

Federal Mediation and Conciliation Service
Case Number: 230727-07948

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In The Matter Of The Arbitration

between

MARTIN COUNTY EDUCATION ASSOCIATION
(Union)

OPINION

-and-

AND

MARTIN COUNTY SCHOOL DISTRICT
(Employer)

AWARD

**RE: : Association Presidential Leave:
Pay and Benefits**

-----X

BEFORE: Robert Herzog, Esq.

Pursuant to Article III of the 2020-2023 Collective Bargaining Agreement, with 2022-2023 Modifications,¹ between THE SCHOOL BOARD OF MARTIN COUNTY, hereinafter referred to as the “Board,” “District,” “MCSD” or the “Employer,” and the MARTIN COUNTY EDUCATION ASSOCIATION, hereinafter referred to as the “MCEA” or the “Assn.,” the Undersigned was designated by the Federal Mediation and Conciliation Service as Arbitrator to hear and decide the matter in dispute between the above - identified Parties.

A Virtual Hearing was held on December 12, 2023. The Parties were given full and complete opportunity to offer testimony, present evidence, examine and

¹ The Collective Bargaining Agreement with Modifications is hereinafter referred to as the “CBA.”

and cross-examine witnesses.

The following appearances were noted:

A P P E A R A N C E S

For the Employer:

Kristine Shrode, Esq.
Sniffen & Spellman, PA

For the Association:

Martin Powell, Esq.
Meyer, Blohm and Powell, P.A.

I S S U E

The question to be arbitrated is as follows:

Did the Employer violate the Collective Bargaining Agreement by its application of Article XI.2(I) in the case of presidential release?

If not, what shall be the remedy?²

T R A N S C R I P T A N D B R I E F S

A transcript of the proceeding was taken. The Parties filed Post-Hearing Closing Briefs³. The case was declared closed on January 24, 2023.

W I T N E S S E S

Jeanette Phillips
Karen Resciniti
Julie Sessa

Gary Simmons
Matthew Theobald

² Transcript, page 6. References to the December 12, 2023 transcript are hereinafter noted as "TR."

³ References to the MCEA Brief shall be denoted as "UB" followed by the page number; references to the Employer Brief shall be denoted as "EB" followed by the page number.

BACKGROUND

The Martin County School District currently employs 1,167 teachers educating 18,650 students at twenty-seven (27) school locations.⁴ The teachers are represented by the Martin County Education Association.

CBA Article XI.2(I)⁵ states:

Upon request from the Association, the Board shall grant leave for one (1) year without pay to the MCEA president to act in the capacity of president. The duration of said leave shall count toward accruing seniority. The teacher on leave shall have the option to continue, through the School Board, at his/her own expense, insurance, and all other benefits to which he/she would normally be entitled. Such leave may be renewable upon request submitted to the Chief Human Resources Officer by March 15 each year, and on approval of the Superintendent. At the conclusion of the leave, the teacher shall be returned to a teaching position for which he/she is qualified.

Article XI.2(I) had been in the CBA since 1999. From its inception through to early 2022, XI.2(I) had never been invoked. The MCEA President continued to be a full-time teacher. In March 2022, then MCEA President Resciniti notified the Employer of exercising her XI.2(I) rights. A document dated August 16, 2022, signed by both the MCEA President and the MCSD Superintendent, set forth Presidential Leave information. The application of XI.2(I) and the August 16, 2022 Presidential Leave provisions were applied during the 2022-2023 school year without incident.

In May 2023, Matthew Theobald was elected MCEA President replacing Ms. Resciniti who retired. When incoming-President Theobald requested the same

⁴ SOURCE: Arbitrable Notice of Martin County School District website.

⁵ Article XI.2(I) hereinafter shall be noted as "XI.2(I)."

XI.2(I) Presidential Leave salary and benefits arrangement retiring MCEA President Resciniti enjoyed during the 2022 – 2023 school year, the request was denied.

The MCEA filed the following July 12, 2023 dated grievance:

Articles Violated

- (1) Article IV: Association and Management Rights, including but not limited to Section IV.2 Use of Facilities and Communication
- (2) Article XI Leave Provisions, including but not limited to Section XI.2: Unpaid Leaves, Section I; and
- (3) Article XIII: Employee Benefits, including but not limited to Section XIII.1: Insurance.

Statement of Dispute

The Board violated Article IV: Association and Management Rights; Article XI.2: Leave Provisions; and Article XIII: Employee Benefits, by refusing to implement the plain language of Article XI.2 Section I related to MCEA president leave and refusing to provide association leave for the MCEA President, Matthew Theobald including providing all benefits through the school board as required by the contract, and past practice. The Board has further purported to remove the president's access to Microsoft Outlook, FOCUS, and other related platforms.

Further restrictions to limitations on his electronic or physical access to school sites and school applications are expected based on their present implementation. Finally, the Board has stopped providing medical benefits or retirement benefits and is insisting that the MCEA president provide, those himself through COBRA or through direct payment to the providers. These benefits are limited in term and scope and create additional requirements for Mr. Theobald which are not consistent with the intent or language of the contract. The Board presented a proposal to the Association, *Implementation of MCSB/MCEA Contract Provision, June 2023* and thereafter met but refused to discuss alterations to the implementation. More recently, the Board refused to indicate in writing their intentions to implement their plan without further alterations or MCEA agreement. On or about July 10, 2023, the Board sent paperwork to President Theobald to begin paying his Life Insurance directly. This is seen as a clear indication that they are initiating their implementation proposal absent agreement by MCEA.

Relief Sought

We ask that the Board immediately comply with the terms of the contract and with

established past practice and provide the "option to continue, through the School Board, at his/her own expense, insurance and all other benefits to which he/she would normally be entitled." We ask for the Board to make whole Mr. Theobald

The grievance was denied and the case was filed for arbitration.

POSITION OF THE UNION

The School Board of Martin County must follow the terms of the CBA, whether or not the current Board members agree with the CBA and amending MOUs⁶ negotiated by their predecessors. The District correctly implemented XI.2(I) during the 2022-23 school year. However, upon receiving a subsequent request for newly elected MCEA President Theobald for the same established pass-through pay and benefits for the following year, 2023-2024, the Board unilaterally denied the request and, in so doing, violated the CBA and incorporated MOU. In addition to placing President Theobald on unpaid leave status, the Board's unilaterally issued implementation document expressly stated that the District will not perform the financial function and payroll function, will not provide health insurance, will not provide retirement credit, and will not continue, through the Board, insurance, or any benefit to which he would have otherwise been entitled. This directly violates the CBA as *amended*.

