BEFORE AN ARBITRATOR APPOINTED THROUGH THE AMERICAN ARBITRATION ASSOCIATION

In the matter of:

TEACHERS ASSOCIATION OF LEE COUNTY,

Union,

and

AAA Case No. 01-23-0004-3550 (Coverage Pay Funding)

SCHOOL DISTRICT OF LEE COUNTY, FLORIDA,

Employer.

_____/

ARBITRATOR'S AWARD

Appearances:

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For the Employer: Kathy Dupuy-Bruno, Esq., B.C.S.
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Arbitrator: Christopher M. Shulman
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PROCEDURAL HISTORY

This matter was submitted under the grievance arbitration provisions of the collective bargaining agreement (CBA) between the Parties. EX-23, Article 4, § 4.04(2)(d).[1] On November 28, 2023, the American Arbitration Association (AAA) appointed the undersigned as arbitrator in this dispute, assigned AAA Labor Case No. 01-23-0004-3550. The issue denoted in the appointment letter was "Teachers Association of Lee County (all affected members – The District shall allocate for coverage $8.2 million in funding for FY24.)"

Hearings in this matter were initially scheduled for April 24, 2024, but these were cancelled on short notice by the District.[2] The Hearings were rescheduled thereafter for June 27, 2024.

On June 26, 2024, the Parties submitted their Amended Joint Prehearing Statement, which contained three factual stipulations,[3] the Parties' respective statements of the issue, lists of the expected TALC and District Exhibits, and a list of the six witnesses who might be called to testify. The Parties' stipulated facts, which were taken as established for all purposes in this action are:

- The Elementary and Secondary School Emergency Relief ("ESSER") grants provided additional funds to supplement class coverage for instructional staff.
- The [P]arties entered into a Memorandum of Understanding ("MOU") on

[1] Throughout, references to Exhibits are denoted as "EX-[n]," where "[n]" corresponds to the number of the exhibit. Thus, EX-23, refers to Exhibit 23, the relevant Collective Bargaining Agreement. References to the transcript are denoted as "T.[p]", where "[p]" refers to the page numbers of the transcript.

[2] Throughout, the Employer is referred to as "the District" and the Union is referred to as "TALC."

[3] The first so-called "Stipulated Fact" was that "1) The matter is properly before the Arbitrator for disposition. All filings have been timely." (Amended Joint Prehearing Statement, at 1; T.9)

2/11/22, on 8/11/22, and a Collective Bargaining Agreement ("CBA") for FY23-25 to outline terms relating to the ESSER supplement for class coverage.

- Instructional staff were paid $33 million dollars for Class Coverage between FY22 and FY23, specifically expending, approximately, $23 million dollars for FY23.

Amended Joint Prehearing Statement, at 1; T.9 – 10)

One day of arbitration hearing, June 27, 2024, was held at the District's Offices, in Fort Myers, FL. The hearings were open to the public and reported by a court reporter; the Parties agreed a transcript should be prepared and would serve as the official record of the proceedings. (T.7) The Parties also stipulated that the present matter was properly before me. (*Id.*)

At hearing, the Parties made opening statements, presented the testimony of six witnesses, and proffered several exhibits accepted into evidence: Exhibits EX-1 to EX-29.[4] The Parties stipulated to the submission of posthearing briefs (T.11), due on or before August 12, 2024, approximately 30 days after receipt of the final hearing transcript. (T.166 – 167) The briefs were emailed timely from each Party. Thus, the present award was due no later than September 11, 2024, thirty days from the closing of the record, per AAA Labor Arbitration Rule 36.

After reviewing the hearing transcript in its entirety, the twenty-nine Exhibits, and the Parties' posthearing briefs, I have deliberated and hereby issue the following award.

