damages that may be considered as a punishment for a disagreement as to what is, or is not, a "specific" date for celebrating a holiday. This simply is not a situation calling for punishment of a party for an honest dispute regarding the terms and conditions of Holiday provisions of a collective bargaining agreement.

It seems to me punitive damages are extraordinary in nature, and should be reserved for situations that cannot be corrected by other remedies. Punitive damages should be awarded only as a deterrent to future similar violations. In the present situation, there is another remedy available to insure future violations will not occur. That remedy is a ruling the employer must select a specific date, in advance, for each of the four Floating Holidays, and such a date shall not be a personal selection day of individual employees. The remedy is readily found in employer's written answer to the grievance which states:

"The scheduling of a personal floating holiday is being done on a trial basis for calendar year 1998. If this proves to be a burden on either Management or the Union, the practice will be discontinued for calendar year 1999."

The trial period is over. The practice has become a burden on the Union, as evidenced by the grievance, and the proper remedy is to now discontinue the practice of scheduling personal holidays, until the parties have an opportunity to negotiate their understanding of the application of the term "specific" in regard to designating a "floating Holiday".

AWARD

THE EMPLOYER VIOLATED ARTICLE VI, SECTION 6.1 OF THE COLLECTIVE BARGAINING AGREEMENT WHEN IT FAILED TO DESIGNATE A SPECIFIC DATE FOR EACH OF THE FOUR FLOATING HOLIDAYS. THIS PRACTICE MUST BE DISCONTINUED UNTIL THE PARTIES HAVE AN OPPORTUNITY TO DISCUSS AND AGREE UPON THE PROPER APPLICATION OF THE TERM "SPECIFIC" IN REGARD TO EACH OF THE FOUR ADDITIONAL FLOATING HOLIDAYS.

MILFORD TOWNSHIP —

Decision of Arbitrator

In re MILFORD TOWNSHIP [Ill.] HIGH SCHOOL DISTRICT 233 and MILFORD HIGH SCHOOL EDUCATION ASSOCIATION, AAA Case No. 51-390-00548-98, August 25, 1999.

Arbitrator: Lamont E. Stallworth.

EMPLOYEE BENEFITS

1. Early retirement benefits ¶100.58 ¶100.45

School district did not violate collective-bargaining contract when it failed to add negotiated one percent retirement system contribution to teacher's base salary to calculate her 20 percent stipend for early retirement, where contract's plain and unambiguous language provides for no more than 20 percent increase over prior year's salary for last two years to determine early retirement benefits.

Appearances: For the employer — Daniel M. Boyle, attorney. For the union — Roberta R. Werner, Uniserv Director.

EARLY RETIREMENT BENEFITS

The Issue

STALLWORTH, Arbitrator: — The instant Contract interpretation case involves the question whether the Board of Education violated and/or misapplied the early retirement provisions of the Contract. The parties submitted the following issue(s) to the Arbitrator.

Whether the Board of Education violated, misinterpreted, or misapplied Article VII, Section 11 of the 1996-98 Agreement, extended for 1998-1999, and if so, what is the remedy?

Relevant Contract Provisions

Article VII—Compensation and Fringe Benefits

Article 7.3—Board Paid Retirement

From the established gross salary schedule, according to the authority granted by the Pension Reform Act of 1974, Section 414(h)(2) of the Internal Revenue Code, the Board agrees to pick up and pay the Teacher Retirement System on behalf of each teacher, eight percent (8%) of the gross earnings reflected for each teacher, and will shelter said amount for tax purposes or the Board will pay .080957 of the reflected taxable income. Should any of the above be declared improper by an IRS ruling or opinion, that clause or portion thereof shall be deleted from this Agreement to the extent it violates the ruling or opinion.

EXAMPLE

Gross Salary	Sheltered Amount	Taxable Salary
$14,674.00	$1,174.00	$13,500.00

(Note: percentage changed to nine percent (9%) and .098901 by the Contract extension through 1998 -1999).

