

IN THE MATTER OF ARBITRATION BETWEEN:

AMERICAN FEDERATION OF TEACHERS,)	
)	
Union,)	FMCS No. 180426-04018
)	
and)	Re: Certificated Pay
)	
ST. LOUIS PUBLIC SCHOOLS,)	
)	
Employer.)	Arbitrator: Gerard A. Fowler

Appearances:

For the Union:

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OPINION AND AWARD

ISSUE

Did the District violate the parties' agreements in placing newly-hired (or newly-returned) teachers at salaries above the step C salaries set forth in the Agreements' certificated salary schedule? If so, what is the appropriate remedy?

STATEMENT OF THE GRIEVANCE

This matter involves the second part of a bifurcated hearing between the St. Louis Public School District (hereinafter "District" or "Employer") and Local 420 of the American Federation of

Teachers (hereinafter "Union"). An initial hearing was held on August 29, 2018 regarding the issue of whether the Union's grievance is arbitrable. In an Award dated January 4, 2019, this Arbitrator held that the grievance was arbitrable. Hearings were thereafter held on March 5 and 6 and May 3, 2019 on the issue of whether the District violated the parties' agreements and, if so, the appropriate remedy.

POSITION OF THE UNION

The Union submits that the District violated the parties' agreement in three ways. First, in regard to those employees on Union Exhibit 5 who returned to employment with the District after a break in service, the District improperly placed some of them at the step they held at the time the break in service began. Pursuant to the parties' agreement and numerous statements made by the District's representatives, such persons should have been placed no higher than Step C. Further, in spite of the District's claim regarding its alleged consistent practice of placing returning teachers at their prior step, on numerous occasions individuals with breaks in service were returned at steps different from the steps they held at the time of their initial separation.

Second, a significant group of teachers having no breaks in service, and who did not hold CTE or "hard to fill" positions, were placed at above Step C at the time of hire, with no explanation given.

Third, several employees who were purportedly placed at Step C or lower at the time of hire were paid salaries inconsistent with, and greatly in excess of, their step placement. By placing teachers at the incorrect step or salary at the time of hire (or rehire) in contravention of the agreements, the District has created an improper pay gap, thereby violating the rights of comparably-situated teachers who are paid less than these so-called outliers. The requested remedy for the District's contractual violation is to increase the salary of those comparable teachers to the salaries of the outliers.

The parties have entered into a series of collective bargaining agreements known as Policy

Statements. The Policy Statements address the compensation of teachers and other employees whose positions require certification. (See Article XI of the current Policy Statement, Un. Ex. 1, p. 84) The Policy Statements incorporate a "certificated salary schedule" or " pay grid." (The current pay grid is Un. Ex. 4.) The evidence is uncontradicted that such pay grids have been part of the Policy Statements since at least 1993. (August 29, 2018 hearing, Tr. 27)

The pay grid directs the salary placement of newly-hired teachers. It provides that such teachers with 0-3 years' prior experience are to be placed at Step A, those with 4-6 years prior teaching experience are to be placed at Step B, and those with 7 years' or more are to be placed at Step C. (Un. Ex. 4) Newly-hired teachers are not to be placed higher than Step C, regardless of their prior experience. In this regard, Local 420 Labor-Management Liaison John Whisenhunt testified as follows:

Q: Okay. So what if the teacher had eight years prior experience when he or she was hired, where would he or she be placed?

A: No higher than Step C.

Q: And what if the teacher had 28 years of prior service when he or she was hired, where would he or she be placed?

A: No higher than Step C. (August 29, 2018 hearing, Tr. 24-25)

According to the Union, the District has been adamant in the past about the enforcement of this requirement. Thus, Mr. Whisenhunt testified that he has attended numerous Labor-Management meetings with District officials at which this matter was discussed. Whisenhunt's unrefuted testimony was as follows:

Q: And what position has SLPS articulated at these labor management meetings regarding placement of teachers at the time of hire?

A: That regardless of the previous experience, that no one can be placed higher than Step C. They

have taken the position in labor management that even if a person leaves the District, then comes back, they do not get their old salary and step back. They go - they can be no higher than Step C. And they said this is an iron-clad rule that they have been following ever since the SAB came into existence. (August 29, 2018 hearing, Tr. 26)

The pay grid contains two stated exceptions to this rule. The first of these is "CTE" ("career technical education"). This refers to those who teach in technical job-training programs such as firefighting, pre-vet, plumbing, electrician, etc. (August 29, 2018 hearing, Tr. 39, 135) The second exception covers "hard to fill" positions. While that phrase is not defined in the Policy Statement, such positions encompass those who teach highly-specialized subjects. (August 29, 2018 hearing, Tr. 136; May 3, 2019 hearing, Tr. 16) The District further contended that the phrase may cover vacancies which occur at inopportune times. (August 29, 2018 hearing, Tr. 136) The District conceded, however, that "regular classroom teachers never become hard to fill, per se." (August 29, 2018 hearing, Tr. 137)

According to the Union, during meetings with the Union, the District has repeatedly maintained that even when a teacher leaves the District and returns, he or she is to be placed at no higher than Step C. (August 29, 2018 hearing, Tr. 26,234)

In spite of these statements, Chief Human Resources Officer Charles Burton testified that all Human Resources Officers other than Dr. Healey (who served in that capacity from 2014-2016) placed returning teachers back at the step they occupied prior to their departure. (March 6, 2019 hearing, Tr. 19) The Union maintains that the evidence establishes that this claim was not true; in fact, numerous employees had such breaks in service and were not returned at the step at which they left.

