

American Arbitration Association

VOLUNTARY LABOR ARBITRATION TRIBUNAL

In the Matter of the Arbitration between:

CUMBERLAND SCHOOL COMMITTEE

- and -

CUMBERLAND TEACHERS' ASSOCIATION (NEARI)

CASE NUMBER: 11 390 02120 07

AWARD OF ARBITRATOR

THE UNDERSIGNED ARBITRATOR(S), having been designated in accordance with the arbitration agreement entered into by the above-named Parties, and dated 2006 - 2009 and having been duly sworn and having duly heard the proofs and allegations of the Parties, AWARDS as follows:

- I. The grievance is substantively arbitrable.
- II. The grievance is procedurally arbitrable.
- III. The Cumberland School Committee placed the aggrieved teachers at the correct salary level for the 2007-08 school year, as well as the 2008-09 school year.

◆ ◆ ◆

/s/

Lawrence E. Katz, Esq.

December 23, 2008

AMERICAN ARBITRATION ASSOCIATION

CUMBERLAND SCHOOL COMMITTEE

Case No. 11 390 02120 07

- and -

ARBITRATION DECISION

CUMBERLAND TEACHERS' ASSOCIATION (NEARI)

Re: Salary Levels – 2007-08 and
2008-09 School Years

Arbitrator: Lawrence E. Katz, Esq.

Hearings: Cranston, RI, March 27, 2008
May 1, 2008
May 28, 2008
May 30, 2008

Transcripts: forwarded by AAA, June 19, 2008

Briefs: forwarded by AAA, October 2, 2008

Suppl. Briefs: forwarded by AAA, November 3, 2008

Appearances: Jeffrey W. Kasle, Esq., St. Peter & Kasle, for the Employer
Vincent P. Santaniello, Esq., Deputy Executive Director,
NEARI, for the Union

AGREED ISSUES

- I. Is the grievance substantively arbitrable?
- II. Is the grievance procedurally arbitrable?

III. If so, did the Cumberland School Committee place the aggrieved teachers at the correct salary level for the 2007-08 school year?

If not, what shall be the remedy?

In agreeing to the above-noted framing of the issue on the merits, the term "salary level" was utilized as a neutral choice, with the understanding that it encompasses two elements – the placement of the teachers on a particular step of the salary schedule, as well as the salary resulting therefrom.

The parties also agreed with respect to the issue of remedy (if reached) that the salary issues for the individual grievants would not be addressed in the initial decision. Rather, based upon the ruling that was reached, the individual salary issues would be remanded to the parties in the first instance, with jurisdiction being retained in the event that they should be unable to agree upon the implementation of the remedy.

We may also note that the scope of this proceeding, including the above-noted issue on the merits, has now been expanded by agreement of the parties to cover a newly-arising disagreement as to the salary levels for year 3 of the contract (2008-09).¹ Pursuant to a tele-conference between the parties and the arbitrator, it was agreed to include the year 3 issues as part of this case, with the understanding that a supplemental spreadsheet showing the salary placements effected by the School Committee would be presented (as it has been), and that the parties would address the issues involving year 3 in their supplemental briefs (as they have now done).

¹ Rather than referring to the dates of each of the three applicable school years, short-hand references are sometimes utilized. In such instances, "year 1" is the 2006-07 school year; "year 2" is the 2007-08 school year; and "year 3" is the 2008-09 school year.

CITED CONTRACT PROVISIONS

At the outset, we may note, as discussed in subsequent sections of this opinion, that the parties may disagree as to whether there is a binding collective bargaining agreement for 2006-09. At this point, we will cite the applicable portions of the purported 2006-09 agreement. At the same time, we may note that with the exception of the new salary schedule, there were no changes in the other cited provisions (that is, they are the same as those in the now-expired 2003-06 agreement, although in some instances, the numbering may have changed).²

ARTICLE 21 —GRIEVANCE PROCEDURE

* * *

- D. **Initiation and Processing:** Grievance[s] arising shall be handled in the following order or manner:
1. **LEVEL ONE** [Principal; informal/oral; details omitted]
 2. **LEVEL TWO** [Superintendent; written]

* * *

b. 1) If the teacher does not file a grievance in writing with the Chairperson of the PR&R Committee and the written grievance is not forwarded to the Superintendent, or his/her designee within thirty (30) school days after the teacher knew, or should have known, of the act or condition on which the grievance is based, then the grievance will be considered as waived.

2) A dispute as to whether a grievance has been waived under this paragraph will be subject to appeal pursuant to Level Four [arbitration].

² The 2003-06 agreement ran through August 31, 2006. Unlike many collective bargaining agreements, this contract does not appear to have a so-called "evergreen" clause, whereby the old contract would remain in effect beyond its expiration date, in the event that the parties should fail to timely negotiate a successor agreement.

ARTICLE 5 —EMPLOYMENT STANDARDS

* * *

- C. A teacher who has taught one hundred and thirty-five (135) days in a given school year on either a regular or a substitute basis, or a combination thereof, shall be given credit for a school year and placed on the next salary step if hired for the next school year.

ARTICLE 23 —TEACHERS' SALARIES

- A. As to Salaries ... as follows:

step #	2006/2007	2007/2008		2008/2009	
		1 st half	2 nd half	1 st half	2 nd half
1 & 2	34,623	37,026	37,767	38,522	39,292
2	36,300	39,484	40,274	41,079	41,901
3	38,710	41,585	42,417	43,265	44,131
4	40,770	43,984	44,864	45,761	46,677
5	43,122	46,920	47,858	48,816	49,792
6	46,000	49,470	50,459	51,469	52,498
7	48,500	52,020	53,060	54,122	55,204
8	51,000	57,375	58,523	59,693	60,887
9	56,250	58,813	59,989	61,189	62,413
10	57,660	66,734	68,068	69,430	70,818
11	65,425				

"REFORMED" CONTRACT PROVISION

This somewhat atypical section of an arbitration decision is included at this point to highlight the differences between a "reformed" version of the salary schedule, as advocated by the School Committee (although this recompilation has been drafted by the arbitrator) and the above-quoted salary schedule that was included in the tentative agreement for the 2006-09 contract (as Ex. IX thereto).

This revised or "reformed" version of the salary schedule moves all the salary figures for year 2 and year 3 down one line, so that the 10-step schedules for those two years line up with the 2nd to 11th steps of the year 1 schedule, rather than the 1st to 10th steps of the year 1 schedule. As a result, the empty line for years 2 and 3 (due to the elimination of one step) appears at the top of the schedule (lined up with the 1st step from year 1), rather than at the bottom (lined up with the 11th step from year 1, as in Ex. IX to the TA).

The location of this empty line may have one other effect. It leaves the ten steps of the compressed salary schedule with non-matching numbers. Instead of running from Step 1 to Step 10, it runs from Step 2 to Step 11. Since the old first step (based on the year 1 Step 1 pay of \$34,623 has been eliminated), the second step may have to be considered the first step during years 2 and 3 (and so on down the schedule, with Step 11 being viewed as the tenth step).

Irrespective of the arguments that the parties might make in favor of and against this revision/reformation of the salary schedule, we may note one objective mathematical fact. Under the revised version of the salary schedule, each horizontal line reflects the 2%+ 2% pay increases that were agreed to for the second and third years of the contract. For example, at Step 2, the year 1 pay of \$36,300, increases by 2% (\$726), to become \$37,026 during the first half of year 2.

In contrast, under the original version of the salary schedule, the increases are significantly greater. Using the same example of \$36,300 in Step 2 pay for year 1, the figure of \$39,484 is listed for the first half of year 2. However, this represents an increase of \$3,184, which amounts to 8.8%

of the year 1 pay.

["reformed" version]

step #	2006/2007	2007/2008		2008/2009	
		1 st half	2 nd half	1 st half	2 nd half
1 & 2	34,623	[eliminated]		[eliminated]	
2	36,300	37,026	37,767	38,522	39,292
3	38,710	39,484	40,274	41,079	41,901
4	40,770	41,585	42,417	43,265	44,131
5	43,122	43,984	44,864	45,761	46,677
6	46,000	46,920	47,858	48,816	49,792
7	48,500	49,470	50,459	51,469	52,498
8	51,000	52,020	53,060	54,122	55,204
9	56,250	57,375	58,523	59,693	60,887
10	57,660	58,813	59,989	61,189	62,413
11	65,425	66,734	68,068	69,430	70,818

We may also note that this "reformed" version of the schedule (as drafted by the arbitrator) is essentially the same as a similar School Committee re-draft that was presented at the instant hearing to demonstrate the School Committee's views as to the proper salary schedule, well as the year-to-year movement between steps.³

³ The School Committee's views of the salary schedule and the year-to-year movement are reflected in Jt. Exs. 6A and 6B, respectively. With respect to its salary chart and my recompilation thereof, the horizontal arrangement/match-ups for the salary figures are the same on both charts. However, my version of the chart uses the same 11-step numbering system that appears in the salary schedule that was appended to the Tentative Agreement (running from 1+ 2, to 2 through 11); whereas the School Committee chart seems to have a 12-step scale (although the same figure appears on steps 1 & 2 in year 1); and only 10 steps have salary figures during years 2 and 3 (with the top two steps being left empty; thus, the salary numbers for those two years appear on lines 3 through 12 of the chart (as opposed to lines 2 through 11 on my re-compilation).

BACKGROUND

The parties were subject to a three-year collective bargaining agreement covering the three school years from 2003-04 to 2005-06. That agreement included a basic salary schedule (then numbered as Article 24.A), which included three columns (one for each year of the contract) and which had 12 vertical steps. During the third year of the contract, the pay ranged from \$32,774 at Step 1 to \$63,747 at Step 12.⁴

The negotiations for a successor agreement commenced in the spring of 2006 and were concluded by September 1. The School Committee's Chief Negotiator was Joseph Rotella, Esq., who serves as the Director of Administration/Legal Counsel. The Union's team included NEARI representative Jerome Egan, Union President Rod McGarry, Vice President Jacqueline Crowley and several other Union officers or teachers, including Scott Carpenter and Robert Thurston. Egan and McGarry served as co-spokespersons.

Although the negotiations and subsequent mediation included a number of subjects, we will focus on the issue of salary, which is involved in the instant grievance. During the course of the negotiations, the Union proposed two changes in the area of salary. First, the Union wanted to bring the overall pay up to average levels of pay throughout the state (apparently, the

⁴ Under the 2003-06 contract, the salary schedule was increased across-the-board each year. The first-year increase was 4%. Increases of 3.5% were provided in the second and third years.

In some pay schedules, there is a fixed percentage relationship between the vertical steps. In this contract, it appears that there were certain fixed dollar relationships between the steps. At the lower steps (1 to 2 and 2 to 3), relatively smaller increases were provided (\$1,170 as of year 3 – 2005-06). Increases of \$2,341 were the most common (occurring as one went from Step 2-3, 3-4, 5-6, 6-7, 7-8, 8-9 and 10-11). Atypically large increases were provided at two junctures – \$5,852 from Step 9 to 10; and \$6,393 from Step 11 to 12.

pay level had fallen below the state average). Second, the Union wanted to change the structure of the salary schedule, reducing it from 12 steps (an atypically large number) back to 10 steps (a more typical number).

The School Committee was amenable to these changes, as long as the overall increase in salary expenditures could be kept within its budget. Nevertheless, it still took several months for the parties to reach agreement.

Much of the evidence at the instant hearings covered the progress of the negotiations and mediation, including the development of the allegedly mistaken salary schedule that was appended to the tentative agreement, as well as the applicable principles, if any, for the initial salary step placement in year 1 (when the schedule was compressed from 12 steps to 11 steps); and the subsequent placement and/or year-to-year movement during year 2 (when the schedule was compressed from 11 steps to 10 steps); and during year 3 (when the 10-step schedule was being continued). We will address that evidence in chronological order.

A. Union's Opening Proposal (April 11, 2006)

In its opening proposal, presented to the School Committee on April 11, 2006, the Union proposed a new ten-step salary schedule, effective during the first year of the new contract, with pay ranging from \$36,683 to \$66,282 (as compared to the above-noted range of \$32,774 to \$63,747 during 2005-06, under the 12-step schedule). Generally speaking, the monetary difference between the steps was more uniform (at least going from step 1 to step 9, where the differences in pay gradually increased from \$2,590 (step 1 to 2) to \$3,346 (step 8 to 9)). However, just as under the

prior schedule, the largest increase was to the final step – \$6,365 (step 9 to 10).⁵

During the second and third years, the Union proposed across-the-board increases of 4.5%. The Union's proposal did not explicitly indicate the manner in which teachers would be placed on the intended ten-step salary schedule in the first instance, and/or how they would move from year-to-year.⁶

The Union indicated that the selected salaries were intended to bring the teachers up to the state-wide averages (by 2005-06, they had fallen behind at all steps except the maximum step). Also, since 10-step schedules were more typical than 12-step schedules, the Union proposed to change over to a 10-step schedule.

⁵ The evidence did not indicate whether there was any relationship between the new salary figures on the proposed ten-step schedule and the prior figures on the old 12-step schedule. I am unable to discern any obvious mathematical relationship between the two sets of figures.

⁶ The "default," or standard method, in the absence of any explicit agreement to the contrary, would be that all teachers advance one step each year, with newly-hired teachers being placed on Step 1. As applied to a salary schedule being compressed from 12 steps to 11 steps to 10 steps, this would enable the teachers who were at Steps 1-10 during 2005-06 to advance to the next higher step during year 1 of the new contract. However, due to the compression, teachers formerly at Steps 11 and 12 would be unable to advance. Rather, they would remain at, or they would revert to Step 11, the highest step on the new year 1 schedule.

