In the Matter of the Arbitration
between

MOVIELAB FILM LABORATORIES, INC.

AND-

MOTION PICTURE LABORATORY FILM
TECHNICIANS, LOCAL 702

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MOVIELAB FILM LABORATORIES, INC., hereinafter called "the Company" and MOTION PICTURE LABORATORY FILM TECHNICIANS, LOCAL 702, hereinafter called "the Union" have submitted to arbitration an issue concerning the operation of the so-called ultra-sonic cleaning machine. Briefly, the issue is whether the Company may assign operators of the ultra-sonic machine, while the machine is in operation, to do other work such as counting notches and cleaning by hand. The Union contends that it is impossible for the operator to turn away from the machine, while it is in operation, to do other work without substantial danger of damage to the film in the ultra-sonic cleaner. The Company insists that if the machine is correctly set at the time it begins operating there is little or no danger of damage to film. In any event, the Company says that it has the clear right under the collective bargaining agreement to assign the operators of the ultra-sonic cleaner to do other tasks while the cleaner is in operation.

At the hearings, testimony was given by witnesses for both the Union and the Company as to the practicality of operating in the manner sought by the Company. In general, the testimony was squarely contradictory, Company witnesses saying that the machine required little or no attention once it started running, while Union witnesses asserted that the machine required constant and unremitting attention. In the view I take of this case, it is unnecessary to address myself to this aspect of the issue, for in my judgment the case should be disposed of in accordance with Section 17 of the collective bargaining agreement in effect between the parties.

Section 17 (c) of the agreement says, in part: "if such new, unusual, reconstructed or accelerated machinery or equipment is the same as presently or may hereafter be operated in any other laboratory with which the Union has a collective bargaining agreement then the Employer shall have the right, upon notification to the Union and upon the mutual agreement that said machinery or equipment is the same, to operate such equipment in the same manner as the other laboratory. . . . ."

There is no doubt whatever in my mind that the ultra-sonic cleaner is a "new" machine within the meaning of Section 17 (c), notwithstanding that it serves the same purpose as the so-called "Truman" machines which the Company has. Nor is there any doubt that the Company's machine is, for all practical purposes, identical with the ultra-sonic cleaners in use in a number of other laboratories.

Now, while in some laboratories the operators of the sonic cleaner do no other work while the cleaner is in operation, in at least one laboratory -- Du-Art, the operator does other work while the sonic cleaner is running. This fact has been known to the Union for some time; the Union has apparently been discontented with the situation at Du-Art and has spoken to the management about it but at no time has a grievance been filed and the matter has not been brought to arbitration.
The record is clear that the Union sought to negotiate on the matter at the time the collective bargaining agreement was under discussion. Management's refusal (the management being the committee of representatives of the various companies under contract with the Union) to negotiate because of a pending grievance led the Union to drop the matter in bargaining. Apparently, the Union was under the impression that the alternatives open to it — arbitration of the grievance and bargaining de novo on the issue — did not differ from each other, and that it might make its point successfully in either situation. However, an arbitrator is bound by the terms of the collective bargaining agreement under which he is functioning, and in this instance, Section 17(c) compels the conclusion that the Company must be sustained. For Section 17(c) gives the Company the right to the same conditions as those under which Du-Art operates. Whatever the basis for not pressing the situation at Du-Art, the Union may not, under Section 17(c), ask that the Company here operate under less favorable conditions than those which obtain at Du-Art.

The issue is one which is peculiarly appropriate for collective bargaining, and one which should be resolved by the establishment of a uniform rule applying to all employers similarly situated. But the Company here is entitled, by the "most favored employer" clause of Section 17(c) to as good treatment as any other, and, since Du-Art has the operator of the ultra-sonic cleaner doing other work while the cleaner is in operation, the Company here may not be denied the same condition. Hence, I am of the opinion, and I so find, that the Company may assign the operators of the ultra-sonic cleaning machine to perform other tasks while the machine is in operation.

/s/ EMANUEL STEIN, Arbitrator
February 24, 1960

AWARD

The Undersigned constituting the Arbitrator to whom was submitted the matter in dispute between the parties above-named, having heard the allegations and received the witnesses and proofs, AWARDS as follows:

The Company has the right to assign the operators of the ultra-sonic cleaning machine to perform other tasks while the machine is in operation.

/s/ EMANUEL STEIN, Arbitrator
February 24, 1960
IN THE MATTER OF THE ARBITRATION BETWEEN  
DU ART FILM LABORATORIES, INC.  
AND  
LOCAL 702, MOTION PICTURE LABORATORY  
FILM TECHNICIANS, I.A.T.S.E.  

AWARD OF ARBITRATOR  
4-Duart  
5/3/60  
A. Stark  

I, ARTHUR STARK, having been designated in accordance with the Arbitration Agreement entered into by 
the above-named Parties, and having duly heard the proofs and allegations of the Parties, hereby make 
the following award:

While operating an Ultrasonic Cleaning Machine an employee shall
not be required to perform any other work simultaneously therewith other
than the rewinding of film and the dusting (without use of solvent) thereof.

An exception to the foregoing will be permitted to the extent of
cleaning film by hand with solvent simultaneously with the Ultrasonic
Machine operation only when both of the following conditions are present:

1. Only one Negative Cleaner is on duty during a shift;

2. An emergency or rush job is brought in and the cleaning
thereof cannot be delayed until the Ultrasonic Machine
cycle is completed. (An emergency or rush job, for the
purpose of this exception, shall be deemed to be news items, the processing of which is required for immediate
delivery to a waiting customer.)

Dated: May 3, 1960

State of New York  ss.:

County of New York  

On this 3rd day of May, 1960 before me personally came and appeared ARTHUR STARK, 
to me known and known to me to be the individual described in and who executed the foregoing instru-
ment and he acknowledged to me that he executed the same.

LILLIAN STEINORTH
Notary Public - State of New York
No. 71-017240
Qualified - New York County
Commission Expires March 30, 1962
Opinion

Issue:
The proper method of operating the Ultrasonic Film Cleaning Machine.

Background Information

Four to six firms in the industry have installed this new machine. The Union's claim that an operator should not be given other tasks while assigned to the Ultrasonic Cleaner was discussed with these employers from time to time. No agreement was reached, but during the course of current industry contract negotiations (which commenced August 1959 and are still not concluded) the Union proposed that the method of operation be negotiated.

Before negotiations on this issue could begin, Moviola Film Laboratories, Inc. filed for arbitration of the matter. Arbitrator K. Stein, in an Award dated February 24, 1960, held:

"The Company has the right to assign the operators of the ultra-sonic cleaning machine to perform other tasks while the machine is in operation."

It is clear from Arbitrator Stein's Opinion however, that:

1. He did not pass on the "merits" of the issue presented, but confined his decision to the fact that operators at another Laboratory (Du Art) had been performing other work while the machine was in use.

2. He apparently assumed - in finding that the Union had dropped its proposal to negotiate the matter - that collective bargaining negotiations had been concluded.
3. He based his decision solely on the "most favored employer" clause of Section 17 (C).

The Union contends, however, that (1) it has never withdrawn its objections to assigning other tasks to the Operator - at Du Art or elsewhere; and (2) it did not proceed to arbitration on its pending complaints because of its hope that an agreement on proper method of operation could be reached with all affected companies before conclusion of contract negotiations.

In view of the Stein Award the Union finds it necessary to bring the present issue to arbitration in order to obtain a definitive ruling on the "merits." It argues, in this respect, that the new machine requires an Operator's constant attention because of (1) the complex controls regulating temperature, pressure and tension of the film strand; (2) most film processed through this machine is original negative - and therefore irreplaceable; (3) processing is much faster than under the former hand system.

The Company does not contest the Union's right to arbitrate; it agrees that the issue of operation has been in dispute since the machine was first introduced; it concedes that collective bargaining negotiations have not been concluded. But, it maintains, for all practical purposes there is no longer a proposal on the negotiation table since all the affected Labs agreed to resolve the problem through one proceeding - and the Stein arbitration thus constituted a substitute for joint negotiation (and was so recognized by the Union).

As for the "merits," the Company claims the new machine operation requires less care and attention than the old hand cleaning
method since the machine is fully automatic, controls are pre-set, and it stops automatically if the film breaks.

Management also states that Operators have been required to perform several other tasks during machine operation, including re-winding and dusting film, with or without use of solvent. Performance of these tasks, the Company maintains, permits the Operator to "keep an eye" on the machine.

Discussion

The crux of the issue before us is: under what circumstances may an Operator of the Ultrasonic Cleaning Machine perform other tasks while the machine is in operation?

