

Commonwealth of Pennsylvania Pennsylvania Labor Relations Board

IN THE MATTER OF FACT FINDING OF

CENTRAL MONTCO TECHNICAL
HIGH SCHOOL

District

and

CENTRAL MONTGOMERY COUNTY TECHNICAL :
TEACHERS ASSOCIATION :
Association :

CASE NO: ACT 88-12-18-E

REPORT AND RECOMMENDATION OF FACT-FINDER

Introduction

This arbitrator was appointed to hear this matter by the Pennsylvania Labor Relations Board pursuant to its authority under Act 88 and the PERA. A hearing on this matter was held on May 2, 2012 at the Central Montco Technical High School. Each side was ably represented: the District by Mark Fitzgerald, Esq., and the Association by Representative Andrew Muir. Each side simply made a presentation on its behalf, calling no witnesses. Additionally, each party submitted exhibits setting forth its position respecting the issues in dispute: Central Montco submitted Exhibits Nos. C1 through C17, and the Association Exhibits A1 through A10. All were received into evidence as part of the record.

The Technical High School, consisting of approximately thirty (30) teachers and twenty four (24) support staff, is governed by a Joint Operating Committee (JOC) which consists of nine (9) representatives with three (3) coming from each of the referring school districts: Norristown, Colonial and Upper Merion. These districts, which refer students interested in the trades and technical careers to Central Montco, are the chief source of funding for this District.¹ Over time the districts have faced increasing financial pressures on their resources, which pressures, in turn, affect the technical school. Colonial has recently laid off 12 and ½ of their support staff, and the Norristown district has a school population where 70% are on free or reduced lunches, a measurement showing it is far

¹ 87% of the funding for the technical school is received from the referring districts.

from a wealthy school district. There has been a decline in tax revenue over time, but pension obligations have increased.² Even Upper Merion has a \$1.478 million deficit for the 2012-2013 budget year, after applying the maximum Act 1 index and using exceptions. (Exhibit C-10).³ Additionally, there is less incentive to fund the technical school as enrollment has declined from 600 to the high 400's. Historically, salaries have been a function of those operating in the referring districts, although the other major benefit, health care, has not necessarily run in lock step fashion with those in the three sending districts.

The following areas are in disagreement between the parties:

SALARIES

Neither the Association nor the District are looking to change the process by which salaries are determined. The salaries at this high school are determined by taking the average of the salary scales at the three referring districts. The current collective bargaining agreement reads:

Appendix "A" -Salary Provisions

Article I: Salary

A. Salaries will be computed in accordance with the following:

1. Annually, no later than June 1, the salary schedules for the three sending school districts (Colonial, Norristown and Upper Merion) for the upcoming year will be examined in each step and column that is equivalent to the step and column on the Central Montco Technical High School Salary Schedule.
2. The salary schedule format will be as follows:

NoDegree	A Less Than Voc I	B Voc I	C VOC I +24 AEC	D VOC II	E VOC II + 30 AEC	F VOC II + B.S.	G VOC II +B.S. + 24 AEC	H VOC II + M
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Degree		B	B+12	B+24	M	M+15	M+30	M+45
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3. The number of steps on the salary schedule shall be fourteen (14).
4. Each respective step and column on the Central Montco Technical High School Salary schedule will be determined by taking the average of the equivalent step/column from the sending schools' salary schedules. Column "A" equals 90% of Column "B". . . .

6. In the event that one or more districts does not have a settled contract for the year, the previous year's salary schedule shall be used for the initial salary computation. Retroactive salary adjustments will be made within thirty (30) calendar days of final ratification of the unsettled school district (s) contract. In the event that the school district (s) contract remains unsettled for the entire school year, the salary schedule will not be retroactively adjusted. . . .

B. For the purpose of this Agreement, the term "accepted earned credits" is defined as follows:

1. Credit awarded by an academic institution of higher learning authorized by the Commonwealth of Pennsylvania to issue post-secondary academic degrees. Courses must be pre-approved by the Director.
2. Work experience credits or seminar and/or workshop credits recommended by the Director and approved in advance by the Director, not to exceed six (6) credits for Bargaining Unit members with sixty (60) credits but less than ninety (90) credits.
3. Work experience credits or seminar and/or workshop credits recommended by the Director and approved in advance by the Director, not to exceed six (6) credits for Bargaining Unit members with ninety-one (91) or more credits.
4. Additional work experience credits or seminars and/or workshop credits may be authorized by the Director provided the Bargaining unit member takes specific courses recommended by the Director. . . .