Similarly, during year 2, teachers who were at Steps 1-9 during year 1 would be able to advance to the next higher step. However, due to the compression, teachers formerly at Steps 10 and 11 would be unable to advance. Rather, they would remain at, or they would revert to Step 10, the highest step on the new year 2 schedule.

During year 3, teachers who were at Steps 1-9 during year 2 would advance to the next higher step. However, teachers formerly at Step 10 would be unable to advance. Rather, they would remain at Step 10, the highest step on the year 3 schedule.

The School Committee's basic salary proposal called for across-the-board pay increases of 3½% during each year of a three-year contract. However, as noted previously, the School Committee was not averse to changing the salary structure, as long as the overall expenditure was consistent with the amounts that would be expended under its 3½% per year offer.

B. Mediation (August, 2006)

Apparently, the parties made little progress on the pay issue during the negotiations. By August, the parties entered mediation, under the auspices of mediator John Harrington. The mediator generally used a "shuttle diplomacy" method, whereby the parties assembled in separate rooms, rather than face-to-face, and the mediator brought proposals and counter-proposals back and forth between them.

1. August 22 - Union Proposal – the mediation appears to have started on August 17, 2006. The first pay proposal from the mediation that was presented into evidence herein was that of the Union, dated August 22, 2006, which was presented to the School Committee (by the mediator) that same evening.

Although the salary figures are not the same as those in the final agreement, the proposal includes the same basic salary structure which the parties eventually agreed to – in terms of the number of steps and the phased-in compression of the schedule from 12 steps to ten. The first year has 11 steps. The second and third years have ten steps (albeit with the omitted step at the top of the salary schedule, rather than the bottom⁷). In

⁷ The terms "top" and "bottom," while somewhat confusing, connote the physical location of the steps on the salary charts, rather than the pay. Since the charts are
(continued...)

year 1, the pay would range from \$36,325 (step 1) to \$67,044 (step 11). Thereafter, the range would go from \$41,009 (step 1) to \$70,126 (step 10) in year two; and then to \$44,112 (step 1) to \$73,317 (step 10) in year three.⁸

Since the compression occurs at the bottom of the schedule, in at least one instance, the schedule includes a relatively large year-to-year increase – \$8,526 in going from Step 10 in year 1 (\$61,600) to Step 10 in year 2 (\$70,126). This may have been intended to cover the situation of the former "top step" (or "maxed out") teachers (at Step 12 in 2005-06), who, due to the compression of the schedule, would end up on Step 11 in year 1 and Step 10 in year two. Under this schedule, they would still receive an increase since the year 2 Step 10 pay (\$70,126) was still \$3,082 higher than the year 1 Step 11 pay (\$67,044).

2. Union Proposal - August 23-24 – during the evening of August 23-24, the Union presented another proposal, structured in the same manner as its above-noted August 22 proposal (that is, with 11-steps in year 1 and ten steps in years 2 and 3). However, in this instance, the pay numbers were

⁷ (...continued)

arranged in ascending pay order, the lower-paying steps are at the top of the chart, while the higher-paying steps are on the bottom. In short, notwithstanding the nomenclature, the bottom steps pay more.

The possible confusion in the nomenclature also includes references to the "top step." When that term is used, it connotes the top pay step (applicable to teachers who have "maxed out"). However, perhaps ironically, this top pay step will appear at the bottom of the ascending pay order salary charts.

⁸ Once again, the evidence did not indicate whether there was any relationship between the new salary figures on the proposed 11-step schedule and the prior figures on the old 12-step schedule. I am unable to discern any obvious mathematical relationship between the two sets of figures or between those in year 1 and the two subsequent years.

reduced somewhat. In year 1, the pay would range from \$35,517 (step 1) to \$66,711 (step 11). Thereafter, the range would go from \$40,561 (step 1) to \$69,778 (step 10) in year two; and then to \$44,053 (step 1) to \$72,953 (step 10) in year three.

3. Saturday, August 26 - Multiple Proposals – it appears that the parties had a lengthy session on Saturday, August 26, which included the presentation of two salary proposals by the Union and, perhaps, one salary proposal by the School Committee. The word "perhaps" is used advisedly, insofar as the witnesses disagreed as to whether, in fact, the School Committee's proposal, with a noted time of 9:50 p.m., was actually received by the Union. Before we get to that disputed document, we will consider the two earlier proposals developed by the Union that day.

The Union's 1:00 p.m. proposal was significantly different from its earlier proposals. It presented an 11-step salary schedule for year 1, with detailed explanations of the way the numbers were developed, as well as the way teachers would move from the old 12-step schedule to the new 11-step schedule. There was also a cost-out of the proposal, based on the number of teachers who would be at each step. The proposal also included a column showing the state-wide averages, as well as the difference between the proposed new salary schedule and those averages.

The first 8 steps of the new schedule were based upon identical additions of \$3,000 to the corresponding figures from 2005-06, resulting in figures ranging from \$35,774 (step 1) to \$49,819 (step 8).⁹ The proposal

⁹ However, the proposal had one unusual feature. Although it nominally included a first step, in the concurrent cost-out, none of the teachers were placed on that first step (possibly because it was based upon the existing teachers returning and moving
(continued...)

indicated that much of the compression would occur at the bottom of the schedule, with old steps 10 and 11 being compressed to step 9 for 2006-07. In order to ensure at least a slight increase, the old step 11 figure of \$57,354 would be raised to \$57,362. The old step 12 figure of \$63,747 would be increased by 3½% (\$2,231) to \$65,978. The proposal listed the new figure on the same line as former step 12 (although, since there is no figure listed in the space for step 11, that figure is the eleventh listed pay level on the new schedule). The Union's cost-out indicated that salary costs would be \$23,553,083 – an increase of \$1,315,254 (5.9%) from what it would have cost to implement year-to-year step increases, without any increase in the salary levels.

The Union's 7:00 p.m. proposal returns to the more stripped down format of its earlier proposals – simply including three sets of salary numbers (one for each year), with 11 steps in year 1 and ten steps in years 2 and 3. The salary figures for year 1 were somewhat lower than on the proposal presented earlier that day – ranging from \$34,623 (step 1) to \$65,652 (step 11). The year 2 figures range from \$37,365 (step 1) to \$68,488 (step 10). The proposal does not indicate how these figures were developed. The year 3 figures range from \$38,672 (step 1) to \$71,008 (step 10). The proposal indicates that this represents an increase of 3.5% from year 2 (and there is a mathematical match of the horizontal figures for those two years).

The disputed document is the 9:50 p.m. proposal of the School Committee. It appears to work off of the Union's Step 1 numbers for years 1 and 2 (in the above-noted 7:00 p.m. proposal). Although it retains the same

⁹ (...continued)
to a higher step; if so, only a newly-hired teacher would be placed on Step 1; returning teachers would be placed at Step 2 or higher).

basic structure (11 steps, 10 steps, 10 steps, for years 1, 2 and 3), the numbers at the other steps are somewhat lower than on the Union's proposal, ranging from \$34,623 (step 1) to \$65,000 (step 11) in year one; from \$37,365 (step 1) to \$66,963 (step 10) in year 2; and from \$38,223 (step 1) to \$69,668 (step 10) in year 3. The proposal does not indicate how these figures were developed.

An accompanying chart also explained how the year-to-year step movement would be accomplished, as the schedule was condensed from 12 steps to ten steps. The compression was primarily at the top of the chart (*i.e.*, the lower-numbered, lower-paying steps). During year 1, the first two steps on the old 12-step schedule were merged into the new first step of the 11-step schedule. And by year 2, the first three steps on the old 12-step schedule would have been compressed into the new Step 1 of the 10-step schedule.

Moreover, the traditional method of moving one numerical step higher each year would be halted, and in some cases reversed. This result would certainly be necessary at the top step (at the bottom of the chart), since former Step 12 teachers could be placed no higher than Step 11 during year 1 or Step 10 during years 2 and 3. However, the same result also appeared to be achieved with mid-level salary steps. For example, during year 1, teachers at old Step 8 would seemingly revert to new Step 7, and then to new Step 6 in year 2.

Mr. Rotella indicated that the School Committee proposal called for compression at the top of the schedule (the lower steps), because the higher steps, at the bottom of the schedule, could not easily be compressed due to the fact that many of the teachers, perhaps a majority, were already "maxed

out" at the top step.¹⁰

Mr. Rotella also indicated that this proposal was given to the mediator for transmission to the Union in the same manner as the School Committee's other proposals. Nevertheless, the Union negotiators maintained that they had not seen this particular proposal until it was presented at the instant hearing. Mr. Egan, called as a rebuttal witness, testified firmly and unequivocally that he had "absolutely not" previously seen this proposal.¹¹

Just as the School Committee questioned the credibility of Mr. Egan's testimony of non-receipt, the Union questioned the credibility of Mr. Rotella's testimony as to the delivery of the document. Since the document addressed the issue of step movement/salary placement from year 1 to year 2, the Union asked Mr. Rotella, upon cross-examination, whether it had been cited when the disagreement as to the Year 2 salaries arose. Rotella indicated that he did not then advise the Union that the School Committee's views were supported by the step condensation chart that was included in the August 26, 2006 proposal.

4. August 27 - Union Proposal – the Union's August 27, 2006 proposal is again in the form of a spreadsheet containing 15 columns, which

¹⁰ The Union's subsequent spreadsheets/proposals, which included cost-outs, indicated that 196.9 of the teachers (out of a total of 401) were at the top step (12) (\$63,747) during 2005-06. This was slightly less than a majority (49%).

¹¹ The School Committee objected to this evidence on the ground that an absent party (to wit, the mediator) was the only one with first-hand knowledge of this matter. I overruled the objection, because the intended recipient (the Union team), as well as the mediator, might have first-hand knowledge as to whether the delivery process was completed.

The School Committee also objected on the ground that the testimony would be self-serving (anticipating a negative answer). In my view, however, the possible self-interest of the Union and/or the Union witness goes to the weight of the testimony, but not its admissibility.

included additional information, such as the state-wide averages at each step. The starting point is the old 12-step schedule (for 2005-06). However, rather than "costing-out" the actual 2005-06 salary costs (using the actual number of teachers at each step), the Union did a revised cost-out, increasing each figure by 3.5% – that being the amount of the increase which the School Committee had budgeted for the upcoming year (2006-07). This produced a School Committee-budgeted salary figure of \$22,093,393 for year 1 of the new contract.¹²

In subsequent portions of this opinion, we have used the situation of one mid-level teacher (who was at Step 6 in 2005-06) in order to make the salary issues more concrete (see, sub-section C., p. 42, *below*). At this juncture, it may be useful to focus on where her group of teachers appeared in this section of the Union's proposal – the adjusted cost-out for year 1.

During 2005-06, the Step 6 salary was \$42,137. The Union's cost-out indicates that there were 34.7 teachers at Step 6 during 2005-06. The Union then proceeded to cost-out the amount of pay these 34.7 teachers would receive in 2006-07, assuming they would receive an increase in the amount of 3.5%, as budgeted by the School Committee (this sub-total was part of the above-noted figure of \$22,093,393).

After approximating the SC-budgeted figure for 2006-07, the Union, in the next section of the spreadsheet, made a salary proposal for year 1, which, when costed out, was some \$604,612 higher than the above-noted SC-budgeted figure (totaling \$22,698,005). It ranged from \$34,600 (step 1)

¹² If the budgeted 3.5% increases had not been added in, this cost-out would have reflected the actual costs for 2005-06 – \$21,346,274 – the figure which appeared in the cost-out in the Union's subsequent August 29 proposal (sub-section 6., *below*).

to \$65,650 (step 11). The year 2 figures ranged from \$37,350 (step 1) to \$68,450 (step 10). However, this column included a notation that there would be "no teachers on step one." No figures were provided for year 3.

With respect to our above-noted example (teachers on Step 6 in 2005-06), that group of 34.7 teachers appeared on the sixth line of the Union proposal, with proposed pay in the amount of \$46,750 (and a group sub-total of \$1,622,225, which was part of the \$22,698,005 total cost of the Union's year 1 proposal).

5. August 28 - Union Proposal – this Union "counter-proposal," issued at 8:00 p.m., is in the form of a 9-column spreadsheet that includes references to a School Committee proposal that had been made at 3:50 a.m. on the prior evening (of August 27-28).¹³ The reported year 1 numbers of the School Committee proposal are the same as those in the disputed August 26 proposal (sub-section 3., *above*) – ranging from \$34,623 (step 1) to \$65,000 (step 11). This spreadsheet also references the School Committee's proposals for years 2 and 3 – which, for the first time, included two-part increases during each half of the school year.

Although not stated in the Union's recap, the year 2 numbers in the School Committee proposal represent 2% increases over the prior numbers. However, for reasons that are not altogether clear, the numbers do not line up horizontally. The year 2 chart ('07-08) does not include a figure that represents a 2% increase of the Step 1 pay from year 1 ('06-07) ($\$34,623 + \$692 = \$35,315$). Rather, that pay step seems to disappear from the subsequent charts.

¹³ The written version of that August 28 School Committee proposal, if any, was not presented into evidence.