[4] Despite having listed separate Party Exhibits in the Joint Prehearing Statement, at hearing, the Parties stipulated to one set of exhibits, without Party designation thereof. (*See, e.g.,* T.167)

ISSUE PRESENTED

The Parties did not specifically stipulate to the issue for decision, but, at hearing, they agreed I should identify the issue. (T.7 – 9)

For its part, TALC framed the issues as "Whether the District satisfied the requirements in 10.04(4)(g) in sharing or reporting specified coverage data? and Did the District comply with the requirements of 10.04(4)(h) when it failed to fund coverage pay in the amount of $8.2 million for FY24? If not, what is the appropriate remedy?" The District did not agree with this statement of the issue, instead proposing, "Whether the District complied with article 10.04 in determining that no further funds were due after the allocated ESSER funds were exhausted? and Did the District have any obligation to pay the ESSER class coverage supplement for FY24, if so, what is the appropriate amount?" (Amended Joint Prehearing Statement, at 1 – 2; T.8 – 9)

Based on the evidence and the Parties' arguments, the undersigned determines the issue submitted is:

> *Whether the District violated Article 10, § 10.04, of the Parties' Collective Bargaining Agreement, by failing to provide TALC with required data and by failing to pay any ESSER grant Class Coverage pay for FY24? If so, what shall the remedy be?*

In this arbitration over a substantive contract interpretation issue, the Union has the burden of proof. *See, e.g., Tamarack Materials, Inc.,* 138 Lab. Arb. (BNA) 522 (Arb. Van Kalker 2018) (citing authorities); ELKOURI AND ELKOURI, HOW ARBITRATION WORKS, 8th Ed. May (2016), p. 8-104.

RELEVANT CONTRACT PROVISIONS

ARTICLE 10 – COMPENSATION

. . . .

10.04 – NON-STANDARD RATE OF PAY

. . . .

(4) Instructional Coverage: The parties agree that there is a direct and positive relationship between the presence of an appropriately certified classroom teacher and student achievement.

. . . .

(g) Data: Data related to coverage shall be shared monthly with the TALC Labor/Management Committee, including but not limited to a count of: "Coverage – Absence", "Coverage – Vacancy", "Coverage – ED Approval", "Administrative Tasks", total coverage by employee, and total coverage by school. The TALC Labor/Management Committee will review data regularly to ensure implementation supports shared interests related to equity.

(h) Duration: This article will remain in place for the remainder of FY23 (2022-2023 school year) and FY24 (2023-2024 school year) or until the exhaustion of the $8.2 million per year in ESSER funding allocated for coverage. If ESSER funding is exhausted, the parties will return to the language in place prior to the introduction of ESSER funding. All District employees must be notified prior to the exhaustion of ESSER funding.

. . . .

(EX-23)

FACTS AND ARGUMENT OF THE PARTIES

The facts of this matter are not significantly in dispute.

The District applied for, and received, nonrecurring grant funds through a series of

Elementary and Secondary School Emergency Relief ("ESSER") grant applications.[5] These funds were authorized for a variety of uses by the District, but the purpose at issue here is that portion used to compensate bargaining unit members who were providing "Class Coverage" for absent teachers (or teacher vacancies) during and since the COVID-19 epidemic. The entire amount initially allocated across two different ESSER tranches, for such Class Coverage payments, was $24.6M, a total reached by estimating $8.2M in Class Coverage payments per year for FY21-22, FY22-23, and FY23-24.

In FY21-22 and FY22-23, the District paid teachers a total of approximately $34M in Class Coverage pay, the lion's share of which was incurred in FY22-23. In August 2023, the District notified the bargaining unit that it would not be paying ESSER Class Coverage monies anymore, since those allocated funds had run out. TALC disagreed with the District's interpretation of Article 10, § 10.04(4)(h), and asserted that Class Coverage payments were still required for FY23-24 up to the $8.2M. This grievance followed.

TALC's Position.

TALC asserts that, based on the Parties' negotiation history, specifically, the February 2022 Memorandum of Understanding ("MOU") (EX-21), the August 2022 MOU (EX-22), and the present (February 2023) CBA, the Parties changed the language relating to ESSER grant payment for bargaining unit Class Coverage. Thus, TALC states that the current language –

> This article will remain in place for the remainder of FY23 (2022-2023 school year) and FY24 (2023-2024 school year) or until the exhaustion of the $8.2 million per year in ESSER funding allocated for coverage. If ESSER funding is exhausted, the

[5] As described by the Florida Department of Education, "The Elementary and Secondary School Emergency Relief (ESSER) Fund was established as part of the Coronavirus Aid, Relief, and Economic Security (CARES) Act in March 2020. The CARES Act provided direct funding to state education agencies (SEA) and local education agencies (LEA) to address the impact COVID-19 has had, and in certain contexts continues to have, on elementary and secondary schools." https://www.fldoe.org/covid-19/funding/esser.stml (retrieved Aug. 15, 2024).

