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 In the Matter of Arbitration \*  
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 Between \*  
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 State Council of Professional \*  
 Educators - Ohio Education \*  
 Association \*  
 \*  
 and \*  
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 The State of Ohio \*  
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Grievance No.:  
 10-03-880125-0010-06-10

Appearances: For SCOPE - OEA:

Henry L. Stevens  
 UniServ Consultant  
 Ohio Education Association  
 5026 Pine Creek Dr.  
 Westerville, OH. 43081

For State of Ohio:

Jennifer Dworkin  
 Labor Relations Specialist  
 Office of Collective Bargaining  
 65 East State St., 16th Floor  
 Columbus, OH. 43215

Introduction: Pursuant to the procedures of the parties a hearing was held in this matter on July 22, 1988 before Harry Graham of Chagrin Falls, OH. At that hearing both parties were provided complete opportunity to present testimony and evidence. Post-hearing briefs were filed in this dispute. They were exchanged by the Arbitrator on August 24, 1988 and the record was declared to be closed on that date.

Issue: At the hearing the parties were able to agree upon the issue in dispute between them. That issue is:

Did Management violate the Collective Bargaining Agreement when it failed to place Grievant in Step 16 of the salary schedule for the 1987-88 school year? If so, what shall the remedy be?

Facts: There is agreement between the parties concerning the facts that give rise to this case. The Grievant, Genevieve Spangler, has been employed at the Ohio State School for the Blind since August, 1973. Before assuming her position at that School she had taught for one and one-half (1.5) years in West Virginia. In addition, the Grievant possesses two Master's degrees.

The Ohio State School for the Blind and a companion institution, the Ohio State School for the Deaf, fall under the auspices of the Ohio Department of Education. Teachers at those schools are compensated according to a formula which provides that they receive 105% of the average pay of the six highest paying school districts in Franklin County, OH. This pay plan took effect with the 1978-1979 academic year as provided by Section 124.15 of the Ohio Revised Code. In addition to establishing a pay formula a change was made in the method in which teachers were to be paid. There was established a salary schedule similar to that commonly found in school district throughout Ohio. That schedule gave consideration for years of experience and educational attainment. The prior pay plan permitted educational credentials to be substituted for years of service. Under the system in effect from 1977-78 to the present, experience and

education are separate factors to be considered in arriving at the pay for teachers.

When the change was made to the current plan in 1977-78 it was found that some teachers would be adversely affected. That is, implementation of the revised pay plan would serve to reduce their salary. The State did not wish that this occur. Accordingly, those teachers were placed on the appropriate step on the salary schedule and did not experience any loss in pay. In labor relations terms, they were "red circled." In order to bring the experience and educational qualifications of those teachers into harmony with the newly instituted salary schedule they were frozen on the appropriate step in 1978-79 and 1979-80. That action resolved most the discrepancies between the education and experience of teachers and the salary schedule. At the end of the 1980 school year there remained four teachers whose experience did not correspond with their pay. That is, they were being paid above the rate indicated for people with their years of experience. Included among these four people was the Grievant, Genevieve Spangler. During the following years three people left the bargaining unit through retirement, promotion or resignation, leaving only the Grievant who was being paid more than the amount specified by the salary schedule. When she reached Step 15 of the salary schedule in 1983-84 the State again froze her salary. That

is, she did not continue to move up on the salary schedule. It is that freeze which is the focus of this dispute.

In order to protest the failure to advance the Grievant to Step 16 on the salary schedule a grievance was filed. It was processed through the procedure of the parties. No resolution of the grievance was reached and the parties agree that it is properly before the Arbitrator for determination on its merits.

Position of the Association: In the opinion of the Association the action of the State in keeping Ms. Spangler at Step 15 of the salary schedule since 1983-84 represents a violation of Article 21, Section 21.04 of the Agreement. That Section provides that teachers at the State Schools for the Blind and Deaf will be compensated according to Section 124.15(L) of the Ohio Revised Code. That Section of the Code requires the Superintendent of the State School for the Blind to establish pay rates for teachers. In establishing those rates there is set forth the formula of 105% of the six highest BA base salaries in Franklin County, OH. as the method to be used to compute the salaries. In addition, the Code provides that the Superintendent is to "Determine for each level of training, experience and other professional qualification" the appropriate rate of pay. This language permits the Superintendent to include factors other than length of service in determining salary. An Opinion of the

Ohio Attorney General, 68-052, rendered by Attorney General William Saxbe in March, 1968, permits a School District in Ohio to credit all years of service and all education credentials. In 1983-84 the Grievant had more than 10 years of total teaching experience when her service in West Virginia is counted. She had 10 years of service at the School for the Blind. She was placed at Step 15 of the Salary Schedule where she has remained for the past four years. This record demonstrates that the State has given credit for all experience and education in the past. No reason exists to have kept Ms. Spangler at Step 15 for 1987-88, her fifth year at that position on the schedule. The Salary Schedule, (Jt. Ex. 4) indicates that teachers remain at Step 15 between their 14th and 18th years of service. In the opinion of the Association, this means that teachers must be advanced to Step 16 after 4 years of service at Step 15. As this did not occur, the Association asserts the Agreement was violated. It seeks an award of back pay.