The figure of \$37,434, which appears as the first step of the first-half schedule for year 2, represents a 2% increase of the Step 2 pay from year 1 ($\$36,700 + \$734 = \$37,434$). This holds true through the final step of the year 2/first half proposal. While there is no figure opposite the \$65,000 figure listed at Step 11 for 2006-07, the Step 10 figure for 2007-08 (one line diagonally above) does represent such a 2% increase ($\$65,000 + \$1,300 = \$66,300$). Thus, if one were inclined to compile a revised or "reformed" version of this proposal, to produce a horizontal match-up between the figures based upon the 2% increases, the ten figures for each half-year or year in years 2 and 3 would have to be dropped one line, to line up with steps 2 to 11 of the year 1 chart (rather than steps 1 to 10).

The Union's counter-proposal for year 1 started with the same number at Step 1 (\$34,623), but then worked itself to a higher number at step 11 (\$65,850).

With respect to year 2, the Union developed a set of figures that were close to those under the 2%+ 2% method advocated by the School Committee. But it was not an exact match. For example, while both the School Committee and the Union were proposing \$36,700 as the second step for year 1, during the first half of year 2, the School Committee would have raised that figure by 2% (producing the above-noted figure of \$37,432, which, as we noted, was placed one line higher than the year 1 number it was based on). In contrast, neither the first line or the second line of the Union's proposal for the first half of year 2 matches that number (the first line is \$37,399, which is close to the CSC number, albeit \$43 less; the second line is \$38,082, which is significantly higher, by \$648).

6. August 29 - Union and School Committee Proposals – on August 29 at 7:50 p.m. the Union presented a consolidated spreadsheet, in 25 columns, which began with a cost-out of the 2005-06 salaries, and then proceeded to recap the two most recent proposals of the parties – including the School Committee's August 28/3:50 a.m. proposal (with the reported CSC numbers the same as those reported in the Union's August 28/ 8:00 p.m. spreadsheet; see, sub-section 5, *above*).

With respect to the prior year's cost-out, this spreadsheet used the actual costs (based on the number of teachers at each step), without adding in any projected increase for year 1 of the new contract (the method that had been used in the Union's August 27 proposal; sub-section 4, *above*). For purposes of our ongoing example, we may note that the group of 34.7 teachers at Step 6 during 2005-06 appears on the sixth line of the spreadsheet. The salary sub-total for the group is listed as \$1,462,153.90 (which is part of the total salary cost of \$21,346,274).

With respect to the three years of the new contract, the spreadsheet included updated numbers reflecting the Union's proposals for each year (albeit, without any cost-outs; it was not until the Union's next proposal, on August 29, that a cost-out of the Union's proposal would be utilized; see, sub-section 7.(b), *below*). For year 1, the Union reduced its Step 1 figure below the School Committee offer of \$34,623 – going down to \$34,000. It then built up to a maximum of \$65,425 (at step 11), somewhat above the School Committee's figure (\$65,000). The year two figures ranged from \$37,365 (step 1) to \$68,488 (step 10), which was \$425 more than the figure in the School Committee proposal.

At this juncture, the Union proposal followed the above-noted percentage structure for years 2 and 3 advocated by the School Committee, whereby two semi-annual increases of 2% would be provided during the first and second halves of those two school years. However, just as in the case of the recap of the CSC figures included on the spreadsheet, there was also a horizontal mis-match between the CTA's year 2/1st-half numbers and the year 1 numbers on which they were based.

For example, on the second line of the year 1 chart, column 6 (or F) indicates the Union's proposed salary was \$36,300. For the first half of year 2, that figure was increased by 2% (\$734) to \$37,434. However, the new figure was not placed on the second horizontal line of the chart (on the same line as the \$36,300 figure). Rather, it was placed one line higher, on the same line as the first year 1 figure of \$34,000. This mis-alignment continued for the other nine year 2/1st-half figures on the chart. They all appeared one line higher than the corresponding year 1 numbers on which they were based.

With respect to our ongoing example – the 34.7 Step 6 teachers from 2005-06 – they appeared on the sixth line of the spreadsheet, with a CTA-proposed year 1 salary of \$46,000 (which also happens to be the final figure, and that which they were paid during year 1, as will be discussed in subsequent portions of this opinion).

The School Committee made a further proposal that same evening, at 8:35 p.m.¹⁴ The figures for year 1 and year 2 were the same as those

¹⁴ An updated version of the School Committee proposal was presented at 10:45 p.m. However, it only made changes in the health insurance co-pays. There were no changes in the salary figures.

previously reported as having been offered in its August 28/3:50 a.m. proposal, as recapped by the Union in its August 28 and 29 spreadsheets/proposals. However, there were different figures for year 3. Rather than the two semi-annual figures reported in its earlier proposals, the School Committee was now proposing a single salary schedule for year 3.

The School Committee proposal was fairly straightforward. It included five columns of numbers. Column 1 was the proposed numbers for year 1. Columns 2 and 3 were the proposed numbers for the first and second halves of year 2. Column 4 was a listing of the year-round average pay for year 2. And Column 5 was the proposed numbers for year 3. The proposal did not list step numbers. But it included 11 figures in the year 1 column, and ten figures in the ensuing columns for years 2 and 3 (possibly mis-aligned, as will be discussed further below).

Unlike the School Committee's earlier August 26 proposal, this August 29 proposal did not include a chart explaining the manner in which the compression (or condensation) would be achieved.

The year 1 figures remained the same as in its earlier proposals, ranging from \$34,623 to \$65,652. The year two/1st-half figures ranged from \$37,434 to \$66,300. The ten figures represent 2% increases to the year 1 pay at Steps 2-11 (the first-step pay disappears from the chart). Notwithstanding the fact that the new figures represented 2% increases of ten of the old figures, the new figures were not lined up horizontally alongside the corresponding figures from year one.

Rather, just as in the Union's above-noted proposals, there was a one-line misalignment, whereby the ten figures for year 2 were placed one line

higher than they should have been, in order to achieve such a horizontal match-up.

For example, the second line of the year 1 chart was \$36,700. That figure was increased by 2% (\$734) to \$37,434. However, the new figure was not placed on the second horizontal line of the chart (alongside the \$36,700 figure). Rather, it was placed one line higher, alongside the first year 1 figure of \$34,623. This mis-alignment continued for the other nine year 2/1st-half figures on the chart. They all appeared one line higher than the corresponding year 1 numbers on which they were based.

The year 3 figures (now for the full year, rather than two halves) ranged from \$38,500 to \$69,317. The basis for these figures was not clear.

7. August 30 - Union Proposal / Tentative Agreement – the parties reached tentative agreement on Wednesday evening, August 30, after the School Committee accepted a Union counter-proposal. However, the process was more complicated than might appear, since it included some joint sessions, in which representatives of the parties discussed the final sets of proposals, including the issues of placement and movement on the salary schedule.

(a) The First Joint Meeting; The Carpenter Charts – by Wednesday afternoon, two of the Union negotiators had analyzed the numbers on the School Committee's most recent proposal (August 29; sub-section 6., *above*). One of them, Rob Thurston, developed a new spreadsheet, incorporating the School Committee's most recent offer, and on which the Union would prepare a counter-proposal (*see*, sub-section (b), *below*).

The other Union negotiator, Scott Carpenter, had prepared handwritten recaps of the School Committee's proposed salary figures, on which he hoped to show the year-to-year salary placement/movement. Carpenter indicated that before the Union formulated its counter-proposal (as part of Thurston's spreadsheet), that the Union team reviewed its understanding of the step placement/movement, using his handwritten document.

The Union team then discussed its views of the step placement/movement with the mediator, who, in the first instance, continued the ongoing "shuttle diplomacy" to determine whether the Union and School Committee shared the same understanding of these issues. Apparently, from the Union's viewpoint, the information and/or answers relayed through the mediator were not fully clear. Thus, the Union requested a face-to-face meeting to discuss the matter.

The mediator agreed to convene such a meeting, which was attended by Carpenter, Union President McGarry and NEARI representative Egan (Rob Thurston, the spreadsheet-preparer remained in the Union caucus room while the meeting took place). Mr. Rotella, attended on behalf of the School Committee, accompanied by Paul Neves, the SC Chairman. The mediator may have also been present (or nearby).

Mr. Carpenter indicated that the meeting took place in a hallway at the administration building. He indicated that he laid out his three handwritten sheets and discussed the step movement/placement with Mr. Rotella, who, at no point, expressed any disagreement with his presentation.

The first page of the Carpenter chart covered year 1. It was in three columns. The middle column included the 11 salary figures from the School Committee's last offer, which Carpenter numbered as Steps 1 to 11. To its

left, Carpenter had placed step numbers from the prior year (2005-06), indicating where the teachers in each group would be going to in year 1 of the new contract (2006-07). In doing so, rather than utilizing the numbers 1 to 12 that were utilized in the 2003-06 collective bargaining agreement, Carpenter re-numbered them as 0 to 11. His chart indicated that the former Step 0 and Step 1 teachers would move to new Step 1; that the former Step 2 teachers would move to new Step 2; *etc.*; culminating with the former Step 11 teachers moving to new Step 11. He acknowledged, that for year 1, the teachers would stay at the same step. With respect to our ongoing example – the 34.7 teachers on Step 6 in 2005-06 – they would appear to have been placed at Step 6 in column 1, where they were slated to remain during year 1 (at the School Committee's then-proposed salary of \$46,315, which was subsequently reduced to \$46,000 in the Union's counter-proposal – the figure that was ultimately adopted).

During the course of the instant hearing, Carpenter suggested that the designation "0" in this first column represented a teacher who was newly-hired for year 1. This suggests that the designation 1 in this column would be a new hire from the prior year, who would have been at Step 1. Carpenter's chart indicated that both the Step 0 and Step 1 teachers would be placed at Step 1 during year 1 of the new contract - \$34,623; *i.e.*, that the compression of the salary schedule would be achieved at the top of the chart. Thereafter, the teachers at the remaining 10 steps (numbered by Carpenter as 2 to 11), would move to steps 2 to 11 of the new chart.

However, the step numbers utilized by Carpenter in the first column ("last year") and the applicable salary figures from that prior year, do not match up with the reported pay increases that appear in the third column of

his chart. Rather, they match up with the original 12 steps that appeared in the salary schedule for 2005-06.

For example, in the first line of the chart, where the compression occurs (teachers at Steps 0 and 1 moving to Step 1), Carpenter indicates that they would receive pay increases of 5% and 2% respectively. These numbers work out if one takes the old Step 1 pay of \$32,774 and the old Step 2 pay of \$33,944. The new Step 1 figure – \$34,623 – does represent a pay raise of 5.6% and 2% for the two respective groups. This suggests to me, that Carpenter's "last year" step numbers are wrong – they are one step lower than they should be.

The point is made more clear at the "last year" second step – which Carpenter shows as moving to new Step 2, in the amount of \$36,700. Carpenter indicates that this movement produces a pay raise of 4.5%. This figure would be correct if one was talking about a prior Step 3 teacher, who was paid at \$35,114. The additional pay ($\$36,700 - 35,114 = \$1,586$) amounts to 4.5% of the prior pay. But that would not hold true under the "last year" step numbers utilized by Carpenter. Step 2 pay for the prior year was \$33,944. If such teachers were moved to new Step 2 - in the amount of \$36,700, this would represent a significantly larger increase – \$2,756 (8.1%).

Or, to use our ongoing example – Step 6 teachers from 2005-06, who received \$42,317 – they are shown as moving to year 1 step 6, at \$46,315, which is listed as a 4.1% increase. However, the \$4,178 increase actually amounts to 9.9% of their prior pay. Once again, this percentage increase would be accurate if it involved the pay from the next higher step on the

2005-06 salary schedule – Step 7 (\$44,478). If that pay had been increased to \$46,315, the addition (\$1,837) would produce a 4.15 increase.

The point is also made clear on the final line of Carpenter's year 1 chart. It shows the prior year Step 11's moving to new Step 11 - \$65,000 - and receiving a pay increase of 2%. That percentage is correct if one considers the prior year Step 12's, who were paid \$63,747. The increase of \$1,253 is 2% of their prior pay. But if the old Step 11's (\$57,354) were moved to new Step 11 (\$65,000), the increase would have been much greater – \$7,646 (13.3%).

In sum, irrespective of the peculiar re-numbering of the prior year's steps in column 1, the Carpenter chart shows the Step 1's and Step 2's from 2005-06 being moved to new Step 1 in 2006-07; and it shows teachers at all other steps (3 to 12) reverting to one step lower (2-11). In the alternative, the seemingly larger increases reflected when one proceeds horizontally may simply reflect the fact that the listed figure is actually the prior year's higher step, increased by the cited percentage – so that the teachers at the middle levels would have enjoyed not only the year-to-year pay increases, but also, the benefits of step advancement.

Thus, in our ongoing example, the old Step 6 teacher going from \$42,317 to \$46,315 in year 1, is really going to the old Step 7, increased by 4.1%, and now known as the new Step 6 (\$46,315). The overall increase of 9.9% consists of a proposed year-to-year increase of 4.1% and 5.8% due to the movement from old Step 6 to old Step 7 (now Step 6).

The year 2 page of the Carpenter chart is difficult to decipher. Again, the middle columns represent a straight recap of the School Committee pay proposal, albeit with Step numbers (1 to 10) being placed alongside the pairs

of figures for the two halves of that year. However, the "last year" step numbers column has numerous over-writes, suggesting that the numbering was changed. The final version does contain 11 steps (the correct number, from 2006-07). However, they are re-numbered as 0 to 1, and then 1 to 9 (with the number 1 seemingly repeated on both the second and third lines of the chart; also, a small number 2, in a circle, appears next to the 1 on the second line, so that the number 2 may also appear on two different lines of the chart).

