ARBITRATION BY AGREEMENT OF THE PARTIES
Before
Arbitrator Timothy J Brown, Esquire

Upper Bucks County Technical Education Association, PSEA/NEA	:	
And	:	**Placement on Salary Schedule)**
Upper Bucks County Technical School	:	

Decision and Award

Appearances:

On behalf of Upper Bucks County Technical Education Association:
Charles L. Herring, Esquire
Pennsylvania State Education Association
610 Bethlehem Pike, Bldg. C
Montgomeryville, PA 18936

On behalf of Upper Bucks County Technical School:
Ellis H. Katz, Esquire
Sweet Stevens Katz & Williams
331 East Butler Ave.
New Britain, PA 18901

I. Introduction

This arbitration arises as a result of a grievance filed by the **Upper Bucks County Technical Education Association, PSEA-NEA** (the Association or the Union) pursuant to a July 1, 2014 through June 30, 2017 collective bargaining agreement (the Agreement) between the Association and **Upper Bucks County Technical School Joint Operating Committee** (the School or the Employer). In its underlying grievance, the Association contends that the School violated the Agreement by incorrectly placing bargaining unit members and (Grievant K , Grievant S and collectively Grievants) on the salary schedule when it failed to recognize certain course credits earned by the employees for purposes of column movement on the salary schedule. The parties were not successful in their efforts to resolve the grievance through the formal steps of the Grievance Procedure contained in the Agreement and selected the undersigned to conduct a hearing on the grievance and render a final and binding arbitration award. The matter was heard on July 15, 2015 in Perkasie, Pennsylvania. A transcript of the hearing was made. All parties were afforded the opportunity for presentation of opening statements, examination and cross-examination of witnesses, the introduction of relevant exhibits and submission of closing argument. Grievants were present for the entire hearing. Upon the close of the hearing on July 15, 2015 the parties jointly requested the opportunity to submit written post-hearing briefs on the issues presented, upon receipt of which by the undersigned the matter was deemed submitted on September 30, 2015.

This Decision and Award is made based upon careful consideration of the entire arbitration record in the matter including the undersigned observations of the demeanor of all witnesses.

II. Issues Presented

The parties stipulated that: (1) there are no procedural bars to presentation of the matter; (2) the matter is appropriately before the arbitrator; (3) the arbitrator has the authority to render a final and binding decision and award in the matter and (4) that the issues presented may be stated as:

> Were Grievants properly placed on the salary schedule at the start of the 2014-15 school year considering their course credits earned, including such credits earned prior to receipt of their respective masters degrees, and if not, what shall the remedy be?

IV Facts

Appendix A of the Agreement is entitled "Wage and Salary Provisions." Section 3 of Appendix A is entitled "Horizontal Salary Movement" and provides:

> In order for a credit to count towards horizontal movement on the salary schedule, the course must be offered by an accredited college or university and such course must either be job related or part of the required curriculum necessary to obtain an advanced degree or certification. Such courses must be pre-approved consistent with Article XXX of the collective bargaining agreement.

Section 5 of Appendix A is entitled "Salary Credits for Workshops" and provides: Salary credits will be granted for workshops in accordance with the following:

(a) No credit will be granted for workshops attended prior to the attainment of 60 semester hours;
(b) One (1) credit will be granted for every 24 hours of workshop time or approved time related to the workshop;
(c) Workshops are to be pre-approved by the Executive Director;
(d) A maximum of six (6) credits will be granted for each fifteen (15) salary credits. The remaining nine (9) credits must be academic credits;
(e) If a workshop is offered both during the work-week and on a non-work day, the employee will take the workshop on the non-work day.
(f) The Executive Director may approve noncredit courses for salary advancement.
(g) Professional Development training occurring during contractual time will not be applicable to movement on the salary schedule, unless previously approved by the Executive Director.

Appendix B of the Agreement contains the Salary Schedule. On the left of the schedule are 15 steps from "0" to "15. Across the top of the schedule are eight column headings beginning with:

A
Bachelors
18 SH

and then progresses through columns B+8, B+16, B+24 and B+30 to column F. The final three columns on the schedule are designated:

F	G	H
Masters	M+15	M+30
90 SH	105 SH	120

By email from the School's Business Manager dated November 3, 2014 Grievants were informed;

> Now that the new PSEA contract has been fully executed, we are finalizing our information for your new salary placement

status. Below is listed our calculation of your placement on the contractual salary schedule for 2014-15.

