

A GRIEVANCE ARBITRATION PROCEEDING
PURSUANT TO AN AGREEMENT OF THE PARTIES

In the Matter of a Controversy Between

SACRAMENTO CITY TEACHERS ASSOCIATION, CTA/NEA,

|

INTRODUCTION

The Sacramento City Teachers Association and the Sacramento City Unified School District are parties to a collective bargaining agreement that includes at Article 13.1.1 a provision concerning health benefits. The Association filed a grievance on June 4, 2019, alleging that the District violated Article 13.1.1

An evidentiary hearing was conducted by the undersigned Arbitrator in Sacramento, California, on February 5, May 27, May 28, May 29, and June 2, 2020. The parties introduced documentary evidence; witnesses were called to provide sworn testimony during both direct and cross-examination. Verbatim transcripts of the hearing were prepared by a court reporter. On or about July 24, 2020, the parties filed closing briefs and the matter was deemed submitted.

ISSUE

Per stipulation of the parties, the issues are framed as follows:

Did the District violate Article 13.1.1 by failing to apply to the certificated bargaining unit any health benefit plan savings? If so, what is the appropriate remedy?

FACTUAL SUMMARY

The history of this dispute dates back to the 2014-2015 school year when the District unilaterally changed health benefit plans to generate budget savings. The Union successfully challenged that action. That experience was instructive; the change in health plans resulted in cost savings.

Negotiations for a successor agreement are underway in October 2016 and span` Oc @ \$ „†5b öb F†R †V &—æp

negotiator and attorney Ted Appel, then Assistant Superintendent of Labor Relations
Cancy McAn, Chief Human Resources Officer, Cindy Nguyen, then Director of
Employee Relations, Tu Moua, Instructional Assistant Superintendent, Iris Taylor,
then Chief Academic Officer, and Mary Harden Young, Instructional Assistant
Superintendent. SCTA's team consisted of President David Fisher, First Vice President
Niki Milevsky, and Executive Director John Borsos. In addition, many individual
bargaining unit members attended some of the bargaining sessions.

Even before negotiations got underway, the parties discussed working with the
California Education Coalition for Health Care Reform (CECHCR). CECHCR is part of
the Center for Collaborative Solutions (CCS). It advises school districts and labor
organizations on health care benefit options and costs. Janet Walden is the president and
CEO of CCS.

Mr. Borsos for the Union and Mr. Appel for the District approached CECHCR for
its assistance at reducing health care costs. The parties' first meeting with CECHCR was
on October 4, 2016. During October and November, while the parties primarily focused
on non-economic proposals, they continued to discuss the status of their joint
commitment to work with CECHCR.

In the morning of December 12, 2016, the parties met with CECHCR CEO
Walden to receive its preliminary assessment of potential health benefit cost reductions.
Ms. Walden made a presentation that included a discussion of options by which the
District could achieve on-going health benefit savings by entering a larger health benefit
purchasing pool, such as CalPERS, or changing health plans.

The parties agree to participate in identifying a mutually agreed upon health benefits pool, based upon recommendations provided by CECHCR, which will include the choice of Kaiser and alternative plan(s). Effective July 1, 2017, [ADD]the Board shall provide all eligible employees with a choice of the Kaiser Pan and a mutually agreed upon alternative plan(s), which is currently Health Net, the mutually agreed health benefits pool. [ADD]Health Net EW[OK] Summary plan descriptions of the health plans will be included in Appendix X. The level of benefits of the plan (e.g. out of pocket maximums, co-payments, services covered, networks scope, etc.) may not be reduced and the parties agree that any savings that result from making changes to health plans or in the reduction of health plan costs will be applied to the certificated bargaining unit. The parties will negotiate how to apply to the bargaining unit any such savings achieved by the District. Savings shall be defined as any total amount per plan that is lower on an actual or budgeted basis.[REVISE]The annual anniversary date for health plan changes will be July 1st[OK]

(District Exhibit Y.)

As was customary, the District provided SCTA with a narrative that explained its proposal. The January 30, 2017, narrative noted that any savings generated by working with CECHCR to join the CalPERS pool would be applied to the SCTA bargaining unit.

The parties continued to negotiate, but in March 2017, at SCTA's request, the Public Employment Relations Board declared the parties had reached a bargaining impasse. In April and May 2017, the parties engaged in mediation without success. The mediator certified the parties to fact-finding on May 18, 2017.

The parties engaged in pre-fact-finding negotiations and continued their discussions with CECHCR. On September 4, 2017, CECHCR provided the parties with an updated back-of-the-envelope savings estimate showing that even in the worst-case scenario a move to the CalPERS pool would yield significant health benefits savings.