These include:

_____, was hired in 1983 and had a break in service from 2004 to 2018.

At the time she left, she was at MA30, Step J. When she returned in 2018, she was placed at MA30, Step

C. (May 3, 2019 hearing, Tr. 54)

_____ was fired on April 30, 2005, at which time he was a BA15. He came back to the District in April 2006 as a BA. (March 5, 2019 hearing, Tr. 39)

_____ (Line 255 of Un. Ex. 5, page 6 of Un. Ex. 21) started on January 3, 2006 as a BA Step A. She left in July 2011 and returned in August 2012. (This break in service is reflected by numerical code "99999999" at page 6 of Un. Ex. 21) When she left, she was at MA Step F; she was returned at MA Step H. (Page 6 of Un. Ex. 21)

_____ (Line 375 of Un. Ex. 5, page 14 of Un. Ex. 21) was hired in 1991 and had a break in service from 2000 to 2004. When he left, he was at BA Step G; he was returned at BA Step H.

_____ (Line 303 of Un. Ex. 5, page 8 of Un. Ex. 21) was hired in 2003. She had a break in service from August 1, 2007 to August 4, 2017. At the time she left, she was MA30 Step C; she was returned at MA30 Step F.

_____ (Line 312 of Un. Ex. 5, pages 9-10 of Un. Ex. 21) began teaching in 2006, having previously been a substitute for the District. She had a break in service from August 11, 2007 to August 4, 2013. At the time she left, she was a MA at Step A; she returned as an MA30 Step B.

_____ (Line 325 of Un. Ex. 5, pages 3-4 of Un. Ex. 21) began his employment in 1998. He had a break in service from August 24, 2000 to November 11, 2002. He was a MA Step C when he left; he returned as a MA30 Step J.

_____ (Line 275 of Un. Ex. 5, pages 5-6 of Un. Ex. 21) had a break in service from March 25, 2011 to July 8, 2012. Her last position as a regular teacher was BA15 at Step D; she returned as an MA Step G.

_____ (Line 259 of Un. Ex. 5, page 7 of Un. Ex. 21) had a break in service from July 1, 2008 to April 5, 2009. She left as a MA Step E and returned as a MA Step F.

1 (Line 88 of Un. Ex. 5, pages 18-19 of Un. Ex. 21) had a break in service from 2006 to 2010. She left as a BA15 Step I, but returned as a BA Step I.

2 had a break in service from 2000 until 2016. Prior to her break, she was at Step E; she was returned at Step C. (May 3, 2019 hearing, Tr. 40-42)

3 (Line 130 of Un. Ex. 5, pages 33-34 of Un. Ex. 21) had a break in service from August 21, 2015 to August 8, 2016. She left as a MA30 Step F and returned as a MA Step A.

Utilizing records periodically provided by the District to the Union, known as "Union One" reports, the Union prepared a spreadsheet (Un. Ex. 5) which identifies as "outliers" those individuals who appear to have been placed at above Step C, or paid outside their step's salary, at the time of hire and who were not hired for CTE or "hard to fill" positions. The spreadsheet then identifies other individuals holding the same or comparable positions to those held by the "outliers", who are receiving substantially lower salaries.

The Union contends the District's contention that the Union's spreadsheet did not include evidence regarding the teachers' experience prior to employment with the District misses the mark. Based on the language of the pay grid and the testimony about the position taken by the District in numerous Labor-Management meetings, past experience is only relevant for determining whether a teacher is to be placed at Steps A, B or C at the time of hire. (If the teacher has 0-3 years' prior experience, placement is to be at Step A; if 4-6 years' prior experience, the teacher is put in Step B; if 7 or more years, Step C.) The Union argues that since the outliers were placed above Step C at the time of hire, in contravention of the language of the pay grid and the statements of the District's managers, prior experience is irrelevant.

The Union faults the District's attempt to imply that the Union had access to data beyond the Union One reports. The District ignored a highly salient fact: such additional information was

available only if the individual teachers signed authorizations granting the Union access to such information. (May 3, 2019 hearing, Tr. 11) Without such authorizations, the information is not provided. (May 3, 2019 hearing, Tr. 11) Since the Union's position is that the outliers are being improperly paid too much, there is no reason why these individuals would provide the Union with access to information to bolster its case.

The Union notes that after initially telling the Arbitrator and the Union that it intended to put on evidence regarding each outlier and her/his comparables, the District ultimately chose to introduce evidence regarding only a few hand-picked outliers and their comparables. The salient feature regarding almost all of the outliers about whom the District presented evidence was that they had breaks in service, and were returned at the same step they occupied prior to the break. (Since the Union One reports provided to the Union did not capture these breaks, the rehire date was often reflected on Un. Ex. 5 as the original date of hire.) In this regard, the outliers addressed by the District were:

Line 74 of Un. Ex. 5) Union Exhibit 5 reflects a hire date of August 11, 2008. In fact, he was first hired in 1996. (See p. 23 of Un. Ex. 21) (It is unclear at what step he was hired, as the District does not maintain this information for periods before 1999.) In 1999, he was at BA Step E. As reflected on page 23 of Un. Ex. 21, and the March 5, 2019 hearing at Tr. 19- 22, he resigned on August 1, 2007 and was rehired on August 10, 2008. He left at BA Step J, and was returned at this same step. If his 2008 rehire date is deemed to be his employment date, then

he had longer service with SLPS. (March 5, 2019 hearing, Tr. 24-25)