Testimony shows that the only occasions, in the past, on which Management has assigned work (other than rewinding or dusting without use of solvent) to a Machine Operator, were during shifts when only one Negative Cleaner was on duty and an emergency arose. The typical situation involved a piece of news film which was brought in for immediate cleaning while the Machine cycle was in progress. In such instances the Operator hand-cleaned the film, by use of solvent, while the customer's representative waited for delivery. Accordingly, this shall be our Award.

May 3, 1960
In The Matter Of The Arbitration Between

EU-ART FILM LABORATORIES

and

MOTION PICTURE LABORATORY TECHNICIANS

AWARD

1. Mr. David Mintz was not discharged for just cause. He shall be reinstated with full back pay.

2. Mr. Lawrence Marx was not discharged for just cause. He shall be reinstated, reimbursed for one-half of his earnings lost by the discharge, less earnings received from other sources.

3. This award shall be effective as soon as possible after its receipt.

DATED: JUNE 10 1960

STATE OF NEW YORK )
COUNTY OF NEW YORK)

On this 10 day of June, 1960, before me personally came and appeared William Tucker

...
In The Matter Of The Arbitration Between

DU-ART FILM LABORATORIES

and

MOTION PICTURE LABORATORY TECHNICIANS

OPINION

The undersigned was designated as the arbitrator to determine the following issue as framed by the Company and the Union:

"Were Messrs. David Mints and Lawrence Marx discharged for just cause? If not, what shall the remedy be?"

A hearing was held on the premises of the Company, at which the Company and the Union were duly represented, and had the fullest opportunity to present evidence and to proffer relevant argument.

Messrs. Mints and Marx were discharged for allegedly conspiring to collect pay for time not worked. Specifically, Marx was discharged for punching Mints' time card and Mints was discharged for accepting pay for time he had not worked. The following occurred on March 25, as I analyze and weigh the submitted evidence. This discussion will not review all of the evidence adduced by witnesses' testimony,
but will set forth only the evidence deemed immediately relevant for the frame of reference for my determination.

At noon, Friday, March 25, 1960, Mintz left work because he was ill. He gave a note to Marx to give to their supervisor, and left. Marx delivered the note. The supervisor read the note and discarded it without informing the payroll department.

A supervisor and the plant manager noticed Mintz's absence and that his time card did not show that he had left early. The plant manager inserted a white piece of paper in the rack with Mintz's card so that the paper would fall out if that card should be punched by someone else.

The plant manager placed himself near the time clock just before 5 p.m. He testified that no saw Marx there, that Marx pulled out a card from the slot in which he inserted Mintz's card, that the white piece of paper dropped out, that he obtained the punched card immediately after Marx left, and that the card was Mintz's showing a leaving time of 5 p.m.

Marx categorically denied being at the time clock at that time. He was not scheduled to punch his clock until later when he went out for food for himself and others working overtime. He returned from this errand at 5:07 p.m. However, another supervisor for a mill had seen Marx pass by at 5 p.m. on the way to and from the clock. He later saw Marx leave for the food and...
about 5:27 p.m.

This matter was referred to a higher level of management which decided to await Mintz's reaction to receiving the pay for the time he hadn't worked. They would then decide on the action to take. Mintz remained absent for illness on the following Monday and Tuesday. He returned to work on Wednesday.

Pay envelopes are distributed with the time cards. Employees are asked to check the reported worked hours and calculated pay. If correct, employees sign and return the card. The signature on the card is to the effect that, "Balance due shown above is correct and receipt is acknowledged." This procedure is standard practice.

Mintz signed his card which included the unworked four hours, and kept the pay. The paymaster then asked him whether he had worked a full Friday. He responded that he had not. When asked why he signed his card, he explained that since he expected to receive a small amount, he had signed without checking. The paymaster noted a debit of four hours for Mintz's pay for the following week.

On examination, the paymaster testified the employees have signed cards before for incorrect pay. When they realized the error, correction was made though the cards had been signed.
The Company contends that the two were engaged in a conspiracy to defraud the Company of four hours' pay. There could be no other reason for Marx's punching Mintz's card when he did not belong at the time clock. The Company argues that Mintz must have known that his excuse would not reach the payroll office, and that Marx and Mintz grasped the opportunity to obtain pay for four unworked hours.

The Union responds that the Company had not proven that Mintz had acted as the Company contended. Therefore, at the least, there cannot be a conspiracy. Also Marx categorically denied the Company's charges, and his testimony should be accepted.

The evidence adduced at the hearing was carefully and deliberately considered. The testimony of each of the many witnesses was weighed, together with counsels' forceful and cogent argument.

It is my conclusion that insufficient evidence is available for a finding that Mintz conspired to defraud the Company. That Mintz left work for reasons of illness and left a note to that effect with his supervisor is surely not evidence of any but correct intent. When Mintz received his pay after two and one-half days of absence, he signed his incorrect time card. But he explained that
had not bothered to check his pay because he had expected a smaller amount. Testimony by the paymaster established that other employees had previously signed faulty cards which were subsequently corrected. Apparently, it is not conclusively established practice that the employees verify their pay before signing their cards. In the past, signatures had not foreclosed later correction of pay without discipline.

In view thereof, Company counsel's careful development of the evidence and forceful argument notwithstanding, a determination cannot be made that Mints conspired with Marx, or committed a wrong alone or coincidentally with Marx. The only remaining finding is that Mints was not discharged for just cause, and shall be reinstated with full back pay from the date of the discharge.

The adduced evidence applies differently to Marx. Though there is not a 'finding of conspiracy,' am convinced by the testimony that Marx had punched Mints's time card. Two supervisors testified to seeing him near and at the clock. One of the two supervisors testified to seeing him pull out a card and punch it. The fluttering of the white paper identified the card as Mints's. The card was punched at the time when Marx was seen at
the clock at the time he did not belong there. Making the unavoidable choice resolving the conflict of evidence, the more persuasive testimony is that Marx was at the clock and that he punched Mintz's card.

In view of the absence of sufficiently persuasive evidence that a conspiracy existed, I am somewhat at a loss to explain the reason for Marx's action. Punching Mintz's card cannot be only a mistake. Marx didn't belong at the clock, and Mintz's card was nowhere near his. The only motivation comprehensible to me is the quixotic one of saving Mintz from a loss of pay. This purpose may have seemed worthy to Marx on the spur of the moment but surely shows a degree of compulsive immaturity unworthy of an adult employee.

However, his work has been highly satisfactory. Also, his experience with the Company has been such as to warrant my conclusion that a correctional discipline instead of the final, irrevocable discharge, should salvage Marx for mutually satisfactory future employment on the job.

In consideration of all of the circumstances, including the evidence and the weight given it as reflective of the extent of the wrongdoing, it seems fitting...
that the appropriate penalty is that Mark be rein-
ated, reimbursed with only one-half of the earnings
lost by the discharge, less other earnings he may have
received from other sources during that period of time.

JUNE, 10 1960

WILLIAM RUSIN, ARBITRATOR
IN THE MATTER OF THE ARBITRATION BETWEEN

DU ART FILM LABORATORIES

AND

LOCAL 702, MOTION PICTURE LABORATORY FILM TECHNICIANS, IATSE, AFL-CIO

AWARD OF ARBITRATOR

6-Duart
1/12/61
A. Stark

I, ARTHUR STARK, having been designated in accordance with the Arbitration Agreement entered into by the above-named Parties, and having duly heard the proofs and allegations of the Parties, hereby make the following award:

B. McKiernan shall receive $350. in differential pay for the period November 1959 - June 1960.

Dated: January 12, 1961

State of New York

County of New York

On this 12 day of January, 1961, before me personally came and appeared ARTHUR STARK, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.
Opinion

Issue:

Whether, on testimony, B. McKiernan is entitled to any retroactive pay and, if so, the parties stipulate it should not exceed $448., covering pay differential for the period November 1959 through June 1960 (28 weeks).

Discussion

The parties have been in dispute over Management's refusal to classify an employee as a Sensitometric Sound Control Man at the contractual rate of $2.96 per hour. An issue submitted to this arbitrator on November 15, 1960 concerning whether someone should presently receive that classification has been satisfactorily resolved and withdrawn.

All that remains is the question whether B. McKiernan performed the duties of a Sensitometric Sound Control Man during the specified period and, if so, to what extent. Testimony on this matter was offered by McKiernan, Plant Manager Robert Smith, Executive Vice President Paul Kaufman, Working Foreman Nicholas Ferrara and Plant Superintendent Philip Kagan.

Unfortunately, it is not possible to glean from the evidence any information concerning the amount of time McKiernan spent at any particular task. Under the circumstances we must render an award which will provide substantial justice, given the facts at hand. Accordingly, it is our decision that McKiernan receive $350. in differential pay for the period November 1959 - June 1960.

January 12, 1961

Arthur Stark
In the Matter of the Arbitration between

MOVIELAB FILM LABORATORIES, INC.,
Employer

-and-

MOTION PICTURE LABORATORY TECHNICIANS,
Union.