Position of the State: The Employer insists the Grievant is being correctly compensated under the terms of the Agreement and the Statute. There is no reference in the salary schedule to added compensation for possession of two master's degrees. Furthermore, the State has not treated Ms. Spangler unfairly. The contrary is the case. Prior to the salary schedule system of wage payment being instituted the Grievant was given

credit for her two master's degrees. When the salary schedule became operational no provision was made for people who possessed two master's degrees. Strict application of the schedule would have resulted in a reduction of Ms. Spangler's salary. The State did not apply the schedule strictly. Rather, it froze her salary. She continued to receive the increase in compensation attendant upon her position on the schedule as it was revised upward in its entirety. Retention of the Grievant at a position on the schedule to which she is not entitled has produced a "windfall" for her of approximately \$14,000. Inclusion of applicable fringe benefit payments raises this figure to \$17,640. That amount will only increase if the Association prevails in this dispute.

Arbitrator's decisions involving "red circle" rates have considered similar problems in the past. Decisions have held that unless limited by the Agreement management retains the right to eliminate such rates. That is what occurred in this instance. Nothing in the Agreement prohibits the State from acting as it did in this instance. The Grievant has been advantaged during the 1980's as a result of the State's desire not to harm employees adversely affected by the implementation of the salary schedule form of wage payment. To continue to provide windfall type payments is inappropriate in the State's opinion.

Discussion: Examination of the salary schedule, (Jt. Ex 4)

indicates that people move to Step 16, the step sought by the Grievant, after 18 years of experience. The Grievant does not possess 18 years of experience. The form of the schedule is quite explicit and refers to "years of experience." It does not refer to years in grade, the interpretation urged upon the Arbitrator by the Association.

There is nothing in the Salary Schedule that mandates extra or additional compensation for possession of two Master's degrees. It may well be argued that the Grievant has in fact received such compensation as a result of the decision of the State to red circle her upon implementation of the salary schedule form of wage payment. It must be borne in mind that the action of the State does not constitute a wage reduction. Rather, it represents a delay in advancement on the salary schedule. That delay is consistent with the express terms of the schedule which refer to experience, not time in grade or possession of two master's degrees.

Furthermore, examination of the Collective Bargaining Agreement indicates it does not preclude the State from acting as it did in this instance. With respect to salary schedules it provides that payment be made according to Section 124.15(L) of the Ohio Revised Code. This was done at all times by the State. In fact, the State has exceeded its obligations to the Grievant under ORC 124.15(L) by red

circling her. Her employment history indicates that she has received pay at a rate above that contemplated by the Statute. This development predates the advent of collective bargaining and the Agreement. That the State continued to pay Ms. Spangler at a rate above that required by the Statute is evidence of its good faith and clean hands in this situation.

When the red circling of teachers first occurred among those involved was one Judy O'Keefe. Subsequent to being red circled Ms O'Keefe left the employ of the State at the School for the Blind. At some time later she returned to employment, minus her red circle status. That is, she resumed her employment at the place on the salary schedule to which her education and experience entitled her. This is indicative of the transitory nature of the red circle status provided to teachers who were adversely affected by implementation of the salary schedule form of wage payment.

The State has not acted arbitrarily or capriciously in this situation. The "freeze" imposed upon Ms. Spangler is a freeze in grade. She has continued to receive increments that accrue as all positions on the salary schedule have secured upward revisions in compensation. It is recognized that failure to advance the Grievant to Step 16 on the salary schedule as she seeks disadvantages her. In a larger sense, the record in this situation indicates that she has been advantaged since implementation of the salary schedule



through receipt of salary payments above those to which strict application of the schedule would have entitled her. As nothing in the Agreement prevents the State from acting as it did in this situation the conclusion is inescapable that no violation of its terms has occurred.

Award: Based upon the preceding discussion the grievance must be DENIED.

Signed and dated this 6<sup>th</sup> day of September, 1988  
at South Russell, OH.

  
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Harry Graham  
Arbitrator