(Line 88 of Un. Ex. 5, p. 19 of Un. Ex. 21) was hired in 1994. (It is unclear at what step she was hired.) In 1999 she became a BA Step D. (She was a preschool teacher.)

left on August 25, 2006 and returned on November 7, 2010. As noted above, she was a BA 15 Step I when she left, but a BA Step I when she returned. Un. Ex. 5 picked up

return date as her original hire date. If [redacted] return date is deemed to be her hire date, then several other employees, including [redacted]

[redacted] had greater years of service with the District. (Lines 89, 91, 92 and 93 of Un. Ex. 5)

[redacted] (Line 94 of Un. Ex. 5; page 3 of Un. Ex. 21) [redacted] was hired in 1994. He left August 23, 2003 and returned January 7, 2008. He was a BA Step I before and after the break in service. If the return date is considered [redacted] date of hire, most of the comparables would have greater service with the District.

[redacted] (Line 119 of Un. Ex. 5) The District claims that [redacted] was hired in 1979, taught until 1997, then returned in 2001, where she was placed at BA Step J. If 2001 is treated as [redacted] hire date then [redacted] (Line 120 of Un. Ex. 5) has greater service with the District, as she was hired in 2000.

[redacted] (Line 121 of Un. Ex. 5) She was hired on November 29, 2003 as a kindergarten teacher. (Page 26 of Un. Ex. 21) She had approximately 13 years prior experience outside of the District. She was placed at BA Step H, in spite of the language of the pay grid and the District's articulated position that regardless of prior experience, new hires would be placed no higher than Step C.

[redacted] (Line 125 of Un. Ex. 5) She was hired in 2001 and placed at BA Step C. Since she had 8 years prior experience and was placed at Step C, the Union concedes that her placement was not violative of the pay grid and therefore she should not be deemed an outlier.

The Union notes that the District introduced evidence regarding a few employees who experienced breaks in service, and who, upon return, were not treated as new employees (i.e., were placed above Step C). In addition, a comparison of Un. Ex. 5 and Un. Ex. 21 reflects that the following outliers also had breaks in service and returned at the step which they left. [redacted] (Line 133 of Un. Ex. 5; pages 6-7 of Un. Ex. 21) had a break in service from December 19, 2015 through August

13, 2017. She left as a MA Step F and returned at the same level.

(Line 138 of Un. Ex. 5; page 15 of Un. Ex. 21) had a break in service from June 4, 2014 through August 8, 2016. He left as a MA Step Hand returned at the same level.

(Line 139 of Un. Ex. 5; page 21 of Un. Ex. 21) had a break in service from August 30, 2000 through August 8, 2016 (nearly 16 years). She left as a MA Step F and returned at the same level.

(Line 170 of Un. Ex. 5; page 30 of Un. Ex. 21) had a break in service from August 3, 2007 to August 7, 2015, over 8 years. She left at MA Step D and returned at MA15 Step D.

(Line 199 of Un. Ex. 5; pages 29-30 of Un. Ex. 21) had a break in service from July 21, 2007 to October 18, 2009. He left as a BA Step H and returned at the same level.

(Line 202 of Un. Ex. 5; page 11 of Un. Ex. 21) had a break in service from 2009 to 2012. He was at MA Step K before and after.

(Line 211 of Un. Ex. 5; page 26 of Un. Ex. 21) had an 11-year break in service, from August 2, 2004 to August 7, 2015. She left at MA Step I and returned at the same level.

(Line 230 of Un. Ex. 5; page 20 of Un. Ex. 21) had a break in service from 2010 to 2015. She left and returned at MA Step M.

(Line 291 of Un. Ex. 5; page 16 of Un. Ex. 21) had a break in service for 11 years, from January 13, 2002 to October 6, 2013. She left as BA Step G and returned as MA Step G.

(Line 302 of Un. Ex. 5; page 30 of Un. Ex. 21) left in 2008 to be a substitute and returned in August 2015. She left as a BA15 Step D and returned as a MA Step D.

(Line 304 of Un. Ex. 5; page 22 of Un. Ex. 21) had a break in service from August 2017 to January 2018.

(Line 343 of Un. Ex. 5; page 13 of Un. Ex. 21) had a 13-year break in service from 2001 to 2014. She left at MA30 Step G and returned at the same level.

[redacted] (Line 347 of Un. Ex. 5; page 31 of Un. Ex. 21) had a break in service from January 2014 to October 2014. She left as a MA30 Step J and returned at this same level.

[redacted] (Line 379 of Un. Ex. 5; page 28 of Un. Ex. 21) had a break in service from June 27, 2015 to August 7, 2016. She left as an MA30 Step F and returned at this same level.