Pursuant to the arbitration provisions of their collective bargaining agreement, the abovenamed parties submitted the following controversy for determination by the undersigned as arbitrator:

Does the Employer have the right
to extend the lunch hour and dis-
charge employees for non-obeyance
of the order extending that period?

A hearing was held in this proceeding on January 24, 1961, and both the Employer and the Union appeared before the undersigned, were represented by attorneys and afforded full opportunity to be heard and to introduce evidence with respect to the issues.

This dispute relates to a change in lunch hours announced by an order issued unilaterally on September 19, 1960, by the Employer after prior notice had been given to the Union. The employees immediately affected are the three-man complement assigned to the color negative processing machine, two of whom actually work on the machine while the third stands by at the machine as a reliefman in order to insure its continuous operation during the working day. These employees are hourly rated and are not compensated for lunch periods. Each of them receives a thirty minute lunch period, staggered from about noon to one thirty p.m. so that the machine can be operated at such times by the two men not at lunch. At substantially all other times, the three men are in attendance at the machine.

The lunch hour practice just described was in existence at the time the parties entered into their current Agreement and continued unchanged up to the present date. The announced extension has not as yet been put into effect and no employee has been discharged for failure to comply with it.
The Employer's Order of September 19, 1960, which is vigorously opposed by the
Union, would extend each of the three lunch periods in question to about an hour. The effect
would be to require the employees to remain on the premises from 7:30 a.m. to 4:30 p.m. with one
hour for lunch, rather than, as is the existing practice, from 7:30 a.m. to 4:00 p.m., with one-
half hour for lunch. Accordingly — and the Union emphasizes this point, the Employer, without
additional compensation to the employees, would gain an extra thirty minutes of machine operating
time each day and only two men would be in attendance at the machine during three hours of its
daily operation as compared with one and one-half hours at the present time.

There is merit, as an examination of the Agreement will establish, in Employer's
contentions that Section 4 (c) permits lunch periods to exceed thirty minutes and that the extension
in question is consistent with the provisions concerning starting time, hours and wages. On the
other hand, the Union maintains that Section 17 (b) is controlling and resolves the issue in its favor.

Section 17 (b) prescribes that "present methods of operation" shall continue during
the term of the Agreement, subject to exceptions that are not here applicable. In view of that
language and since the lunch hour practice the Employer seeks to change was in existence at the
time the parties signed their Agreement, the ultimate question to be determined is whether that
practice qualifies as a "method of operation" within the meaning of Section 17 (b).

It is quite apparent that the Agreement, particularly in the last paragraph of
Section 15 and in Section 17, draws a distinction between "working conditions" and "methods of
operation." The latter phrase seems to refer to machine operations whereas changes in lunch
hours ordinarily fall in the "working conditions" category.

Nevertheless, there is an additional element present in this situation that, in
this Arbitrator's opinion, brings the changes under consideration within the purview of Section
17 (b). Here, these changes directly affect the manning of, and attendance at, a machine,
since they mean that only two employees will attend the machine during a three hour period
daily, in marked contrast to present practice. Accordingly, this Arbitrator is satisfied, upon
examining the Agreement in the light of the factual situation, that Section 17 (b) is applicable
since the lunch period extension directly affects the size of the employee complement in attend-
ance at a machine for a substantial period of time. The mere fact that the Union was notified of the
extension before the Order of September 19, 1960 was issued does not correct the situation. The
changes cannot be effected unilaterally during the term of the Agreement in view of Section
17 (b)'s unequivocal language and the said Order is therefore invalid. It follows that the Employer
has no valid right to discharge employees who disobey that Order.

Dated: February 1, 1961

/s/ Harold M. Weston
Arbitrator

AWARD
The undersigned arbitrator having been designated by the Federal Mediation and
Conciliation Service in accordance with the agreement of the parties, and having been duly sworn,
and having duly heard the proofs and allegations of the parties, Awards as follows:

The Employer's Order of September 19, 1960, extending lunch hours is
invalid and Employer has no right to discharge employees who disobey
that Order.

Dated: Feb. 1, 1961

/s/ Harold M. Weston
Arbitrator
IN THE MATTER OF THE ARBITRATION

-Between-

MOVIELAB FILM LABORATORIES, INC.,

-and-

MOTION PICTURE LABORATORIES FILM TECHNICIANS LOCAL 702.

The undersigned was duly designated by the parties to hear and determine a dispute involving the propriety of a certain simultaneous operation, by the Employer, of one negative (color) developing machine and one positive (color) developing machine.

Some time in 1957, the Employer commenced operations in the color field. The disputed method of operation also began about that time went unchallenged by the Union until 1960. In August 1960 at the Union's request, pending arbitration, the Employer discontinued the particular operation in an effort to maintain harmonious relations with the Union.

The operation in question is easily described. At 7:00 A.M. one single strand color positive developing machine begins to function. At 10:30 A.M. another single strand color positive developing machine is put into action and the two machines are operated by five men as a dual operation. Prior to 10:30 A.M. the Employer had utilized three men from the Negative Developing Department in
conjunction with two positive developers to operate a negative machine jointly with the aforesaid positive machine. Thus, from 7:00 A.M. until 10:30 A.M. five men were operating one single-strand color positive machine and one single-strand color negative machine jointly. The Union contends that this method is improper under the terms of the collective bargaining agreement, maintaining that the two machines should be operated separately by three men at each machine.

Both parties agree that five men may operate two color positive machines dually and that five men may operate two color negative machines dually. The dispute stems from the simultaneous operation of a negative and positive machine.

The Employer urges that since this method had been in effect for approximately three years, it should not be lightly set aside. Moreover, time-tested as it is, there can be no objection that it is too burdensome on the men involved. Furthermore, other employers have been using a similar practice in their shops and so, pursuant to Article 17, the Employer should be permitted to operate its machinery in the same manner.

Article 17 reads, in pertinent part, as follows:

"(b) the parties agree that present methods of operation within the laboratories shall continue without change except that the Employer may, if it so elects, change its operations from a single to a dual operation of machines, so that one operator may
operate two machines, provided such dual operation is presently or may hereafter be in existence in a laboratory operating under a collective agreement with the Union.

"In the event of any such change, the Employer will pay the base rate applicable to such dual operation."

The Union, on the other hand, urges the inapplicability of Article 17 in that "dual operation" applies only to similar machines, that is, two machines of the same nature and function. Even assuming a broader connotation encompassing a negative and positive machine, they maintain that the evidence presented at this hearing was insufficient to show that other employers were conducting a similar operation, with the Union's consent and knowledge. The Union contends that the applicable and controlling portion of the contract is Article 13:

"13. Temporary Transfer of Employees:

"It is agreed that temporary transfers shall be made from lower classifications so far as practicable, provided that such transfers shall not deprive another employee then in the employ of the Employer, of actual employment or result in an employee performing two separately classified operations simultaneously."

The undersigned concurs with the Union in that the method of operation in question is not permissible under the contract and the circumstances in this case. The term "dual operation" in Article
17 would appear to be limited in scope to mean the operation, by an employee, within his classification of machines having the same essence and function.

The contract sets forth various and numerous classifications (and correlative wage rates). With respect to the machines in question there are four separate classifications and four distinct wage rates:

Developing Department (Positive)

- Dry End - Type 5 - Color $2.96
- Wet End - Type 5 - Color $3.13

Negative Developing Department

- Dry End - Type 3 - Color $3.07
- Wet End - Type 3 - Color $3.24

Presumably these wage differentials indicate a disparity rather than similarity in required skills, function, working conditions, etc. This disparity certainly indicates that an employee, handling either the wet end of a positive and negative machine at one and the same time, or the dry end of the same machines, would be "performing two separately classified operations simultaneously" within the meaning of that portion of Article 13. This is not allowable under the agreement.

The Employer objects to the applicability of Article 13 to the instant issue in that it applies only to temporary transfers, whereas a permanent transfer is
the parties, the underwritten Engage, decide, determine
in connection with the proof and the content of
endorsement.

Recognition of their fellow members employed in different
for the possible (and as change, underwritten) parties
not be withdrawn but should they be permitted; however,
of their elected officials; their contractual duties should
by, and expressly agreed by the parties or directors
contract commitment in agreement, such as this, may be bound
the rights and powers of members of a union under a
plan agreed by the employer, such as shown is essential
resulting this issue, either to this plant or the other
knowledge of the assessment or the union prior to that
of the union's committee, however, there was no showing
commitment. One might well wonder at the lack of
of years as well as in other parties satisfactory to the same
even method had been in use to the plant for a number
the most compelling evidence of the company are

as set forth in the committee;

It would appear to be within the meaning of "apparent"
recognizable and applied to the special facts encountered
both "compromise" and permanent solutions. Considering all
and can fairly house each day on a containing plate, bear

besides invited. The instance in the case for three
executed thesame.