⁶ MOU – Memorandum of Understanding

Article XI.2(I) and its 2022-2023 school year implementation does not violate any law. Same or similar Article XI.2(I) language exists in CBAs between other Education Associations and their respective school boards in Florida. If, at some future time, a court of competent jurisdiction declares any part of Article XI.2(I) to be illegal or if state or federal law is enacted that invalidates a part of Article XI.2(I), the CBA mandates Article XI.2(I) be amended, by mutual agreement of the Parties, in order to comply with the judicial decision or legislative enactment. Should future circumstances make a part of XI.2(I) to be unlawful, the impact would be appropriately resolved by both parties reaching a mutual negotiated agreement at the bargaining table, not by unilateral Board action.

The Arbitrator cannot condone the Board's CBA violation and must sustain the MCEA's grievance.

POSITION OF THE BOARD

MCSB did not violate the CBA in its application of XI.2(I) upon Mr. Theobald becoming MCEA President. CBA Article I.4 recites that the CBA is the complete agreement between the Parties "*and may not be altered nor amended during the term of its existence except as provided for by law.*" CBA XI.2(I) is clear and unambiguous that the MCEA President shall be on UNPAID LEAVE during any one (1) year increment wherein the MCEA President requested a one

(1) year Leave and the Board approved such Leave. While on Unpaid Leave, a MCEA President has the option of continuing insurance and other benefits through the District at the President's own expense.

The clear language of XI.2(I) only has one meaning. Since ambiguity is lacking, any extrinsic evidence should neither be taken nor considered. The Arbitrator must reaffirm the patent language as having been agreed to by the Parties and memorialized in the CBA. To do otherwise, the Arbitrator would be adding to or otherwise altering the CBA which is prohibited by the CBA.

With reference to the August 16, 2022, Presidential Letter, it was nothing more than the MCEA President and the District Superintendent entering into an implementation plan of the plain and unambiguous XI.2(I) language. The Presidential Letter does not change the content of XI.2(I). The Article must be given its clear meaning to which the Parties had agreed and memorialized in the CBA.

The MCEA's position would have the MCEA President, with no teaching duties, being on the payroll and receiving pay and benefits, just as classroom teachers are paid and receive benefits. Neither XI.2(I) nor any other CBA article mandates such arrangements. Using the dictionary definition of "through," the plain meaning is the MCEA President would be offered the same options to benefits as any other employee on Unpaid Leave receives. In the case of health

insurance, employees on Unpaid Leave have the option to keep coverage through COBRA.

The District only makes FRS⁷ contributions for employees who are working full-time. As the MCEA President is not receiving paychecks, no basis for FRS contributions exists. Florida Statute and Florida Retirement System (FRS) rules only provide for a two (2) year “buy back” should the employee return to active teaching.

Based upon the clear and unambiguous XI.2(I) language, the MCSB did not violate the CBA. The grievance must be denied in its entirety.

DISCUSSION

Article XI.2(I) first appeared in a collective bargaining agreement as the result of the Parties’ 1999 collective bargaining negotiations. During the twenty-three (23) year period from its 1999 inception to 2022, XI.2(I) had not been exercised by the MCEA. In 2022, the then current MCEA President applied for a grant from the MCEA’s parent organization. The request was granted enabling the MCEA, for the first time, to open a MCEA office.

⁷ FRS – Florida Retirement System

An August 16, 2022 dated document addressed Presidential Leave. MCEA President Resciniti then began her MCEA Leave for the 2022-2023 school year. The MCEA remitted to the District each month funding for the entire cost of the District providing salary and benefits to President Resciniti.

A new MCEA President was elected in May 2023 and requested MCEA Leave for the 2023-2024 school year. The Leave request was granted, but the Board declined to provide the new President with the same salary and benefits outgoing MCEA President Resciniti had enjoyed.

In deciding whether the Board's salary and benefit denial violated XI.2(I), it must first be established what constitutes XI.2(I) and its meaning. Several basic arbitration rules apply:

Best Evidence Rule:

A document itself is considered the best evidence of its contents and is preferred to testimony concerning the contents of the document, but failure to present the document itself will not bar testimony concerning it.⁸

Parole Evidence Rule:

Evidence of a written or oral agreement outside the contract itself to prove the meaning or interpretation of that contract is not admissible. The meaning is to drawn from the words of the contract itself.⁹

Plain Meaning Rule:

If the words are plain and clear, conveying a distinct idea, there is no occasion to resort to interpretation, and their meaning is to be derived entirely from the nature of the language used.¹⁰

⁸ Theodore J. St. Antoine, Editor, *The Common Law of the Workplace*, Second Edition, page 35.

⁹ Charles S. Loughran, *Labor Arbitration Practice*, page 345.

¹⁰ Kenneth May, Editor-in-Chief, *Elkouri & Elkouri, How Arbitration Works, Eighth Edition*, page 9-8, CH.9.1.B.iii.

Contract Ambiguity

A contract is ambiguous if it is reasonably susceptible to more than one meaning.¹¹

A. THE 1999 ARTICLE XI.2(I)

CBA language is unclear and ambiguous “**if it is susceptible to more than one meaning.**”¹² Both Parties agree that XI.2(I) is clear, unambiguous and has only one meaning.¹³ However, the Parties differ as to what that one meaning is. Since the Parties profess more than one meaning for the XI.2(I) language, the language then is unclear and ambiguous. To arrive at the right case decision, the Arbitrator must determine what the language of XI.2(I) is and what it means.

Parsing XI.2(I)

Analysis of the first three (3) sentences of XI.2(I) will establish whether equivocality exists in its language.

(1) “Upon request from the Association, the Board shall grant leave for one (1) year without pay to the MCEA president to act in the capacity of president.”

“Shall” is defined as: *“used in laws, regulations, or directives to express what is mandatory”*¹⁴

“Without” is defined as: *“outside;” “absence or lack of something,” “unless,”*¹⁵

¹¹ Theodore J. St. Antoine, Editor, *The Common Law of the Workplace, Second Edition*, page 74.

¹² EB, pages 12,13 quoting *Elkouri & Elkouri, How Arbitration Works, Seventh Edition*, page 9-8

¹³ EB, page 12; UB page 11.

¹⁴ *Merriam-Wester’s Collegiate Dictionary, Eleventh Edition*, page 1143.

¹⁵ *Ibid.* page 1439

“Pay” is defined as: (1) *“to make due return to for services rendered or property rendered”*
 (2) *“to bear the cost of something;”*
 (3) *“to discharge a debt or obligation”*¹⁶

The construction of XI.2(I)’s first sentence makes the sentence ambiguous, i.e., subject to more than one meaning. One interpretation benefits the District; the other interpretation benefits the MCEA and its President. By substituting dictionary words for CBA words, differing meanings emerge:

(1) “Upon request from the Association, the Board shall grant leave for one (1) year lacking any earnings to the MCEA president to act in the capacity of president.”