Both parties wish to continue with the methodology of calculating technical employee salaries as a function of the referring districts, for the system has worked fairly well for the past twenty (20) years. However, the Association wants to give those without a bachelor's degree the opportunity to move beyond column "E" on the salary schedule. Academic aspects of technical training have increased over the years, and technical teachers have been asked over the years to move toward academic degrees. Teachers are rewarded in the salary schedule, as shown above, for the certifications they obtain. Nonetheless, the Association contends that those without an academic degree, who currently are only four (4) in number, should continue to move across the salary grid as do their academic counterparts. The Association therefore proposes the following:

- 1 Any instructor who has earned Vocation Two Certification (VOC II) will advance to Column F of the salary schedule provided that he/she has earned sixty additional AEC Credits (120 total). Credits are defined as those earned at an Institute of higher learning or as recommended by the American Council of Education. CEU credits will be accepted as the equivalent of AEC Credits.
- 2 Any instructor who has earned Vocational Two Certification will advance to Column G of the salary schedule provided that he/she has earned Eighty Four additional AEC Credits (144 total). Credits are defined as those earned at an Institute of higher learning or as recommended by the American Council of Education. CEU credits will be accepted as the equivalent of AEC Credits.
- 3 Any Instructor who has earned Vocational Two Certification will advance to Column H of the salary schedule provided that he/she has earned ninety six additional AEC credits (156 total.). Credits are defined as those earned at an Institute of

higher learning or as recommended by the American Council of Education. CEU credits will be accepted as the equivalent of AEC Credits.

The Association contends that its proposals, including the costs of the Health Care program, PSERS contributions, and Social Security/Medicare payments (net of reimbursement) would produce a 9.4% increase in bargaining unit costs in the first year of the contract, 2011-12; 5.5% increase in the second year, and 5.5% increase in the third year. These figures represent a very small share of the District's budget: In 2010-11, the total District expenditures amounted to \$8,004,356 and the bargaining unit costs were only \$2,590,599, or 32.4% of expenditures. Further, the share of the bargaining unit expenses for this technical school as a percentage of property taxes in the referring districts, for the 2010-11 year, were quite small: .9% in Colonial; 1.7% in Norristown and 1.3% in Upper Merion. The Association's proposals for 2011-12 would only require .06% increase in the millage rate in Colonial, a .17% increase in Norristown, and a .12% increase in Upper Merion; the Act 1 index for the year is 1.4%. Similar results are reached for the Association proposals in 2012-13:

District	% increase in millage	Act 1 Index
Colonial	.05%	1.7%
Norristown	.06%	1.7%
Upper Merion	.07%	1.7%

The Association's point is that this is not a District "soaking up" a lot of monies from the sending districts. Moreover, this District tends to overestimate its anticipated expenditures and this results in "overpayments" from the referring districts.

For its part, the District notes that, at the outset of the negotiations, the Association proposed simply adding a step "E-1" to allow for additional movement of those without academic degrees to move up on the salary scale. The District had no problem with such a proposal. The salary for this column would be halfway between the salaries of Column E and Column F, and an employee would advance to E-1 provided that he or she has earned at least three additional certifications in their particular trade area. All the certifications would have to remain current. This column would be instituted in the 20122013 academic year.

The District is not willing to agree to the addition of further columns. The State is increasingly developing measures by which the students at the technical school are being held to the same levels of academic excellence at their counterparts in the referring schools. The technical students are given the same end of program tests that their counterparts in the academic schools are given. Thus, the District has been encouraging its teachers to obtain academic degrees as academics is becoming a greater part of the technical training program.

Central Montco contends that awarding teachers with movement across the grid because of additional certifications is a 'double dip'. These teachers are already rewarded on the grid for their certifications. Further, as the Association notes at Exhibit C-3:

Through a generous tuition reimbursement program and a salary scale that rewards teachers for earning a college degree, Central Montco Technical High School ranks among the top school for degree attainment. Currently 84% of our teachers have earned at least a Bachelor's Degree and 44% have earned a Master's Degree.