Given underseal and duly acknowledged to me that he
the undersigned daterected in, and who executed the sone
the 31st day of May, 1961 before me personally.

COUNTY OF NEW YORK.

STATE OF NEW YORK.

[Signature]

Burton B. Kirkman - Attorney

1961

Date: May 31, 1961

New York, New York

The agreement between the parties:
authorized by thecollective bargaining
contract dated the same is not
collected from the machinery with a
color descriptive machine and one positive
descriptive machine and one positive
operation of one negative color

AND:

end renders the following
On August 16, 1961, the undersigned was appointed arbitrator to hear and determine a dispute stated in the appointment as involving "company's failure to pay two weeks' pay to employees in lieu of notice of layoff".

At a hearing duly held November 17, 1961, the parties presented their proofs and arguments, and they thereafter submitted briefs, on the stipulated issue whether or not Subdivision (C) of Article 8 of their collective bargaining agreement entitled employees who had been terminated in a discontinuance of operations to two weeks' wages thereunder.

Upon going out of the film-processing business during the life of the agreement, the company granted to its covered employees various amounts of severance pay, in accordance with the schedule set out in Article 11, for that event of their "lay-off", as that article provides. In addition, the union claims in their behalf, under Article 8(C), two weeks' wages for that same event of their "layoff", as therein also provided, effected without otherwise requisite prior notice to the union.

This claim rests upon the assertion that Article 8(C) creates an obligation, in its own proper and unambiguous terms, wholly independent of and parallel to the obliga-
tion for severance pay as such. In its own terms and context, the argument runs, this specific provision was negotiated, designed, and worded as an express, unconditional method of outright lay-off for lack of work, whatever the reason, as an alternative to the rotational method of preliminary work-sharing provided for in Subdivision (A) of Article 6 and to the straight-line cutback method of staggered reduction, on notice, provided for in (B) thereof. The argument hinges on a construction of the term "lay-off" which would equate permanent separations, as upon cessation of operations, with conventional temporary or indefinite separations with or without recall prospects, actions more commonly connoted by that term.

The Company's defense to the claim relies upon the circumstances in which Subdivision (C) was negotiated into the contract for the first time, along with (B), and upon the peculiar setting in which those provisions were imbedded accordingly to condition and limit their special meaning and effect. Article 8 in the parties' collective bargaining agreement prior to the current one under which this dispute arose had provided in so many words, as does the instant agreement, under the topical reference "Work Distribution and Lay-Offs", a detailed scheme of spreading limited work opportunities before resorting to lay-offs, and of effecting force reduction thereafter.

The article in its then form and in the revised contract introduced the subject in the following manner: "When work is insufficient to provide a full week's employment for all employees of a department, layoffs may be effected in any one of the following methods." The previous agreement had specified, before reaching the manner of proceeding with necessary departmental layoffs, a sole method
of curtailed work distribution by rotation of the available work among certain qualified employees so as to afford a weekly minimum of three days' work for each employee. Thereafter the reduction in force might be accomplished if and to the extent that the rotating plan should nevertheless yield less than the 3-day minimum or that only such minimum was achieved for six successive weeks.

In the last contract negotiations the Company sought greater flexibility in dealing with the work force in face of a contracting business. It proposed amendment of Article 8 so as to permit management, before effecting layoffs, the choice of other methods of work distribution besides the rotational plan summarized above. Thereupon the parties agreed to the addition of a plan whereby, upon six weeks' prior notice of election to the Union, appropriate layoffs might be effectuated after a guaranteed minimum 4-day week had been afforded each employee during that 6-week period; and upon still another plan whereby, without any notice but upon payment of two weeks' wages, employees might be laid off at once. This latter plan was formulated, in the entire context, as Subdivision (C) of the article.

The Company's main contention is that this optional plan had only one purpose, intent, and rationale, namely, to allow the management this broader leeway, in what the parties contemplated in all events would be a continuing and going business, to rearrange work forces and assign work efficiently and economically for itself, and with other equitable benefits to excess employees so affected instead of their having the respective protections of the other two plans. In no case, the Company now argues, was it in the minds of the parties that any of these plans would apply or become oper-
active in the unexpected event, not of a mere insufficiency
of work in a department for full-time employment therein,
but rather of a total and permanent cessation of all opera-
tions in which the bargaining unit employees had been
engaged, consequent upon a complete discontinuance of that
enterprise, and therefore inevitably and simultaneously
resulting in the final terminations of employment. That
emergent event, the Company reasons, was by its very nature
one which could present no problem or opportunity of depart-
mental or other "work distribution" according to any of the
three optional programs for dealing with that precise sub-
ject and with no other. Rather, that event was fully,
suitably, and adequately met by compliance with the separate
severance pay provisions of Article 11. The Company con-
ceives the present claim to be no more than an unwarranted
attempt to enlarge the contractual severance pay schedule
of entitlements.

It does seem beyond question, and the Company
raises none, that the use of the word "layoff" throughout
Article 8 embraces the concept of final, permanent termina-
tion of employment as well as of temporary or indefinite
separation from pay roll. The same term is used indiscrim-
inately, in no refined sense, as an occasion for severance
pay under Article 11. This construction is fortified in the
provisions of Article 8(a) and (e). At any rate, it is
plainly stipulated that "upon receipt of said severance pay
the employee's tenure in a plant shall be terminated", irre-
respective of the cause and nature of his lay-off. Indeed
only in Articles 7(a) concerning vacations and 8(e) concerning
certain causes of plant closings are temporary lay-offs
suggested.

Hence, a lay-off effected in the exercise of any
of the options reserved to the Company under Article 8 would apparently give rise to a proper severance pay claim. Demand for payment of any other contractual monetary rights attaching to a lay-off, such as pro rata vacation under Article 7(g), cannot fairly be rejected as an enlargement of scheduled severance pay as such. No more fairly can the Union's present pay claim be tested as to its merits by that consideration. Standing alone, out of its particular Article 8 context, it is clear that the unqualified words of Subdivision (C) thereof would create an independent unconditional obligation to pay two weeks' wages to employees upon laying them off whether for cessation of operations or otherwise. The payment thereof would be due as surely as, without dispute herein, severance pay thereupon becomes due. There would be no escape in the notion, as to either liability, that the contract silently but effectively assumed the incidence of sporadic lay-offs during and not affecting the continuance of the business.

The only sensible criterion for testing the applicability of the absolute language of Subdivision (C) is the natural reading of it in full context as an integral part of a total scheme of work force utilization adapted to job security, with each party's interests protected at different points by balancing features of their own contrivance. There can be no doubt, in that approach, that this lay-off pay provision was conceived as but one of a package of three options given to management, with varying consequences of burden and benefit to employees, "when work is insufficient to provide a full week's employment for all employees of a department". The several options are in terms designed to cope with such insufficiency in various ways, two of them short of but all leading, as management may find necessary or
may elect, to lay-offs under set conditions.

The most summary and drastic of these options is set out in Subdivision (C). This allows an immediate cut-back of force presumably commensurate with the insufficiency; obversely, the retention of only so much of the force as for which there may be sufficient work for full employment.

While there is a clear and expressed assumption within the four corners of each of the other options that operations will in all events be carried on, at least for the time being, with some residual work and employment no matter what lay-offs may be necessitated, yet on the face of Subdivision (C) there is no such inherent assumption at all. The question, then, would seem to be whether or not such a restrictive assumption therein is fairly to be inferred either from the introductory setting of the article concerning insufficient work and lay-offs generally, or from the suggestive contents of the other options, or even from the on-going provisions of (a) through (e) of the article. An ancillary but vital question is whether any such "inference" may be justified as a proper interpretation of the stark clause or condemned as an impermissible addition to or modification of the parties' contract. The latter question is not reached here for the reasons given below in answer to the first question.

Although the heading of the article is "Work Distribution and Lay-Offs", the governing textual frame to which Subdivisions (A), (B), and (C) are subtended is a simple proposition: "When work is insufficient ... (that) layoffs may be effected in any one of the following methods." (Under-scoring supplied.) Thus the article, throughout from beginning to end, purports only to provide one manner or another
and one set of conditions or another, with but one consequence, of accomplishing lay-offs for insufficient work. It does not purport as a whole or in any of its parts to assure the existence or continuance of any work or the means of its distribution, or of any employment. Different means of distributing work, if any, are set out merely as pre-conditions of lay-offs, as the Company may opt such means if it has any work on hand or in prospect at the time of making its election. But Subdivision (C) makes no reference to any work distribution as a condition or otherwise, and none to any force retention whatever.