> parties will return to the language in place prior to the introduction of ESSER funding[,]

– obligates the District to pay up to $8.2M per year in Class Coverage monies, no matter whether more than $8.2M may have been spent in previous fiscal years.

TALC rejects the District's argument that the $8.2M per year was simply a means by which to calculate the total, that, instead, the CBA language, especially the second quoted sentence, meant that the Parties had intended to aggregate ESSER Class Coverage monies into a $24.6M pool. Instead, TALC states,

> There is no language in either MOU or the CBA supporting the District's argument. There is no evidence the parties intended for a single pot of money, $16.2 million for FY23 & 24, and once that $16.2 million was exhausted the District had met its obligations. The clear language in the CBA contemplates two separate and distinct funding requirements, $8.2 million in FY23 and $8.2 in FY24. The District was obligated to spend up to $8.2 [million] in each fiscal year.

TALC Brief, at p. 4. To the contrary, TALC argues that the District asks me to rewrite the CBA, which, of course, the CBA expressly prohibits. TALC argues by corollary, noting that, if the CBA called for $300M in salaries for each of two fiscal years, and the District spent $450M on salaries in the first fiscal year, this would not reduce the District's salary obligation for the second fiscal year.

TALC notes that, if the District intended the ESSER Grant Class Coverage article to provide for a single pot of $24.6M for all three FYs combined (or $16.4M for FY22-23 and FY23-24, combined), they could easily have proposed that language. The District did not do that. Instead, TALC argues, the Parties agreed there would be $8.2M per FY available for the life of the CBA and, only once the District paid out that $8.2M in any particular FY would the Class Coverage payment revert to its pre-ESSER grant language. The District may have overpaid for

FY22-23, TALC states, but that was due to the District not properly accounting for those funds – and, in any event, that had nothing to do with the District's obligation to make such Class Coverage payments in FY23-24.

Further, TALC urges me to find the District failed to keep TALC apprised of the ESSER grant funding and payments, as specifically articulated in Article 10, § 10.04(4)(g), noting that TALC had to make public records requests to get the data. TALC also notes that the District failed to notify bargaining unit employees *before* such funds were exhausted; the first notice was delivered on August 7, 2023, stating the funds were exhausted and no further Class Coverage pay would be authorized.

Under these circumstances, TALC urges me to sustain the grievance as to both §§ 10.04(4)(g) and (h). Noting that crafting a remedy – in light of the difficulty in reconstructing class records for last FY – may be difficult, TALC suggests the most equitable way to address the District's unilateral decision to over-spend monies in FY22-23 is to take the $8.2M (that should have been paid out in FY23-24) and pay it out in equal shares to each bargaining unit member who was employed as of (an unnamed) date certain.

The District's Position.

The District asserts the language of Article 10, § 10.04(4)(h) is ambiguous and that TALC has failed to meet its burden of persuasion as to the appropriate interpretation of the ambiguity. Here, the District states, the Parties dispute the meaning of "per year" in the term regarding how long the District is obligated to pay Class Coverage: ". . . or until the exhaustion of the $8.2 million per year in ESSER funding allocated for coverage." The District asserts that "$8.2 million per year" was simply an estimate, a means to calculate the total ESSER grants sought: the term

"reflects a total amount allocated for class coverage of $24.6 million, with an anticipated payment of $8.2 million annually. The 'per year' was added as clarification, given the estimate of $24.6 million over three years." *District Brief*, at p. 14. Since TALC has taken a different view of the term, that the "per year" means the District is obliged to pay out up to $8.2M per year, irrespective of whether the $24.6M total has already been paid out, the District asserts the term is ambiguous.