It notes that "[t]he proposed additional salary step could dissuade teachers from earning the post-secondary degree. The District concludes (Exhibit C-3):

"School districts in the state and in the country are in financial distress. Decreased state and federal aid, Act 1 limitations, real estate reassessment, and reduced real estate transfer tax has forced schools to make very difficult choices. The JOC believes that the Association has grossly misread the current economic conditions of our sending schools and is making an unrealistic request in the proposal of these additional salary steps."

HEALTH CARE

Under the current collective bargaining agreement, the health care plan agreed to was based upon an average of those offered at the three home districts. Currently, employees are offered the PC (Personal Choice) 7 plan and the P/C 10-20-70 plan. Employees make a flat contribution and enjoy co-pays on prescriptions of either \$5/\$10 or \$10/\$15. These plans, according to the High School, are no longer being offered as basic health care plans in many districts; rather, employees are being required to 'buy up' to them.

The District has offered employees the PC 10-20-70 plan, with a percentage payment by employees towards premiums. The percentage will be calculated as an average of the percentages contributed by employees in each of the referring districts to their health plans. In place of the current PC - 7 plan, the District is offering the Keystone Direct POS C1 F1 01 plan, and the percentage contribution by employees will, again, be an average of the percentage contributions by district employees to their respective plans. The only difference between the Personal Choice plans and the proposed Keystone plan is that employees must obtain referrals for four (4) specific services: radiology/x-rays; occupational therapy and physical therapy; podiatry; and chiropractic or spinal manipulations.

As to the drug program, the District seeks a 3 tier co-pay program of 15/25/40 on drugs, to replace the current 5/10 co-pays on generic drugs and the 10/15 co-pays on nongenerics. A three tier system is cheaper for the school and savings will be passed on to employees in terms of the percentage of the premium they will be expected to pay. District points out that Norristown has a 15/30 co-pay program for drugs, while Colonial and Upper Merion have the plan now proposed by the District.

With respect to half (½) time employees, the District proposes that these employees pay 25% of the premium for the C1 F1 O1 plan and for the prescription drug plan. However, all current employees will be 'grand fathered' into the existing program providing for a full benefit package. This proposal, therefore, would only pertain to new hires.

The Association indicated, at the hearing, that it was agreeable to the change in the health care plans,⁴ but it seeks contributions of a flat dollar amount which shall be the average of the dollar amounts of the sending school premiums.⁵ However, the Association wants to see the District join a consortium created by several school districts and associations in Bucks and Montgomery Counties, known as the "the Bucks and Montgomery County Schools Health Care Consortium." The Association believes that better health care premium rates can be negotiated through the consortium than would be achieved through a stand alone response by the school negotiating with health care carriers. Even if the District does not join the consortium, the Association believes that the prescription plan offered should be the average of what the sending districts are offering their employees.⁶ It is willing to accept a co pay program of 15/20/35; however, if the consortium adopts a different reimbursement program, it wants the District to go with such plan.

As to the benefits for half-time employees. The Association has no dispute with grand fathering in for full benefits all current full time employees. It has a concern about a full time employee who, after the contract, is reduced to part-time status. It contends such employee should keep his or her full-time benefits.²

⁴ The Association's Exhibit 10 suggests that the Association seeks the PC5 Rx 5/10 and PC 10/20/70 and Rx 10/15 plans as part of the contract, and not the plans proposed by the District. This contradicts somewhat my understanding that the parties were in agreement as to the proposed health care plans, but were only in disagreement as to the prescription plans.

⁵ This position is that articulated at the hearing, according to my recollection. Yet, whether an average is taken as an average of percentages, or it is taken as an average of its dollar equivalent, the resulting figure will be the same. I may, therefore, have incorrectly perceived the Association's position. Unfortunately, the Association has not provided any set dollar figures it believes should become part of the Agreement.

⁶ The District opined that there may not be an 'average' plan that is offered by Blue Cross; prescription drug plans are often fixed at particular co-pay levels.