In that setting this subdivision should be read and construed as though it stood alone as the only method of affecting lay-offs "when work is insufficient to provide a full week's employment for all employees of a department." Then we come squarely to grips with the basic question of the implications of that quoted key clause and their adequacy to support a fair inference that Subdivision (C) necessarily and exclusively assumes continuance of operations with at least some work and employment. In the view of the undersigned the key clause does not compel and cannot bottom such an inference. An insufficiency such as is posited may reasonably and expectedly range from a total, permanent, and irremediable lack to a slight, momentary, and passing shortage.

Under the terms of the previous agreement, when only the present Subdivision (A) appeared, it can hardly be urged that a sudden cessation of operations, discontinuance of business, and mass lay-off of all employees could not have been effected precisely under those very provisions, for obvious lack of even three days' work per week for any employee. The addition of Subdivision (C), as here construed, might then have been regarded as costly surplusage, with the
pay factor added, but for the ample consideration therefor which the addition of Subdivision (B) at the same time supplied as a practical, working alternative to (A), and which (C) itself supplied as alternative to the notice and work guarantee requirements of (B), even assuming in each instance the continuance of partial operations.

Hence, though neither party may consciously have projected the possibility of a complete shutdown when Subdivision (C) was negotiated into Article 8, it is plainly written internally to fit such a situation among others and, as integrated with the article's introductory clause, it is written as an uncomplicated extension and implementation of the stated objective of effecting lay-offs for any insufficiency of work in whatever degree and however caused, whether partial because of slack business or complete because of shutdown. The only arguable exception suggested by Article 8 itself is in the last paragraph of provision (e) thereof. That seems to treat specially, for purposes of severance pay and perhaps of lay-off pay as well, the situation of work insufficiency resulting "from an Act of God, fire or shortage of essential materials created by an Act of God, fire or strikes causing the closing of the plant." In any such case, not here involved, a lay-off of up to five days appears to be permissible without liability for severance pay or, presumably, for lay-off pay under Subdivision (C).

Upon the submission, the evidence and arguments, the briefs, the foregoing opinion, and due deliberation, the undersigned hereby makes the following
AWARD

Subdivision (C) of Article 8 of the collective bargaining agreement entitled employees who had been terminated in a discontinuance of operations to two weeks' wages thereunder.

Dated: New York, N. Y.
December 21, 1961

Sidney S. Suemeran
Arbitrator.

STATE OF NEW YORK
COUNTY OF NEW YORK

On this 21st day of December, 1961, before me personally came and appeared SIDNEY S. SUGERMAN, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

Eugene S. Ginsberg
Notary Public, State of New York
No. 36-1439700 Qual. in Nassau County
Cert. filed with New York County Clerk
Commission Expires March 30, 1963
STATE OF NEW YORK
COUNTY OF NEW YORK

SIDNEY SUERMAN, being duly sworn, deposes and says that he will faithfully and fairly hear and examine the matters in controversy between the above named Parties submitted by them to him for determination, and that he will make a just Award according to the best of his understanding.

S/ SIDNEY SUERMAN

Sworn to before me this 23rd day of October, 1961.

S/ EUGENE S. GINSBERG

Eugene S. Ginsberg
Notary Public, State of New York
No. 30 (7)-1/29700 Qual. in Essex County
Cert. filed with New York County Clerk
Commission Expires March 30, 1965
IN THE MATTER OF THE ARBITRATION BETWEEN  
DU ART FILM LABORATORIES, INC.  
AND  
LOCAL 702, MOTION PICTURE LABORATORY, FILM TECHNICIAN, I.A.T.S.E.  
AFL-CIO  

AWARD OF ARBITRATOR

9-Duart  
12/27/61  
A. Stark

ARThUR STARK, having been designated in accordance with the Arbitration Agreement entered into by the above-named Parties, and having duly heard the proofs and allegations of the Parties, hereby make the following award:

The rate of pay of a Negative Cleaner, while operating two Sonic Cleaning Machines simultaneously, shall be $2.32 an hour.

Dated: December 27, 1961

State of New York  
County of New York

On this 27th day of December, 1961, before me personally came and appeared ARTHUR STARK, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

Sylvia Whitten, Notary Public  
State of New York, No. 02-424334  
Qualifies in Bronx County  
Commission Expires March 30, 1963
**Issue:**

What should be the rate of pay for a Negative Cleaner while operating two Sonic Cleaning Machines simultaneously?

**Background Information**

On May 3, 1960 the undersigned arbitrator issued an Award stating in part:

"While operating an Ultrasonic Cleaning Machine an employee shall not be required to perform any other work simultaneously therewith other than the re-winding of film and the dusting (without use of solvent) thereof."

The Negative Cleaner performing this work received $2.32 an hour.

In January 1961 the Company assigned some Negative Cleaners to operate two Sonic Cleaning Machines. Until then, they had performed the dual assignment of dusting (hand cleaning) and operating one Machine.

The Union claims the $2.32 rate was not intended to apply in the operation of two machines. Article 17 (b) of the Agreement, it notes, specifies that:

"The parties agree that the present method of operation within the laboratories shall continue without change except that the Employer may, if it so elects, change its operations from a single to a dual operation of machines, so that one operator may operate two machines...

In the event of any such change the Employer will pay the base rate applicable to such dual operation."

The Union believes that $2.47 would be an appropriate rate for a Negative Cleaner who operates two machines.
Discussion

Does a Negative Cleaner who operates two Machines deserve more pay than one who operates one Machine and dusts?

Testimony concerning Machine and Hand operations was presented at the hearing, with special attention to skill, responsibility, quantity and quality of production. In our judgment this evidence does not establish the need for a rate increase.

In hand cleaning the Operator performs these tasks: removes film from can, places on left rewind, pulls leader across to right rewind, engages it in core of take up flange, moistens cloth with solvent (or uses dry cloth in dusting), wraps cloth around film strand, rewinds with right hand to end of reel. The Operator must give his undivided attention to the strand passing through his fingers. He continually observes the surface to insure that he is removing all visible dust, dirt, grease or foreign matter. He watches for evidence of other surface damage, particularly on the edges of the film.

In machine cleaning the Operator removes film from can, places on loading flange, threads head leader through rollers and sprocket, engages take up flanges, closes machine door, pushes Start button. The machine then operates by itself for about thirteen minutes, during which time the Operator checks several gauges (Temperature, Solution, Tension, Pump). At the conclusion of the cleaning cycle the Operator removes the film, replacing it with one from another can.

It is clear that hand cleaning requires somewhat more skill than machine cleaning. It is also more difficult in the sense that it requires closer attention and greater concentration for longer periods than the machine operation.

A hand cleaner's responsibility is greater since he personally detects dirt and damage and removes foreign matter which may interfere with film quality. But as a machine operator, he has no such responsibility since all this work is performed inside the Sonic Machine. Also, if an employee breaks or scratches a film in hand cleaning, the error is charged to him; as a Machine Operator he is not held responsible
and, in fact, the machine stops automatically if the film breaks.

What of production? The Union believes that the machine processes more film per hour than a hand cleaner. Management states the opposite.

It is agreed that the machine, when running normally, operates at about 70 feet per minute; a 1000 foot reel is completely processed in about 16 minutes. Company Vice-President Paul Kaufman timed an average hand cleaning operation at 5 minutes per 1000 feet. Since two machines can run almost simultaneously, 2000 feet can be processed in 16 minutes. But, according to Mr. Kaufman, a hand cleaner can finish the same amount of work in 10 minutes.

While these hand cleaning figures are challenged by the Union, it has made no time studies itself. Projectionist Henry Luck, the Union's expert witness, estimated that the average time required to hand clean a normal 1000 foot reel was at least 7 minutes. But, admittedly, Luck is not a full-time Hand Cleaner and performs that type of work only about once a month. More significantly, even if his 7 minute estimate is more accurate than the Company's time study, it would still appear that machine cleaning is no faster than hand cleaning.

The evidence does indicate that machine cleaning results in less waste than hand cleaning. This fact, however, is not sufficient of itself to justify a higher rate of pay for the Operator of two machines when it is apparent that he has fewer responsibilities and produces no more per day than his counterpart who dusts and operates one machine. Accordingly, the Union's claim will be denied.

December 27, 1961

Arthur Stark
NEW YORK STATE BOARD OF MEDIATION

In the Matter of the Arbitration between:

DU-ART FILM LABORATORIES, INC.,

- and -

LOCAL 702, MOTION PICTURE LABORATORY TECHNICIANS

The undersigned Arbitrator, having been designated in accordance with the Arbitration Agreement entered into by the above named parties, and having duly heard the proofs and allegations of the said parties, AWARDS as follows:

I hereby sustain the grievance and direct that GENARO MARTUCCI be reinstated to his former position with back pay from January 14, 1963.