The year 3 page of the Carpenter chart accurately transcribes the School Committee salary proposal, adding the correct step numbers (1 to 10). But the "last year's" step numbers column is, once again, difficult to decipher. Although there were only 10 steps on the year 2 schedule, Carpenter's chart includes 11 steps, albeit re-numbered as Steps 0-10. It shows the old Step 0 moving to new Step 1. However, in his testimony, Carpenter indicated that this Step 0 line was limited to new hires for year 3.

The year 3 chart also shows a form of compression occurring, involving old Steps 1 and 2 – both of which are moved to new step 2 (even though there was no further compression of the salary schedule from year 2 to year 3). In his testimony, Carpenter indicated that these were the two groups of teachers (so-called "siamese twins") who had been joined together on the year 1 and year 2 charts at last year's steps 0 and 1.

After the first two steps, the year 3 chart shows level movement – old Step 3's go to new Step 3; *etc.*; to the final step where old Step 10's go to new Step 10.

In any event, Mr. Carpenter indicated that after he went through his three charts with Mr. Rotella, he felt that the Union and the School Commit-

tee were on the "same page." After the meeting ended, the parties returned to their separate rooms. Carpenter indicated that he advised the Union team that the parties were on the same page. The Union then began to prepare its counter-proposal, which, as on the prior day, was in the form of a spreadsheet developed by Mr. Thurston.

Mr. Rotella's version of this first meeting, in the hallway, was somewhat different. Although he agreed as to the location, he thought the meeting occurred in the early morning hours of the prior evening's session (August 29-30). If so, this would mean that Carpenter's handwritten step movement charts would have been prepared during the session itself, rather than during the gap between the August 29 session and the August 30 session.

In any event, whether the meeting was at 3 a.m. or 3 p.m. on August 30, it was Mr. Rotella's recollection that he and Carpenter went through the year-to-year step movement (even though the actual salary numbers may not have been finalized at that point). He recalled presenting a School Committee scenario whereby the compression would occur at the top of the schedule (lower-paying steps) rather than at the bottom of the schedule (higher-paying steps) and that the School Committee's presentation was consistent with what was outlined in its August 26 step condensation chart (although he did not indicate that the chart was utilized during the discussion). Mr. Rotella indicated that Mr. Carpenter's handwritten chart was not utilized during the course of this discussion (although, as discussed in sub-section (c), *below*, he indicated that Carpenter may have utilized that chart during the subsequent meeting on the evening of August 30, before the TA was signed).

Even though the step condensation chart of the August 26 proposal was not utilized, Rotella recalled a discussion which referenced the compression of the schedule at the top of the charts. The 2005-06 step 1 and step 2 teachers, who had been compressed into new step 1 of the 2006-07 chart, were referred to as "siamese twins." Thereafter, in year 2 (2007-08), just as on the August 26 proposal, they were joined by the 2005-06 step 3 teachers (who were at new step 2 during year 1) – with all three groups being placed at new step 1 of the year 2 schedule – and referred to as the "triplets." The triplets would be linked not only for year 2, but also for year 3.

When the discussion ended, Rotella indicated that Mr. Carpenter understood the School Committee presentation. Thereafter, the parties returned to their separate caucus rooms and the mediation process continued (including the presentation and consideration of the below-noted Union counter-proposal).

(b) The Union Counter-Proposal – in this instance, Mr. Thurston divided his spreadsheet into three separate pages (one for each year of the new contract). Unlike the prior day's spreadsheet, which began with a salary cost-out for the prior year (2005-06), this one proceeded directly to each year of the new contract, incorporating both the School Committee's last proposal (August 29) and the Union's counter-proposal.

For year 1, the Union proposal started with a "costed-out" recap of the School Committee's last proposal (August 29), with 11 steps ranging from \$34,623 to \$65,500. The cost-out was based on the then-existing status of the 401 f.t.e. teachers in the system. It showed a total cost of \$21,915,490.

In this spreadsheet, the Union placed numerical labels on the 11 steps in the School Committee proposal (which had been un-labeled in the SC

proposal). However, rather than a simple 11-number sequence – *i.e.*, 1 to 11 – the first step was labeled as "1+ 2" and the remaining ten steps were numbered as 2 to 11 (thus, the number 2 appears on both the first and second lines of the spreadsheet).

Each line of the spreadsheet indicated the number of teachers who were at the step. The first step ("1+ 2"), with a salary of \$34,623, had 27.3 teachers listed. This number consisted of two sub-groups that had been listed separately in the recap of the School Committee proposal that was contained in the Union's August 29 spreadsheet/proposal – which listed 13.0 teachers at step 1 (\$34,623) and 14.3 teachers at Step 2 (\$36,700). The two groups were now combined at Step "1+ 2" on the new spreadsheet, so that the teachers previously listed at Step 2 (\$36,700) were now reverting to a lower step of the new schedule (Step 1+ 2, at \$34,623).

However, even at other steps, where two former steps were not being compressed into one new step, similar reversions occurred at all the intermediate steps (from Step 3 to Step 10).

Using our ongoing example of the prior year's group of 34.7 Step 6 teachers, we previously noted that the August 29 spreadsheet had placed them on the sixth line (Step 6) with a prior salary of \$42,137. They would remain on that line during year 1 of the new contract, with their salary increased to \$46,315 or \$46,000 (under the then-existing proposals of the School Committee and Union, respectively).

However, in the August 30 spreadsheet for year 1, that group of 34.7 teachers was placed on the fifth line (new Step 5), with proposed salaries of \$43,790 or \$43,122 (under the then-existing proposals of the School Committee and Union, respectively). Even though they might have been expected

to be placed at the new Step 6 (as they were on the prior proposal), the next group, consisting of 21 former Step 7 teachers, appears on that line.

Also, the cost-outs are done based on the seemingly mis-matched numbers in the groups and the salaries. The cost-outs for the new Step 5 are based on 34.7 teachers being at that step during year 1 (while those for the new Step 6 are based on 21 teachers being at that step during year 1).

This possible mis-match continued through the next-to-last step, which included 20.4 teachers, who were listed at Step 11 on the August 29 compilation (at \$65,000), but were now listed at Step 10 on the August 30 compilation (at \$58,800). It was only at the last step, which included 196.9 "maxed out" former step 12 teachers, that the listed salaries were the same – both compilations indicated that they would receive the new Step 11 pay of \$65,000.

The Union, seemingly working from the School Committee's salary figures, "tweaked" them somewhat, arriving at a salary schedule which would have an almost identical projected cost – ranging from the same starting figure of \$34, 623 at Step 1 to a maximum of \$65,425 at Step 11 (slightly above the School Committee figure of \$65,000). The cost-out of the Union's numbers was \$21,915,485 (\$5 less than that of the School Committee's proposal – which led some members of the Union team to subsequently tell the School Committee team that the Union had saved them \$5).

For year 2, the Union made similar cost-outs of the CSC proposal, as well as its own adjustments thereto (counter-proposals). These figures reflected the parties' seeming agreement to two semi-annual increases of 2% (as in the School Committee's August 29 proposal).

For year 3, the spreadsheet only included the salary figures resulting from another set of 2% semi-annual increases at each of the ten steps. However, there was no attempt to cost-out year 3 (or to show where the various sub-groups of teachers would end up on the year 3 chart, since, by that time, the mixture of teachers at the various steps may have changed due to new hires and/or turnover).

In order to do the year 2 cost-out, the Union's year 2 spreadsheet placed numbers next to the ten listed salary steps in each year – which, from steps 2 to 10, corresponded with their actual sequence on the chart. However, just as the initial step in year one had a dual reference (as Step 1+ 2), the initial step on the year 2 chart also had a dual reference – as Step "0+ 1." In costing out the proposal, the various step groups of teachers were placed alongside the applicable step. The new first step (listed as "0+ 1") was to be for new teachers plus another group of 13.0 f.t.e. teachers.

Although not indicated on the spreadsheet, it appears that the previously combined group of 27.3 f.t.e. teachers at year 1/Step "1+ 2" (13 teachers from "old step 1" and 14.3 teachers from "old step 2" of the 2005-06 schedule) was now being separated out into two sub-groups. The 13 "old step 1's" were placed at Step "0+ 1" of the year 2 chart (along with new hires, if any). However, the 14.3 "old step 2's" were placed at Step 2 of the year 2 chart.

At the ensuing intermediate steps (3 - 9), we find that the prior year's groups were advanced one step at the start of year 2. For purposed of our ongoing example, the 34.7 teachers at new Step 5 during year 1, were placed at new Step 6 during year 2, with cost-outs based on proposed first-

half salaries of \$49,925 or \$49,470 (the latter being the number that was eventually agreed to). Similarly, the 15.6 teachers at Step 8 on the year 1 chart, were placed at Step 9 on the year 2 chart.

The maximum 10th step of the year 2 chart is more complex. It lists 228.8 teachers. During the course of the hearing, Mr. Thurston, who compiled the spreadsheet, indicated that this number consisted of the following three sub-groups from the year 1 chart:

- 11.5 teachers from Step 9 (who would advance one step)
- 20.4 teachers from Step 10 (who could advance no further)
- 196.9 teachers from Step 11 (who had to revert one step)

(c) The School Committee's Acceptance of the Union Counter-Proposal; The Second Joint Meeting – in any event, once the Union spreadsheet was finalized (at c. 9:15 p.m.) it was presented to the mediator for delivery to the School Committee. Some time later, the mediator advised the Union that the School Committee had accepted its counter-proposal.

The School Committee indicated that it reviewed the year 1 cost-out, including the apparent \$5 difference in the overall cost (which, with an overall annual payroll of almost \$22 million, was small change). The School Committee review of year 1 suggested that the Union's cost-out was accurate – if not to the exact dollar, then "quite close."

With respect to year 2, Mr. Rotella indicated that the School Committee did not pay that much attention to the Union's cost-out, including the number of teachers listed at each step, since that year, as well as year 3, would be subject to the same 2%+ 2% semi-annual increases, which made it relatively easy to determine the increase in the overall payroll.

Based on the year 1 numbers, and the perceived agreement as to the latter two years, the School Committee advised the mediator that it would accept the Union's counter-proposal.

Notwithstanding the apparent acceptance of the counter-proposal, the Union caucused once again. NEARI Executive Director Robert Walsh suggested to the Union team that they should go through the numbers with the School Committee once more, just to make certain that everybody had it right. The mediator was advised of the request and Mr. Rotella came to the Union's caucus room, in the presence of the full Union committee.

Mr. Carpenter indicated that he and Mr. Rotella sat at a table in the library and went through the numbers once again. He indicated that they were not working from the Union's last proposal (August 30), or from his handwritten chart that had been utilized earlier that day. Rather, he indicated that they used a regular salary structure sheet – that is a year-by-year salary schedule (similar to that which eventually appeared in the tentative agreement).

According to Mr. Carpenter, he walked through various scenarios of the step placement and movement that would occur for teachers at the various steps. He further indicated that Mr. Rotella did not express any disagreement with the scenarios he presented. The discussion concluded and Mr. Rotella left the room. Carpenter suggested to the Union negotiating team that we were "all set."

Mr. Rotella agreed that the parties appeared to reach consensus as to the way the step placement/movement would be handled; that he thought the parties were on the "same page." (He also suggested, at this relatively

late stage of the negotiations/mediation, that fatigue may have been a factor, which may have caused the parties to believe they had reached consensus when they had not actually done so).

Notwithstanding the perceived agreement as to the salary step placement and movement, the parties did not attempt to address those issues in writing. Other than the salary schedule, the tentative agreement contains no explanation of the rules for salary step placement and movement.

(d) The Tentative Agreement – later that evening, the mediator prepared a tentative agreement which the parties signed.

The mediator, who kept his own "charts" or versions of the salary schedule proposals, prepared a "condensed" version of the Union's August 30 counter-proposal, as accepted by the School Committee. Mr. Rotella recalled it first being presented in a truncated fashion. At first, the mediator presented a chart limited to the year 1 figures. When it appeared that the parties were in agreement as to year 1, he then added the year 2 and year 3 figures.

In any event, the full three-year chart was appended to the tentative agreement (as Ex. IX) which the parties signed later that evening. That version of the chart included a handwritten notation, indicating "final from CTA - 8/30/06 - @ 10:10 P.M." (Mr. Rotella indicated that he made that notation).

The chart had six columns. The first column listed 11 step numbers, consistent with the way they were designated on the Union's proposal (*i.e.*, "1+ 2" followed by 2 through 11). The year 1 salary figures (11 in number)

were in the second column, lined up horizontally with the 11 numbers in column 1.

The year 2 salary figures (in two semi-annual halves) were in the third and fourth columns, which explicitly noted the amount of the semi-annual increases (2%). Similarly, the year 3 salary figures (in two semi-annual halves) were in the fifth and sixth columns (which, again, explicitly noted that the semi-annual increases were 2%).

The mediator's version of the salary schedule followed the "unreformed" version of the chart (as set forth at p. 4, *above*), in which the four sets of ten salary figures for years 2 and year 3 were lined up horizontally with the first ten lines of the year 1 schedule (steps 1-10), rather than being placed one line lower, so that they would line up with the final ten lines of the year 1 schedule (steps 2-11). As a result of this one-line difference, the year 1 and year 2 figures do not line up horizontally in terms of the first of the four agreed-upon 2% pay increases (year 2, 1st half). Rather, the 102% figures are one line higher on the year 2 chart.