[Benefits the MCSD]

(2) “Upon request from the Association, the Board shall grant leave for one (1) year absent the Board bearing any cost for the MCEA president to act in the capacity

of president. [Benefits the MCEA]

In the former case, the MCEA President receives no earnings from the District; in the latter case, the MCEA President will still receive salary and benefits from MCSD, but at no cost to MCSD, i.e., cost remitted to the MCSD from the MCEA President on a “pass-through” basis. The ambiguity will be addressed later in this decision.

(2) “The duration of said leave shall count toward accruing seniority.”

¹⁶ *ibid.* page 910.

Seniority mandatorily accrues during the leave period.

(3) “The teacher on leave shall have the option to continue, through the School Board, at his/her own expense, insurance, and all other benefits to which he/she would normally be entitled.”

“Shall” - as defined above.

“Option” – *“the power or right to choose; freedom of choice”*¹⁷

“Continue” - *“to maintain without interruption a condition, course, or action”*¹⁸

“Through” – *“by way of”*¹⁹

“Own” – *“belonging to oneself”*²⁰

“Expense” - *“financial burden or outlay: cost”*²¹

“Normally” – *“conforming to a type, standard, or regular pattern:*

*characterized by that which is considered usual, typical, or routine”*²²

“Entitled” – *“a right to benefits specified especially by law or contract”*²³

¹⁷ *Ibid*, page 871.

¹⁸ *Ibid*, page 270.

¹⁹ *Ibid*, page 1303.

²⁰ *Ibid*, page 887.

²¹ *Ibid*, page 440.

²² *Ibid*, page 846.

²³ *Ibid*, page 417.

Holding the ambiguous first sentence to the side for the moment, the remainder of the 1999 XI.2(I) means: **While on leave, the MCEA President mandatorily has the unfettered choice to exercise her/his right, by way of the School Board, to the contract specified, i.e. CBA specified, regular patterned, routine insurance and all other benefits. Such exercised choice shall lack cost to the Board. Instead, the cost shall be the MCEA President's sole funding responsibility, dollar for dollar, to remit to the District for the School Board's disbursement for the regular patterned, routine, contract-specified insurance, and other benefits while the MCEA President is on Leave.**

The second and third sentences give meaning to the first sentence. The MCEA President can opt to continue, without interruption, the salary and benefits he received while teaching. The salary and benefits shall be through the MCSB, but the MCEA President {or his surrogate} must remit the cost of the salary and benefits to the MCSB so there is no cost to the MCSB. The second and third sentences negate the District's interpretation of the first sentence.

The District argues that, insurance-wise, XI.2(I)'s "normal entitlement" means COBRA coverage. [TR, page 185; EB, page 7]; the MCEA argues "normal entitlement" means the same insurance the President had prior to becoming President. [UB, page 10].

Nowhere in XI.2(I) is COBRA mentioned. Subsection (I) does **not** read “at his/her own expense, COBRA insurance and all other benefits.” Likewise, nowhere in XI.2(E) is there any reference to a COBRA mandate:

E. While on leave in accordance with this article:

- 1. An employee shall have the option to remain an active participant in his/her state teacher retirement system and/or other fringe benefit programs by continuing to pay the amount required.**

COBRA significantly is totally omitted.

When the Parties meant COBRA to apply in the CBA, they so stated such as is found in Article XII.10.A:

The School Board shall continue to provide the full cost of the insurance premium associated with District provided core employee benefits for any bargaining unit member who is disabled and receiving workers' compensation for up to six (6) months following placement on workers' compensation leave.

The employee may elect to participate in COBRA consistent with law.
[Emphasis supplied]

If the Parties intended for COBRA insurance to apply in XI.2(I), they would have so stated. They did not. For the Arbitrator to add the word “COBRA” to the article would violate CBA Article III which provides “...**that the arbitrator shall not add to nor subtract from, modify, or otherwise alter the terms of the Agreement.**”²⁴

In the absence of any stated COBRA mandate, “normally entitled” means the insurance benefits the MCEA President had prior to becoming President. The

²⁴ CBA as amended, Article III, ARBITRATION, page 11.

finding will be reinforced by the analysis of Employer Exhibit 2, the MCSD Presidential Leave document.

The above application of the previously cited arbitration rules fully complies with Florida Court decisions:

Institutional & Supermarket Equipment, Inc. v. C & S Refrigeration, Inc., 609 So.2d 66 involves a commercial contract and a proprietary interest sale by one of the parties. The judge used *Webster's New World Dictionary* to give meaning to terms. The Court ruled: ***"Where contracts are clear and unambiguous, they should be construed as written, and the court can give it no other meaning."***²⁵

The part of XI.2(I) that is clear and unambiguous has been given its Plain Meaning using *Webster's Dictionary*; the part of XI.2(I) that is unclear and ambiguous, *Webster's Dictionary* was also used to determine its unambiguous meaning.

Pol v Poe, 7052d 51 (Fla3d DCA 1997) involved a divorced couple who entered into a property agreement, memorialized in a letter, while married. The property was condemned, and the dispute issue concerned the disbursements of proceeds from a condemnation award. The Court ruled:

²⁵ *Institutional & Supermarket Equipment, Inc. v. C & S Refrigeration, Inc.*, 609 So.2d 66,68.

“It is well established that a court cannot rewrite the clear and unambiguous terms of a voluntary contract.”²⁶

In the part of the above analysis addressing the clear and unambiguous language, terms have not been rewritten. The analysis part addressing unclear and ambiguous terms has used the dictionary for clarity.

Specialty Restaurants Corp. v City of Miami, 501So.2d 101 involved the meaning of terms in a lease agreement. The Court ruled: ***“The lease agreement ... contained no glossary of terms, thus the plain and ordinary meaning of the words used therein are to be applied.”***

City of Miami Beach v Royal Castle Systems, Inc, 126So2d595 (Fla3d DCA 1961) concerned the meaning of zoning ordinance terms. The Court ruled: ***“Considering definitions from Webster’s Dictionary for the meaning of terms in a zoning ordinance, where the term is not defined by the ordinance itself, is recognized by our Florida Supreme Court.”***²⁷

In the absence of a glossary of the terms used in XI.2(I), Webster’s Dictionary has been considered for the meaning of terms.

In giving meaning to unclear and ambiguous CBA terms, the Arbitrator has used Webster’s Dictionary following the guidance of Florida court decisions.