The parties met every day during the week of September 11, 2017. On September 15, 2017, the District proposed to add the following language to Article 13.1.1: District and SCTA agree to negotiate in good faith to effectuate on or before July 1, 2018, reductions in health insurance premiums with the understanding that our joint goal is not to reduce benefits but to pursue cost reductions that maintain comparable benefits. (District Exhibit TT.) SCTA rejected that language.

Late in the evening on September 15, 2017, the parties reached a tentative agreement on Article 13.1.1. It added the effectuate language and deleted the budgeted language (District Exhibit XX). The agreed-upon first sentence read: District and SCTA agree to negotiate in good faith to effectuate on or before July 1, 2018 changes to the health plan consistent with this section. (Union Exhibit 20.)

Despite the tentative agreement on Article 13.1.1, the parties had yet to reach agreement on a successor contract. Fact-finding ensued. On November 5, 2017, with the assistance of Sacramento Mayor Darrell Steinberg, the parties signed a Framework Agreement that led to a contract settlement. (District Exhibit UU). The parties agreed “that the application of savings as set forth in the parties tentative Article 13.1.1 agreement will determine the available funds to achieve the agreed upon goals. If the funds are not sufficient to meet the goals, the parties will negotiate prior to the contract. (District Exhibit 22.)

The District's Board of Education voted to approve the parties' contract on December 7, 2017. SCTA members approved the tentative agreement on December 11, 2017.

Throughout the spring of 2018, the parties continued to work with CECHCR to achieve health benefit savings. Timelines provided to the parties by CECHCR indicated that the July 1, 2018, date as the deadline to make the new health care benefit purchasing pool. As discussed more fully below, the parties dispute whether the July 1, 2018, date was a firm deadline or an administratively convenient date. In any event, July 1, 2018, came and went without any changes to health plans or pools.

The parties continued to exchange correspondence. Superintendent Jorge Aguilar invited the Union to resume discussions and select a new timeline to make benefit changes. In December 2018, the Union presented the District with a proposed draft MOU contemplating that the parties work together with CECHCR to transition the purchase of health insurance for SCTA-represented employees to CalPERS effective July 1, 2019, in exchange for which funds would go toward mutually agreed upon priorities.

During this time, SCTA informed the District of its entitlement to dollars flowing

conditioned on health plan changes executed by July 1, 2018. The parties' bargaining history supports SCA's claim. At the time the District proposed the effectuated language, it did not say the new language conditioned SCA's claim to health benefit savings on the parties effectuating health plan changes by that date. What District negotiators may have understood

District shared its bargaining priorities with SCTA, including the goal of achieving ongoing savings. That was the purpose of engaging with CECHCR.

When SCTA passed its proposal on Article 13.1.1 on December 12, 2016, and thereafter, neither Mr. Borsos nor any member of the SCTA bargaining team said that savings could be achieved other than through changes to health benefit plans. SCTA did not put forth its theory that savings encompassed year-to-year fluctuations in renewal rates for existing health plans until after the July 1, 2018, deadline passed. Borsos's testimony that he shared this view with the District bargaining team lacks credibility and is supported by no other witness accounts.

The District insisted and SCTA agreed that health benefit changes necessary to achieve savings must occur by July 1, 2018. The operative language is not surplusage and must be given meaning. The year-long discussions with CECHCR support that July 1, 2018, was a hard contractual deadline. Because no charges were made either before or after July 1, 2018, no savings exist within the meaning of the contract. The District's conduct after July 1, 2018, is irrelevant.

SCTA's lack of trust in the District is irrelevant to the proper interpretation and implementation of the contract language. The District was not required to give SCTA notice that the July 1, 2018 deadline was approaching.

DISCUSSION

Timeliness. This dispute is not time-barred, as the District asserts. This arbitration is founded on the parties' settlement agreement signed by SCTA President Fisher and Superintendent Aguilar on August 21, 2019, in partial resolution of two unfair practice charges filed with PERB concerning the District's compliance with Article 13.1. (Union

Exhibit 2). In that document, the District did not reserve any procedural challenges, such as timeliness, to a resolution on the merits.

Merits. By operation of Article 13.1.1, SCTA is not entitled to any health benefit savings achieved through a change in health benefit plans or pools because the parties have not agreed to any such changes either before or after July 1, 2018. Nor does a fair reading of Article 13.1.1 entitle SCTA to savings in health care costs that result from reductions in renewal rates to existing health benefit plans.

As noted above, irrespective of the effectuate on or before July 1, 2018 language in Article 13.1.1, because the parties have not agreed to a change in health benefit plans or pools, no savings have resulted through that mechanism. However, that language would operate to exclude savings from any other potential application of Article 13.1.1.