With such ambiguity, the District urges me to use extrinsic, i.e., parol, evidence to determine the Parties' meaning. First in this regard, the District notes the Parties' bargaining history included specific references to the fact that ESSER Grant monies were not limitless and would be exhausted at some point, prompting the need for a sunset provision. Second, the District asserts that both TALC's witness and the District's witnesses refer to this money in the aggregate, that is, a single "pot" of money; the funds were allocated by the School Board in the aggregate and, once exhausted, there was no more to spend. *District Brief*, at p. 14 (citing T.45, 82, 150) The District suggests that the "per year" language was explanatory rather than limited, but, citing *NCP Lake Power v. Florida Power Corp*., 781 So.2d 531 (2001), only explains the difference in terms of whether I should consider extrinsic evidence to give meaning to the Parties' ambiguous CBA term. With the various changes in the versions of agreement between the Parties (both MOUs and the CBA) and the Parties' persistent discussion of the issue and the grant process during the negotiations leading to those iterations of the Class Coverage pay term, the District suggests TALC has failed to prove its urged meaning of the term "per year" is correct.

The District also argues TALC has failed to prove its case here, by likening the present situation to a breach of contract claim in court, which requires proof of the existence of a contract, a breach thereof, damages caused by the breach. The District states that, even if TALC had proven

breach of the agreement (which the District denies), TALC nevertheless failed to prove damages, because all that was ever supposed to be paid out for Class Coverage under the ESSER Grants was $24.6M – and all of that was paid out as Class Coverage. Indeed, the District notes it had to amend its ESSER grant applications, taking monies from other ESSER grant programs to pay out an additional approximately $10M (for a total of $34M) in Class Coverage pay. Thus, the District argues, because it paid out *more* than the $24.6M that Section 10.04(4)(h) required, TALC has failed to prove its breach of contract claim and the grievance should be denied.

On the information aspect of the grievance (Article 10, § 10.04(4)(g)), the District states that, in his unrebutted testimony, District Chief Negotiator testified he attended all the Labor/Management meetings since September 2021, and that, as corroborated by the Meeting Agendae and Minutes, ESSER and Class Coverage ". . . were continuing discussion items at those meetings. Data regarding the items specified in the relevant article was reviewed by all parties. The testimony and evidence support that the District substantially complied with the Article. It must be noted that the amount of ESSER funds expended was not required to be reported under Article 10.04(4)(g), contrary to the TALC representative's testimony. However, per Calfee's testimony, even the expenditure data was shared when requested." *District Brief*, at 17 (internal citations omitted). Consequently, the District asks me to deny the grievance.

As to remedy, while the District asserts TALC has not met its burden of proof and, so, no remedy should be awarded, the District nonetheless suggests that, should I sustain the grievance, and remedy ought to be *de minimis.* First, the District notes the CBA provides no indication of "what penalty should be incurred for violating any contract provisions relevant to this grievance." *Id.* at 19. Second, the District states TALC failed to prove any damages related to a failure to

provide all the § 10.04(4)(g) information in the format and at the time TALC requested it. With its production of some 28,000 pages of information, the District (eventually) complied. Third, since more than the CBA-required $24.6M was actually paid out, neither TALC nor its bargaining unit members have suffered any losses; thus, the District states, I should award no remedy, even should I find a violation of § 10.04(4)(h).[6]

DISCUSSION

As noted by the Supreme Court,

> When an arbitrator is commissioned to interpret and apply the collective bargaining agreement, he is to bring his informed judgment to bear in order to reach a fair solution of a problem.... Nevertheless, an arbitrator is confined to interpretation and application of the collective bargaining agreement; he does not sit to dispense his own brand of industrial justice. He may of course look for guidance from many sources, yet his award is legitimate only so long as it draws its essence from the collective bargaining agreement.

United Steelworkers of America v. Enterprise Wheel & Car Corp., 363 U.S. 593, 597 (1960). Accordingly, to determine the merits of the grievance at issue here, i.e., whether the District violated Article 10, § 10.04, of the Parties' Collective Bargaining Agreement, by failing to provide TALC with required data and by failing to pay any ESSER grant coverage pay for FY24, we turn first to the contract language at issue.