[redacted] (Line 413 of Un. Ex. 5; pages 28-29 of Un. Ex. 21) had a break in service from 2008 to 2012. She left as a BA Step F and returned as a MA Step F. While the District in putting forth evidence regarding a few selected outliers focused largely on individuals who had breaks in service and were returned to the same step, outliers who did not have such breaks in service were largely ignored by the District. These include:

[redacted] (Line 1 of Un. Ex. 5) She was hired on August 8, 2016 as a secondary math teacher. (Page 1 of Un. Ex. 21) (While she had worked as a substitute teacher since May 2014, the District maintains that such prior experience is not relevant. March 5, 2019 hearing, Tr. 112-113; March 6, 2019 hearing, Tr. 41) This was not a "hard to fill" position, as several other math teachers were hired the same day. While District records indicate she was placed at BA Step A at the time of hire, her hiring salary was \$47,978. (Page 1 of Un. Ex. 21) The actual salary for a BA Step A was \$39,015, a difference of \$8,963. (May 3, 2019 hearing, Tr. 36) The District offered no explanation for this disparity. At the same time that [redacted] was hired, the District hired [redacted] as a middle school math teacher. (Line 11 of Un. Ex. 5) [redacted] was placed at BA Step A, but, unlike [redacted] was paid the correct BA Step A salary of \$39,015.86. (May 3, 2019 hearing, Tr. 36-37) [redacted] was a full-time teacher for the District from 1995 to 2000, then had a break in service until her rehire on August 8, 2016, the same date as [redacted] hire. She was returned at Step C (even though she had been at Step E before her break.) [redacted] had worked for the Riverview Gardens school District as a math teacher from 2000 to 2010. (May 3, 2019 hearing, Tr. 41-42) In spite of [redacted] prior employment with the District (which Ms.

... did not have, Un. Ex. 21, page 1), in spite of her lengthy interim employment with another school District, and in spite of the fact that she was placed at Step C on the same date that ... was purportedly placed at Step A. ... has consistently made a higher salary than ... Un. Ex. 5 reflects that six other math teachers were hired on August 8, 2016 yet are being paid substantially less than ... Further, many such math teachers were also hired years before ... and/or had attained higher educational levels (MA or BA 15), and yet are paid significantly less than ... (Un. Ex. 5)

Line 30 of Un. Ex. 5) She was hired as an elementary counselor on September 13, 2016. Although she was supposedly hired at BA Step A, her starting salary was \$46,818. (Un. Ex. 21, page 11) As noted above, the BA Step A salary was supposed to be \$39,015 (May 3, 2019 hearing, Tr. 42) Likewise, ... (Line 29, Un. Ex. 5) was hired on September 26, 2016 as an elementary counselor, at BA Step A. (Un. Ex. 21, page 12) Although the BA Step A salary was supposed to be \$39,015, he also was inexplicably given a starting salary of \$46,818. (Un. Ex. 21, page 12; May 3, 2019 hearing, Tr. 43-44)

In spite of the fact that ... and ... were hired in September 2016 and were placed at the BA Step A level, they received substantially higher salaries than other counselors at the BA level who were hired significantly before them, and higher salaries than counselors who had a higher educational level (MA or MA15), many of whom were also hired before them. (Un.

Ex. 5, Lines 31-50) For example, ... (Line 36 of Un. Ex. 5) had a Masters and prior experience as a counselor and special school counselor. As a result, she was placed at MA Step B (i.e., 4-6 years' prior experience, per Un. Ex. 4) at a salary of \$42,136.20. (May 3, 2019 hearing, Tr. 45) Although MA Step B is higher than BA Step A, ... inexplicably was given a lower starting salary than ... or ...

§ (Line 372 of Un. Ex. 5) was hired on August 5, 2013 as a music teacher and inexplicably placed at MA30 Step G. He had no prior employment with the District. (Page 24 of Un. Ex. 21)

— (Line 170 of Un. Ex. 5) on August 16, 2006 was hired as a social studies teacher at MA Step D. She had no prior employment with the District. (Page 30 of Un. Ex. 21) There was no explanation as to why she was placed above Step C.

Line 51 of Un. Ex. 5) was hired on August 5, 2017 as a middle school science teacher. Although he had no prior employment with the District (Un. Ex. 21, pages 8-9), he was inexplicably placed at BA Step H, with a salary of \$46,579 (May 3, 2019 hearing, Tr. 47) While it is unclear whether he had any prior experience with other school Districts, pursuant to Un. Ex. 4 he should have been placed no higher than Step C regardless of the length of any such prior service. On that same date, six other science teachers were hired (Lines 53, 56, 57, 58, 60, 61 of Un. Ex. 5) All of them received lower salaries than even though some of them (Lines 53 and 56) had Masters degrees. Likewise, many other such science teachers were hired well before August 5, 2017 hire date, yet are paid less (Lines 54, 55, 59, 63, 64, 65, 66, 67, 68, 69 of Un. Ex. 5). By way of example, was hired on the same day as had approximately 13 years' prior teaching experience and was placed at BA Step C with a salary of \$40,575 (May 3, 2019 hearing, Tr. 50-51), over \$6,000 less than starting salary.

Line 355 of Un. Ex. 5) was hired as a secondary counselor on August 9, 2010 and was placed at MA30 Step M. She had no prior employment with the District. (Page 1 of Un. Ex. 21) The District offered no explanation as to why was placed above Step C. (Even if she had prior employment outside of the District, she should have been placed no higher than Step C.)

(Line 193 of Un. Ex. 5) was hired in August 2013 as a kindergarten teacher and placed

at BA Step D. She had no prior employment with the District. (Page 31 of Un. Ex. 21) There was no explanation for why she was placed above Step C.

Line 298 of Un. Ex. 5) was hired in January 2012 as an MA Step D. He had no prior employment with the District. (See page 35 of Un. Ex. 21) There was no explanation of why he was placed above Step C.

Line 338 of Un. Ex. 5) was hired in September 2004 as a special education "cross cat" teacher. She was placed as MA Step H. (See pages 2-3 of Un. Ex. 21) She had no prior employment with the District. (Page 3 of Un. Ex. 21) There was no evidence as to why she was placed above Step C.