JOSEPH DI FEDE, Arbitrator

Dated: New York, N. Y.
February 4, 1963

STATE OF NEW YORK )
COUNTY OF NEW YORK )

On the 4th day of February, 1963, before me personally appeared JOSEPH DI FEDE, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

HELEN E. DEMPSEY
Notary Public, State of New York
No. 52-595000
Qualified in Suffolk County
Town Eastport March 7, 1963
In the Matter of the Arbitration between:

DU-ART FILM LABORATORIES, INC.,

and

LOCAL 702, MOTION PICTURE LABORATORY TECHNICIAN.

On December 12, 1962, GENARO MARTUCCI was suspended from his job by Robert Smith, plant manager of DU-ART FILM LABORATORIES, INC., hereinafter referred to as the Company, for smoking or having a lighted cigarette in his hand while working in the silver recovery room. On December 14, 1962, the Company took the ultimate step of discharging the said GENARO MARTUCCI.

The issue before me is to determine whether or not the discharge was for just cause and, if not, what the remedy should be.

A hearing was held before me on January 29, 1963, at the office of the New York State Board of Mediation, 270 Broadway, New York 7, New York. The following appearances were noted:

1. GENARO MARTUCCI, discharged employee

2. BENJAMIN STEIN, Esq.
   27C Madison Avenue
   New York 16, N. Y.
   for the Union

3. LEONARD COOPER, Esq.
   160-16 Jamaica Avenue,
   Jamaica, New York
   for the Company
As its first witness the Company produced Mr. Robert Smith, Plant Manager. He testified that he is in charge of production, certain phases of coloring and personnel. While he sits in at interviews and makes recommendations on the hiring of employees, he does not have the right of discharging them. He does have the right to suspend any of the employees, but Mr. Young, President, and Mr. Kaufman, Vice-President, have the sole right to order a discharge.

On December 12, 1962, at about 11:00 A.M., while walking through the silver recovery room, he saw Mr. Martucci standing by one of the machines with a lighted cigarette in his hand. He immediately suspended the said employee and walked away.

Mr. Smith also testified that two weeks before this incident he was walking through the silver recovery room and saw "smoke" coming out of Mr. Martucci's mouth. When asked about this, Mr. Martucci denied smoking and, in fact, Mr. Smith did not find any evidence of a cigarette in and about the room. Nevertheless, Mr. Smith warned Mr. Martucci about the no smoking rule.

Mr. Smith then described the large concentration of nitrate film located within a few feet of the silver recovery room and the serious dangers involved if a spark should strike and ignite such film. He also stated, on cross examination, that Mr. Martucci had worked for the company about 8 years and his work was satisfactory as to quality and quantity. There was some question, however, about the way Mr. Martucci sometimes permitted the chemical tanks to overflow when cleaning them.
Mr. Smith also stated that men were permitted to smoke in the men's room and he had seen the men smoking there. There was no other place where the men could smoke.

The Attorney for the Company then called Mr. Paul Kaufman as a witness. He stated that he is Vice President of the Company and that he was the person who discharged Mr. Martucci because of the report he had received that Mr. Martucci had been "caught" smoking in the chemical room. The witness then described the extreme dangers involved and the hazards created by smoking in the laboratory or other areas of work because of the huge quantities of nitrate films stored and kept on the premises. He stated that such nitrate films are highly combustible and explosive. When ignited, these films emit intense toxic gas, which is capable of suffocating people. A combustion of such films would result in a tremendous explosion endangering the lives of all people on the premises and the destruction of the Company's property.

Mr. Kaufman also stated that they have "no smoking" signs all over the premises and that all the employees are told of the dangerous consequences which could result from smoking in the areas of work. He also stated that the Company had the full support of the Union in their campaign to win the full cooperation of the employees to obey the Company's rule against smoking. In fact, Mr. Kaufman stated that because of a series of small fires of suspected but undetermined origin during the course of the month of June, 1962, Mr. Gramaglia, the President of the Union, had come to the laboratory and had addressed and warned all the employees of the danger of smoking in the work.
areas. He admonished them to be careful and warned that if he learned of anyone smoking he would personally throw such a person out.

Mr. Kaufman also stated that it is the Company's policy to discharge a person who was careless enough to smoke in the laboratory, because of the dangers involved. Actually no one has ever been fired for this reason because no one was ever caught smoking in the restricted area.

The Union then called Genaro Martucci, the discharged employee, as its only witness. He stated that he had worked for the Company about nine years, and during the last five or six years he had worked in the chemical room. On December 12, 1962, sometime during the morning, he was putting water in one of the tanks. When the tank was about three-quarter full, he went to the men's room to urinate. While there, he lighted a cigarette and began to smoke. Suddenly, one of the maintenance men called him and told him that the tank was overflowing. Mr. Martucci ran out of the men's room and went to the chemical room to turn the water hose off. As he did this, he first realized that he had a lighted cigarette in his mouth. He quickly took it out of his mouth and put it in his hand. At that very moment Mr. Smith came through the room and, looking at him, said "Gino, your smoking." Mr. Smith then asked him to open his hand and when he saw the cigarette suspended him. Mr. Martucci wanted to explain what had happened, but Mr. Smith refused to listen and walked away. On December 14, 1962, the suspension became a discharge.
CONCLUSION

After considerable deliberation and soul searching I have concluded that the testimony of the three witnesses, while varying in some details, was essentially and basically truthful. There is no question that on December 12, 1962, Mr. Martucci was found with a lighted cigarette in his mouth or hand by Mr. Smith, when the latter came through the chemical room. In fact, the employee does not deny this. Also, in view of the nature of the Company's business, I am satisfied that it is extremely dangerous for employees to smoke in work areas of the laboratory, and that a violation of the "no smoking" rule would justify severe penalties. If there were any evidence that Mr. Martucci had been caught smoking on any other occasion I would go so far as to justify his discharge now.

However, I am satisfied that in this case there are extenuating circumstances, which should mitigate the penalty. When Mr. Martucci ran out of the men's room to shut off the water, he was not aware of the fact that he had a lighted cigarette in his mouth. This was an involuntary and unconscious act on his part. Yet, it was a careless act which could have resulted in serious consequences.

On the basis of the prior good work record of Mr. Martucci, and in the absence of any credible evidence that Mr. Martucci consciously violated the "no smoking" rules at any time during his eight or nine years of employment with this Company, I do not feel that the extreme penalty of discharge of this employee is justified by the facts and circumstances of this case. I do, however, feel that the careless act of this
NEW YORK STATE BOARD OF MEDIATION

In the Matter of the Arbitration:

between:

PATHE LABORATORIES, INC.

and:

LOCAL 702, MOTION PICTURE
LABORATORY TECHNICIANS.

AWARD OF ARBITRATOR

I, THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the Arbitration Agreement entered into by the above-named Parties, and having been duly sworn and having duly heard the proofs and allegations of the Parties, AWARD, as follows:

1. The Employer has not violated the Agreement by paying Jack DeCarlo and Frank Spataro the Maintenance Mechanic rate.

2. The grievance is dismissed.

Dated: August 26, 1963

HERBERT WECHSLER, Arbitrator

STATE OF NEW YORK ) ss.:
COUNTY OF NEW YORK)

On this 26th day of August, 1963, before me personally came and appeared HERBERT WECHSLER, to me known and known to me to be the individual described in the and executed the foregoing instrument and he acknowledged to me that he executed the same.
NEW YORK STATE BOARD OF MEDIATION

In the Matter of the Arbitration between
FATHE LABORATORIES, INC.,
and
LOCAL 702, MOTION PICTURE LABORATORY TECHNICIANS.

The issue presented for determination in this arbitration, instituted in accordance with the collective agreement between the parties, is whether Jack DeCarlo, employed as a "plumber" in the Employer's Mechanical Department, is entitled to be paid the contract rate for "precision machinist" rather than the lower rate for "maintenance mechanic", which he has been receiving since August 24, 1959. The same question arises with respect to Frank Spataro, whose grievance the parties have included in their statement of the problem posed.

There is no dispute as to the facts. Five men and a foreman are employed in a unit of the Mechanical Department, the mission of which consists primarily of assembling, cutting and fitting pipe in connection with the construction and maintenance of the plumbing and pipe systems of the plant. Of the men thus employed, the foreman and the three seniors have been paid at the precision machinist rate ($3.27) or better ($3.37) for over ten years. Spataro and De Carlo, hired in 1952 and 1957, respectively, have been receiving the maintenance mechanic rate ($2.96) since 1956 and 1959. There is no justification for the differential either in the work performed or in the skills of the
employees and De Carlo and Spataro naturally are aggrieved by the discrimination. The question remains, however, whether the inequity involves a violation of the contract, the only ground on which an arbitrator is empowered to afford a remedy in a proceeding of this kind.