[6] The District also makes a procedural argument, indicating that, rather than filing a grievance over the District's refusal to pay any § 10.04(4)(h) Class Coverage as of August 2023, TALC was obligated instead to demand reopener negotiations under Article 15, § 15.03(3) of the CBA. *District Brief*, at pp. 20 – 21. This argument was never raised by the District before its posthearing *Brief*, either in its response to TALC's grievance (EX-28) or at hearing. To the contrary, the District stipulated that the present matter was before me (i.e., that it was procedurally and substantively arbitrable). (T.7) By not raising this procedural arbitrability concern earlier, the District has waived it. *See, e.g., Alameda County Housing Authority and Service Employees International Union, Local 1021*, 126 Lab. Arb. (BNA) 64 (Arb. Staudohar 2009) (employer "never raised the issue of timeliness in any of its communications with the Grievant. Indeed, the point was not made until the arbitration hearing, which was too late for timely objection on procedural arbitrability grounds. By not previously raising this issue the [employer] waived its rights to do so.")

As noted above, the contract language is as follows:

> **§ 10.04(4)(g) Data:** Data related to coverage shall be shared monthly with the TALC Labor/Management Committee, including but not limited to a count of: "Coverage – Absence", "Coverage – Vacancy", "Coverage – ED Approval", "Administrative Tasks", total coverage by employee, and total coverage by school. The TALC Labor/Management Committee will review data regularly to ensure implementation supports shared interests related to equity.
>
> **§ 10.04(4)(h) Duration:** This article will remain in place for the remainder of FY23 (2022-2023 school year) and FY24 (2023-2024 school year) or until the exhaustion of the $8.2 million per year in ESSER funding allocated for coverage. If ESSER funding is exhausted, the parties will return to the language in place prior to the introduction of ESSER funding. All District employees must be notified prior to the exhaustion of ESSER funding.

I find that neither § 10.04(4)(g) nor § 10.04(4)(h) is ambiguous.

First, the District does not assert § 10.04(4)(g) is ambiguous; it simply states it "substantially" complied with the contract term, through the discussions at Labor/Management meetings and the eventual production of 28,000 pages of data. I disagree with the District. The meeting agendae and minutes and the videos of contract negotiations (EXs-10, -24, -25) reflect the fact that ESSER grant and contract terms were discussed, but the only indication of the specific data required by § 10.04(4)(g), "Coverage – Absence", "Coverage – Vacancy", "Coverage – ED Approval", "Administrative Tasks", total coverage by employee, and total coverage by school, are the coverage costs by school (EX-11). The two Exhibits relating to Class Coverage by Check Date (EX-19 and EX-20) do not address any of the listed data categories and the record does not show when, if at all, these were shared with TALC prior to August 2023. Thus, I find the District violated Article 10, § 10.04(4)(g) as asserted by the Union.

Second, while the District asserts § 10.04(4)(h)'s "per year" is ambiguous, I am not persuaded. "Arbitrators give words their ordinary and popularly accepted meaning in the absence of a variant contract definition or extrinsic evidence indicating that they were used in a different sense or that that parties intended some special colloquial meaning." ELKOURI & ELKOURI, 8th ed., p. 9-22, see also pp. 9-22 to 9-25.

The Article's plain meaning is that the District has obligated itself to pay up to $8.2M in Class Coverage pay "per year" during FYs 22-23 and 23-24. Indeed, that the "per year" amount meant just that – an amount per year – is bolstered by District Business Services Coordinator Matthew Acosta's March 8, 2023, email to District Program Administrator (for ESSER grants) Leta Dietz Smith, in which he told her that, by his calculations,[7] Class Coverage expenditures of $8,737,792.19 were "over the allotted amount for the year." (EX-15, p.1) Likewise, District CFO Ami Desamours testified that she first learned ". . . in March of 2023 of a higher than estimated expenditure of our class coverage funds." (T.89) At that time, the total Class Coverage payout was slightly over the $8.2M. Again, this suggests that the Parties intended "$8.2 million per year" to mean "$8.2 million per year."