Line 247 of Un. Ex. 5) was hired as an elementary physical education teacher in 1999 at BA Step E. He had no prior certificated service with the District. (Page 27 of Un. Ex. 21) (He had only worked a few months as a temporary instructor.) There was no evidence as to why he was placed above Step C.

A comparison of Un. Ex. 5 and 21 reflect a small number of teachers who were correctly placed at the time of hire at Step C or below and who did not have breaks in service which resulted in subsequent improper placement. These include:

Line 117 of Un. Ex. 5; page 34 of Un. Ex. 21) was hired in 2007 at BA Step A, with no break in service.

Line 125 of Un. Ex. 5; pages 15-16 of Un. Ex. 21) was hired in 2001 as BA Step C, with no break in service. (See discussion above at page 7.)

Line 136 of Un. Ex. 5; page 33 of Un. Ex. 21) was hired in 2008 as MA Step B, with no break in service.

First, the Union argues that the placement of returning teachers with breaks in service at higher than Step C violates the Policy Statement and the rights of other teachers. The District's defense to the

manifold pay disparities reflected on Union Exhibit 5 is to cite situations where individuals initially worked for the District, left (sometimes for as long as 16 years and later returned. At the hearing, the District maintained (contrary to its prior statements) that it was justified in counting the years of service prior to the break, and placing the returning employee at the step which s/he held before the break. It is the Union's position that this practice violates the Policy Statement.

The Union points out that the Policy Statement does not make an exception for employees hired after having been previously employed by the District (March 6, 2019 hearing, Tr. 20-21). It requires all teachers to be placed no higher than Step C at the time of hire, regardless of prior experience. (The only exceptions to this requirement are for CTE or "hard to fill" positions.)

The Union claims that the practice makes no sense. Some of the individuals in question had breaks of well over a decade. The lack of continuity after such a lengthy period makes such prior service no more useful than employment with another school District. The Union argues that while such employment is entitled to consideration, pursuant to the language of the pay grid it should result in no higher than Step C placement.

The Union points out that individuals with breaks in service are treated as new hires for all other purposes. For example, under the Policy Statement if a teacher resigns and is subsequently rehired, seniority begins with the date of reemployment; the earlier period is not bridged. (March 6, 2019 hearing, Tr. 25) Such teachers are required to go through the new hire process. (March 6, 2019 hearing, Tr. 26-27) If a teacher works for five or more years and is therefore tenured, and the teacher resigns, he or she is not considered tenured upon return. (March 6, 2019 hearing, Tr. 21) Likewise, if a teacher ceases employment after less than five years and is re-employed, the earlier period is not counted for tenure purposes. (March 6, 2019 hearing, Tr. 26).

The Union argues that the District was inconsistent regarding how it treated such breaks

in service. While there were many teachers who, when rehired after breaks, were placed at the same step they occupied prior to their initial separation, there were also large numbers who were not treated this way, including

It is the Union's position that the District violated the Policy Statement, and the rights of other teachers, when it placed returning teachers at the same level on the pay grid as they held prior to their separation. Aside from the issue of the District's improper placement of teachers who had breaks in service above Step C upon their return, numerous teachers were either hired at above Step C, or were hired at salaries that were well in excess of the salaries called for at their step level. For example

had no prior certificated employment with the District when hired, and no more than three years prior teaching experience outside the District and was therefore placed at BA Step A. (Step A is for those who have 0-3 years' prior experience.) However, in contrast to her step placement, was given a starting salary of \$47,978, even though the starting salary for BA Step A was \$39,015. As noted below, numerous other teachers were hired at the same time as and received the stated salary of \$39,015. As also noted below, many also had achieved a higher educational standing yet were paid less. (See Un. Ex. 5, lines 2-9, 26) The Union submits that, given that was paid nearly \$9,000 more than the BA Step A salary (the category which she purportedly occupied), the District had an obligation to explain this discrepancy, which it failed to do. The payment of this salary to is unfair to those teachers who had the same or greater years of service or higher educational attainment. Union Exhibit 5 identifies twenty-five (25) teachers who have more years of service than and/or higher educational levels (including one BA15, six MAs, one MA15 and one MA30) who are performing the same job as (math teacher) and receiving substantially lower salaries. Indeed,

six of these teachers were hired on the same day as [redacted] (8/8/2016). (Lines 8-13 of Un. Ex. 5)

The Union argues that in the face of the District's failure to address this discrepancy, it can only be concluded that a violation of the Policy Statement has occurred which requires redress.

Likewise, [redacted] s and [redacted] n, neither of whom had a break in service, were each hired at a salary of nearly \$8,000 more than the BA Step A salary that they should have been receiving based on their placement at this step when hired. Twenty of their fellow counselors had greater experience and/or a higher educational level and yet were paid less. (Lines 31-50 of Un. Ex. 5) Four of these lesser-paid counselors were at MA 15 (Master's degree plus 15 credit hours towards a PhD) (Lines 31-34 of Un. Ex 5), while [redacted] and [redacted] y had only Bachelor' s degrees. (Lines 35-44 of Un. Ex. 5)

The Union notes a small number of "outliers" were hired at the same level and step as numerous other employees, yet the outliers were given a substantially higher salary than others at the same level and step, with no explanation and no discernable reason. The Union argues this creates a gross injustice for the other employees, one that can only be remedied by increasing their salary to that of the "outliers." In addition to employees who were hired at salaries substantially higher than the salary called for by their level and step, the evidence reflects numerous employees (in addition to those with breaks in service) who were placed above Step C at the time of hire, with no explanation offered by the District. These include:

[redacted] (Line 51 of Un. Ex. 5) was inexplicably hired as a middle school science teacher at BA Step H, when he should have been placed at no higher than Step C.