Section 7.11—Retirement Benefits

The following requirements apply in any case of early retirement:

(1) Per the Teachers' Retirement System, the teacher must be at least fifty-five (55) and no older than fifty-nine (59) by June 30 of the Retirement Year.

(2) The teacher must have taught for a minimum of twenty (20) continuous years in the District.

(3) The District shall not be responsible for the teacher's contribution to the Teachers' Retirement System for the purpose of avoiding the early retirement reduction in allowance. Any such contribution shall be the sole responsibility of the retiree.

(4) No more than three (3) teachers may begin participation in the Early Retirement Stipend Program in any one year. In the event that more than three (3) teachers apply, those eligible to participate shall be chosen on the basis of the greatest continuous full-time length of service with the District.

(5) The State of Illinois must continue the Teachers Retirement System's early retirement plan as set forth in the Illinois Pension Code.

* * *

B. Any teacher who chooses early retirement with at least thirty five (35) years of creditable service shall receive additional salary stipends equal to twenty percent (20%) of the teacher's annual salary in each of his/her last two years of teaching.

(1) *Notification.* The teacher shall submit to the Superintendent written notification of intent to retire no later than June 1 one year prior to the effective date of the teacher's retirement. (Example: To retire at the end of the 1996-1997 school year, notification must be made by June 1, 1996).

(2) *Payment.* Payment of the stipends shall occur as follows: (a) The teacher may elect (1) to receive the stipends as lump sum payments on June 15 of each year or (2) to receive the first year's stipend as a lump sum payment on June 15 of the year before retirement and the second year's stipend in equal amounts with the teacher's regular salary. (b) In addition, if notification of retirement occurs prior to January 15 of the year before retirement, the teacher may elect to receive the first year's stipend in equal amounts with his/her remaining regular salary payments.

(3) *Right to Rescind* If approved by the Board, the teacher may rescind the letter of intent to retire prior to January 15 of the second year. The District shall then have the right to withhold in equal amounts from the teacher's remaining regular salary payments a total equal to all stipend monies heretofore received by that teacher. . . . . (Emphasis in original)

1997-98	Step 32 BS+ 44
1998-1999	
1999-2000	

On August 28th, 1998, Schmidt sent the Grievant another memorandum which indicated that the Board had reviewed her request and that the Board had tabled any action on this request until the next Board meeting on September 16, 1998.

It is important to note that Section 7.3 of the Contract requires the District to pick up and pay on behalf of each teacher their entire required retirement contribution to the Teacher's Retirement System (hereinafter referred to as TRS). The amount of this contribution for the 1997-98 school year was eight percent (8%) (.086957). However, beginning with the 1998-99 school year, TRS required an additional one percent (1%) to TRS, thus raising the amount contributed to

Background

The Grievant is a high school teacher employed by the District. The Grievant determined in June 1998 that she would retire at the end of the 1999-2000 school year. The Grievant decided that she would take advantage of the District's early retirement plan as indicated in Section 7.11(B) of the Contract.

On June 16, 1998, the Grievant wrote a letter to Superintendent Michael Schmidt and the Members of the Board of Education of the District. In relevant part, the letter stated:

I am planning to retire from teaching at the end of the 1999-2000 school year. I am opting for the retirement benefits as specified in Section 7.11 and 7.11(B) of the . . . [Contract]. At that time, I will have met the specified requirements: at least fifty five years of age, over twenty years of service with Milford High School District, and more than thirty-five years of creditable service with the Teachers Retirement System.

I am requesting that payment of the stipend for the 1998-99 school year be made in equal amounts with my salary payments and that payment of the second year's stipend be made in equal amounts insofar as the final payments do not present a problem with the district's accounting methods.