The balance of the language, i.e., "until the exhaustion of the $8.2 million per year in ESSER funding allocated for coverage. If ESSER funding is exhausted, the [P]arties will return to the language in place prior to the introduction of ESSER funding," applies when, as occurred in FY22-23, the $8.2M annual cap was reached. The fact that the District paid out more than $26M in FY22-23 was, frankly, due to a failure to manage funds by the District.

[7] This amount varies slightly from the running total in the District's other exhibits, specifically EX-19 and EX-20.

Indeed, it was apparent at hearing that the persons at the District responsible for monitoring expenditures of ESSER grant § 10.04(4)(h) Class Coverage payments did not monitor such expenditures well. Per EX-20, the District had paid out – and therefore, bargaining unit members had submitted requests for Class Coverage payments, which requests were entered by School Secretaires and approved by School Principals and, later, by payroll – $7,628,186 in Class Coverage payments as of January 31, 2023, yet no one sent up a red flag about approaching the $8.2M annual cap. In fact, the first red flag was sent by Mr. Acosta to Ms. Dietz Smith on March 8, 2023, when the amount had exceeded the $8.2M "allotted amount for the year." (EX-15) This was elevated to Dr. Desamours who, in conjunction with other District personnel – but without involving or even telling TALC – unilaterally decided to continue to pay out Class Coverage payments under § 10.04(4)(h), eventually exceeding the $24.6M aggregate grant amount. (T.90 – 92)[8]

Thus, with no ambiguity in the CBA, overpaying in FY22-23 did not relieve the District's obligation to pay Class Coverage expenses under § 10.04(4)(h) in FY23-24, and the District violated § 10.04(4)(h) by refusing to pay Class Coverage pay under that article in

[8] Along these lines, it bear mentioning that, as noted at the hearing, some schools were outliers in terms of the amount of Class Coverage pay requested by teachers, with ***substantially*** more requested than the average of other schools. (See, e.g., EX-16) To the extent that, at least at hearing, there was a suggestion of so-called padding of requests at certain schools, it was clear that District management, from approving Principals on up the chain of command, as well as those responsible for overseeing the District's expenditures under the ESSER grants for Class Coverage were, at best, asleep at the proverbial switch. Mr. Acosta appears the one bright light here, being the first to raise concerns in March 2023 about total expenditures and, again in early May 2023, thinking to identify Class Coverage expense by school. (EX-16)

Moreover, the District was able to persuade the Board to seek modification of the ESSER grants, to reallocate monies originally intended for other ESSER grant purposes, to make up the approx. $10M shortfall. (EXs-3, -4, -7, and -8) At hearing, Ms. Dietz Smith testified that the District *could* have requested the Board approve asking for a modification to the ESSER grant to allow for payment of § 10.04(4)(h) monies in FY23-24, but chose not to do so, stating that the other monies were essentially (not literally) earmarked for other projects that would have impacted students more. (T.76 – 77) It is unclear to this arbitrator how paying for teachers to cover classes and, therefore, to teach students would have impacted student achievement less.

FY23-24. To the extent that this finding may pose some difficult questions for the District, I note it is often said that "Arbitrators apply the principle that parties to a contract are charged with full knowledge of its provisions, and, the clear meaning of language may be enforced even though the results are harsh or contrary to the original expectations of one of the parties." *Transit Management of Southeast Louisiana, Inc. v. Amalgamated Transit Union, Division 1560*, 88 Lab. Arb. (BNA) 1055 (Arb. Baroni 1987) (citing authorities).

Having found that the District violated § 10.04(4)(h), I wish to be clear: § 10.04(4)(h) did *not necessarily* require the District to pay out the full $8.2M in FY23-24. As it eventually did here, the District was able to cover the classes through means other than bargaining unit members (who would be entitled to § 10.04(4)(h) Class Coverage pay when they covered a class). It did so by contracting with an outside temporary/placement agency. By doing so, the District did not have to incur as much § 10.04(4)(h) pay; it only owed that for bargaining unit teachers who actually provided Class Coverage. Thus, per EX-11, the District was able to limit its Class Coverage expenditure in FY23-24 to only $3,620,702.09 ($2,687,387.44 prior to usage of the temporary/placement agency to cover classes; and only $933,314.65 from March 15 through the rest of the year, after adoption of the temporary/placement agency model). That fact suggests the remedy appropriate here for the § 10.04(4)(h) violation.

