-time payment. However, nothing prohibited its use for that purpose. In late September, the District decided to use the 2015-2016 ADA as the basis for the 2016-2017 budget, rather than the higher projected number. It was that ADA number that was incorporated into the first interim budget report in December 2016. It was consistent with the CBA to use the revenue projection in that report as the basis for the one-time payment.

It is also notable that, in the more detailed Article 24.1 language regarding the calculation of the 2015-16 one-time payment, the parties referred explicitly to the first interim report as the source of revenue information. Nothing in the agreement indicates that the parties intended to perform the 2016-17 calculation any differently.

The District has argued that the burden of persuasion is on the Association to prove that the District violated the agreement in how it calculated the 2016-17 salary adjustments. The undersigned

agrees. In the case of the one-time payment, the Association has failed to meet this burden. The one-time payment of 1.25% made on January 1, 2017 did not violate the CBA.

In sum, the grievance is sustained in part and denied in part. The District violated the agreement when it implemented a 3.07% salary increase effective July 1, 2016 and a .34% salary increase on January 1, 2017. The District did not violate the CBA when it implemented a 1.25% one-time payment on January 1, 2017.

The Ordered Remedy Will Make Unit Members Whole without Placing an Undue Administrative Burden on the District: The ordered remedy in this case begins with the premise that the District violated the agreement on both July 1, 2016 and January 1, 2017 in implementing the salary schedule increases. The District underpaid unit members beginning in July 2016 and ending on December 31, 2016 by .68% (3.75% minus 3.07%). When it implemented a .34% increase on January 1, 2017 the District continued to underpay the unit members, but by the lesser amount of .34% (.68 % minus .34%). A 3.41% increase carried forward into the 2017-18 school year. Had the agreement been followed, the increase going forward would have been 3.75%

Therefore, the ongoing remedy is a .34% increase to the salary schedules. The District is ordered to implement this increase effective July 1, 2017. Due to the timing of this award, this implementation hopefully can be accomplished without the need for retroactivity in the 2017-18 school year.

The additional portion of the remedy is a one-time retroactive payment for the 2016-17 school year. In order to make whole current unit members who also worked in the 2016-17 school year, the District must make one-time payments. This award does not order a one-time payment for any unit members who were not employed by the District during the 2016-17 school year. It also does not order a one-time payment for unit members who were employed by the District during the 2016-17 school year but are no longer employed by the District.

The amount of the one-time payment will be calculated as a percentage of each unit member's salary. The percentage is calculated by the undersigned based on the premise that each member was improperly deprived of a .68% increase for a full year (a sum of .68%), but then improperly paid a .34% increase for half a year (a sum of .17%). The correct amount to pay in lieu of retroactivity is a one-time payment of .51% (.68% minus .17%). The .51% is to be calculated as a percentage of the unit members' 2016-17 salary.

Due to the size and complexity of the District, the District is given until November 1, 2017 to issue the .51% one-time payments.

AWARD

1. The District violated Article 24.1 of the CBA when it implemented a 3.07% salary schedule increase effective July 1, 2016. The District should have implemented a 3.75% salary schedule increase effective July 1, 2016.

2. The District violated Article 24.1 of the CBA when it implemented a 0.34% salary schedule increase effective January 1, 2017. The District should have not adjusted the salary schedules on January 1, 2017.

3. The District did not violate Article 24.1 of the CBA when it implemented a 1.25% one-time off-schedule payment effective January 1, 2017.

4. The District is ordered to increase all applicable OEA salary schedules .34% effective July 1, 2017.

5. The District is ordered to make a one-time payment to all OEA bargaining unit members who were employed by the District both in the 2016-2017 school year and the 2017-2018 school year. The amount of the payment is to be .51% of the unit member's 2016-17 salary. The one-time payments are to be made no later than November 1, 2017.

6. The arbitrator retains jurisdiction for the purposes of the implementation of the remedy.

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Paul D. Roose, Arbitrator

Date: July 26, 2017