The Grievant computed her salaries under Section 7.11(B) for the 1998-1999 and 1999-2000 school salaries based upon a 20% increase over the previous years' salaries and submitted a memo to the District showing those amounts as follows:

Salary	TRS Included
$34,205	$37,179
$41,046	$44,615
$49,225.20	$53,538

nine percent (9%) (.098901). Consistent with Section 7.3 of the Contract, the District agreed to pay the additional one percent (1%) on the teacher's behalf.

	Salary	w/TRS .086957	w/TRS .098901	Chg.
1997-98	$34,205	$37,179	NA	NA
1998-1999	$41,046	$44,615	$45,105	+$490
1999-2000	$49,226.20	$53,538	$54,127	+$589

As indicated above, the Grievant believed that her salary for the 1998-1999 school years should have included both the twenty percent (20%) increase over her 1997-98 salary as well as the additional one percent (1%) TRS Contribution by the District. According to the Grievant, the recalculated amounts for 1998-99 was $45,105 and was $54,127 for 1999-2000.

However, the Board did not agree with the Grievant's revised calculations. The Board computed her base salary in the amount for 1998-99 not to be $41,046, but instead to be $40,600. When the nine percent (9%) TRS contribution was added, the total salary for 1998-99 was $44,615. It is apparent that what occurred is that the Board increased the Grievant's 1997-98 salary by twenty percent (20%) in total, but then reduced it by $490 to compensate for the additional one percent (1%) that it was required to contribute to TRS. Thus, the net increase for the 1998-99 school year was a total of twenty percent (20%), not twenty-one percent (21%) as Grievant calculated.

In this distinction lies the basic dispute between the Parties. The District's position is that the maximum increase, including the TRS contribution, can be absolutely no more than a maximum increase of twenty percent (20%). Thus, the one percent (1%) additional contribution effectively must be borne by the Grievant.

Conversely, the position of the Association is that the twenty percent (20%) increase is based upon the salary which the Grievant earned in the preceding year (1997-98). Further, according to the Association, the additional one percent (1%) TRS contribution must be made in addition to the twenty percent (20%) increase.

It is apparent that there was a discussion between the Grievant and Schmidt regarding this controversy. He indicated that he would not raise her salary beyond twenty percent (20%) more than the gross salary received in 1997-98. Pursuant to that conversation, on October 26, 1998, Schmidt sent a letter to Grievant indicating the following:

> The purpose of this letter is to document our recent discussion concerning your request to the Board of Education to increase the level of TRS contribution paid by the Board. It is the opinion of the Board that the requirements of the Agreement are currently being met. Thus, the Board took no action to increase the level of TRS contribution.
>
> Should you choose to file a grievance as you indicate in our discussion, I would like to meet with you and our MHSEA representative to clarify procedures in order to expedite the disposition of this grievance.

Pursuant to this additional one percent (1%) increase, the numbers which the Grievant had initially submitted to the Board now changed for the 1998-99 and 1999-2000 school year.

On October 23, 1998, the Association filed the instant grievance. It stated, in relevant part:

> *Statement of Grievance:*
>
> The Milford High School Board of Education has violated the contract by failing to calculate accurately my salary with respect to "additional salary stipends equal to twenty percent" of my last salary.
>
> *Remedy:*
>
> The Board of Education will accurately calculate my salary with respect to the "additional salary stipends equal to twenty percent" of my last annual salary.

The Parties were unable to resolve the instant dispute. Accordingly, the instant grievance was properly submitted to arbitration. It is within this factual context that the instant dispute arises.

Position of the Association

The Association contends that the District violated the Contract by failing to accurately calculate the Grievant's salary with respect to additional salary stipends for retirement benefits, thus denying the Grievant her full contractual benefits.

According to the Association, the Grievant has met all the contractual requirements of the Contract in order to receive twenty percent (20%) retirement stipend under Section 7.11(B). The Association contends that the twenty percent (20%) retirement stipend should have been calculated on the Grievant's base salary for 1997-98 *plus* retirement contributions paid by the Board. Thus, the Association contends that the Grievant should have received a twenty percent (20%) increase over her 1997-98 salary as well as the additional one percent (1%) TRS contribution, making for a total increase of approximately twenty-one percent (21%).