Grievant K was placed at F10 on the schedule (Masters Degree, Step 10) and

Grievant S was placed at F11 (Masters Degree, Step 11).

The grievance asserts that each Grievant should have been placed in "Masters +" columns based upon their respective number of credits earned. The record establishes that at the time of their 2014-15 school year salary schedule placements both Grievants had credits earned prior to their receiving their respective Masters degrees that were not applied to their respective column designations.

V Positions of the Parties

The Association

According to the Association, there is no real dispute as to the relevant facts in this matter, particularly (1) that Grievants were denied the opportunity to use graduate credit hours they obtained prior to the receipt of their maters degrees for purposes of column movement and (2) that had Grievants received the credits at issue after they received their respective masters degrees, the credits would have been eligible for use relating to column movement and salary advancement. Essentially, the Association summarized, the School is arguing the credits are not available for column movement consideration because the "+" in the headings of column G (M+15) and column H (M+30) mean "after," and the Association is arguing that the "+" in the subject column headings means "plus" or "in addition to." The Association relied upon two basic arguments to support its position that the School improperly placed Grievants on the salary scale. First, the Association argued, there is overwhelming support

among arbitrators that in such circumstances the "+" in school district bargaining agreement salary scales means in addition to the degree. Thus. M+15, means fifteen credits in addition to a masters degree. Secondly, the Association maintained, past practice establishes that the School has on at least three other occasions given credit to employees for column movement using credits earned prior to the receipt of the degrees in question. The School's practice in such regard, the Association asserted, is unequivocal; clearly enunciated and acted upon and readily ascertainable over a reasonable period of time. Such practice may be used to clarify ambiguous language, implement language that sets forth only a general rule, can be used to modify unambiguous language (not an issue here) or can be relied upon to establish a separate enforceable condition of employment not contained in the express language of the Agreement.

Thus, the Association concluded, the overwhelming weight of case law and the absolute practice as established by the parties mandates that the grievance be sustained, and the School be ordered to make Grievants whole by paying them retroactive back pay plus statutory interest. The Association also requested that the Arbitrator retain jurisdiction over remedy related issues should the parties be unable to resolve questions of remedy.

The School

The School agrees that the facts in this matter are not in dispute, and that the issue is whether or not credits taken prior to receipt of a Master's degree can be utilized to move a column beyond the Masters degree column. The Association has the burden of proving that the Agreement supports its interpretation of the Agreement

and here, the School argued, the Association has not met its burden. According to the School, the Association has agreed that the language (the "+" sign at issue) is ambiguous and can be interpreted as either meaning "after the Master's or "in addition to" the Masters degree. As a consequence, the School maintains, the Association must prove that the parties intended the language at issue to mean what the Association claims it means. There was no bargaining history presented at the hearing and therefor, the School argued, the Association cannot show which of the two meanings were mutually intended by the parties. As a result, the School continued, the Association has failed to meet its burden.

As for the prior arbitration decisions offered by the Association, the School asserted, they involved different parties, different language in different agreements and different circumstances; particularly bargaining history and practices of the involved parties. For example, one of the cases involves language providing for "each credit above the Master's Degree" and not the "+" sign at issue here, and others considered evidence of bargaining history or did not address the burden of proof issue presented here.

In response to the Association's past practice argument, the School asserted, the few instances relied upon by the Association were different from the circumstances of Grievants and even if they were factually similar, would plainly not be sufficient in occurrence to establish a practice binding upon the parties. The Association has failed to meet its burden and, the School concluded, the grievance should be denied.

VI Discussion

Introduction

Because this matter presents a question of contract interpretation, the Association as the moving party has the burden of presenting evidence sufficient to support its proffered interpretation of the language at issue. After full and careful consideration of all of the evidence and argument presented by the parties, I conclude that the Association has established that Grievants were not placed in the correct steps on the salary schedule at the start of the 2014-15 school year.