²⁶ *Pol v Poe, 7052d 51 (Fla3d DCA 1997)*

²⁷ *City of Miami Beach v Royal Castle Systems, Inc, 126So2d595 (Fla3d DCA 1961)*

Parole Evidence

Parole evidence, concerning ambiguous terms addressed above, bolster XI.2(I)'s meaning. The ambiguities are:

- A. Pay – remuneration for rendered services or cost;
- B. Normal entitlement – regular teacher insurance benefits or COBRA;
- C. Through the School Board – on the direct payroll or as a facilitator, e.g., using WEX {third-party administrator};
- D. All other benefits – without FRS participation or with FRS contributions.

The XI.2(I) ambiguities opened the door for parole evidence under the Contract Ambiguity and Parole Evidence Rules. Of those testifying at the arbitration hearing, only one witness was present during and participated in the 1999 collective bargaining negotiations, that being then MCEA President Phillips. All other witness 1999 negotiation testimony was hearsay, double hearsay, conjecture, or opinion.

The 1999 MCEA President testified concerning the creation and intent of XI.2(I):

- Q. And what was your understanding at the time of the intention of that ... language?
- A. That the payment for the president would continue through the School Board with reimbursement. MCEA would reimburse the school district for the expenses. But it was all to just stay the same going through payroll. And all the benefits, everything would be included, just like if they were a teacher at a school.

Q. So MCEA would pay the expenses, but the Board would process them?

A. Correct.

Q. So it would be no cost to the School Board?

A. Exactly.

Q. Okay. And where it says, "insurance and all other benefits," what was that referencing?

A. Whatever benefits a teacher had, that -- those would apply to this release president. So be it personal days, sick days, moving -- we had steps back then for salary, so moving on the steps. Anything that the classroom teacher had, the release president would also have.

[TR, pages 29, 30]

Q. Okay. So how -- how do you feel that this would be implemented if the employee is not performing any work for the school district?

A. It would -- it -- it's an understanding that they would be paid in the same way as the teacher, that everything would go through the School Board.

Q. Even if they're not performing any work for the School Board?

A. Yes. Because in a sense, they are performing for the School Board because they're out there helping the teachers and working with the different district personnel for that teacher or --

Q. Are they teaching students?

A. No, but look at all the different positions the School Board has downtown and in other facilities that aren't teaching either.

Q. But the -- all of the salary and benefits would be paid for by the MCEA who's the employer, isn't that right?

A. The MCEA would be paying for everything. So it's not costing the District anything because it's all going to be reimbursed to the District.

Q. What about Florida Retirement System, is the Board contributing to that during their leave? What's your understanding of that?

A. Yes. Whatever the -- a classroom teacher would receive, the president will receive also.

[TR, pages 36, 37]

The former President's testimony not only eliminates any existing ambiguities, but corroborates the analysis, observations and findings found *supra*.

B. PRESIDENTIAL LEAVE DOCUMENT AND ITS XI.2(I) IMPACT

CBA Article XIV.1A reads:

This contract shall be effective as of July 1, 2020 and shall remain in force and effect through June 30, 2023. This does not eliminate the possibility of altering or amending the agreement as specified elsewhere in this Agreement. [Emphasis supplied]

The only CBA limitation is set forth in Article I.4 entitled “Negotiations:”

This agreement shall constitute the full and complete agreement between the Board and Association and may not be altered nor amended during the term of its existence except as provided for by law. [Emphasis Supplied]

Articles XIV.1A and I.4, read together, permit midterm altering or amending of the CBA, providing the alteration or amendment does not violate law.

CBA APPENDIX C is entitled “Letters of Understanding.”²⁸ The Parties have an established practice of altering and/or amending the CBA prior to and during the current CBA. The alterations and amendments are integrated into the CBA and remain as parts of the CBA unless (a) self-ending “sunshine dates”²⁹ are stated, or (b) they are removed or changed through the collective bargaining process.

DOCUMENT TYPE	DATE SIGNED	SUBJECT	SUNSHINE DATE	CBA PAGE #
MOA	03/09/2016	Virtual Streaming of Instruction	None	75
MOA	08/09/2018	Work Hours & Salary Amounts for Instructional Personnel Assigned	None	76

²⁸ “Memorandum of Understanding (MOU)” and “Memorandum of Agreement (MOA)” are used interchangeably.

²⁹ If a document has a stated “sunshine date,” the documents ebbs and is no longer effective.

		to Elem. Schools Designated a Low 300 School	Effective date only	
MOA	02/04/2016	Pay Calendar	None	77
MOU	12/01/2021	Sick Leave	06/30/2022	78
MOU	08/01/2022	Sick Leave Buy Back Addendum	Part 10/01/2022; Remainder stays in effect	79
MOU	08/23/2022	Sick Leave Buy Back Second Addendum	Part 11/03/2022; Remainder stays in effect	80
-	-	81-83 Left Blank		
MOU	03/02/2022	COVID Sick Leave	06/30/2022	84,85
MOA	03/22/2022	Illness-in-the-Line-of-Duty	Closes all open cases	86
MOU	07/22/2022	One Time Recognition for Reading Personnel	12/31/2022	87
MOU	10/04/2022	ESSER/ARP Funded "Incentive Supplement for Tutoring"	When ESSER/ARP funds are exhausted	88
MOA	11/28/2022	Millage Stipend	06/30/2025	89-91
MOU	11/22/2022	Bus Operator Referral Bonus Program	Open ended	92
MOA	01/20/2023	Western Zone Supplement	None	93,94

A January 20, 2023 MOA sentence clearly delineates the relevance of a MOA:

The terms and conditions of this MOA are meant to supersede, supplant, and replace all language contained in the 2020-2023 Collective Bargaining Agreement("CBA")³⁰

³⁰ Employer Exhibit 9, page 93, RES 0407

The Parties' MOA/MOU definition supersedes any other sourced definition of MOA/MOU. The above thirteen (13) MOU/MOA establish the Parties' practice of midterm amending and altering of the CBA.

The MCSD Presidential Leave document was signed by the MCSD Superintendent and the MCEA President on August 16, 2022.³¹ The provisions are not merely procedural in nature, but also alter, amend, and supersede the original 1999 CBA XI.2(I) terms and conditions. By the terms of the Presidential Leave document, its content applies to all MCEA Presidents. Where the Presidential Letter conflicts with the original XI.2(I) language, the Presidential Letter language prevails. The following observations are pertinent to the Presidential Letter paragraphs and bullets:

Para. / Bullet #	Provision	Observation
P1	"...[T]he MCEA is requesting that the MCEA President act in the capacity of 'President' for the 2022-2023 school year."	The reference is to the generic MCEA President, not to a specific named individual. It is illogical for the MCEA in 2022 to make such a request for school years commencing in 2023, 2024, 2025, etc.
P3	"Term: Effective 8/1/2022 – 6/30/2023, the term can be renewed upon request ... each year"	"Term" and "renewal" are not procedural in nature, but rather are contentual in nature that add provisions not stated in the 1999 XI.2(I). The start school year is identified. No sunset school year is found. Rather, a provision for continuation in succeeding years is clearly specified by the words " <i>renewal upon request ... each year.</i> "

³¹ Employer Exhibit 7, RES 0299.