On the one hand, the District asserts that any additional § 10.04(4)(h) monies would be a windfall for TALC and its bargaining unit members. On the other hand, TALC asserts concerns about equity prompt it propose dividing the entire $8.2M among the entire bargaining unit. I disagree with both Parties' suggestions about remedy.

Instead, I find that the appropriate remedy is to identify all the bargaining unit members

who received Class Coverage pay (not under § 10.04(4)(h)) for FY23-24. These were teachers who either took more students or who used what would otherwise have been, for example, planning time, to cover for an absent teacher (or vacant teacher position). They were paid under the other provisions of Article 10 for doing so. They were also the ones who were willing to go that extra mile to assist the District and its students in light of the understaffing that caused the need for Class Coverage. Thus, it would be fair for them – and only them – to receive the difference between what they were paid for the instances of Class Coverage they engaged in for FY23-24 and what they would have been paid under § 10.04(4)(h).

AWARD

Accordingly, for all these reasons – having considered the entirety of the record and the Parties' Briefs and rejecting any arguments not specifically addressed herein – I hold that the Grievance is SUSTAINED in its entirety, and, as Award, direct the Parties to take the following steps:

1. On or before October 15, 2024, the District shall provide a list to TALC, identifying each bargaining unit member who received Class Coverage pay under Article 10 during FY23-24. As to each person, the District shall, first, identify each instance for which that person requested Class Coverage compensation and the amount of compensation paid for each instance and, second, calculate the amount of compensation that person would have received if the District had paid that person under § 10.04(4)(h).
2. On or before October 31, 2024, the District shall pay each person on said list the

District's calculated net amount due – up to a maximum payout of $5,512,612.56, which figure represents the difference between $8.2M that should have been the cap under § 10.04(4)(h) and $2,687,387.44 (the amount paid through March 15, 2023, per EX-11).

3. On or before November 15, 2024, TALC shall provide a list to the District identifying any bargaining unit members whom TALC believes were incorrectly omitted from the District's list and any disagreements with the net amounts due calculated by the District, explaining what the perceived discrepancy is, how it was calculated, and what TALC believes should be the correct net amount.
    a. If the District agrees with the different net amounts noted by TALC, the District shall, on or before December 15, 2024, pay those persons whose amounts the District agrees were not correctly calculated the agreed amount due.
    b. As to any omitted persons or incorrect amounts timely identified by TALC with which the District does not agree, the Parties shall seek to resolve such differences through negotiation or mediation. If those differences are not resolved by agreement of the Parties by January 31, 2025, then the Parties shall appoint an arbitrator, under Article 4, § 4.04(2)(d), as if the matter were submitted through the grievance process; the issue submitted to that arbitrator shall be, in substance but subject to the Parties' discretion as to specific wording, "What is the correct net amount owed to each of the persons timely identified in TALC's list?" In such a subsequent award, if

the arbitrator should find that the District undercalculated the net amount due to any such person, the arbitrator should require the District to pay the net amount still due to that person and also award that person pre-award interest at the Florida statutory rate, accrued from December 15, 2024, through the date of that award.

4. Under no circumstance shall the District be obligated to pay bargaining unit members more than the maximum payout of $5,512,612.56; *provided that*, any pre-award interest awarded by a subsequent arbitrator under ¶ 3.b., above, shall not count toward the maximum payout of $5,512,612.56.

5. There is no specific remedy ordered with respect to the violation of Article 10, § 10.04(4)(g), but I do specifically find the District violated that provision as well.

Respectfully submitted today, Friday, August 16, 2024, at Tampa, in Hillsborough County, Florida.

Christopher M. Shulman
Arbitrator