[redacted] had no prior service with the District.) (See Un. Ex. 21, pages 8-9) Six of his lesser-paid science teacher colleagues were hired on the same day as [redacted] (7/5/2017) (See lines 53, 56, 57, 58, 60 and 61 of Un. Ex. 5), so it cannot be claimed that he was hired into a " hard to fill" position. Five lesser-paid

science teachers had Master's degrees compared to [redacted]'s Bachelor's degree. (Lines 52-56 of Un. Ex. 5) In total, nineteen science teachers had more experience and/or more education than [redacted], yet are paid less. (Lines 52-69 of Un. Ex. 5)

[redacted] (Line 193 of Un. Ex. 5) was hired on August 5, 2013 as a kindergarten teacher at BA Step D, when she should have been hired no higher than Step C. (Un. Ex. 21, page 31) Fellow kindergarten teacher [redacted] (Line 198 of Un. Ex. 5) was hired on the same day at a lower salary, so it cannot be contended that this position was "hard to fill." Aside from four other kindergarten teachers have greater experience than [redacted], and yet are paid less. (Lines 194-197 of Un. Ex. 5) [redacted] had no prior employment with the District (See Un. Ex. 21, page 31) and even if she had prior teaching employment with another school District (which the District does not claim), she should have been hired at no higher than Step C.

[redacted] (Line 298 of Un. Ex. 5) was hired on January 17, 2012 as a secondary counselor at MA Step D. There was no explanation as to why he was placed above Step C. He had no prior employment with the District (See pages 34-35 of Un. Ex. 21). The District does not contend that he had any significant employment outside the District. He has a salary substantially higher than that of three of his colleagues (See lines 299, 300, 301 of Un. Ex. 5), including one individual who was hired over three years before him. (Line 301 of Un. Ex. 5)

[redacted] (Line 372 of Un. Ex. 5) was hired August 5, 2013 as an elementary vocal music teacher at MA30 Step G. (Un. Ex. 21, page 24) There was no explanation as to why he was hired above Step C. His date of hire was the date on which school began for the 2013-2014 school year. (See Un. Ex. 5, Lines 43, 54, 156, 160, 161, 162, 164, 165, 167, 169, 193, 240, 346) Thus, the District cannot claim that he was hired at a time which made his position "hard to fill." He had no prior District employment. (Un. Ex. 21, page 24) Even if he had seven or more years of employment with another District (which

the District does not assert), that would entitle him to placement at only Step C. He is receiving a salary higher than another MA30 elementary music teacher, [redacted] (Line 373 of Un. Ex. 5), who started at the District 5 ½ years before [redacted]. He is also making more than an elementary vocal music teacher [redacted] (Line 374 of Un. Ex. 5) who began her employment with the District a year before [redacted] and has a PhD.

[redacted] (Line 355 of Un. Ex. 5) was hired August 9, 2010 as a counselor at MA30 Step M. (Un. Ex. 21, page 1) The District offered no explanation as to why she was placed at above Step C. Her hire date belies any contention that timing made the position "hard to fill." She had no prior employment with the District. (See Un. Ex. 21, page 1) Even if she had worked at another district (for which there is no evidence) she should have been placed no higher than Step C. She is making more than MA30 counselors with over a decade more service with the District (Lines 366 and 367 of Un. Ex. 5), and is making more than a PhD counselor (Line 356 of Un. Ex. 5), [redacted] Nine MA30 counselors have more experience than [redacted] yet are lower paid. (Lines 358, 359, 361-367 of Un. Ex. 5)

[redacted] (Line 338 of Un. Ex. 5) was inexplicably hired as a MA Step H in 2004. She had no prior employment with the District. (Pages 2-3 of Un. Ex. 21) She is making significantly more than four of her special education cross cat teacher colleagues who are at MA30. (Lines 339, 340, 341 and 342 of Un. Ex. 5)

[redacted] (Line 247 of Un. Ex. 5) was hired initially as a physical education teacher in 1999 as a BA Step E. (Un. Ex. 21, page 27) There is no explanation as to why he was hired above Step C. (While he had a break in service from 2007 to 2014, this does not explain why he was originally hired at Step E.)

[redacted] (Line 170 of Un. Ex. 5) was hired as a social studies teacher in 2006 at MA Step D. (Un. Ex. 21, page 30) The District offered no explanation as to why she was hired at above Step C. (While she had a later break in service from 2007 to 2015, that does not explain her placement at the

time of her original hire in 2006.)

In conclusion, the Union argues that even if it is determined that the District's placement of returning teachers at the step which they held prior to their departure was not violative of the parties' agreement (a procedure which was not followed consistently and which contradicted the District's stated position), it is nonetheless clear that other employees, who had no breaks in service, were placed at above Step C at the time of hire, even though they were not CTE teachers and did not hold "hard to fill" positions. Individuals falling into this category include

g (Un. Ex. 5, line 170). Likewise, it is undisputed that employees were paid salaries vastly in excess of the salaries specified for the grade and step which they occupied. The placement and pay of these outliers violates the parties' agreement. Moreover, the result of this contractual violation is the underpayment of those individuals with comparable or greater service than these outliers. Accordingly, the Union requests an equitable remedy of increasing the salary of those teachers to that of the outliers.