<p>P4</p>	<p>“Personnel Action: MCEA President, Karen Resciniti will be reclassified from Teacher at SFHS to MCEA President on Leave as per the MCEA contract effective 8/1/22.”</p> <p>“Her assignment will be placed under the Director of Professional Standards, Tyson Villock.”</p>	<p>The 1999 XI.2(l) makes no mention of reclassification. Ms. Resciniti’s reclassification is totally an Employer matter. If MCSD wants to reclassify future MCEA Presidents to other classifications, it retains the right to do so.</p> <p>Again, the assigned placement of President Resciniti to Director Tyson Villock is totally an Employer matter. If the MCSD wants to change the assigned placement of future MCEA Presidents, it retains the right to do so.</p>
<p>B1</p>	<p>“The MCEA President will be placed on leave from her current position and placed as a teacher on assignment, for one (1) year, <u>beginning</u> with the 22-23 school year. August 1, 2022, through June 30, 2023.”</p>	<p>The placement of a MCEA President as a Teacher On Assignment is totally an Employer matter. If the MCSD desires to change the Teacher On Assignment designation of future MCEA Presidents, it retains the right to do so. Testimony was the Teacher On Assignment selection was solely to accommodate the “system.”</p> <p>A <u>beginning</u> school year is stated. If the Parties wanted an ending date, they would have so provided.</p>
<p>B2</p>	<p>“According to the contract, <u>this will be without pay</u>, as the MCEA will be reimbursing the Martin County School District for ALL compensation paid to Karen Resciniti from August 1, 2022, through June 30, 2023.”</p>	<p>The equivalent remunerations made to a MCEA President on Presidential Leave, including Karen Resciniti, shall not be at the Board’s cost. ALL equivalent remunerations made to the MCEA President on Leave by the District are done so to discharge the MCSD indebtedness existing due to MCEA’s pass-through reimbursements to the District. <i>{In actuality, pre-payment was remitted by MCEA to the MCSD.}</i>³²</p> <p>Because a check could not be made payable to “MCEA President,” Karen Resciniti’s name was entered as the payee for the 2022-2023 school year.</p> <p>A starting school year is identified. There is no sunset school year identified.</p>

³² See the document’s last bullet.

B3	<p>“Placing Karen Resciniti in a ‘Teacher on Assignment’ position will allow for the accruing of seniority and the continuance of her benefits to which she will be normally entitled.</p> <p>The reimbursement payments must include ALL compensation including benefits and deductions collected from each payroll during the 2022-2023 school year.</p> <p>Should a qualifying event occur, and any benefits or contributions change, the MCEA will agree to pay the revised amount.”</p>	<p>Karen Resciniti is placed in the “Teacher On Assignment” classification. There is no mandate that succeeding MCEA Presidents must be placed in the “Teacher On Assignment” classification, i.e. the District may place succeeding Presidents in a classification other than “Teacher On Assignment” as long as the future Presidents accrue seniority and continue normal benefit entitlement.³³</p> <p>The MCEA’s reimbursement must replicate ALL MCSD’s equivalent remuneration and benefit costs as set forth in each school year’s payroll. E.g., 2022-2023 costs for the 2022-2023 school year; 2023-2024 costs for the 2023-2024 school year, etc.</p> <p>Any change in MCSD’s cost in benefits or if contributions change, the MCEA shall pay to MCSD the modified amount.</p>
B4	<p>“For 22-23 school year, the annual evaluation will be conducted by the Deputy Superintendent who will be supervising the President. The ‘Non-Classroom Teacher’ observation tool in Observation will be used, and the District student growth score will be applied.”</p>	<p>“Annual Evaluation” is not procedural in nature, but rather is contentual in nature. It adds a provision not stated in the 1999 XI.2(I). Nowhere in 1999 XI.2(I) are “Annual Evaluation” or “Observer” found.</p> <p>The naming of a specific Observer is procedural.</p> <p>The language does not read “Annual evaluation for each school year.” Rather, the language limits who will be conducting the evaluation “For {the} 22-23 school year.” Should the MCSD desire to change the Observer in future years, it retains the right to do so.</p> <p>The MCEA President on Leave being evaluated just as all teachers not on leave are evaluated reaffirms the validity of the analysis thus far.</p> <p>The Deputy Superintendent’s supervision is totally a MCSD matter. Supervision does not need to be the Deputy Superintendent. Supervisors in future school years, however,</p>

³³ “Normal benefit entitlement” is addressed *infra*.

		cannot supervise the MCEA President's MCEA activities as that is prohibited by law. The observation tool and student growth score application are the same criteria used in evaluations of teachers not on leave. This reaffirms the analysis thus far.
B5	"The President will be eligible for the millage per the MCEA Bargaining unit agreement."	"Millage Eligibility" is not procedural in nature, but rather is contentual in nature. It adds a provision not stated in the 1999 XI.2(l). The term "President" is used generically. Millage is an adjunct of salary. Millage cannot be added to salary unless salary exists. Thus, the document is inclusive of salary.
B6	"At the end of each month the millage per the Finance Department will submit an invoice to the Martin County Education Association for <u>all compensation paid</u> to the Martin County Education Association's President. <i>{Remainer of section devoted to procedural matters.}</i>	"Compensation" ³⁴ is not procedural in nature, but rather is contentual in nature. It adds a provision not stated in the 1999 XI.2(l). "President" is used generically as no one person's name appears. It is also clear and unambiguous that the MCEA President shall receive millage and <u>compensation</u> .
B7	Prepayment – MCEA will provide a check in the amount of \$7000.22 to the Finance Department for pre-payment as part of the salary pass-through.	The pre-payment creates an indebtedness on the District's part to provide MCEA President salary replacement and benefits. The pass-through reference memorializes that the quid pro quo arrangement shall be at no cost to the District. The \$7000.22 amount includes both salary replacement and benefit costs.

While the MCEA signatory to the document testified that the District wanted to

³⁴ § 211.2 Definition of compensation.

(a) The term compensation means any form of payment made to an individual for services rendered as an employee for an employer. ...

(b) Compensation includes, but is not limited to, the following:

(1) Salary, wages and bonuses; ...