The determinative issue presented herein is what was intended by the "+" symbol in the various column headings on the salary schedule of the Agreement. The District asserts the "+" is ambiguous and could have been intended to mean either (a) "in addition to" or (b) "after" or "following" and that the grievance must fail because the Association has not affirmatively shown that the parties intended the former meaning rather than the latter. The Association argues the "+" symbol can only represent the concept of "in addition to." In concluding that the Association has met its burden, I rely upon the following considerations:

1. The "+" Symbol is not Ambiguous

Contrary to the argument of the District, I find that the parties' use of the "+" symbol is not ambiguous. Although the Association acknowledged that the District was arguing the "+" symbol could mean "after" and that the issue presented was whether the "+" symbol used in the Agreement means "after" or "in addition to," contrary to the argument of the District, there was no affirmative statement or admission by the Association that the "+" could be interpreted to have more than one

meaning. The Association did not admit that the "+" symbol could mean "afterward" or otherwise be ambiguous and, instead, consistently argued that the only meaning that could be given the "+" symbol was a communication of the idea of adding to. I agree with the Argument of the Association in this regard. The "+" symbol means "plus" – it is a symbol of "quantitative" character and meaning. I have found no support in the cases cited by the parties or my own research into the use of the "+" symbol to support the interpretation argued by the District that the symbol is also one recognized to have a ***temporal*** character. I found no support for an interpretation of the symbol to mean "after" or subsequent to. In contrast, no matter the way the "+" symbol is used or the word "plus" is used, whether; "plus," "something in addition to," "a surplus," "a gain," "in addition to," "besides," "also," "furthermore," "increased by" or "more of," the words never communicates a temporal connotation.

Based upon such considerations, I find that the "+" symbol used in the salary schedule of the Agreement conveys only one meaning communicating "in addition to," and does not communicate a concept of "after" or "afterward" as argued by the School.

2. Other Language of the Agreement Supports the Conclusion that the Parties did not Intend the "+" Symbol to Mean Afterward.

Other language in the Agreement establishes that when the parties intended to communicate that something would occur before or after an event, they knew how to do so. For example, in Article V the parties agreed that should an unauthorized strike occur the Association would take specified measures "within twenty-four hours **following** a request by the employer"; in Article XVIII the parties agreed that

"Employees shall return to work **following** such leaves...at the beginning of the school term..."; in Section 3 of Appendix A the parties required that in order for a credit to count towards horizontal movement on the salary schedule the involved courses must be "**pre**-approved"; in Section 5 (a) of Appendix A the parties provided that "no credit will be granted for workshops attended **prior to** the attainment of 60 semester hours"; in Section 5 (c) the parties agreed that workshops are "to be **pre**-approved by the Executive Director" and in Section 5 (g) the parties agreed that "...training occurring during contractual time will not be applicable to movement on the salary schedule, unless **previously** approved by the Executive Director." (Emphasis added.) Although the parties knew how to express themselves when they mutually intended that an obligation created by the Agreement would arise before or after an event, they did not express such when referencing post-masters degree column movement. Applying widely recognized principles of contract interpretation, I conclude based upon such considerations that the parties did not intend that credits had to be earned after receipt of a master's degree to be eligible for column movement.

3. Although the Association has not Shown a Past Practice Sufficient to Establish an Enforceable Term or Condition, the Conduct of the Parties has been Consistent with the Interpretation Proffered by the Association

The mutually intended meaning of contract terms may be evidenced by how the parties have conducted themselves after entering an agreement as a manifestation of their understanding of what they agreed upon. In the instant matter, although I have found the parties' mutual use of the "+" symbol to be unambiguous and need not rely upon the conduct of the parties to resolve the matter, I find that the conduct of the

School has been consistent with a quantitative rather than temporal interpretation of the "+" symbol.

Conclusions

The grievance is sustained.

The Association has met its burden of establishing that the District violated the Agreement by incorrectly placing Grievants on the salary schedule at the start of the 2014-15 school-year. As remedy, I shall order the School to retroactively place Grievants on the salary schedule recognizing their credits earned at issue in this matter and make Grievant whole for their loses resulting from their incorrect placement on the salary schedule.

I will retain jurisdiction in this matter relating to issues of remedy only.

Dated: October 28, 2015

Timothy J Brown, Esquire

ARBITRATION BY AGREEMENT OF THE PARTIES
Before
Arbitrator Timothy J Brown, Esquire

Upper Bucks County Technical Education Association, PSEA/NEA	:	
And	:	**Placement**
Upper Bucks County Technical School	:	**on Salary Schedule)**

Award

The Association has met its burden of establishing that the District violated the Agreement by incorrectly placing Grievants on the salary scale at the start of the 2014-15 school year.

The grievance is sustained.

Upper Bucks County Technical School is ORDERED to:

Retroactively place Grievants on the salary schedule recognizing the credits earned at issue in this matter, and

Make Grievants whole for their loses resulting from their incorrect placement on the salary schedule.

The undersigned shall retain jurisdiction over this matter for purposes of remedy only.

Dated: October 28, 2015

Timothy J Brown, Esquire
Arbitrator