³REIMBURSEMENT FOR UNUSED SICK LEAVE

Under Article IV of the current agreement, the school provides a severance package to retirees for unused sick days. The rate is currently \$90 per day. The referring school districts only receive about \$50-\$60 a day for unused sick leave. However, the parties recognize that many faculty members at the District come from the trades and have not had the opportunity to build up substantial pensions as have their counterparts in the referring districts. The District proposed for the 2012-2013 academic year and the 2013-2014 academic year that reimbursement for unused sick days be at the rate of \$95 per day, up to a maximum of \$20,235, which is based on reimbursement for 213 sick days. For 2014-2015, the rate of reimbursement shall remain the same, the maximum amount to be reimbursed rises to \$21,000 based on 221 days. The 403(b) Plan will be modified to reflect these changes.

The Association wants the District's proposal for 2012-2013 to be implemented in the 2011-2012 academic year. Thus, the Association seeks in 2011 a payment of \$95 per day, up to a maximum of \$20,235 based on reimbursement for 213 sick days. For 2012-2013, that figure rises to \$100 per day based on a maximum of \$21,200 (for 213 days); and for 2013-2014, the rate will also be \$100 per day to a maximum of \$22,365 (for 213 days). The figure for year 3 is a change from that set forth in Exhibit A-1. Mr. Muir also advised at the hearing that the proposal for year 4, the 2014-15 year, would also be \$100, to a maximum of \$22,365 (for 213 days). The Association proposed changes in the 403(b) plan, under Article XVII to reflect the proposals set forth here.

CO-CURRICULAR AND EXTENSION EDUCATION OR IEP IMPLEMENTATION ISSUE

This technical high school has a larger percentage of special needs students in their population than the student populations in the referring schools. Indeed, according to Exhibit C-17, "the Special Education population of a technical school usually outpaces the population at the home schools by 2:1". The parties recognize the great deal of work involved in properly accommodating and educating such students, and believe that some form of stipend should be provided to those teachers with high numbers of special education students. The District made the following proposal:

Any teacher who has 15 or more students on the roll with IEPs will be eligible to receive a stipend from a pool of \$6,500. The pool of \$6,500 shall be available in each year of the contract:

- a. Teachers with 15 or more students with IEPs qualify for the stipend
- b. Teachers with 14 or less students with IEPs in their class would not be eligible to receive funds from the pool.
- c. Of the teachers eligible to receive funds from the pool, a total number of students with IEPs will be calculated for each class.
- d. The pool of \$6,500 shall be divided by the number of students in classes over and above 14 in a class. The stipend shall then be proportionally distributed based on multiplying the number of students times the per student value. For instance, the school as a whole may have an IEP student population of 100. However of that, 50 students are enrolled in classes over and above 14 IEP students in the class. Thus \$6,500 is divided by 50. The value per student is \$130.00. Therefore, for an employee with 20 special

education students on his/her case load, the employee shall receive a yearly stipend of \$780.00 reflecting 6 students in excess of the 14 student limit.

The District notes that none of the other three (3) County Vocational-Technical Schools provide language for EP implementation. Central Montco also would like to form a joint labor-management committee to fully discuss the proposal; this is a matter where educators should sit down and determine the best compensation here.

For its part,⁷ the Association is asking to have teachers compensated on the same level as the sending districts. The District's teachers are expected to write goals for their

special education students, and each of the guidance counselors from each of the sending districts has asked for such goals in a different format. The Association feels that bargaining unit members are getting bombarded with work with respect to such students and they should be properly compensated. It notes that the sending schools have "an entire staff of special education teachers, counselors, and advisors that often do the work that we are 'expected to do' (⁴Exhibit A-7). The Association continues:

⁷ Colonial School District compensates Special Education Teachers as follows, in addition to their annual salaries:

2011-2012: \$650

2012-2013: \$700

2013-2014: \$750

Teachers of gifted students (grades 1-6) are provided ½ day per week for the purpose of preparing IEPs.

Norristown pays as follows: Special Education teachers receive an additional \$500 per year. Teachers who are required to write IEPs receive 3th workdays of substitute coverage. They may receive a 4th day and/or reimburse for up to 10 days per individual per year at the following rates per hour for time spent outside the regular work day in writing of IEPs:

2011-2012: \$32.65

2012-2013: \$33.14

2013-2014: \$33.64

2014-2015: \$34.31

Upper Merion pays as follows: IEPs are to be done as part of regular classroom preparation. If a special education teacher desires to prepare the IEP after the conclusion of the work day, they must give their building principal 48 hours notice and will then be granted 1 hour to prepare the IEP. For time spent following the conclusion of the work day, the employee is compensated as follows:

2011-2012: \$47.63 per hour, maximum of \$952

2012-2013: \$47.63 per hour, maximum of \$952

2013-2014: \$49.42 per hour, maximum of \$988

“Our members work very hard to meet the accommodations of all students. Members often write multiple versions of one lesson to address accommodations. Such an effort often requires the instructors to do the necessary work at home or during their preparation time period. This has the effect of reducing preparation time, which is supposed to be used to prepare the member’s classroom for the next incoming session of students.”