The collective agreement surprisingly contains no guarantee as such of equal payment for equal work. It provides that the "wages set forth in Schedule A...shall be applicable to employees employed in the respective classifications indicated thereon..."; that "all new and experienced employees shall receive the wage rate established in said Schedule for the particular type or classification of work for which he or she may be engaged"; that employees "receiving wages over the prior base rate of their respective classifications shall continue to receive the same amount over the base rate set forth in Schedule A, so long as they remain in said classifications"; and that notwithstanding "the minimum set forth in the wage scale attached hereto, the wage paid an employee on the effective date hereof shall not be reduced so long as said employee remains in the classifications in which he is employed at said date and such classifications shall not be changed without the consent of the Union..." Article 4, (a) and (e).

These provisions do no more than assure an employee the prescribed compensation for the classification of work "for which he...may be engaged" and safeguard old employees against reductions based on a new application of the contract rates for
their classifications. Since De Carlo and Spataro were both engaged in their present positions as "maintenance mechanics" and admittedly are being paid the Schedule A rate for that classification, it is difficult to find in the agreement any basis for contending that their contract rights have been denied.

The Union seeks to overcome this obvious hiatus in the contract by arguing that the Employer by according others in the plumbing unit compensation as precision machinists has in effect classified that work as equivalent to work of the machinists; that practice has, in short, established a classification for plumbers that Schedule A does not in terms provide. The difficulty with the argument is that there is no reason to regard this as the purpose or the meaning of what happened. It is more probable upon the evidence that the higher compensation paid the senior members of the unit simply was a preferential rate accorded a long time ago to them. The wage structure seems, indeed, to be ridden with such preference, for none of the ten men who actually serve as maintenance mechanics are paid at the contract rate for that classification; all receive the precision machinist rate or better for the work that they perform. It could hardly be contended that this practice has obliterated the maintenance mechanics category, in defiance of the very language of the contract, with the consequence that no one may be hired in that category in the future without paying the machinist rate. Nothing in the practice with respect to plumbers seems to me to make a stronger case.
Since practice does not suffice to show the merit of the grievance, the Union's case must rest on the proposition that plumbers are more fairly classified as precision machinists than as maintenance mechanics. No such evidence was put before me and, upon the evidence there was, the contrary would seem to be the case.

I must, therefore, conclude that the grievance has not risen to the stature of a violation of the contract.

By conclusion that the grievance does not involve violation of the contract is fortified by the fact that the issue has been raised in two negotiations prior to extensions of the bargaining agreement, without finding a consensual solution. It would be strange, indeed, if that solution had already been achieved by a fair reading of the antecedent practice.

Dated: August 26, 1963

HERBERT WECHSLER, Arbitrator
DETERMINATION OF DISPUTE

Upon the basis of the foregoing findings and the entire record in this case, the Board makes the following Determination of Dispute pursuant to Section 10(k) of the Act.

1. Employees of Kaiser-Nelson Steel & Salvage Corporation engaged on the project of dismantling a grain elevator belonging to the New York Central Railroad at pier 7, West New York, New Jersey, in the work of cutting and lowering of steel where power is required and currently represented by Local 734, International Hod Carriers, Building and Common Laborers Union of America, AFL-CIO, are entitled to perform such work.

2. Local 45, International Association of Bridge, Structural and Ornamental Iron Workers and Machinery Movers, AFL-CIO, is not and has not been lawfully entitled to force or require Kaiser-Nelson Steel & Salvage Corporation to assign such work to its members.

3. Within 10 days from the date of this Decision and Determination of Dispute, Local 45, International Association of Bridge, Structural and Ornamental Iron Workers and Machinery Movers, AFL-CIO, shall notify the Regional Director for the Twenty-second Region, in writing, whether or not it will refrain from forcing or requiring Kaiser-Nelson Steel & Salvage Corporation, by means proscribed by Section 8(b)(4)(D), to assign the work in dispute to its members rather than to the employees of Kaiser-Nelson Steel & Salvage Corporation who are represented by Local 734, International Hod Carriers, Building and Common Laborers Union of America, AFL-CIO.

Pathe Laboratories, Inc. and Motion Picture Laboratory Technicians, Local 702, International Alliance of Theatrical and Moving Picture Machine Operators of the United States and Canada, AFL-CIO. Case No. 2-CA-8632. April 12, 1963

DECISION AND ORDER

On January 30, 1963, Trial Examiner Eugene F. Frey issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had not engaged in the unfair labor practices alleged in the complaint, and recommending that the complaint be dismissed in its entirety, as set forth in the attached Intermediate Report. Thereafter the General Counsel and Charging Party filed exceptions to the Intermediate Report and supporting briefs. The Respondent filed a brief in reply to the exceptions and brief of the General Counsel.1

1. The Charging Party has requested oral argument. The request is hereby denied because the record, the exceptions, and briefs adequately present the issues and positions of the parties.

141 NLRB No. 120.
Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Rodgers, Fanning, and Brown].

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, and the entire record in the case, including the exceptions and briefs, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

[The Board dismissed the complaint.]

INTERMEDIATE REPORT

STATEMENT OF THE CASE

The sole issue in this case is whether Respondent, Pathe Laboratories, Inc., discharged Alphonso Francis legally for cause, or because of his attempt to process grievances as shop steward of the above-named Union and to engage in other protected activities in the course of administration of a collective-bargaining contract between Respondent and the Union, in violation of Section 8(a)(3) and (1) of the National Labor Relations Act, as amended, 29 U.S.C. Sec. 151, et seq. (herein called the Act). The issue arises on a complaint issued June 26, 1962, by the General Counsel of the National Labor Relations Board,1 and an answer of Respondent denying the commission of any unfair labor practice.

A hearing was held on the issue before the Trial Examiner Eugene F. Frey at New York, New York, on various dates between October 1 and 17, 1962, in which all parties participated through counsel and were given full opportunity to be heard, to examine and cross-examine witnesses, present pertinent evidence, make oral argument, and file written briefs. Motions of Respondent at the close of General Counsel's case-in-chief to dismiss the complaint on the merits were denied; similar motions at the close of the testimony were taken under advisement, and are now disposed of by the findings and conclusions in this report. At the close of the case, all parties presented oral argument. Written briefs have been filed by Respondent and the Union which, together with the oral arguments, have been carefully considered by the Trial Examiner. A motion for correction of the transcript filed by Respondent since the close of the hearing has been considered, and is hereby granted, and the transcript is hereby corrected.

Upon the entire record in the case, and from my observation of the witness on the stand, I make the following:

FINDING OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent is a Delaware corporation which maintains offices and places of business in New York, New York, and Los Angeles, California, where it is engaged in the processing of black and white and color motion picture film for theatrical and television use. During 1961 Respondent performed services valued over $500,000, of which services valued in excess of $50,000 were performed in, and for enterprises located in, States other than New York and California, and of which other services valued in excess of $200,000 had a substantial impact on the national defense. In the same period, Respondent had a direct inflow of chemicals, equipment and other goods and materials valued in excess of $50,000 to its places of business in New York and California. I find that Respondent is, and at all times material herein has been, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION

The Union is a labor organization within the meaning of Section 2(5) of the Act.

1 The complaint is based on a Board investigation initiated by a charge filed by the Union on May 14, 1962.
The grievance provisions of the current and preceding contracts required that any disputes arising under the contract must first be discussed for adjustment between Respondent "and the Union"; if they could not settle a dispute within 24 hours, either party could request arbitration by the New York State Mediation Board, whose decision would be binding on the parties. The contract also provided that "pending the final determination of any dispute there shall be no strike or lockout, nor shall there be any change of working conditions or methods of operation as they existed prior to the dispute except as they may be otherwise permitted by this agreement." In practice, the parties processed grievances as follows: If a worker brought a grievance to Francis, or he himself saw an operation he considered to be in violation of the contract, Francis was supposed to find out how the grievance or operation arose, and if the man was working on specific orders of a supervisor; if he found that the problem arose from a management order, Francis was to discuss it directly with the supervisor who gave the order, advise him that he considered it a contract violation, and try to adjust with him; 2 if this failed, Francis would discuss the matter with Production Manager Hinkle or Kanis; if it was not adjusted there, they could call Gramaglia into the discussion; if that failed, either party could resort to arbitration. During the first 10 months of Francis' tenure, this procedure was generally followed: about 90 percent of all grievances were discussed and settled amicably, some at the supervisory level but most in weekly conferences between Francis and Kanis; Gramaglia was called into the discussion infrequently; the parties resorted to arbitration only once. After Francis had been steward about 2 months, Kanis told Gramaglia that he was very much surprised about Francis' operation, as he had turned out to be a cooperative steward in presenting and handling grievances, and the two were getting along very well.
In processing grievances, Francis questioned various supervisors about ordering workers to do certain work, and about doing production work themselves, which he claimed were contract violations. The supervisors usually refused to change their orders or practices without orders from management, so Francis took these grievances to Kanis, after which certain work practices were changed or stopped in some instances, but not in others; Francis did not succeed entirely in getting supervisors to stop occasional production work.