Source: Code of Federal Regulations (CFR § 211.2)

avoid a MOU, merely omitting the title “MOU” from a document does not prevent the document from being a MOU. The document’s words mean what they say and say what they mean. The August 16, 2022 document is a MOU as it terms, conditions, alterations, and modifications supersede, supplant, and replace conflicting language contained in the 2020 – 2023 CBA Article XI.2(I). The merged 2020 – 2023 XI.2(I) and August 16, 2022 MOU language is hereinafter referred to as the “2020 – 2023 CBA as *amended*.”

The MCSB was aware of the Presidential Leave situation. At a February 7, 2023 MCSB Workshop, a MCSB Member offered the following:

“Both Parties must abide by the obligations to which they have agreed. This includes the provisions for equivalent remuneration and CBA benefits.”

C. INCONTROVERTIBLE ENTITLEMENT

If the above contractual analysis were not enough, XI.2(E), under the subsection entitled Unpaid Leaves, is unequivocal concerning the state teacher retirement system and/or other fringe benefit programs. The pertinent language reads:

E. While on leave in accordance with this article:

- 1. An employee shall have the option to remain an active participant in**

his/her state teacher retirement system and/or other fringe benefit programs by continuing to pay the amount required.

2.

3. An employee shall be given the opportunity, unless otherwise provided, to continue insurance coverage in existing school programs during the leave, provided that the premiums for such insurance programs shall be paid by the employee on a monthly basis in advance of the month due.

Section E. applies to the MCEA President on Leave and grants the MCEA

President the right to remain an active participant in the state retirement system and to receive active participant fringe benefits by remitting the required cost amount to the MCSD. There is no mention of a pension buyback on return from leave because the MCEA President continued to be an active plan participant.

If the MCSD believed the CBA language conflicted with FRS rules, it had at least six (6) collective bargaining negotiations over a twenty-three (23) year span, since 1999, to eliminate any offending CBA language. The failure to change Article XI language over the twenty-three (23) year period, encompassing at least six (6) collective bargaining negotiations, substantiates the Parties' belief that no Article XI conflict with FRS rules exists.

The President also has the opportunity under Article XI to continue existing fringe benefits, including insurance. Section E. makes no mention of COBRA as distinguished from Article XII.10 that does make specific reference to COBRA.

E. THE FEBRUARY 7, 2023 MCSB WORKSHOP MEETING

On February 7, 2023, the MCSB conducted a Workshop. The Workshop was videotaped and a transcript made of the proceeding. The first agenda item to be discussed was Presidential Leave. The Board's awareness of Presidential Leave is reflected by statements made by Board members or counsel. Transcript quotations follow:

- **“The Proposal {MOU} in late May {2022} from the MCEA that was emailed to the then Board”** verifies when the Board became aware. [Workshop Transcript Reference 7:13, 7:23]³⁵
- **“To change that language {XI.2(I) as *amended*} that something would have to be done at the collective bargaining”** [WTR REF: 8:35, 8:40]
- **“R]oughly 7000 was advanced by the Union and there’s been steady reimbursements to the District of the salary that is being paid out and the benefits to ... the MCEA President”** [WTR REF: 9:39 – 9:58]
- **“...{[T]he PLMOU³⁶} was the document that {the MCEA President} and {the Superintendent} would sign. It covers the aspect of the salary and the reimbursement. At the September Board Meeting is a Teacher Assignment position for {the MCEA President} as a salaried employee. ... My take on it is that was a way to get the payroll software to recognize she’s getting a salary**

³⁵ Workshop Transcript Reference hereinafter is referred to as “WTR REF:”

³⁶ The Presidential Leave MOU is referred to as “PLMOU.”

and benefits so that they used what had been basically a retired title Teacher on Assignment.” [WTR REF: 10:29 – 11:16]

- **“... [T]his was discussed before ... at an executive session um I think was discussed at least more than one executive session” [WTR REF: 14:54 - 15:01]**
- **“...[T]he direction from the Board at that time was for staff to handle it {Presidential Leave}” [WTR REF: 15:46]**
- **“... [I]s this type of contract being used in other counties in Florida and if so, I’d love to see them” [WTR REF: 18:19 - 18:27]**
- **“...[S]he will basically be a full-time President and be a hundred percent paid by the Union but still an employee of ours” [WTR REF: 19:11 – 19:19]**
- **“[T]he excuse that our system won’t accept it when we’re making poor decisions and decisions without information” [WTR REF: 29:29 -29:36]**
- **“You know the damage is done but I don’t know how you’re going to correct this” [WTR REF: 32:21]**
- **“... [W]e’ll see what other districts I heard other districts do it so you know maybe we need to see how other districts do it if they do”**

WTR REF: 33:16 -33:28]

- **“[T]here are several districts in the State of Florida that do it. There’s like St. John’s and ... Seminole. Well there’s just several.” [WTR REF: 40:34 – 40:40]**

- **“If the contract language has changed and then how do we know the things like how do we get payment”** [WTR REF: 44:13 – 44:18]

- **“...[B]ut those types of things have to be negotiated I guess”**

[WTR REF: 45:46 56:02]

- **“I would like to see these other counties uh polices. I'd like to see it written exactly how they carry it out”** [WTR REF: 48:07 – 48:12]

Abundantly clear are:

- A. The School Board was aware of the issue as early as May 2022 when a MCEA proposal was mailed to Board members.
- B. At the February 7, 2023 Workshop, Board Members, the Superintendent and Counsel all acknowledged the legitimacy of XI.2(I) as *amended* and the realization that XI.2(I) could only be changed through the collective bargaining process.
- C. Board Members several times sought a survey as to what other Florida school districts were doing relative to their Presidential Leave situations. NOTE: If such a survey was performed, survey results were not introduced into evidence at the hearing.

F. COUNSEL CONCERNS

At the February 7, 2023 Workshop Meeting, Board Counsel presented and discussed a written report,³⁷ dated February 7, 2023, that he authored concerning XI.2(I) as *amended*. Significant report entries are insightful.

- A. Counsel noted that the August 16, 2022 Presidential Leave documented modified XI.2(I). Reference is made to **“Article XI.2 Unpaid Leaves I as modified by the MCSD Presidential Leave Introduction.”**
- B. Conceded the MCEA’s **“reimbursing the MCSD for ... {the MCEA President’s} salary and benefits”** from August 2022 through to February 7, 2023.
- C. **“{Subsection} I allows for the MCEA president to pay, at the president’s expense, insurance and all other benefits the MCEA president would be entitled to.”**
- D. The August 16, 2022 MOU, coupled with the Board’s approval of the Teacher on Assignment position, enables the MCEA President to receive a salary.
- E. As the MCSD is **“directly paying {the MCEA President’s} salary,”** it may expose the District to a Worker’s Compensation claim.
- F. The XI.2(I) situation has occurred because:
 - “● The MCSB in September 2022 approved a Teacher on Assignment with full**

³⁷ Employer Exhibit 5, RES 0294 - 0298

salary and benefits for {the MCEA} President.