According to the Association, the salary (including the TRS contributions) was determined based only after the amount of base salary had already been determined through the negotiations of the Parties. Thus, the twenty percent (20%) retirement stipend should have been calculated based upon the salary amounts only and the one percent (1%) should have been added. The salary for 1997-98 was $37, 179. An increase of twenty percent (20%) of this salary was $44,615. In addition an additional one percent (1%) contribution should have been added for TRS to bring this total to $45,105. The Association contends that this is supported by Section 7.3 of the Contract. The Association contends that the TRS contribution is to be made upon the Grievant's "gross earnings". According to the Association, the nine percent (9%) must be paid on the 1997-98 salary, plus twenty percent (20%), making for a total of approximately twenty-one percent (21%).

Further, the Association disagrees with the contention of the District that the TRS rules and regulations provide that the TRS will only accept up to a twenty percent (20%) salary increase including Board paid retirement benefits in a teacher's last years of teaching. The Association agrees that while TRS will only credit a teacher with a twenty percent (20%) increase for pension purposes, that does not preclude a teacher from earning more than a twenty percent (20%) increase in salary. The Association stresses that there is no ceiling to the amount of increase in a teacher's pay.

The District has based part of its arguments on the Rules and Regulations of the TRS. However, the Association maintains that the decision of the Arbitrator must be based only upon the Contract, and not upon any external or extra-contractual evidence.

Finally, according to the Association, the change in computation has an important and significant effect on the Grievant. Instead of obtaining her rightful twenty percent (20%) increase, the Grievant will only receive an 18.7% increase. For the two (2) years to which the Grievant is entitled to the twenty percent (20%) stipend, she will lose $1079.

In sum, the Association contends that the District has acted in an arbitrary and inequitable manner with respect to the Grievant. The Association asks that the Grievant be made whole for any and all losses in salary.

Position of the District

The District points out that in a contract interpretation case such as this one, the Association has the burden of proof in this matter and that it has been unable to meet that burden. According to the District, the Association was unable to prove that the Grievant was entitled to the amounts in question. The Grievant was entitled to no more than a twenty percent (20%) total increase. Thus, the District acted appropriately when it included the additional one percent (1%) TRS contributions into the twenty percent (20%) salary stipend.

According to the District, each section of a contract is to be supplementary to all other sections and they are not to be read in conflict with one another, citing a number of arbitration decisions. In the case at bar, the District claims that the one percent (1%) TRS contribution requirement must be read as a part of the twenty percent (20%) salary increase provision found in Section 7.11(B). According to the District, when reading Sections 7.3 and 7.11(B) in harmony, the Contract requires that the maximum increase allowed to be no more than a total of twenty percent (20%) and that the one percent (1%) TRS contribution be read as being included in the twenty percent (20%) stipend, not above and beyond it. According to the District, if the Contract were read as the Association requires, the Grievant would not get a twenty percent (20%) increase, as required by Section 7.11(B), but a twenty-one percent (21%) increase, to which there is no reference in the Contract.

Further, according to the District, this interpretation is borne out by a reading of Section 7.11(B), in the context of the TRS rules and regulations, included in the Illinois State Statutes. According to the District, the twenty percent (20%) retirement stipend is not an arbitrary number. The TRS rules and regulation give teachers credit for no more than a twenty percent (20%) increase in salary for each year when determining pension benefits. Retirement contributions which are picked up and paid by the Board of Education, including the nine percent (9%) picked up as TRS contributions, are included in both the Agreement and the TRS definition of salary. Thus, according to the District, it is clear that when the Parties negotiated their agreement, the understanding between the Parties was that the maximum amount of increase that a teacher could receive was twenty percent (20%), pursuant to the rules and regulations of the TRS.