For example, the year 1/step 2 pay of \$36,300, when increased by 2% (\$726), would produce a year 2/1st-half pay of \$37,026. However, that figure does not appear alongside the \$36,300 figure. Rather, it is one line higher, representing the initial step of the year 2 schedule, since, as noted previously, the year 1/step 1 pay of \$34,623 was not carried over to the year 2 schedule (if that figure had been increased by 2% - \$692 - it would have been \$35,315; however, there is no such figure on the year 2 chart; rather, as noted above, that chart begins with the figure of \$37,026).

8. September 1 – "Power-Point" Presentation; Union Membership Ratification

On Thursday, August 31 and/or Friday, September 1, the Union negotiating team presented the tentative agreement to the Union membership, which ratified it on September 1.

With respect to the salary schedule, the membership was shown a "power-point" presentation prepared by Messrs. Thurston and Carpenter, which had 15 screens/pages. It included 13 salary movement scenarios for teachers in 13 different groups, which showed their salaries and step numbers for the first year of the new contract, and their salaries, but not their step numbers, for years 2 and 3.

The first screen covered new teachers – that is, those who were not employed during the prior year and who were newly hired for year 1 of the new contract. The screen for this group included the following comment at the bottom:

Essentially, you were hired on step 2 but it is called step one.

But the actual salary figures did not cross-reference the step numbers. The screen indicated that they would have the following salaries at the beginning of each of the three years of the new contract (to make the presentation more compact, I have omitted the mid-year increases during years 2 and 3; also, I have added bracketed references to the step numbers as listed in the so-called "unreformed" version of the salary schedule):

Year 1	\$34,623	[1&2]
Year 2	\$37,026	[1&2]
Year 3	\$41,079	[2]

The next 12 screens covered returning teachers, who were employed at Steps 1 through 12 during the prior school year (2005-06). However, the introductory phrase in each box is somewhat ambiguous, using the following phrase for the first group of returning teachers (those formerly on Step 1):

If you are on step two you are on the new step one.

However, Mr. McGarry indicated in his testimony (which I have paraphrased) that the true meaning of this sentence, as applied to the returning Step 1 teachers from the prior year, was as follows:

If you were previously on Step 1 in 2005-06, so that you would have been slated to move to Step 2 in 2006-07 if no changes in the salary structure had been made, you will be on the new step one for 2006-07.

In other words, the step reference in each box is a "would have been" – the step to which the teacher would have been advanced if the 12-step schedule had been retained, instead of being compressed to 11 steps.

Each of the remaining screens was intended to include a similar reference to the seeming reversion or retention at a lower step during year 1. However, as will be discussed momentarily, an error appears to have been made with respect to the listed salaries (and the corresponding step) for returning Step 5, 6, 7 and 8 teachers).

The intended scenarios were done correctly (from the Union's view-point) in the screens covering the returning Step 1, 2, 3 and 4 teachers. For example, the Step 2 teachers, who would have advanced to Step 3 if a 12-step schedule had been retained, were advised that they would be on the new Step 2. And the returning Step 3 and 4 teachers were advised that they would be on Steps 3 and 4, respectively.

One such screen (for the returning Step 2 teachers) indicated as follows (with bracketed step numbers added and with the mid-year salaries for years 2 and 3 omitted):

If you are on step 3 you are on the new step 2

- 06/07 \$36,300 [2]
- 07/08 \$41,585 [3]
- 08/09 \$45,761 [4]

The four-year pattern of step movement for those teachers would be:

2 - 2 - 3 - 4.

The year-to-year movement for the returning Step 1 to Step 4 teachers showed the following 4-year pattern of step movement (starting with the prior year and then based on the salary numbers indicated on the screen, with the corresponding step numbers taken from the "unreformed" salary schedule):

	1 st yr.	2 nd yr.	3 rd yr.
<u>05-06</u>	<u>06-07</u>	<u>07-08</u>	<u>08-09</u>
1	1+ 2	2	3
2	2	3	4
3	3	4	5
4	4	5	6

It is at this point, however, that an error appears to have been made in the screens for the returning Step 5 to Step 8 teachers (although, as discussed *below*, the error was not detected until the first new paychecks were issued). If the same pattern had been followed as for the three groups above (Steps 2 to 4), they would have stayed at the same step in year one, and then advanced one step in years 2 and 3, which would have appeared as

follows:

	1 st yr.	2 nd yr.	3 rd yr.
<u>05-06</u>	<u>06-07</u>	<u>07-08</u>	<u>08-09</u>
5	5	6	7
6	6	7	8
7	7	8	9
8	8	9	10

In actuality, however, when the screen for the returning Step 5 teachers was prepared, even though the introductory phrase indicated that they would be on the new Step 5, the compilers inadvertently skipped over the new Step 5 salary (\$43,122) and inserted the next higher number – \$46,000, which corresponds to new Step. 6. The apparent error was corrected in year 2, when they were shown with a Step 6 salary (\$49,470). The same error was carried through the next 3 steps. Although the introductory phrase indicated that the returning Step 6, 7 and 8 teachers would be on the new Step 6, 7 and 8, respectively, the year 1 salary figures were one step higher, corresponding to that for new Steps 7, 8 and 9, respectively. The year-to-year step summary is as follows:

	1 st yr.	2 nd yr.	3 rd yr.
<u>05-06</u>	<u>06-07</u>	<u>07-08</u>	<u>08-09</u>
5	6	6	7
6	7	7	8
7	8	8	9
8	9	9	10

Thus, while they were on the correct salaries/steps (from the Union's viewpoint) as of years 2 and 3, their year 1 salaries were one step higher than they should have been (which, as discussed in sub-section C., *below*,

led to certain complaints when the Step 5-8 teachers received paychecks lower than they expected at the start of year 1).

The remaining four screens, covering the returning Step 9, 10, 11 and 12 teachers, appear to be error-free (based on the Union's understanding of the TA). During year 1, these screens show the returning Step 9, 10 and 11 teachers being placed at new Steps 9, 10 and 11 (their subsequent advancement during years 2 and/or 3 would have been capped, because Step 10 was the new maximum step). The screen for the returning Step 12 teachers "TOP STEP") was somewhat different. It only included the maximum salary figures for each year of the new contract (Step 11 in year 1; Step 10 in years 2 and 3).

C. The Salary Placements for Year 1 (2006-07)

Payroll Director Dennis Belleville utilized a spreadsheet with an alphabetical listing of all the teachers to accomplish the pay "roll-up" for the first year of the new contract. He indicated that the "step" column for 2006-07 was done "automatically" – that is, the returning teacher was advanced to the next step (unless they were already at Step 12, the old top step). It appears that this column was prepared before the year 1 salary schedule was compressed to 11 steps. Teachers who were at old Step 11 during the prior year, were shown moving to Step 12 for 2006-07 (even though that step no longer existed).

Belleville indicated that the seemingly improper step numbers for year 1 were converted to the proper pay levels by adjusting the pay levels one step downward – so, for example, the old Step 11's, who would have advanced to old Step 12 (if the salary schedule had not been compressed), were placed on new Step 11.

In order to make the salary issues more concrete, as the Union did in its briefs, we will focus on the case of the first teacher who appears on the alphabetical salary spreadsheets utilized by the School Committee – Marilyn Ackaway, an English teacher, who was hired as of the 2000-01 school year and in her sixth year and placed on Step 6 of the salary schedule during the third year of the old contract (2005-06) – with a salary of \$42,137.

For 2006-07, she would have moved to old Step 7. Indeed, that is the number which appears in that column on the School Committee's roll-up spreadsheet. However, pursuant to its above-noted understanding of the way the salary compression was to be accomplished, the School Committee treated the old Step 7 as the new Step 6, which gave Ms. Ackaway a salary of \$46,000 for year one.

The first paycheck reflecting the newly-negotiated pay rates was issued on September 15, 2006.¹⁵ Although the "old step" to "new step" method utilized by the School Committee was consistent with the Union's understanding of the salary placements for year 1, it appears that some of the middle-step teachers thought otherwise – seemingly due to the misinformation they had received in the Union's above-noted partially-erroneous power-point presentation (sub-section B.8, *above*). Some of these teachers complained to the Union and/or the administration. This led to a September 20 meeting between Union President McGarry, Mr. Rotella, and Mr. Belleville.

When the issue arose, the Union had reviewed its prior "power-point" presentation and realized that an error was made (involving former steps 5-8, which were supposed to become current steps 5-8). Mr. Thurston prepared

¹⁵ The first paycheck of the school year was issued two weeks earlier, on September 1, 2006. However, that was too soon for the new rates to be incorporated.

a "simplified" spreadsheet showing the salary movement at all prior 2005-06 steps throughout the three years of the new agreement. At the first two mid-level steps that were involved in the September, 2006 disagreement, the following movement (corrected) was indicated (although, to make it more compact, I have omitted the 2nd half figures for years 2 and 3, as well as the final pair of columns, showing the overall pay increase over the three years of the contract, in dollars and as a percentage):

<u>2005-06</u>		<u>2006-07</u>		<u>2007-08 (1st half)</u>		<u>2008-09 (1st half)</u>	
step	\$	step	\$	step	\$	step	\$
5	39,796	5	43,122	6	49,470	7	54,122
6	42,137	6	46,000	7	52,020	8	59,693

This corrected chart, as applied to our above-noted example (Ms. Ackaway), indicated that she would move from old step 6 (\$42,137) to new step 6 (\$46,000); and thence to new steps 7 and 8 in years 2 and 3.

Mr. McGarry indicated that he used this spreadsheet during the meeting and that as he went through the step movement set forth therein, there appeared to be no disagreement between the parties. With respect to the immediate issue – the pay for 2006-07 – the Union agreed that the School Committee had placed all the teachers on the appropriate steps. Thus, the matter was viewed as resolved.

It was not clear from Mr. McGarry's testimony whether the parties also reviewed and/or discussed the salary placements for years 2 and 3 (which were also included on the spreadsheet).

Mr. Belleville indicated that during the meeting, the School Committee utilized his roll-up spreadsheet,¹⁶ as well as the salary schedule from the

¹⁶ That version of the roll-up spreadsheet had a "print-date" of September 19,
(continued...)

tentative agreement (Ex. IX, thereto). However, handwritten versions of the corrected step numbers had been placed on the first column (year 1), as well as the middle column (year 2).

The year 1 numbers (added by Mr. Rotella) indicated the old steps to which the teachers would have moved if the schedule had not been changed (the same step numbers that were in the '06-07 column of the roll-up spreadsheet). On the first line, this indicates that teachers who would have been at old Steps 1 and 2, would be at new Step 1+ 2; that those who would have been at old Step 3 would be at new Step 2; *etc.*. These handwritten corrections or translations for year 1 are not disputed by the Union.

In addition to this step number analysis, Mr. Rotella indicated that he suggested to the Union that another method be utilized, ignoring the step numbers. He suggested that they should simply "follow the money;" that is, take an individual teacher and look at the year-to-year salary numbers, which, irrespective of the step numbering, would still show year-to-year increases consistent with what the School Committee believed had been agreed upon (including the 2%+ 2% increases during years 2 and 3).

The year 2 numbers on the chart (added by Mr. Belleville) appear to be an attempt to place the new year 1 steps next to the corresponding steps for year 2. The resulting movement is consistent with what I have called the "reformed" version of the pay scale, wherein the ten steps for year 2 line up horizontally with year 1 steps 2-11. Thus, the handwritten numbers indicate

¹⁶ (...continued)
2006 (S.C. Ex. 3). It only went as far as the 2006-07 school year. An updated version of the spreadsheet was given to the Union a year later, in October, 2007, after the instant grievance arose involving the year 2 placements (as discussed further in sub-section E, *below*).

that teachers on Steps 1 and 2 during year 1 would move to the first step (on the 1&2 step line of the unreformed chart); that teachers on step 3 during year one, would move to the third line of the chart (on the step 3 line, which has been re-numbered as 4).

Mr. Belleville indicated that it was his recollection that in addition to the discussion of all the disputed year 1 salary placements, the parties also "walked through" the intended year 2 and year 3 step/salary movement/ placement, by focusing on a half-dozen individual teachers and showing the movement under the above-noted version of the salary schedule, with the administration's hand-written step number additions. He indicated that the Union did not disagree with the School Committee's views of these year 2 and year 3 moves. However, he indicated that the presentation/discussion had not been reduced to writing.

Mr. Rotella also recalled them going through scenarios for the year 2 and year 3 moves, using the one-page salary schedule with the handwritten additions (made by himself and Mr. Belleville). He also suggested that the Union did not disagree with the School Committee's version of the year 2 and year 3 moves.

D. The Unsigned 2006-2009 Agreement

Notwithstanding the above-noted execution of the tentative agreement on August 30, 2006, the parties did not immediately re-compile and sign an integrated version of the full contract. In part, this may have been due to the fact that several issues (apart from salary) had been left open for future resolution.¹⁷ Also, as indicated in sub-section C., *above*, a dispute as to the

¹⁷ The two open unresolved issues are referenced in ¶¶18 (advisor/advisee
(continued...))

year 1 salary placements of some of the teachers had arisen shortly after the TA was signed.