POSITION OF THE EMPLOYER

The Employer introduced testimony and evidence indicating that the District operates public schools in the city of St. Louis, with an annual enrollment of almost 25,000 students and employing more than 4,000 faculty and staff members. When the Missouri State Board of Education withdrew its accreditation of the District in March 2007 due to low student academic and poor fiscal responsibilities, the District was graduating just over 50% of its students and had developed a \$24 million deficit.

Once accreditation was removed, the State simultaneously established a new management structure for the District and appointed a three-person Special Administrative Board (the "SAB"). The

SAB assumed governance authority over the District at the start of the 2007-08 school year, holding all of the powers formerly exercised by the District's elected Board of Education. The SAB was tasked with "turning around" the District with specific goals, which included stabilizing the District financially and academically as well as regaining accreditation. As one of its first actions, the SAB hired a new Superintendent to lead the District through the necessary changes. Together, the SAB and the Superintendent focused on creating a rejuvenated atmosphere of sustained academic success in conjunction with improving the District's overall financial health. In a little less than a decade, the District has elevated its performance and operations to the point of graduating over 70% of its students with a 95% attendance rate and benefitting from a \$19 million surplus. At the start of 2017, the State Board of Education voted to return the District to full accreditation status.

For over 40 years, the Union has served as the union representing all certificated teachers and other non-certificated, non-teaching District employees. In total, the Union represents over 3,000 District employees, who total approximately 75% of the District's faculty and staff.

In accordance with state labor laws, the District and Union recurrently meet to collectively bargain the terms and conditions of employment for the District employees represented by the Union. These negotiated terms and conditions are memorialized in a Policy Statement, which is reviewed, voted on, and approved by both the SAB and Union membership. Each Policy Statement remains in effect for a time period as agreed to by the parties, with individual term years running from July 1 to June 30 to account for the academic school calendar and the District's fiscal year. During the SAB's governance of the District, the parties have negotiated, agreed to, and ratified the following Policy Statements: Policy Statement (2008-2011); Policy Statement (2011-2014); Policy Statement (2014-2016); Memorandum of Understanding (2016-2017); Policy Statement (2017-2020).

Overall, the parties have come together to bargain the relevant terms and conditions of

employment — including employee wages — in five separate negotiations over the last ten years.

The District maintains that there has been no violation of the Policy Statement in the payment of teachers within the District. The parties have historically referred to their collective bargaining agreements as "Policy Statements" and each Policy Statement and related memorandum of understanding was negotiated, reviewed, voted on, and approved by both the SAB and Union membership.

The District argues that the Union failed to provide any relevant Policy Statements in effect prior to July 1, 2008 and therefore can offer no basis for its requested relief on behalf of approximately 160 grievants, who are employees hired before the July 1, 2008 school year. The District further argues that the Union's failure to introduce the Policy Statements from the relative time periods and higher dates for approximately one third of the grievants, ignores the fact that in 2011, the District and the Union specifically agreed through collective bargaining to add language to their policy statement the District's discretionary authority as to where to initially place newly hired employees on the salary schedule (in order for the District to have greater flexibility in attracting better quality teachers).

The District also points out that the Union ignores its own explicit and continued agreement to maintain this discretionary authority for the District in each consecutive Policy Statement since 2011, covering the time period from 2011 through 2020. The District points out that the Union relies on a single spreadsheet as evidence of impermissible salary discrepancies, but during the arbitration hearing that spreadsheet was shown to have numerous errors and having left out relevant information.

Accordingly, the District argues that the Union cannot possibly show all the necessary evidence to support a claim of the Policy Statement violation in relation to more than 400 individual employees.

In addition, to its procedural arguments the District maintains an equity argument against the Union's grievance. The District maintains that the Union skips over long-standing and regular notice

provided by the District multiple times per year whenever represented employees and new hires were placed at higher salary level, including the employees named in the underlying grievance. Despite having knowledge of the Districts "off schedule" placement decisions for years, and in some cases decades, the Union has never elected to file a grievance about that practice until 2018.

The District argues that in filing the subject grievance the Union disregards recent salary negotiations with the District wherein proposals from both sides for varying percentage increases to wages were entirely premised on the employees existing placement on the salary schedule now, with negotiations closed in 2017 and having secured salary percentage increases over the next three years, the Union attempts to change the salary schedule placements for hundreds of individual employees.

Accordingly, the District maintains the subject grievance is without merit. Past practice and governing language in the policy statements is unequivocal in providing the District with the discretionary authority to determine initial placements and "off schedule" starting salaries. The District argues that the Union should not be permitted to circumvent this expressly negotiated language and challenge the individual placement decisions of hundreds of employees. Further, the District points out that the Union's requested relief would greatly prejudice the District and result in a serious blow to the District's budget over the next three years and beyond. Therefore, the District requests that the Grievance be denied.