The Association contends that its teachers, who are not special education teachers, are being asked to prepare IEP’s , and they do not have the proper certifications to do so. Since they are being asked to do the work, however, the Association seeks the following addition to the contract:

Article XVIII, Section 1

- D. Members of the Bargaining Unit involved in extended individualized student based planning will be paid thirty five (\$35) per hour.

ADDITIONAL PREPARATION TIME

The Association indicated it was requesting five (5) more minutes of prep time four days a week, time that should be designated to occur between the AM & PM sessions. Thus, it recommends changing the reference at Appendix C, Article I, Hours of Employment, from 40 minutes to 45 minutes. The new language would read:

For the term of this Agreement, the workday shall not exceed seven (7) hours and thirty (30) Minutes per day, including a one-half (½) hour lunch period. There will be at least four (4) forty-five (45) minute preparation periods per week between the AM and PM sessions, to be used by each instructor for lesson preparation, developing and marking tests, grading, report cards, material ordering and minor shop repair. The school year shall consist of one hundred ninety (190) days.

RETROACTIVITY

The District points out that under the Norristown contract, there was step movement under the 2011-2012 contract, while there was a complete freeze in Upper Merion and a half step in Colonial.⁸ Had this contract been settled at the expiration of the last agreement, the District would have willingly paid the salaries based on the movements in the referring districts. However, the District anticipated paying any such step movement costs from health care cost savings which have not been realized since the parties have not settled their contract. Therefore, the District does not want this contract to be retroactive. Under the District's proposal, if the contract is settled at this point in time, the District teachers would not enjoy any of the step movements realized in the referring districts. The Association desires retroactivity and points out that retroactivity would only cost the District about \$30,000 and the district agrees with that figure.

RECOMMENDATIONS

Salary

I recommend that a new Step E-1 be created in accordance with the District's proposal to accommodate the teachers who have earned at least three additional certifications in their particular trade area. All the certifications would have to remain current, as noted by the District. The salary in each year shall be half way between that of the E and F levels. I would not recommend that additional columns beyond E-1 be created to compensate the District's non-degree teachers more in line with their academic counterparts. I agree with the District that such a plan could discourage teachers from⁵

⁸ Employees generally move up one (1) step per year. In Colonial, they essentially had no salary increase for the first six months of the contract.

seeking academic degrees, and the district wants to encourage such attainment of a degree of higher learning as academic teachings are increasingly becoming part of the trade curriculum. This provision shall become effective in the 2012 -2013 academic year.

Health Care Plans

The parties do not appear to be at odds over the plans selected. The Association would like the District to join the consortium. While consortiums may well be effective in negotiating as a bloc with health care providers, thus reducing costs, the District has made a business decision to remain outside of the consortium and provide health care with Blue Cross/Blue Shield. The District, as management, is entitled to run its business, and there is certainly nothing on the record which leads me to conclude that requiring membership in the consortium is the optimal result for both parties. The references to the benefits of the consortium were vague at best.

I further recommend that the share of premium costs to be paid by employees equal, on a percentage basis, an average of the shares paid by the referring districts. The Association has not submitted any data considering the flat fee desired, and thus it is difficult to make a determination here setting up a flat fee contribution. Further, the parties have historically looked to the referring districts to determine payment provisions in their own contract, and thus I think it makes the most sense to have the contribution provisions aligned with those of the referring schools.

The parties are at odds over the prescription plan. The District is proposing a specific plan, and the Association is proposing a co-pay which it contends is close to the average of the three sending districts. However, the District is dealing with Blue Cross, and it is not evident that the type of co-pay plan desired by the Association is even available. Since, an averaging of the co-pays of the sending districts may create a co-pay scheme which is not available with Blue Cross, it seems that the parties should either go with the Employer's proposal or that of one of the sending districts. Since the Association was willing to agree to health care savings with a change to the C1 F1 O1 plan, I would recommend looking to a drug co-pay program which is the most favorable to the employee from one of the three referring districts. Thus, for example, if Colonial's drug program is best from the employee's standpoint, that is the program that should be instituted. If such a program is not available with the health care plans being instituted at Central Montco, then the drug plan proposed by the District should become part of the new contract.