The first sentence of Article 13.1.1 establishes the parties' agreement to engage in good faith negotiations to effectuate on or before July 1, 2018, changes to the health plan consistent with this section. Contrary to the Union's argument, the italicized phrase does not qualify or flag the "any savings" language of Article 13.1.1. The "consistent with" language instructs that changes put in place by July 1, 2018, would offer a choice of the Kaiser plan and a mutually agreed upon alternative plan; would be described in Appendix A; would not reduce the level of benefits; would direct savings to the certificated bargaining unit; would require negotiations over how to apply those savings, defined in terms of actual costs, and would establish the annual anniversary date for health plan changes as July 1. The consistency called for in Article 13.1.1, including its focus on changes to health benefit plans or pools, as discussed below.

The District was not required to provide notice to SCTA that the July 1, 2018, was a hard and fast deadline that

fact, the proposal SCTA presented to the District on December 14, 2018, suggesting that the parties work with CECHCR to transition to the CalPERS pool effective July 1, 2019, acknowledges that the Union was willing to negotiate a new agreement with a later deadline in exchange for funds to be applied to the SCTA bargaining unit.

SCTA also points to the District's response to a PERB filing as evidence that the July 1, 2018, deadline did not extinguish the Union's claim to savings. In its unfair practice charge, SCTA claimed the District violated the Educational Employment Relations Act by failing to apply health cost savings to SCTA members in accordance with Article 13.1.1 or to bargain over the issue. Consistent with its position here, the District's response to PERB was that until changes to the health plans are actually implemented and cost savings realized, it has no obligation to apply health cost savings to the certificated bargaining unit. That position does not remove the July deadline from the agreement reached on September 15, 2017, or rely on it.

The fact remains that in unambiguous language, the parties agreed to effectuate—put in effect—on or before July 1, 2018, changes to the health plan. The District needed and got a firm commitment from SCTA to effectuate changes by a date certain. The changes needed for SCTA to benefit from those savings did not occur.

SCTA's claim to 'any savings'. The Union's central claim to funds rests on the language that entitles it to any savings... "in the reduction of health care costs." It is an undisputed principle of contract interpretation that the meaning of a contested phrase be read in light of other parts of the instrument. (See, Elkouri and Elkouri, Arbitration Works Chapter 9.3.A.) When this clause is read together with other provisions of Article 13.1.1, the interpretation advanced by SCTA is not persuasive.

In the first sentence, Article 13.1.1 documents the parties' agreement to negotiate in good faith "to effectuate on or before July 1, 2011, changes to the health plan consistent with this section." As noted above, although the parties did not achieve that goal, that sentence introduces the focus of the parties' agreement on changes to the health plan.

The next sentence of Article 13.1.1 promises eligible employees a choice of the Kaiser Plan and mutually agreed upon alternative plan(s)..." The agreement ensures that the level of benefits may not be reduced "and providers may only be changed through mutual agreement of the parties." Again, the mutual agreement "to alternative plans and changed providers points to changes to the plan. This is consistent with SCTA's objective. Frustrated with the District's earlier unilateral change to health plans, the language it proposed ensured that the level of benefits would not be reduced and that providers would only be changed through mutual agreement.

Although addressing different topics, the language of Article 13.1.1 read together leaves little doubt that the parties were intending to negotiate changes to the existing health benefit plan and to have any savings generated from those changes applied to the SCTA bargaining unit.

Rather than giving meaning to the language of the entire agreement, SCTA focuses on the statement that "any" savings that result from the reduction of health plan costs will be applied to the certificated bargaining unit. This reading of the contract ignores all the references to plan changes noted above. It purports to introduce in the middle of the fifth sentence of Article 13.1.1 an entirely separate mechanism for achieving health care cost savings not mentioned elsewhere in the language.

from “any” health benefit costs is not a standalone, independent provision. To go further and suggest that the cited language captures year-to-year reductions in renewal rates existing plans is not plausible.

The proper interpretation of contract language is further guided by the purpose the parties intended to achieve. Pre-contract discussions and bargaining history states that purpose (See, Elkouri and Elkouri, How Arbitration Works Chapter 9.3.A.) These principles support the District’s interpretation of the language of Article 13.1.1.

The District pays 100 percent of health benefit costs for each SCTA member and has long sought to achieve savings by making changes to SCTA health benefits in the

and \$6.9 annually by changing health care plans, most likely, health care purchasing pools.