The District claims that it is apparent that teacher salaries increase during the two years prior to retirement

in order to increase their pension benefits after the conclusion of their teaching career. According to the District, it is equally clear that the intent of the parties was that Section 7.11 as well as the remainder of the Contract be read in conjunction with TRS plans and requirements. Therefore, according to the District, it is clear that the intent of 7.11(B) was to provide a total salary increase of twenty percent (20%) and that the one percent (1%) additional TRS contribution be included within the twenty percent (20%) increase and not in addition to it.

Thus, the District contends that it acted appropriately when it granted the Grievant a twenty percent (20%) retirement salary stipend for 1998-99 over the 1997-98 salary. For all of the above mentioned reasons, the District contends that the Association has not met its burden of proof and the Grievance should be denied in its entirety.

The instant Contract interpretation case involves the question whether the Board of Education violated and or misapplied the early retirement provisions of the Contract.

The Parties submitted the following issue(s) to the Arbitrator:

Whether the Board of Education violated, misinterpreted, or misapplied Article VII, Section 11 of the 1996-98 Agreement, extended for 1998-1999, and if so, what is the remedy?

Opinion

After a careful review of all facts and arguments, this is a fairly straightforward case. At the end of the 1997-98 school year, the Grievant, pursuant to Section 7.11 of the Contract legitimately requested that she obtain early retirement. Further, it is uncontested that the Grievant qualified under Section 7.11(B) of the Contract to receive a twenty percent (20%) salary stipend for the last two years in which she acted as a teacher for the District. At approximately the same time, the District and Association extended the Contract for an additional year. As part of that agreement, the Parties agreed that the District would contribute an additional one percent (1%) to the TRS each year. There is no question that the Parties agreed that the District would pick up this additional one percent (1%) contribution pursuant to Section 7.3 of the Contract.

The Grievant gave the District her view on what her salary would be for the 1998-99 and 1999-2000 school year. She took her 1997-98 salary, including the eight percent (8%) TRS contribution and increase that total amount by twenty percent (20%) for 1998-99. The Grievant then took the amount which she would earn in 1998-99 and increased that amount by twenty percent (20%) for the year 1999-2000. Up to this point in the calculations, the Parties are in agreement as to the relevant amounts.

When the Association and the District agreed that an additional one percent (1%) TRS contribution would be made beginning in 1998-99, Grievant believed that she would get this amount in addition to the twenty percent (20%) she had already indicated. However, when the Grievant began to receive her salary in 1998-99, she did not receive the additional one percent (1%). Rather, she only received the twenty percent (20%) and the one percent (1%) TRS contribution was considered by the Board to be included within the twenty percent (20%).

Like the facts in this case, the positions of the Parties are relatively straightforward. The Association believes that the twenty percent (20%) stipend should not include the additional one percent (1%) TRS contribution. The Association believes that the twenty percent (20%) increase should be twenty percent (20%) above and beyond what the Grievant was entitled to make in 1998-99, plus the additional one percent (1%). Conversely, the District contends that the twenty percent (20%) is the maximum increase that a teacher could receive and thus cannot be increased by an additional one percent (1%). The District believes that Grievant's maximum increase from 1997-98 to 1998-99 can be no more than twenty percent (20%) total. Thus, the one percent (1%) additional increase must be included within the twenty percent (20%).

The net effect of these arguments is a total difference of $1,079 for the Grievant for the 1998-99 and 1999-2000 school years. While this may not seem to be a significant amount, the Undersigned Arbitrator is cognizant that this decision will have an effect on many individuals beyond the Grievant as it will be an issue in the future any time that a teacher attempts to take advantage of Section 7.11(B).

In the instant case, the Parties submitted the following issue to the Arbitrator:

Whether the Board of Education violated, misinterpreted, or misapplied Article VII, Section 11 of the 1996-98 Agreement, extended for 1998-1999, and if so, what is the remedy?