As to payments for half-time employees, I agree with the proposal of the district, which will apply to new hires only. Thus, I would recommend, in line with the Association's concern, that if any current full-time employee is subsequently reduced to part-time in the new contract, such employee should maintain his or her full-time benefits. The Employer undoubtedly will continue to pay full benefits for all current part-time employees, under the new contract. It should, therefore, have no problem paying for a current employee whose status simply changed after the implementation of the new agreement. Such former full-timer should have no less rights than a current half-time employee since both are currently in the system.

Payment for Unused Sick Leave

Both of the parties agree that such a stipend is necessary because many of the teachers worked in the trades before coming to the District to teach, and they have not built up a substantial pension in the school system. It seems entirely appropriate therefore, that the Association's plan should be adopted in this regard, as it is the more generous of the two proposals. Nonetheless, this District, as well as the referring districts, are facing economic hardships with the increased pension contributions due and owing to the PSERS system. Therefore, I would keep the system, as is, for the 2011-12 academic year, and implement the Association's proposal at \$100 for the 2012-2013 year, and continuing on in the remaining years of the contract as proposed by the Association.

IEP Payments & Prep Time

I am sympathetic to the Association's argument that bargaining unit members are being asked to do increasing amounts of work for special needs students. Such work should receive appropriate compensation. However, the Association conceded that unit employees are being asked to perform work that they are not certified to do; special education teachers apparently have such certifications, and the compensation offered them in the referring districts reflects such training. I agree with the District that a joint labor-management committee should address the issue of the work being asked of bargaining unit members; certainly they should not be performing work they are not qualified to do. In the meantime, I recommend that the parties institute the proposal suggested by the District until such time as the labor management committee can properly address the issue of compensation here. However, as the teachers here are dealing with a larger special needs population than in the referring districts, and since such students' IEP's often require additional preparation time, I recommend adopting the proposal of the Association with respect to additional prep time minutes. The language of Appendix C, Article I, should be changed as referenced by the Association.

Retroactivity

I recommend that the contract be made retroactive to the expiration of the old agreement, with the exception that the E-1 column shall not be brought into effect until 2012 -2013. The District argued that retroactivity would have been appropriate had it achieved a contract on July 1, 2011 with the anticipated health care savings it wanted. Those savings could have paid for the wage increases. I am not persuaded by the District's argument. There was no suggestion in this record that the Association has bargained in bad faith. The District, from its experience, must know that sometimes contracts settle on time, and sometimes they are not settled until well past the expiration of the old contract. Absent some proof that the Association has proved obstreperous and has bargained in bad faith, I see no reason to punish employees for simply engaging in their right to collectively bargain. To not apply retroactivity here would, in my view, amount to such a punishment.⁶

⁹

The Association at Exhibit A-1 made a proposal respecting hours of employment. The Association did not address the matter as one in dispute in the pre-hearing submission, and there was no discussion of the matter at the hearing. The District did not address the issue in its pre-hearing submission or at the hearing. Accordingly, I do not recommend adoption of the proposal.

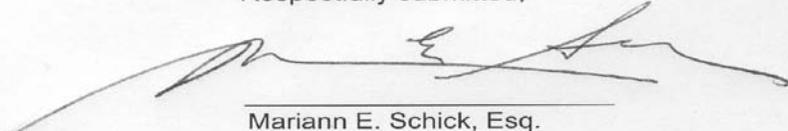
Moreover, as conceded by the District, retroactivity would only cost the District approximately \$30,000, a rather insubstantial sum when considered against the entire cost of running the school district.

Conclusion

With respect to any areas of the agreement not referenced, I recommend that the provisions of such Articles in the contract remain as set forth in the expired contract or as changed, per agreement, during negotiations.⁹ Having reviewed all areas of dispute between the parties, my duties are concluded herewith. Any relevant matrix is attached.

Done this 21st day of May, 2012 at Philadelphia, Pennsylvania.

Respectfully submitted,



Mariann E. Schick, Esq.
Arbitrator