- **{The MCEA President} has complied with the Presidential Leave**

Introduction. The MCEA has reimbursed the MCSD for her salary and benefits.

- **Undoing the arrangement raises a substantial risk of litigation and a possible Unfair Labor Practices complaint.”**

G. There are other employees in the MCEA who do not have teaching responsibilities and are receiving millage stipends. As long as the MCEA continues to fully reimburse the MCSD for millage costs, Counsel recommends the MCEA President continue to receive the millage stipend.

At the February 7, 2023 Workshop, Counsel also advised the Board **“that this Board has been put in {a difficult position}. Now to backtrack, it’s going to cause probably cause more issues, more litigation, so I just want to prepare you that it might not be the outcome that you’re expecting.”** [WTR, 50:16 – 50:29].

G. ESTABLISHMENT OF A PRACTICE

Pay period after pay period, from August 2022 to May 2023, the then MCEA President received MCSD issued salary and all teacher benefits. MCSD’s salary and benefit actions: (a) formed a clear, consistent, repetitive pattern, week after week, for a long period of time and (b) was known and accepted by the MCSD as MCSD issued the salary payments and covered benefits. The MCEA, as well, knew and accepted the salary and benefit arrangements. All the elements of a

Past Practice are present. The Parties' actions have provided corroborative definition to any ambiguity that may have existed in XI.2(I) as *amended*.

H. POTENTIAL EXTERNAL IMPEDIMENTS

District witness testimony cited impediments that would make XI.2(I) as *amended* compliance impossible:

COBRA & Non-Employees

*Florida Blue*³⁸ has no independent knowledge as to the identity of COBRA employees and, consequently, would not disqualify any employee from benefits. *Florida Blue* only acts upon the information provided to it by the MCSD.

The Consolidated Omnibus Budget Reconciliation Act (COBRA) provides employees with severely cut work hours or who were out of work altogether an opportunity for said individuals to continue their employer-provided health care coverage for eighteen (18) months by remitting each month to the employer premium plus an administrative charge.

A District witness testified that employees working thirty (30) hours or less or who were out on non-paid Leaves of Absence lost their District paid health insurance benefits. Such employees are hereinafter referred to as the "affected Class." Affected Class individuals were directed to a third-party COBRA

³⁸ Insurance provider *Florida Blue* is hereinafter denoted as "FB."

administrator, WEX. WEX would collect premium from Affected Class individuals opting for COBRA benefit continuation and then notify the District. The District then would merge those individuals' names onto the master list of employees names being sent to the insurance company, *Florida Blue*. *Florida Blue* would not know who on the list were District premium paid employees and those who were COBRA paid individuals.

District Exhibit 1, a 174 page document, self identifies itself as the *Florida Blue Master Contract for the Martin County School District* and the *Martin County School District Employee Benefits Highlight Guide 2023 -2024*.³⁹ During direct examination of a District witness, the following statements were made concerning the *FB Master Contract*:

11 Q. Does this page describe the eligibility for
12 coverage?

13 A. Yes. It's entitled "Eligibility For
14 Coverage."

15 Q. Okay. And tell me the conditions for an
16 employee being eligible for coverage under your policy.

17 A. So there is a bulletin list here with a
18 number of items listed. In order to be eligible as a
19 covered employee, individual must be an eligible
20 employee.

21 An eligible employee must meet the following
22 requirements: The employee must maintain his or her
23 primary residence in the service area, be a bona fide
24 employee. The employee's job must fall within a job
25 classification identified on the group application,

³⁹ District Exhibit 1 is hereinafter referred to as the "*FB Master Contract*."

completed any applicable waiting period identified on the group application, meets any additional eligibility requirements identified on the group application.

40

When asked “**If we kept an employee on our insurance and they didn’t work 30 hours, what could potentially happen,**” the District witness answered:

13 A. Well, it violates our plan document, and it
14 also violates our group application. We're fully
15 insured. So we have to abide by our contractual
16 obligations with regard to the plan document and the
17 group application.

The witness additionally testified:

“Q. ... Is it your testimony today that this plan would not allow Mr. Theobald to be covered?

A. Based on our plan document and our eligibility rules”.⁴¹

The witness left no doubt that the *Florida Blue Plan* prohibited the MCEA President from non-COBRA insurance benefits. This is a situation illustrating the wisdom inherent in the Best Evidence Rule.

A document itself is considered the best evidence of its contents and is preferred to testimony concerning the contents of the document, but failure to present the document itself will not bar testimony concerning it.⁴²

The eligibility for District paid health care benefits is not as limited and inflexible as represented by the District witness. In determining plan eligibility under the *FB Master Contract*, the definition section of the *FB Master Contract*

⁴⁰ TR, page 215, 216

⁴¹⁴¹ TR, page 237.

⁴²⁴²

cannot be overlooked. Particular attention is directed to the definition of “Covered Employee.” The failure to properly understand the *FB Master Contract* term definition then taints the remainder of the witness’s testimony that is based upon the misunderstood term.

Page ⁴³	Master Contract Excerpt	Observation
0010	Definitions – “for the convenience of Covered Persons”	Reference is to Covered Persons, not limited to just eligible employees.
0010	“ Covered Employee – means an Eligible Employee, OR <u>OTHER INDIVIDUAL</u>”	Coverage is not limited to just employees.
0010 & 0138	“ Covered Person – means a Covered Employee or a Covered Dependent”	Covered Employee is defined to include OTHER INDIVIDUAL. Thus, OTHER INDIVIDUAL is a Covered Person.
0011	“ Group – means the employer, labor MCEA, association, partnership ...through which coverage and benefits are issued by us.”	Group is all encompassing.
0011	“ Note – ... References to ‘you’ or ‘your’ in the Benefit Booklet refer to Eligible Employees, Eligible Dependents, Covered Employees and/or Covered Dependents depending on the context and intent of the specific provision.”	The definition of Covered Employee is inclusive of OTHER INDIVIDUAL.
0019	“... An SBC (Summary of Benefits Coverage) must be provided ... at the following times, and under the following circumstances: ... 3. To special enrollees”	Acknowledges “special enrollees” are coverable under the <i>FB Master Contract</i> .
	EMPLOYEE BENEFITS GUIDE	
187	Board Member Eligibility – School Board members are eligible for all	While the Board Members are Covered Employees as they satisfy

⁴³ “Page” refers to District Exhibit 1 RES page number

	benefits except voluntary retirement savings plans and disability insurance.	the OTHER INDIVIDUAL portal for coverage, they are not MCSD teaching employees.
--	--	---

Except for Board members who coincidentally are also MCSD teachers, Board Members are not MCSD employees but are nonetheless eligible for *FB Master Contract* insurance coverage as “Others.” Even taking the District-advocated position that the MCEA President is an unpaid employee on Leave, the MCEA President could still be considered an “Other” just as the School Board Members qualify for coverage as “Others.”