The Arbitrator has carefully considered the testimony, other evidence and arguments put forth by the Parties and concludes that the Association, which has the burden of proof in this matter, has not been able to sustain

that burden of proof. As the Association was not able to sustain that burden of proof, the Undersigned Arbitrator agrees with the District that the maximum salary increase that a teacher was to receive pursuant to the early retirement option was no more than a total of twenty percent (20%) over the prior year's salary. When the Parties negotiated an increase of one percent (1%) in the TRS contribution, it was proper for the District to include that amount within the twenty percent (20%) and not in addition to it. The District acted properly when it increased the Grievant's salary by twenty percent (20%).

As noted above, the Association has the burden of proof in this matter. In order to sustain its position in this case, the general rule in arbitration is that in nondisciplinary cases, the charging party, (in this case, the Association), proceeds first at the hearing and subsequently has the burden of proving its case. If the Association can prove its case at this juncture, the burden shifts to the other side (here, the District) to rebut that evidence. While different arbitrators may disagree over the quantum of evidence needed to prove its case, the basic relevant concept here is that the Association must prove, at least by a preponderance of evidence, that its position is correct. Here, as noted in the analysis below, the Undersigned Arbitrator concludes that the Association has not been able to sustain that initial burden of proof and its case must fail.

After a review of all the evidence and arguments, the bases for the ruling in the District's favor is premised upon two different methods of analysis. These matters include the plain language of the Contract as well as the rules and regulations of the TRS.

The instant grievance arose within the context of the language of Article 7.11(B) of the Contract which provides:

> B. Any teacher who chooses early retirement with at least thirty five (35) years of creditable service *shall receive additional salary stipends equal to twenty percent (20%) of the teacher's annual salary in each of his/her last two years of teaching.* (Emphasis added)

The language of this provision provides that the additional salary stipend shall be equal to twenty percent (20%) of the teacher's annual salary (from the year preceding) in the final two years of teaching. It does not indicate that twenty percent (20%) is the minimum or maximum increase that a teacher shall receive. Rather, it simply indicates that twenty percent (20%) is the increase that the teacher who fulfills the requirements of early retirement shall receive.

It is a well-known arbitral axiom that there is no need to look to other standards for contract interpretation in the event of plain language in the Contract. There is no need for interpretation unless the agreement is ambiguous. If the words are plain and clear, conveying a distinct idea, there is no occasion to resort to technical rules of interpretation and the clear meaning will ordinarily be applied by arbitrators Elkouri & Elkouri, *How Arbitration Works*, 5th Edition (Volz & Goggins, Editors) at p. 470.

[1] In the instant case, there is no need to resort to any other rules of construction or other parole evidence in order to ascertain the intent of the Parties. The plain language of the Contract provides for a simple twenty percent (20%) increase in salary for the last two years. An arbitrator may also give words their ordinary and popularly accepted meaning in the absence of anything indicating that they were used in a different sense or that the Parties intended some special colloquial meaning Elkouri & Elkouri, *How Arbitration Works* 5th Edition (Volz & Goggins, Editors) at p. 488, citing Kaiser Permanente, 100 LA 119, 120 (Knowlton, 1992).

In the instant case, it is apparent that the Parties mutually agreed to a twenty percent (20%) increase in each of the last two years of teaching for a teacher taking advantage of the early retirement option. The language of Section 7.11(B) provides for a twenty percent (20%) increase *over the prior year's salary*, no more, no less. Here, twenty percent (20%) is exactly what the District granted the Grievant. The District took the Grievant's 1997-98 salary and increased it by the twenty percent (20%) required by the Contract for 1998-99. In turn, it took the proposed 1998-99 salary and again increased it by twenty percent (20%) for the 1999-2000 school year. Based on the plain language of the Contract, the District contends, and the Undersigned Arbitrator agrees, the District is contractually precluded from giving the Grievant more than a twenty percent (20%) increase. Thus, because the Contract provided for only a twenty percent (20%) increase, if the District would have also provided an additional one percent (1%) increase in TRS, the additional one percent (1%) would have pushed the amount beyond the twenty percent (20%) and the District technically would have then been in violation of the Contract for the Grievant.