In any event, the Union had drafted an integrated version of the contract by the spring of 2007. Mr. Egan indicated that he presented it to the School Committee on April 12, 2007 (during the course of an unrelated grievance meeting). Although he indicated that the School Committee had not pointed out any perceived errors in the draft, by the same token, he acknowledged that the School Committee had declined to sign it.

Notwithstanding the failure to finalize the outstanding items, or to sign an integrated collective bargaining agreement, Mr. Rotella indicated that the School Committee was not repudiating those portions of the TA that had been agreed to. To the contrary, it was honoring all such provisions, including the agreement as to salary.¹⁸

E. The Salary Placements for Years 2 and 3

In or about September, 2007 (just as a year earlier), Mr. Belleville prepared a salary roll-up spreadsheet for year 2, which included the administration's understanding of the manner in which the salary/step movement/ placement would occur. In this instance, he added a new column for the 2007-08 school year, which, instead of calling for the step number, now

¹⁷ (...continued)
program) and 19 (job pool) of the TA. Mr. Rotella indicated that the parties subsequently reached a tentative agreement on the two outstanding issues and that the School Committee ratified the two TA's. However, the Union membership only ratified one of them (the job pool issue). The agreement on this issue was approved by December, 2006. However, the advisor/advisee program issue remains unresolved. Mr. Rotella indicated that the School Committee was waiting for a Union counter-proposal on that issue.

¹⁸ This is consistent with the position the School Committee took in the 2007 salary arbitration case of an individual teacher (Gail Girolimon). See, p. 53, *below*.

called for the year number. He also amended the '06-07 column to call for the year number, rather than the step number (whereas, the original version of the spreadsheet, prepared in September, 2006, labeled it as the step number). Mr. Belleville indicated that he made the change because the year number and the step number would not necessarily match, due to the compression of the schedule during the term of the new agreement.

Mr. Belleville indicated that the teachers' salaries were determined based on the prior year's step (during year 1), and the School Committee's understanding of the proper movement to the compressed 10-step schedule for year 2 (as indicated in the salary schedule with the handwritten additions, which was presented or discussed in September, 2006, when the apparent dispute as to year 1 arose; see, sub-section C., *above*). This movement, as reflected in the handwritten additions (as well as the "reformed" version of the salary schedule prepared by the School Committee¹⁹), was consistent with the School Committee's understanding that teachers would move to the next higher step, which, during the first half of that year, would have been increased by 2%.

In many instances, this produced a mis-match between the result that appeared to be required by the "unreformed" version of the pay charts (as incorporated in the TA) and the "reformed" version of the pay charts advocated by the School Committee.

To make it more concrete, we will again focus on the case of Ms. Ackaway. As discussed previously, the parties agreed that for year 1 she

¹⁹ As previously noted (p. 6, n. 3), the School Committee version of the reformed salary schedule (Jt. Ex 6A) is essentially the same as the arbitrator's version thereof. Although the step numbers differ, the salary figures, and their horizontal arrangement, are the same.

was properly placed at the new Step 6, with a salary of \$46,000.

The parties disagree as to where she was to be moved during year 2. Irrespective of the salary charts (whether properly aligned or improperly mis-aligned), the School Committee makes the common sense argument that she (just as the other year 1 "Step 6" teachers), should have been moved to the next higher step (however labeled or numbered), which, during year 2 would have been increased by 2% at the start of the school year (to be followed by a further 2% increase mid-way through the year).

On the year 1 chart, the next higher step (the seventh line, numbered as Step 7) had a year 1 salary of \$48,500. The School Committee maintains that as of the first half of year 2, with a 2% increase (\$970), this step would be \$49,470. The School Committee maintains that this is the year 2 step to which Ms. Ackaway should have been moved – notwithstanding the fact that this figure has been placed on the sixth line, rather than the seventh line of the year 2 salary chart. Irrespective of the alignment (or mis-alignment), or the numbering (or mis-numbering), the School Committee maintains that this is the only move that is mathematically correct in terms of the parties' agreement to increase each step in 2% semi-annual increments during year 2 (and year 3).

In contrast, consistent with the above-noted spreadsheet utilized during the September, 2006 salary placement discussions (sub-section C., *above*), the Union maintains that the salary schedule must be followed as it was written and included in the TA – whereby a year 1/step 6 teacher, such as Ms. Ackaway, must be moved to year 2/step 7, which is the seventh line of the year 2 chart, with a salary of \$52,020.

The first paychecks of the school year were issued on September 14, 2007. Shortly thereafter, numerous teachers were aggrieved because they had been placed on the salary schedule at one step lower than they believed they should have been placed (consistent with the Union's interpretation, as embodied in the September, 2006 spreadsheet). On their behalf, the Union filed a grievance challenging the salary placements on September 18, 2007 (Jt. Ex. 3A).²⁰

Once again, the parties met to discuss the matter. During the course of the meeting, Mr. Rotella indicated that he suggested that the issue of the year 2 step placement/movement had been discussed a year earlier, when the apparent disagreement on the year 1 placements emerged, and that the Union had agreed with the School Committee's views of how the year 2 progression should be handled. Apparently, the Union disagreed. Thus, unlike the dispute that initially arose with respect to the year 1 placements, it did not appear that the year 2 issues would be readily resolved.

Nevertheless, after the meeting, by memo dated October 10, 2007, Mr. Rotella forwarded to the Union a copy of the year 2 roll-up spreadsheet, which had been utilized at the meeting, which he asked the Union to review. Notwithstanding any such review, the Union and the teachers still felt that many of the year 2 salaries were incorrect. As a result, the grievance was advanced to arbitration in this proceeding.

During the course of the instant hearing, Mr. Rotella testified as to the additional payroll expenditures that would be required under the Union's

²⁰ A second inter-related grievance was filed two days later, on September 20, 2007. In addition to the improper salary claim, it added a claim involving the School Committee's failure to review and/or sign the integrated collective bargaining agreement for 2006-09, which the Union had presented to it in March, 2007.

views of the appropriate placement/progression. In year 2, the difference between the parties' methods amounts to some \$533,000.²¹

While the matter was pending, year 3 commenced (2008-09). Both parties agreed that the teachers (except those at the top step) were entitled to advance one step during year 3. However, since they disagreed as to the starting point (from year 2), they continued to disagree as to whether the year 3 step placements were correct (as the School Committee maintained), or one step too low (as the Union maintained).

For example, in the ongoing example of Ms. Ackaway, the School Committee moved her from the \$49,470/\$50,459 step in year 2, to the \$54,122/\$55,204 step for year 3. However, since the Union maintains that she should have been on the \$52,020/\$53,060 step for year 2, it also maintains that she should have been moved to the \$59,693/\$60,887 step for year 3.²²

Since the year 3 disagreement is, in essence, a continuation of the disagreement as to year 2, the parties agreed to include those disputed issues in this proceeding (rather than initiating a separate grievance and arbitration proceeding). Thus, a supplemental spreadsheet was presented with respect

²¹ The arbitrator overruled the Union's objection to this testimony, on the ground that it was relevant background information, and that it might also speak to the overall reasonableness of the Union's version of the alleged salary agreement.

²² Under the Union's interpretation, the three-year movement, as also reflected on the sixth line of its September, 2006 spreadsheet (Un. Ex. 11, p. 43, *above*), would have produced an overall pay increase for Ms. Ackaway of \$18,750 (\$60,887 - \$42,137), which is c. 44% of her pay as of 2005-06 (\$42,137) – an exceptionally generous amount (a bit less than 15% per year).

In contrast, under the School Committee's interpretation, the total increase was \$13,067 (\$55,204 - \$42,137), which is 31% of her pay for '05-06 – still a fairly healthy amount (a bit more than 10% per year).

to the year 3 salary placements and the further issues were addressed by the parties in their above-noted Supplemental Briefs.

POSITIONS OF THE PARTIES

The parties' "bottom line" positions as to the correct salary placements for year 2 have been set forth in the Background portion of this opinion – particularly that dealing with the year 2 placements (Section C., *above*). Thus, rather than doing a lengthy recapitulation of the parties' positions, I will do a briefer recap (sub-section B., *below*). I will first summarize their positions on the preliminary arbitrability issues (A., *below*).

A. ARBITRABILITY

Employer –at the outset, the Employer submits that a grievance may not be found substantively arbitrable, where, as here, there is no contract in effect between the parties. The evidence indicated that the parties never finalized their Tentative Agreement. Rather, there is at least one item still outstanding (in addition to the instant salary dispute).

In any event, the School Committee raises two further arbitrability arguments, substantive and procedural, which are somewhat inter-related. The School Committee submits that when questions were first raised about the first year placements on the new salary schedule (an issue that was ultimately resolved), that the parties also considered the year 2 (and year 3) issues – which, from the School Committee's viewpoint, were resolved in accordance with its views. Hence, it submits that there has been an "accord and satisfaction" with respect to the year 2 issues, which renders the instant

grievance substantively inarbitrable. The Union acquiesced to the School Committee's position.

In the alternative, assuming for the sake of argument that there was no such acquiescence on the part of the Union, the Union knew or should have known from the time those discussions occurred (in September, 2006), that the School Committee would be advancing teachers from the year 1 salary schedule to the year 2 schedule in a way which was less advantageous than the Union believed to be appropriate. In short, Union President McGarry knew where teachers would be placed on the salary scale during year 2. Since the Union was aware of this allegedly disadvantageous salary treatment by September, 2006, it was obliged, pursuant to Article 21.D.2.b.(1), to file a written grievance within 30 days thereafter. Instead, it waited a year – until September, 2007. That grievance may not be regarded as timely. Thus, the matter is not procedurally arbitrable.

Union –at the outset, the Union asserts that the School Committee has waived its right to assert procedural and/or substantive arbitrability claims, by virtue of its failure to raise the issues when the grievances and/or demand for arbitration were filed (in September to October, 2007); or at any time before the hearing. Instead, the issues were raised for the first time at the hearing.

Even if the arbitrability issues were to be reached, the Union denies that they are valid. In the first instance, with respect to the existence of a binding agreement for 2006-09, the Union argued during the hearing (if not in its post-hearing brief) that the School Committee is estopped from raising that issue due to its prior recognition of the validity of the new contract, as exemplified by its participation in a prior grievance-arbitration proceeding

involving a different salary dispute (involving one individual teacher – Gail Girolimon) which arose during year 1 of the new contract. **Cumberland Teachers' Ass'n & Cumberland School Committee**, AAA Case No. 11 390 00568 07 (Pendergast, 2008) (Jt. Ex. 9B). During the course of that proceeding, the School Committee did not raise an arbitrability issue and it acknowledged the existence of a binding agreement for 2006-09 (as indicated in the transcript of the hearing; Jt. Ex. 9A).

* * *

The Union, while acknowledging the September, 2006 discussions regarding the salary issues, denies that there was a resolution of the issues sufficient to constitute an "accord and satisfaction." Thus, it denies that such an "accord" rendered the instant grievance substantively inarbitrable.

Nor did the September, 2006 discussions demonstrate that the instant grievance is procedurally inarbitrable (untimely). During the course of the discussions, the parties did reach agreement as to the year 1 salary placements. But with respect to the intended year 2 placements, it appears that both parties left the meeting with the understanding that their own divergent views of the year 2 salary movement were correct. Certainly, the School Committee did not make it clear that it intended to violate the new agreement during year 2 by placing teachers on the wrong step.

Since Union President McGarry left the September, 2006 meeting with the understanding that the Union's interpretation was correct, without being advised of the contrary interpretation of the School Committee, he was not then required to initiate a grievance with respect to the year 2 salary placements, which would not actually be made for another year. Indeed, it was not until the first paychecks were issued for year 2 that the Union knew, for

the first time, that an actual dispute existed regarding the step movement from year 1 to year 2. Thus, the September, 2007 grievances were timely filed and the procedural arbitrability claim should be dismissed.

B. MERITS

Union –the Union submits that its views of the year 2 (and hence, year 3) step movement is supported by the language of the agreement, including the new salary schedule, and Article 5.C, which recognizes the traditional or historical model of step movement, whereby rehired teachers are to be given credit for the year they just completed (assuming they satisfied the minimum days requirement which is not at issue herein) and advanced to the next higher salary step number.

The Union recognizes that for year 1, there was an agreement (albeit limited to that year), to depart from the historical/traditional model. The parties agreed that teachers at a given "old" step number during the last year of the prior contract (2005-06), would remain at the same numbered step on the new schedule (*e.g.*, a teacher at old step 6 during the prior year, would be at new step 6 during year 1).

However, the evidence failed to establish any agreement to such a departure from the historical/traditional model of step advancement from year 1 to year 2 (or from year 2 to year 3). In the absence of such an agreement, the step advancement must proceed as normal, *i.e.*, to the next higher-numbered step (*thus*, continuing with the prior example, a teacher at new step 6 during year one would be advanced to new step 7 during year 2).

Moreover, this very movement from year 1 to year 2 is just what was reflected in the Union's final salary proposal (August 30), which the School

Committee accepted. In addition to the cost-out for year 1 (which is not now in dispute), that proposal included a cost-out for year 2 which shows the number of teachers at each step, and which thereby expressly depicts their year 1-to-year 2 step movement. For example, the 10 teachers on Step 2 (\$36,300) during year 1 were to progress to Step 3 (\$41,585) during year 2; and the 24 teachers on Step 3 (\$38,710) during year 1 were to progress to Step 4 (\$43,984) during year 2; *etc.*

The lower salary placements made by the School Committee during year 2 were based upon a unilateral re-numbering of the steps contained in the salary schedule (Ex. IX to the TA). Yet apart from the unilateral nature of the changes, the School Committee failed to follow the annual advancement principle as applied to its new numbers.