This finding is further reinforced by the *FB Master Contract* on page RES 0093. The first sentence under the heading “ELIGIBILITY FOR COVERAGE” reads:

“Each employee OR OTHER INDIVIDUAL who is eligible to participate in the Group Plan, and who meets and continues to meet eligibility requirements described in this Booklet, shall be entitled to apply for coverage with us.”
 [Emphasis supplied]

Further down the page on RES 0093, the following is stated:

“This Employee eligibility classification may be expanded to include:
 1. ...
 2. ...
 3. ...
 4. **Other individuals as determined by us and the Group such as members of associations or labor unions.”**

The Plan clearly does not prohibit the MCEA President from regular insurance benefits as an “Other.”

I. Administrative Concerns

Teacher On Assignment; Reporting Relationship

There was also Board concern about the MCEA President on Leave being classified as a Teacher On Assignment and reporting to a staff member directly involved in labor relations and MCEA negotiations.

The origin of the Teacher On assignment classification dates back to when District personnel were being introduced to computerization. A teacher was assigned to go from school to school to provide staff instruction concerning the District's computer program. The Teacher On Assignment classification was created for the teacher. Once the assignment was completed, the teacher was properly reclassified. The Teacher On Assignment had not been used again until the 2022-2023 school year. When the MCEA President invoked XI.2(I) for the 2022-2023 school year, the President was classified as Teacher On Assignment to accommodate the "system" to have the MCEA President compensated. If the classification is improper, the District can change the classification for future MCEA Presidents requesting Presidential Leave.

Implementation Document

In June 2023, the MCSD unilaterally issued a document entitled "Implementation of MCSB/MCEA Contract Provision, June 2023." The MCEA

did not in any way accept, endorse, or agree to the document. While testifying, a District witness was asked “**if there is a board policy and there is a Collective Bargaining provision that says the opposite, which would control?**” The witness judiciously answered the “**CBA.**”

Where the Board’s June 2023 Implementation Document is in accord with the CBA as *amended*, its provisions will have full force and effect. Where the document conflicts with the CBA as *amended*, said provisions are null and void and the CBA provisions shall prevail.

Workers’ Compensation

Board members had expressed concerns about Workers’ Compensation if a MCEA President had a claim. During the arbitration hearing, MCEA Counsel represented MCEA offered to provide a Workers’ Compensation waiver to the MCSD for MCEA Presidents:

Q. You mentioned that there was -- the Board had concerns about liability issues related to Workers' Comp. Are you aware that MCEA offered to indemnify the Board for any sort of Workers' Comp claim?

A. Was that in form of a waiver?

Q. Yes.

* * * *

The Parties knew, or should have known, the content of their CBA provisions. Just because a provision remained dormant for twenty-three (23) years doesn't invalidate the provision. If the Parties had desired to change the language, they had ample opportunity during the many collective bargaining negotiations that occurred during the twenty-three (23) year period.

Using dictionary definitions, CBA Article XI.2(I) provides a MCEA President on a Leave of Absence the option to continue, at the President's own expense, the same insurance, and all other benefits the President had while teaching. This would be carried out, at no cost to the MCSD, by using a pass-through method, i.e. pre-payment by the President to the MCSD and then the MCSD would continue to provide all benefits to the President.

XI.2(I) terms were altered by the August 16, 2022 Presidential Letter resulting in the creation of Article XI.2(I) as *amended*. The Parties fully complied with XI.2(I) as *amended* during the 2022 – 2023 school year. By so doing, the Parties gave full recognition and definition to XI.2(I) as *amended*. When a MCEA President is on MCEA Leave, the MCEA will forward monthly payments to the MCSD for the full cost of MCSD providing the MCEA President with pass-through salary and regular teacher benefits, inclusive of retirement system contributions. The MCEA President shall receive full teacher health insurance benefits as an "Other." The *FB Plan* document specifically provides for non-

teaching “Others,” such as MCSB members and the MCEA President, to be covered by the Plan.

Throughout the entire 2022 – 2023 school year, the MCEA President received regular pass-through salary payments and benefit coverage, pay period after pay period, thereby creating a Past Practice. The MCSD had knowledge of the pass-through salary and full benefit coverage as MCSD was paying benefit providers for the benefits and issuing pass-through salary checks.

Only those portions of the June 2023 MCSD issued “Employee Benefits Highlight Guide” that are not in conflict with the CBA as *amended* shall be enforced; those portions in conflict with the CBA as *amended* shall be null and void.

The issue before me was limited to Presidential Leave. Because of the unique circumstances involved in this case, the Award and its findings are limited solely to the MCEA President and shall not be used or referred to in any other matter involving a MCEA member.

A W A R D

Based upon the substantial evidence of the case as a whole:

1. The Employer violated the Collective Bargaining Agreement by its application of Article XI.2(I) as *amended* in the case of Presidential Release.

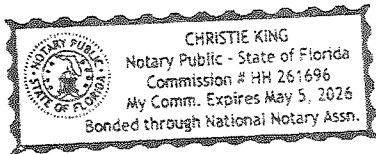
2. In compliance with CBA Article XI as *amended*, inclusive of XI.2(I) as *amended*, effective immediately the Parties shall resume the salary and benefit pass-through process, used during the 2022 – 2023 school year, for the current and future MCEA Presidents invoking Presidential Leave.
3. (a) The Parties shall meet to determine the pass-through salary and benefits withheld from the MCEA President during the June 1, 2023 to date period.
(b) Using the resumed 2022 – 2023 school year pass-through process, the MCSD shall then compensate the current MCEA President with the previously withheld pass-through salary amount;
(c) Using the resumed 2022 – 2023 school year pass-through process, the MCSD shall then provide the current MCEA President with all previously withheld benefits.
4. The MCSD shall reimburse the Union President for all verifiable expenditures he paid during the June 1, 2023 to date period that would otherwise have been paid had benefits not been withheld during the time period.
5. The MCEA shall provide the MCSD, at the beginning of each school year, with assumption of Workers' Compensation risk documentation covering the MCEA President.

6. The Arbitrator retains jurisdiction should a dispute arise in the implementation of this Award.

..... Robert Herzog
..... Robert Herzog
Dated: March 16, 2024 Arbitrator

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 16th day of March 2024, by Robert Herzog.



Christie King
Notary Public

Personally Known _____ OR Produced Identification Per Direct Knowledge