Further, both Parties argue that Section 7.3 is relevant. The Association argues that Section 7.3 is relevant to

this determination in that it clarifies the twenty percent (20%) identified in Section 7.11. The District argues that Section 7.3 must be read in a consistent manner with Section 7.11 so that the sections do not contradict one another. See, e.g., *Indiana Bell Telephone Co.*, 88 LA 122 (1986); *Great Lakes Dredge and Dock Co.* 5 LA 409 (1946). However, a review of Section 7.3 merely provides that a teacher's total salary is made up of the base salary plus the TRS contributions, making for a gross salary. The Undersigned Arbitrator concludes that there is no significant guidance in Section 7.3 regarding the relationship between Section 7.11(B) and the TRS contributions.

However, if the Undersigned Arbitrator could be persuaded that the language of the Contract is ambiguous, an arbitrator may look outside the four corners of the document to determine what the intent of the Parties was when they drafted the agreement. Even assuming that the Contract is considered ambiguous, the District is nonetheless correct that the Grievant is still entitled to no more than a twenty percent (20%) total increase. This is based on the language of the TRS rules and regulations.

In the instant case, the District suggested that the Parties look to the language of the IRS rules and regulations (which are part of the Illinois Statutes) to determine the meaning of Section 7.11(B). Based upon the conclusion that the Contract is ambiguous, the Undersigned Arbitrator has reviewed documents outside the Contract which might shed some light on the question of what the twenty percent (20%) identified in Section 7.11(B) may be indicative of. Specifically, the District has pointed to the TRS Rules and Regulations which provide that TRS provides teachers a maximum credit for no more than twenty percent (20%) increase for salary in any given year when determining pension benefits (See 40 ILCS 5/16-133(b)). The IRS contributions picked up and paid by the Board of Education on behalf of its teachers are included within this twenty percent (20%). The District urges that this language gives an indication as to what the Parties' intent was when Section 7.11(B) was negotiated. The Undersigned Arbitrator agrees that this bolsters the position of the District. It is apparent and logical that the Parties intended that a maximum increase of twenty percent (20%) would be given because there would be no credit for an increase of more than twenty percent (20%). The TRS regulations appear to be the underpinning for the District's argument that twenty percent (20%) is the maximum increase that can be received.

If one accepts the Association's argument in this case, the Grievant's increase would be approximately twenty-one percent (21%), based upon the combination of the twenty percent (20%) plus the additional one percent (1%) TRS contribution. This additional one percent (1%) increase could not be credited by the TRS. Based on the rules and regulations of the TRS, the intention of the Parties was to increase the salary of a teacher by no more than twenty percent (20%). This clarifies the agreement of the Parties that the maximum increase, including TRS contributions would only be a maximum of twenty percent (20%). Thus, the language of Section 7.11(B) is clarified to reflect that a maximum increase of twenty percent (20%) would be granted to the Grievant.

In sum, based upon both the plain language of the Contract and the rules and regulations of the TRS, the position of the District is sustained. In addition, the Undersigned Arbitrator has considered the arguments put forth by the Association. However, those arguments are unpersuasive. The arguments of the Association fail to rise to the level of meeting the required burden of proof in this matter. The arguments are supported by little true evidence. The arguments are suppositions gleaned from the Contract's language.

The Association argues that the TRS rules and regulations should not be considered in this matter. The Association makes this claim for two reasons. First, the Association claims that the Arbitrator may not look outside the four corners of the Contract. In addition, the Association argues that even if one were to look at the TRS rules and regulations, the fact that the rules and regulations provide credit for only up to a twenty percent (20%) increase is not indicative of the Parties' intent. Rather, while the twenty percent (20%) is the maximum for which the TRS gives credit, that does not preclude a teacher from earning more than a twenty percent (20%) increase in salary.