In Mr. Belleville's year 2 roll-up spreadsheet, the step numbers were changed to year numbers. This change did not affect the teachers' pay during year 1, which was in the correct dollar amount. However, after placing them on the correct dollar amounts for year 1, the School Committee unilaterally lowered the step numbers by 1; and, during year 2, it used the unilaterally re-numbered steps for purposes of advancement, resulting in step placements that were one step lower than they should have been.

For example, in the ongoing case of Ms. Ackaway, she was correctly paid \$46,000 in year 1, which was new Step 6, but which Belleville re-numbered as Step 7 (or Year 7) on the year 2 roll-up spreadsheet. If such a re-numbering was appropriate, consistent treatment should have been afforded during year 2. Ms. Ackaway should have been advanced to Step 8/Year 8 – at a pay of \$52,020. Instead, she was left at Step 7/Year 7 in the amount of \$49,470 – one step lower than she should have received.

In sum, all teachers on those intermediate steps were advanced one step in name only from year 1 to year 2. Notwithstanding the nominal advancement, their salaries were one step lower than they should have been. They were advanced one step on paper, but paid at the prior year's salary step level. This means that even in accordance with its questionable re-numbering of the steps (something that the Union was not even aware of, until this hearing), the School Committee failed to progress teachers from their year 1 steps to the next step of the year 2 scale.

Since there was no agreement to such unconventional movement (or more accurately, non-movement) during year 2 (as opposed to year 1, where there was such an agreement), the School Committee was unable to provide an explanation for what it did, even under its own unilaterally-imposed step system.

It is also apparent that the School Committee's interpretation effectively re-writes the parties' admitted agreement to replace the old 12-step pay scale with a 10-step pay scale. Under the School Committee's transitional rules, both new teachers and teachers at intermediate steps do not reach the maximum step until their 12th year of employment. For example, under its views a teacher at Step 5 in year 1 will take seven more years to get to the stop step (12 years in total), notwithstanding the fact that it purports to be a 10-step schedule.

Employer —the School Committee denies that the documentary and testimonial evidence presented at the instant hearings supports the Union's version of step movement/placement for year 2 (or year 3). At most, that evidence reflects either (1) a mutual mistake (in the actual construction of the

salary schedule) which should be reformed in accordance with the School Committee's views, in order to meet the parties' true intentions; and/or (2) an ambiguity in the contract, which based upon the negotiating history, should be interpreted in accordance with the School Committee's views.

The School Committee suggests that the Union, based upon imprecise drafting by the mediator, is attempting to grab additional salary monies (more than \$500,000 per year) to which teachers are not entitled. Nevertheless, its witnesses at the hearing were unable to present a credible explanation supporting its salary movement scenarios.

The School Committee submits that the evidence demonstrates no clear meeting of the minds as to how the movement from year 1 to year 2 should be handled. However, the proper rules for that movement may be determined by applying two principles or points. First, the parties agreed that the salary schedule would be compressed at the top, rather than the bottom. Thus, if there is to be an empty line on that schedule when the compression occurs, it should have appeared at the top of the chart, rather than the bottom (as in the mediator's draft, which was attached to the tentative agreement). Second, the year 1 salary figures (which were agreed upon), should be examined in light of the 2%+ 2% semi-annual pay increases which the parties agreed to provide during years 2 and 3. There should be a horizontal match-up between the year 1 figures and the corresponding increased figures for years 2 and 3 (whereas, on the mediator's draft, there was a one-line mis-match). The School Committee notes that the Union had no response or answers to this so-called "2% discrepancy."

The School Committee submits that the Union's contrary interpretation results in unusually large pay increases from year 1 to year 2, ranging as high

as 15.7% in some cases – a figure far greater than what the parties negotiated, intended or agreed to.

The School Committee denies that the Union's position can be established on the basis of the conversations with Mr. Rotella on the final day of the negotiations (August 30). During the first conversation/meeting, Mr. Carpenter was working from his altogether confusing handwritten charts, which included numerous changes and over-writes. During the second meeting, Carpenter claimed they ran through a number of salary/step placement/movement scenarios, and yet there is absolutely no documentary evidence indicating what may have been discussed.

In sum, the School Committee submits that it correctly determined the teachers' salary/step movement/placement during year 2 (and hence, year 3) of the new contract, in accordance with its reformed version of the salary schedule, in which the year 2 and year 3 figures are moved one line down (leaving the top line of the chart vacant). Thus, the grievance was properly denied.

DISCUSSION and DECISION

I. ARBITRABILITY

A. Waiver Due to Delayed Assertion

Certainly, it is better practice for an employer to assert inarbitrability claims as soon as possible, so that the union may make an intelligent decision as to whether to commit its resources to attempt to arbitrate an issue that may not be subject to arbitration. "Springing" such a claim at the last minute deprives the union of such an opportunity.

However, irrespective of whether it constitutes good or bad practice, since substantive arbitrability claims are generally viewed to be "jurisdictional" in nature, the courts generally view them as being non-waivable. Hence, they can be asserted at the last minute.

As I understand it, however, the case law with respect to claims of untimeliness (procedural arbitrability) are not strictly jurisdictional and they may be waived by non-assertion or delayed assertion (in effect, a claim of untimeliness may not be asserted in an untimely manner).

Applying these principles herein, it would be my conclusion that the substantive arbitrability claim(s) were not waived, but that the procedural arbitrability claim was waived. However, out of an abundance of caution, rather than making a square ruling to that effect (*i.e.*, that the procedural arbitrability claim was waived), I will assume for the sake of argument that it was preserved and it will be considered (in sub-section C., *below*).

B. Substantive Arbitrability

1. The Existence of a Contract

In the present context, this issue is somewhat of a red herring. Irrespective of the existence of one seemingly unresolved issue (the advisor/advisee program ; *see*, pp. 45-46, n. 17, *above*), the parties have treated all the other provisions of the Tentative Agreement for 2006-09 as valid and binding. Although the meaning of the salary schedule is disputed, the parties do not disagree that it was ratified by both sides.

Even if there were any doubts, *ab initio*, as to the existence of a valid and binding agreement, they were dispelled when the year 1 salary grievance of Ms. Girolimon proceeded to arbitration in 2007-2008. In that proceeding,

the School Committee did not assert a substantive arbitrability claim due to the alleged lack of a valid and binding collective bargaining agreement for 2006-09.

Indeed, to the contrary, when the subject came up during the course of the June 12, 2007 hearing, the existence and validity of the agreement was reaffirmed. During that discussion, the Union advocate (Mr. Egan) suggested, notwithstanding the admitted failure to sign and print up a booklet with the integrated agreement, that the tentative agreement had been ratified by both parties and that it was binding. The arbitrator then stated his understanding of the matter, indicating that "the parties recognize there is a binding agreement between them in effect now." The School Committee advocate (Mr. Rotella) responded "yes." (Tr., pp. 7-8; Jt. Ex. 9A).

In sum, I conclude that there is a valid and binding contract. Thus, the grievance is not rendered substantively inarbitrable due to the lack of such a contract.

2. The Alleged "Accord and Satisfaction"

It is not altogether clear to me whether "accord and satisfaction" is a defense on the merits, or whether it would render the grievance substantively inarbitrable. In the present context, we need not decide how to categorize the claim, since, on the evidence presented, it cannot be upheld.

The existence of an "accord and satisfaction" must be established by clear and unequivocal evidence. A written agreement would be one way to establish the requisite clarity. An oral agreement might suffice, if it were sufficiently clear.

In the present case, while the discussions demonstrated a clear agreement as to the year 1 salary step placements, the same cannot be said with respect to the year 2 salary step movement/placement. The alleged oral agreement as to year 2 does not rise to the requisite level of clarity. There was a conflict in the testimony as to whether the Union acquiesced to the School Committee's explanation of the year 2 step movement/placement; or whether the School Committee acquiesced to the Union's explanation.

In either event, it appears that both Mr. Rotella and Mr. McGarry left the September, 2006 meetings with good faith beliefs as to the validity of their respective, yet divergent understandings of what the agreement required. Thus, as to year 2, the evidence suggests that they were like ships passing in the night, rather than two individuals who had reached an "accord" as to how those issues would be handled.

C. Procedural Arbitrability

This arbitrability claim is also based upon what occurred during the September, 2006 discussions involving the year 1 salary placements – and, seemingly, some further discussion of the year 1 to year 2 salary step movement/placement.

Assuming, for the sake of argument, that those discussions as to the year 2 issues were clear and unequivocal, and that they demonstrated that the School Committee was intending to advance the teachers during year 2 in a less advantageous manner, the Union might well have been permitted to file a so-called "anticipatory" grievance; that is, a grievance in anticipation of an expected contract violation which had not yet occurred.

On the other hand, in my view, the filing of such an "anticipatory" grievance, while permissible, would not have been mandated. Rather, the Union would have had the option of waiting (as it did here), to see whether the issue might be resolved before the event occurred. If not, the Union would retain the option to file a grievance when the actual event occurred – in this case, in September, 2007, when the payment of the allegedly improper amounts of pay were first made for year 2.

Thus, even assuming that the School Committee's position as to year 2 had been clearly and unequivocally stated during the September, 2006 discussion, the Union's grievance would not be time-barred.

In actuality, however, as indicated in the discussion of substantive arbitrability/"accord and satisfaction" (B. 2, *above*), the September, 2006 discussion was quite the opposite of clear and unequivocal. As a result, the Union was not on fair notice when it left those discussions that it should expect the allegedly adverse salary treatment which would occur a year later. Thus, the Union was not obliged to file a grievance at that time.

In sum, under either of the two above-noted prongs of analysis, the instant grievance was timely filed and is procedurally arbitrable.

II. MERITS – THE CONTRACTUAL PROPRIETY OF THE YEAR 2 SALARY PLACEMENTS

Article 5.C of the contract embodies what the Union has termed the "traditional" method of step movement. It indicates that returning teachers shall be given credit for the school year they have just completed (assuming they satisfied the 135-day requirement) and "placed on the next salary step" during the next school year.

This provision is clear and unambiguous as applied to a salary schedule which includes the same number of steps during each year of the agreement – as was the case under the parties' prior agreement (2003-06), when a 12-step scale was utilized during all three school years. The provision becomes somewhat unclear and ambiguous as applied to a salary schedule which has different numbers of steps during the term of the agreement – as is the case under the parties' current agreement (2006-09), which effectuates a compression of the salary schedule to 11 steps in year 1 and ten steps in years 2 and 3.

Where, as here, the parties negotiate a compression of the salary schedule, they should also address the issues that are involved in making the transition to the new structure. The instant parties realized that the transitional issues were significant. Thus, they were discussed several times during the course of the negotiations/mediation. Unfortunately, however, the parties did not see fit to embody the agreed-upon transitional rules, if any, in writing.

Fortunately, the absence of a written transitional agreement did not prevent the parties from implementing their joint understanding of the appropriate moves during the year 1 transition, when the 12 pre-existing steps were compressed to 11. Although there were some problems, seemingly due to the Union's partially-erroneous power-point presentation, they were soon resolved.

In year 2, the salary structure was compressed further – from 11 steps to ten. In this instance, the disagreement as to the year 2 transitional moves could not be resolved. In the absence of a written agreement as to

the transitional rules, the parties have made divergent arguments as to the correct way to handle that transition.

I have reviewed the evidence as to the negotiating history in considerable detail – hoping that it would provide some reliable or objective indication of the parties' mutual intention. Notwithstanding that extensive review, I have not found any clear and direct indicator of an agreed-upon rule for the year 2 moves.

The School Committee's August 26 proposal, for the first time and the only time, included a chart showing the manner in which the condensation of the schedule from 12 steps to ten steps would be effectuated. However, since the Union did not appear to receive that proposal, and since that proposal did not form the basis of the tentative agreement, I am unable to conclude that it establishes an agreed-upon understanding as to how the movement would occur.²³

The Union, just as the School Committee, suggests that its version of the step movement was confirmed during the two face-to-face discussions which occurred on August 30, the final day of the negotiations, as well as the available documentation that was used during the first of those discussions – namely, the handwritten notes of Mr. Carpenter. However, for the reasons indicated in Background Section B.7.(a), I do not believe that the handwritten charts utilized by Mr. Carpenter during the first such meeting were sufficiently clear to establish a meeting of the minds as to the Union's

²³ This assumes that the movement shown in that chart corresponds to the School Committee's current position. However, that is not altogether clear. As indicated in Background Section B.3 (p. 14, *above*), the School Committee chart appeared to call not merely for horizontal year-to-year movement (rather than diagonal movement to the next higher numbered step), but in some cases, backward movement. This appears to be contrary to the School Committee's current position.

current interpretation. Rather, it appears that both parties retained their own subjective and divergent understandings of the way those moves should be accomplished.

Notwithstanding the seeming absence of direct agreement on this point, there are a number of factors (or "clues") that may assist us in unraveling the mystery. Certainly, the salary structure itself may be viewed as a primary source. However, in this instance, I tend to agree with the School Committee, which has suggested that the figures for years 2 and year 3 were not properly lined up with the corresponding source figures from year 1. As a result, this "clue" cannot necessarily be viewed as an accurate indicator of the correct moves.²⁴

In my view, after all is said and done, the most reliable and the most objective indicator of the parties' intention may be found in their agreement to move the teachers "horizontally" during year 1 (e.g., from old Step 6, to new Step 6) and to then increase the year 2 pay by 4% (in two semi-annual increments of 2%). By following the agreed-upon year 1 pay figures, as they are increased by 4% during year 2, we may determine what constitutes the next higher step.