DECISION

A great deal of the Union's argument in this case centers on what is "fair" or "just" in compensating teachers who are being paid less than the "outliers". However, the role of an arbitrator in labor disputes is not to dispense fairness or his/her own brand of industrial justice. Rather, in contract disputes between the employer and union the arbitrator is charged with interpretation of the collective bargaining agreement:

Labor arbitration is a matter of contract. It is the role of parties to a collective bargaining agreement to determine the value of their exchange and, then, the role of arbitrators is to interpret the labor contract consistent with the parties negotiated preferences. Arbitrators generally refrain from evaluating the prudence of a particular contractual term or inquiring into bargaining power imbalances and issues of justice. It is the role of arbitrators to use standards of contract interpretation to understand the meaning of the parties' contractual goals and to render a decision in keeping with the parties' intent.¹

The linchpin of this decision hinges on the Union's ability to point to any specific provision of any Policy Statement for the period in question which supports the relief it requests. The language of the Policy Statement which appears to provide the District with the unfettered right to compensate individuals outside of the salary schedule is a bit unusual for a collective bargaining agreement. However, as extensive testimony provided at the hearing indicated, these were unusual times for the District and its teachers. When the Missouri State Board of Education withdrew its accreditation of the District in March 2007 due to low student academic and poor fiscal responsibilities, the District was graduating just over 50% of its students and had developed a \$24 million deficit. The District lost its accreditation and the State established a new management structure for the District and appointed a three-person Special Administrative Board (the "SAB"). The SAB assumed governance authority over the District at the start of the 2007-08 school year, holding all of the powers formerly exercised by the District's elected Board of Education. The SAB was tasked with "turning around" the District with specific goals, which included stabilizing the District financially and academically as well as regaining accreditation. The SAB was able to establish a policy to enhance its ability to hire outstanding teachers and staff through the implementation of the agreed to Management Rights clause in the Policy Agreement.

At the arbitration hearing it became obvious that the Union became aware of salary information

¹ The Common Law of the Workplace, 2nd Edition, National Academy of Arbitrators, T. St. Antoine, Editor, BNA, Washington.D.C. (2005), p. 69.

during the hearing of which it was previously unaware. At the arbitration hearing, the Union admitted through testimony that the overwhelming majority of individual grievants listed on the pay disparity spreadsheet are actually "on the proper salary schedule step." The unambiguous language of the governing Policy Statements demonstrates that the District has the discretionary authority to place employees at a higher salary level than the employee's otherwise applicable step on the salary schedule. The District bargained to have this discretion memorialized in the Policy Statement (2011-14) and the Union has agreed to reiterate and maintain this discretion in each of the subsequent negotiations.

Additionally, the record is devoid of the necessary evidence to support a claim of a Policy Statement violation in relation to more than 400 individual employees. The single spreadsheet relied on by the Union is missing crucial information. The Union attempts to reach back and challenge numerous salary placement decisions from the 1990s and early 2000s without submitting any governing Policy Statement in effect from earlier than 2008. To challenge the salary placement decisions made by the District after 2008, the Union relies primarily on a footnote that was not added to the governing Policy Statement until 2014.²

Even construing the Union's evidence related to placement and advancement in the most favorable light possible, the unreasonable and prejudicial delay by the Union in bringing this Grievance creates strong equity defenses against a finding in its favor. At the point of hire, the District informed the Union of each new employee and each placement "off-schedule" at a higher salary level. For more than 10 years, the District has provided the Union with detailed reports every two weeks which specifically include all relevant salary information, including the salary information underlying the claims in this Grievance. At the time of recent negotiations between the parties about possible wage increases in 2016,

² The footnote included the wording "Exceptions may include CTE and teaching positions that are hard to fill." No definition of "hard to fill" was ever set forth by the parties in their negotiated language.

the District specifically provided the Union (at its request) with a report that showed which individual employees were “off-schedule” with their salaries in comparison to other employees with the same job category. For years, the Union has had the relevant information and notice to challenge the pay discrepancies at issue in this matter.

Importantly, unless there is a provision of the policy statement which specifically prohibits the District from paying above the salary schedule or departing from the salary schedule, the management prerogatives section preserves and confers upon the District the right to pay above any particular step. Given the language of the Policy Statement the District maintains the discretion to pay the amount needed to replace a teacher who left midyear, to attract a highly qualified candidate or to fill a position for which there were extremely few candidates. Despite the Union's protestations to the contrary, the footnote to the policy that states exceptions from placement on the schedule "may include CTE and teaching positions that are hard to fill", there is no evidence that the District's authority regarding "off schedule" placements is limited by this language.

The Union's argument that the District has heard and resolved related salary disputes by increasing the salary of previous grievants lacks merit. All of the evidence indicated that those grievances were fundamentally different than the matter at hand. In each of the prior grievances introduced by the Union, the allegation brought by the Union was that in each of those instances grievants were being paid below what they were entitled under the salary schedule. In those cases, the District properly corrected the placement and moved the employee up to a higher position on the salary schedule.

The District argues correctly that in the instant case, wherein the Union argues that hundreds of employees are being paid below the salary schedule based on the salaries of outliers, the issue is entirely different. Here, the Union is attempting to prove that certain employees are being paid above the salary

schedule rather than below the schedule. If the Union's argument is accorded full face value by the Arbitrator, the proper remedy would be for individual employees who are currently being paid above the salary schedule to have their salaries reduced to be in line with the salary schedule. Simply stated, if the District does not have the discretionary authority to place an employee above the salary schedule, then all employees must be paid in accordance with the salary schedule.

In light of the unambiguous language of the Policy Statement and the District's rights contained in the governing Policy Statements, the Grievance must be denied, and it shall be so ordered.

AWARD

Based upon the reasoning set forth supra, the grievance is denied in its entirety.

So ordered.

Signed this 11th day of September 2019 in the State of Missouri, County of Saint Louis, by:

Gerard A. Fowler

Gerard A. Fowler
Arbitrator