The Association is incorrect that the argument of the District regarding the TRS rules and regulations fail. As noted above, in the event that a Contract is ambiguous, an arbitrator may properly consider outside sources to determine the Parties' intent. Here, if the Undersigned Arbitrator were to look beyond the language of Section 7.11(B), the language of the TRS rules and regulations are directly relevant to the meaning of that provision and

therefore may be considered. Further, the Association claims that while the TRS regulations provide that a teacher may not receive more than a twenty percent (20%) increase in salary for retirement purposes, the TRS does not preclude a teacher from receiving more than a twenty percent (20%) increase. It just will not give credit beyond the twenty percent (20%). The Undersigned Arbitrator agrees with this contention. The Association claims that these regulations are not relevant to the instant case. However, the Association is incorrect in this matter. As noted above, it is logical that the twenty percent (20%) number in the Contract, Section 7.11(B) is directly related to the twenty percent (20%) maximum which the rules and regulations provide that a teacher can receive credit and that the Parties considered this when it reached its agreement on Section 7.11.

Thus, whether one considers the plain language of the Contract, or whether one looks at the language of the Contract in the context of the TRS rules and regulations, the District is correct that the Parties contemplated that no more than a maximum of a twenty percent (20%) increase would be given to any teacher requesting early retirement. Thus, the amount of increase for the Grievant proposed by the District is the amount which is correct. The Union has not been able to sustain its burden of proof. Accordingly, the instant grievance is denied in its entirety.

AWARD

The District acted appropriately when it increased the Grievant's salary for 1998-99 and 1999-2000 by no more than twenty percent (20%). The language of the Contract provides that a teacher requesting early retirement could receive no more than a maximum of twenty percent (20%) increase over the past year in salary. Thus, the maximum increase could only be twenty percent (20%). To increase the Grievant's 1997-98 salary by twenty percent (20%) and then to additionally increase it by the one percent (1%) TRS contribution would be a violation of the Contract. The Union has not been able to sustain its burden of proof.

The instant grievance is denied in its entirety.

COLUMBIA HOSPITAL FOR WOMEN —

Decision of Arbitrator

In re COLUMBIA HOSPITAL FOR WOMEN MEDICAL CENTER, WASHINGTON, D.C. and DISTRICT OF COLUMBIA NURSES ASSOCIATION, FMCS Case No. 99/00392-A, November 30, 1999

Arbitrator: Earle William Hockenberry, selected by parties through procedures of the Federal Mediation and Conciliation Service

EMPLOYEE BENEFITS

1. Employer contribution ▸116.404 ▸24.37

Hospital did not violate collective-bargaining contract, which provides that hospital will make retirement plan available to nurses on same terms as it makes it available to employees generally, when it stopped contributing to nurses' tax deferred annuity plan, where it ended contributions for all employees, and it proposed that language in contract in line with its insistence in bargaining that it would not agree to maintain plan at any particular level of contribution.

2. Employer contribution — Notice ▸116.404 ▸24.751 ▸24.37

Hospital was not required to bargain over its decision to end contributions to nurses' tax deferred annuity plan, where collective-bargaining contract provides that hospital has to give 30 days' notice of changes, not that it had to negotiate over changes in plan, and bargaining history is that hospital did not want to bargain over matters addressed in contract.

3. Employer contribution — Notice ▸116.404

Hospital's notification to union 29 days before it ended contributions to nurses' tax deferred annuity plan was timely, even though collective-bargaining contract required 30 days' notice of some changes, where one-day delay neither prejudiced rights of union nor was sufficient to constitute breach of collective-bargaining contract.

Appearances: For the employer — Elliott H. Shaller, attorney. For the union — Charles Greenfield, attorney.

EMPLOYER CONTRIBUTION

Statement of the Case

HOCKENBERRY, Arbitrator: — This grievance arbitration matter con-