Later that same day, SCTA passed Article 13.1.1's proposal relating to health benefits. Seen against that backdrop, the language of Article 13.1.1 as drafted by SCTA flowed out of the parties' conversation with Ms. Walden about the mechanisms for achieving health plan savings. The District bargaining team reasonably understood SCTA's proposal to be consistent with the parties' many discussions with CECHCR about changing plans or pools to achieve savings. The weight of the evidence demonstrates that SCTA, the drafter of the pertinent language, did not disabuse the District of that understanding.

At the center of SCTA's case is Mr. Borsos's testimony about the December 12, 2016, negotiating session. He testified he explained to the assembled bargaining team members that a reduction in health plan costs achieved more than from a change to a health plan would be applied to the bargaining. There is no testimony from anyone other than Mr. Borsos on this point. Neither Ms. Milevsky nor Mr. Fisher corroborated the assertion made by Mr. Borsos. Of the thirty SCTA bargaining team members at the December 12, 2016, negotiating session, none was called to bolster Mr. Borsos's account.

In contrast, four members of the District bargaining team at the table that evening recounted that SCTA gave no explanation of Article 13.1.1. Mr. Holbrook, Ms. McArn, Mr. Appel, and Ms. Nguyen all testified that Mr. Borsos did not say that "savings" went beyond that which would result from changes to plans or pools and include the reduction in renewal rates to existing plans.

Both sides agree there was little or no discussion following Mr. Borsos's presentation. Surely, had the SCTA told the District that the language it was proposing captured all savings regardless of how they were realized and without achieving on-going year-to-year savings a lively discussion likely would have erupted.

No bargaining notes were produced to corroborate Mr. Borsos's testimony that SCTA explained that any savings caused by a reduction in health care costs, however that came about, would accrue to the bargaining unit. In contrast,

Net with a less expensive plan and pledged that any savings derived from a move to a different plan would be applied to the SCTA bargaining unit. The parties also discussed savings that could be realized if SCTA members were moved to a larger health benefit purchasing pool, such as CalPERS. In that case, for example, SCTA members remain in the same Kaiser plan, but overall savings to health benefits would be achieved by moving everyone to another purchasing pool. The fifth sentence of Article 13.1.1 accounts for both eventualities—savings derived from changes in plans and reductions in health plan costs derived from switching to a larger pool. This reading of the language accounts for both mechanisms by which savings could be achieved, which were discussed throughout negotiations in the context of the parties' talks, the reduction in health plan costs referenced in Article 13.1.1 are those achieved by implementing an alternative plan or changing to a different purchasing pool.

The District's first counterproposal on Article 13.1 specifically referenced CECHCR and reinforces this understanding of the language. While this language was not included in the final draft, it recognizes the parties' extensive collaboration with CECHCR contemporaneous with their collective bargaining and their discussions with CECHCR about health benefit cost savings achieved by moving away from the costly Health Net plan or into a larger purchasing pool. The theme of savings achieved through changes persisted at the time the District presented SCTA with this counterproposal.

As bargaining continued, SCTA and the District continued to discuss changes in plans or a move to the CalPERS health benefit pool. At none of these sessions December 12, 2016, did any member of the SCTA negotiating team communicate that the bargaining unit was entitled to the savings derived from year-to-year fluctuations in

renewal rates for existing health plans. As the time the parties reached their tentative agreement on September 15, 2017, and thereafter through Board approval and SCTA member ratification of the successor agreement, the parties understood that savings derived from changes to the health benefit plans or pools would go back to the bargaining unit.

It is a longstanding tenet of contract interpretation that a party's disclosed understanding of the meaning of contract language cannot determine what the contract means. SCTA did not communicate the alternative path to achieve savings to the District. In contrast, achievement of savings through changes to plans or pools was repeatedly expressed during bargaining and throughout the parties' engagement with CECHCR.

Furthermore, SCTA reads the contested language of Article 13.1.1 to mean that rate reductions are not offset by other rate increases because 'savings' are defined as "per plan." The "per plan" definition of savings is equally serviceable in the context of per plan actual (versus budgeted) cost. Moreover, SCTA's interpretation flies in the face of the District's clearly enunciated priority of making lasting structural changes to SCTA members' health benefits. There is no support for SCTA's assertion that the precise mechanism by which health plan costs are reduced is immaterial. Similarly, including renewal rate reductions but not renewal rate increases as part of the contractual calculation delivers no 'savings' to the District and is antithetical to its goal. And, it sets up a one-sided bargain whereby the District achieves no lasting structural health benefit cost-saving changes but SCTA reaps the benefit of any funds that result from market fluctuations in existing health benefit plan renewal rates. That cannot be what the parties intended or agreed to.