²⁴ Interestingly enough, it was not the mediator who first mis-aligned the year 2 and year 3 figures on the salary chart. The first such mis-alignment occurred in the Union's August 28 proposal (Background Section B.5, *above*) and it was continued in the penultimate Union proposal of August 29 (Section B.6) and the final Union proposal of August 30 {Section B.7.(b)}. Moreover, the School Committee itself included such a mis-alignment in its August 29 proposal, in which the empty or vacant line for years 2 and 3 is at the bottom of the chart, rather than the top (Section B.6). This may have occurred because it was working from a mis-aligned salary schedule previously proposed by the Union.

In short, if "blame" for the mis-alignment is to be assessed, it is not fair to place it all on the mediator. He was working from the parties' proposals which included similar mis-alignments.

In contrast, the Union argues that the year 2 pay issue should be resolved by simply applying Article 5.C to the new salary structure, as it appears in the tentative agreement (including the step numbers in the left-most column). It argues in favor of the traditional, historical, standard, or default step movement – which is diagonal, down and to the right.

In the present context, however, I do not believe that the utilization of such a "traditional movement" criterion will necessarily produce the correct result; that is, the result which the parties intended. Rather, as discussed further below, I believe it would produce a disproportionately high pay increase for the teachers, whereby they would move up two steps, rather than one step, during a single year. Based upon my review of the negotiating history, I am unable to conclude that the parties intended to provide such a "double-bump" during a single year.

The Union's "traditional movement" principle does prove correct in the context of a contract with the same number of steps from year-to-year. In such a case, the contractual phrase – "placed on the next salary step" – means that a teacher who has not already reached the maximum step will move diagonally down and to the right – that is, down one line vertically, to the next higher pay step; and one column over to the right, to the next year of the chart. In such a case, the teacher effectively receives a dual pay increase, consisting of one step of vertical movement, and the negotiated year-to-year pay increase, achieved by horizontal movement to the right.

The Union argues that traditional diagonal movement (down and to the right) is the default mode; that in the absence of agreement to the contrary (such as that which was reached for year 1), this default diagonal movement must be utilized. While I might agree with the Union in a case such as the

prior contract, with the same number of steps, I am unable to do so in the case of the instant contract, where the number of steps differs from year-to-year. Rather, in my view, a determination of what constitutes the "next salary step" involves more than simply moving teachers down diagonally to the right. Before permitting such "down/diagonal" moves to occur, one would have to consider whether, in fact, that movement actually places the teachers on the next higher step of the salary schedule, with the appropriate pay increase that was negotiated for that year of the contract.

Based upon my review of the evidence, I have concluded that the "down/diagonal" movement advocated by the Union for year 2 does not result in teachers being placed on the "next [higher] salary step" for the next year. The rightward movement does correctly give them the negotiated general pay increase for year 2 (2% + 2%). But the downward movement would result in them being placed on the second higher salary step, rather than the next higher salary step.

In contrast, under the so-called "reformed" version of the 2006-09 salary schedule, the "standard" movement – down diagonally to the right – results in step movement, as well as year-to-year general increases, which are consistent with what the parties negotiated.

In my view, however, it is not critical whether we use the original version of the pay schedule or the "reformed" version. In either event, when we seek to determine what is the next higher pay step, the answer is the same – it is the pay step below that which the teacher was on during year 1, as augmented by the general pay increase that was negotiated for year two (2% + 2%).

On the original version of the salary chart, that step is horizontally to the right. On the "reformed" version of the chart, that step is down one line diagonally and to the right.

We may make the matter more concrete by returning to our ongoing example – Ms. Ackaway, who was at Step 6 during the last year of the prior contract (2005-06). The parties agree that during year one of the agreement, she was properly placed on new Step 6, at a salary of \$46,000. As of that year, the next higher step on the salary schedule had a salary of \$48,500 (new Step 7). During year 2, that particular salary figure, after being increased by 2% + 2%, would amount to \$49,740 and \$50,459 during the two halves of that school year. In my view, that is the step to which Ms. Ackaway should have been moved during year two, without regard to where those figures appear on the chart, without regard to how they are numbered, and without regard to whether it produces horizontal or diagonal movement on the chart.

Placing Ms. Ackaway on that step, as the School Committee did, gave her the dual increase which the parties intended – c. \$2,500 due to the vertical movement to the next higher step (\$48,500 - 46,000) and c. \$1,840 from the 4% pay increase ($\$48,500 \times 4\%$).²⁵

In contrast, under the method advocated by the Union, Ms. Ackaway would have received a double-vertical increase, along with the 4% general increase. The "down diagonal" method would have moved her to the year 2

²⁵ I recognize that the actual figures are somewhat different because the 4% increase was provided in two halves (effectively compounding the increase beyond 4%). By the second half of year 2, Ms. Ackaway's pay at new step 6 was \$50,459. This represented an increase of \$4,459 over her year 1 pay, which amounted to 9.7% of her year 1 salary – a fairly healthy increase.

version of the \$51,000 step from year 1 (new Step 8)– which, with the 2% increases, became \$52,020 and \$53,060 during year 2 (albeit, renumbered as new Step 7). Irrespective of the numbering, or the placement on the chart, this \$51,000 step, as augmented for year 2, was two steps away from Ms. Ackaway's year 1 step. The double-step movement would have resulted in a \$5,000 increase (rather than the \$2,500 increase under the School Committee's method), and the 4% general increase would have been worth c. \$2,040 ($\$51,000 \times 4\%$).²⁶

Another way to approach this matter might be to look concretely at the step moves that would get Ms. Ackaway to the maximum. The Union has argued that under the School Committee's scenario, it will still take her 12 years, rather than 11 years or ten years, to reach the maximum step – which it argues is contrary to the fact that the parties agreed to compress the schedule.

However, this argument ignores the fact that the parties agreed that the compression would be achieved at the top of the salary schedule (*i.e.*, at the lower-paying steps). Thus, a teacher such as Ms. Ackaway, who had already passed beyond the lower-paying steps when the new contract was negotiated, would not find her path to the top step accelerated.

As of 2005-06, before the salary scale was compressed, Ms. Ackaway was a member of the class of 2011-12, so to speak, for "top step" purposes.

²⁶ Once again, the actual figures would be somewhat different because the 4% increase was provided in two halves. By the second half of year 2, Ms. Ackaway's pay at new step 7 would be \$53,060. This would represent an increase of \$7,060 over her year 1 pay, which would amount to 15.3% of her year 1 salary – a very hefty increase.

Since she was on Step 6 that year, she would have reached Step 12, the then-maximum, during the 2011-12 school year. Since the compression of the schedule occurred at the top, rather than the bottom, old Step 12 became new Step 11 during year 1, and thence new Step 10 during year 2 (and year 3). Ms. Ackaway will reach new Step 10 (assuming the schedule remains a 10-step schedule) in 2011-12. In my view, this is not contrary to the parties' agreement. Rather, permitting her to reach that step in 2010-11, as under the scenario advocated by the Union, would violate the parties' agreement, since it would be based upon her being given the above-noted "double-bump" during year 2, thereby improperly accelerating her arrival at the maximum step by one year.

This point may be seen more graphically in the following two charts. The first chart shows Ms. Ackaway's expected progression to the top step as of the last year of the old contract and each year of the new contract. In each instance, we have used the step-numbering from the year in question. Alongside each step number, in parentheses, there is another number indicating how many steps she is from the maximum (with "0" indicating that she had arrived at the maximum).

Since the parties agree as to the step placements during the first two years, there is just one column for those years (with Ms. Ackaway's current placement highlighted thus). Since the parties disagree as to the placements for years 2 and 3, their respective views are reflected in the final two pairs of columns.

ACKAWAY – MOVEMENT TO MAXIMUM STEP

	old 12-step <u>05-06</u>	new 11-step <u>06-07</u>	new 10-step per CSC <u>07-08</u> <u>08-09</u>		new 10-step per CTA <u>07-08</u> <u>08-09</u>	
05-06	6 (6)					
06-07	7 (5)	6 (5)				
07-08	8 (4)	7 (4)	6 (4)		7 (3)	
08-09	9 (3)	8 (3)	7 (3)	7 (3)	8 (2)	8 (2)
09-10	10 (2)	9 (2)	8 (2)	8 (2)	9 (1)	9 (1)
10-11	11 (1)	10 (1)	9 (1)	9 (1)	10 (0)	10 (0)
11-12	12 (0)	11 (0)	10 (0)	10 (0)	10 (0)	10 (0)

The first four step columns of this chart, culminating with the placements effectuated by the School Committee during years 2 and 3, produces neat diagonal movement (down and to the right), just as that advocated by the Union under its "traditional" model. In each such year, Ms. Ackaway moves one step closer to the top step, which she reaches in 2011.

In contrast, if we utilize the step numbers advocated by the Union for years 2 and 3 (final two columns of the chart), from year 1 to year 2, Ms. Ackaway goes from being five steps away from the top to being three steps away – again, due to the above-discussed "double vertical bump" under the Union's step movement scenario. As a result, she would reach the top step a year earlier – in 2010, rather than 2011.

The second chart goes through the same scenarios for Ms. Ackaway, but in this instance, I have utilized the salary figures, rather than the step numbers. For years 2 and 3, to make the chart more compact, I have only used the first-half salary figures.

<u>ACKAWAY – MOVEMENT TO MAXIMUM PAY</u>						
	old 12-step <u>05-06</u>	new 11-step <u>06-07</u>	new 10-step per CSC <u>07-08</u> <u>08-09</u>		new 10-step per CTA <u>07-08</u> <u>08-09</u>	
05-06	42,137					
06-07	44,478	46,000				
07-08	46,819	48,500	49,470		52,020	
08-09	49,160	51,000	52,020	54,122	57,375	59,693
09-10	55,012	56,250	57,375	59,693	58,813	61,189
10-11	57,354	57,660	58,813	61,189	66,734	69,430
11-12	63,747	65,425	66,734	69,430	66,734	69,430

Again, the first four numerical columns of this chart, based upon the School Committee's salary scenario, shows neat diagonal movement, with single-step vertical movement in each year. In contrast, if the Union's year 2 and year 3 columns are substituted, although the neat diagonal movement is retained, the year 1 to year 2 movement includes the disproportionately large pay increase (more than \$6,000 by the first half of year 2) that was previously discussed (and rejected as not being indicative of the parties' agreement).

The Union has also suggested that under the School Committee's interpretation, it will still take new teachers 12 years to reach the maximum step. As I understand it, however, by years 2 and 3, when the transition to the ten-step schedule was achieved, newly-hired teachers would reach the top step (10) ten years later. They would be placed in Step 1 during their first year, gain a step each year, and reach the tenth step in year 10.

The Union has also argued that its salary/step placement/movement scenario (including the year 2 double-bump) is implicitly supported by the year 2 salary schedule and cost-out in its final proposal (August 30; Back-

ground Section B.7.(b), *above*). It suggests that page 2 (covering year 2) expressly shows the intended year 1 to year 2 step movement under the traditional model (whereby, for example, year 1 step 6 teachers would move to step 7 in year 2). However, based upon my analysis of the proposal, the numbers do not actually line up that way.

Ms. Ackaway, our ongoing example, was in the group of 34.7 teachers at old Step 6 (\$42,137) during the last year of the old contract (2005-06). The parties agreed that during year 1, she and the others in that group would be at new Step 6 (\$46,000), although the year 1 cost-out in the Union proposal shows otherwise (it shows the group of 34.7 teachers at new Step 5 – \$43,122). This possible error or discrepancy in the year 1 chart is not significant, since, as noted above, the parties agree that this group was properly placed on new Step 6 during year 1.

But the placement of this group of 34.7 teachers during year 2 is quite interesting. They are on the sixth line of the year 2 schedule (new step 6) with a first-half salary of \$49,470 – the very figure which the School Committee claims to be applicable. They are not shown on the \$52,020 line/group (rather, another group of 21.0 teachers, previously at old Step 7 during 2005-06, and new Step 7 during year 1, is listed on that line).

Although Mr. Rotella indicated that the School Committee didn't pay much attention to the Union's year 2 cost-out, even if it had, or even if it was "chargeable with knowledge" as to what was contained therein, the applicable portions of the year 2 spreadsheet hardly demonstrate the double-bump step movement now claimed by the Union. Rather, as noted immediately above, the old Step 6 group of 34.7 teachers (from 2005-06) is shown on the year 2 page of the Union proposal at the \$49,470 step (1st half) and

the \$50,720 step (2nd half) – which is then costed out based on a year round average (\$50,459). Thus, even if the School Committee had examined and analyzed this page of the Union proposal more closely, it would not have learned that this group of 34.7 old Step 6 teachers would be receiving a double-bump (to \$52,020 / \$53,216) during year 2 of the new contract.

* * *

Since I have concluded that the year 2 salary placements effectuated by the School Committee were contractually-proper, it necessarily follows that the year 3 salary placements were also proper.

Newton, Mass.
December 23, 2008

/s/
LAWRENCE E. KATZ, Esq.
Arbitrator

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