In the latter part of 1961, on the basis of complaints by machine maintenance men, Francis told Chief Engineer Leonard Girraputo on several occasions that his foremen were not rotating overtime work among maintenance men equitably as required by the contract. In some of these discussions, Girraputo told Francis that he was trying to change working conditions and practices which had existed as long as 16 years, and that Francis should take the grievances to Kanis. In one such conversation late in 1961, Girraputo told Francis that "we had a wise guy just like you, Louis Francavilla, but we fixed him, and the same thing will happen to you." Francis took the grievances to Kanis, and they were apparently settled amicably in the usual weekly conferences.

In the fall of 1961, Kanis began to get reports from production supervisors and workers that Francis was giving orders to workers, telling them how he wanted work done, and changing work practices in the plant. Kanis dismissed the early reports as minor matters, did nothing about them but continued to adjust grievances with Francis in the usual way. When the complaints continued, however, and Francis at some grievance sessions began to suggest changes in work policy and operations, such as the need for more workers in certain departments, Kanis reminded him privately several times that he should stop giving orders, that such conduct violated the contract, and that "we will not work that way." At one grievance session late in 1961, Kanis told Francis that, if Francis expected to continue to work in the industry, it was very important "not to get yourself a bad name in this industry because it is small," and anything that he did would come up again and might embarrass him later in his career; that if he allowed himself to get a bad reputation it would be hard for him to get a job elsewhere, explaining that when other film laboratories closed down, managements of existing plants usually knew what employees were laid off and could easily find out about them if they considered hiring them. At another grievance meeting in January or February 1962, just after Kanis returned from a vacation, Francis presented a long list of grievances. In discussing them, Kanis got angry and excited, saying "Al, you are nothing but a bastard, a trouble-maker, agitator and rabble-rouser. You are not as bad as was reported to me when you came on this job, but a damn sight worse. What do you think we are running around here? Last week you came up with 15 or 16 grievances with the union president. Are you trying to make things hard for me? You are pushing too much, going too much according to the contract." He then said "I am going to fix you, you had better pray that the present administration wins the election," because if they don't, you are finished, I am going to blackball you in the business, and you will never get another job in the film industry." Shortly after this angry outburst, Kanis called Francis and apologized for his remarks. In this period, Kanis several times told Gramaglia that Francis was not handling grievances in accordance with the contract, but was "stepping out of line" by trying to solve plant problems himself by giving orders to employees instead of discussing the problems with management, and by threatening to stop employees from working overtime on weekends and at other times when he thought such practices were not in accord with the contract. Kanis reminded Gramaglia of the contract provisions for maintenance of the status quo pending settlement of disputes, as quoted above. Gramaglia told Kanis he would talk to Francis about his actions and conduct therewith.

1 The findings to this point are based on credited testimony of Kanis, Gramaglia, Hinkley, Francis, John J. Garvin, and documentary proof. Testimony of any of the witnesses in conflict therewith is not credited.

2 Article 9 of the contract provided that all overtime work should be equitably rotated among employees within each classification of work, and required that a current overtime chart be posted in each department.

3 Kanis obviously referred to the contract clause prohibiting any change of working conditions or methods of operation pending determination of a dispute.

4 Kanis referred to the present officers of the Union, and a union election slated for November 1962.
"straighten it out." Production Manager Hinkle and Chief Engineer Girraputo also made similar complaints to Gramaglia about Francis' actions.3

On one occasion in February 1962 Francis told Hinkle that he had stopped employee Robert Mathias, a finisher on the midnight shift, from doing any work in the shipping room during part of his shift, and that this would no longer be allowed because Mathias was working "out of classification." 4 Hinkle disagreed, saying he would not change a long-standing laboratory practice. 5 Hinkle reported the incident to Kanis. The matter was later discussed in a grievance meeting between Kanis and Francis, and Respondent settled it by discontinuing Mathias' part-time work in the shipping room. 6

On one occasion in late February or early March 1962, when John J. Garvin, day shift supervisor of the printing room, entered that room early in the morning on his usual rounds, he found Francis standing in the room with all the printers (about 10 women) grouped around him, and not working. He heard Francis tell the women not to use the electric rewinding machines. Francis asked Garvin what he was doing there. Francis replied he was telling the girls not to use those rewinders, explaining "that's my orders." Garvin said the printers could use them, and that Francis had no business telling them not to, that "if there is any violation of the contract, you go higher up, to Hinkle or Kanis." Garvin then asked Francis to leave the room, but Francis refused, so Garvin reported the incident to Hinkle who at once went to the printing room, found Francis still standing there in the center of the group, with no work being done. He took Francis to his office where he told him, "You know better than to hold a meeting in the printing room, and give orders to anyone. I have warned you repeatedly about giving orders to people. I want you to cut it out. This is about the last warning I am going to give you." Hinkle then told Garvin that Francis was wrong in giving the orders to the employees, and on orders of management they have since continued to use the electric rewinders, in continuance of a longstanding practice in the plant. 7

The Thomas Kirby incident: In its engineering department, Respondent employs machinists known as "developing maintenance men" whose duty is to spot, adjust, and correct malfunctions of developing machines during production. For several years before 1962, Respondent had often required developing maintenance man Thomas Kirby to report for work on Saturday night 2 to 4 hours before his regular Sunday midnight to 8 a.m. shift with orders to lubricate and adjust the "spray developing machine" to get it ready for operation on that shift. This machine usually requires special lubrication just before use. Kirby often mingled this lubrication and his regular maintenance work on other machines during the Sunday shift, receiving double overtime pay therefor. No other machinist was given this special Sunday assignment. In the last 5 years maintenance employees had occasionally complained about lack of rotation of overtime, as a violation of the contract provision for equitable rotation of overtime, and in 1961, Francis filed several grievances on that subject with Chief Engineer Girraputo, which were settled by better distribution of weekday overtime work among maintenance men.

8 The findings in this paragraph are based on credited testimony of Kanis, Francis, and Gramaglia, which is mutually corroborative in large part. Testimony of any of these witnesses in conflict therewith is not credited. I do not credit Francis' vague testimony that Kanis made "blackball" threats to him several times early in his tenure as steward, because of the preponderant testimony that for at least the first 6 months Francis' actions were unobjectionable and they solved grievances amicably, and Kanis' specific denials that he had ever threatened Francis anony except once in 1949. 9 Francis was referring to the contract clause (article 25) which in effect incorporated the union bylaw prohibition against an employee performing the duties of two or more job classifications at one time (article 26, sec 3(e)). 10 I find from credible testimony of Hinkle and admissions of Francis that it had been the practice in the plant for at least 10 years, with the acquiescence of the Union, to work an employee on midnight shift in the shipping room for part of that shift, and that by agreement with the Union, Respondent had a right to make "one move" per shift by shifting an employee from one classification to the other, provided he did not perform the duties of two classifications at one time. 11 These findings are based on credited testimony of Hinkle and Francis. 12 Electric rewinders had been used throughout the plant (except in the negative room) for well over 10 years past, with the knowledge and acquiescence of the Union which had never before complained about the practice or tried to have it changed. Electric rewinders are used because they mechanically rewind a film tightly on the reel, reducing the chances of folds and breaks in the film, and are also much faster than hand rewinding. The facts on this incident are based on credited testimony of Garvin and Hinkle.
On a Friday night in the same period as the electric rewinder incident, Francis was leaving the plant at the end of his shift, he told Lawrence Van Nest, foreman of the machine shop, and Francis told him that Francis had told machinist Thomas Kirby that morning that he was not to come to work Sunday night on an overtime basis unless he performed nothing but lubrication. Van Nest asked the reason for this order, and Francis replied it was "just a ruling of the Union" that the employee could do only one job, lubrication, when he worked overtime on Sunday, and that if he did any other work, this would involve paying another employee a day's pay. Van Nest told him that if Kirby could not handle both maintenance and lubrication, the engineering supervisors could not operate efficiently on Saturdays if they discovered late in the day that the lubrication was needed because they could not rearrange their working schedules. Francis replied "That is your problem, I have to go now." Van Nest asked Francis to wait to talk to Girraputo about it, as he (Van Nest) could not make any decision on it. Francis refused and left the plant. Van Nest reported Francis' order to Girraputo, who commented that this was a change in policy, and then both men reported it to Kanis, who called Gramaglia and complained about Francis' action. Girraputo ordered Kirby not to work overtime that Sunday, because he did not want any trouble with the Union pending discussion of it with Gramaglia.

The following week the matter was discussed in a regular grievance session at which Kanis, Girraputo, Van Nest, Gramaglia, and Francis were present. Although the engineers presented cogent reasons of efficiency for allowing one employee to continue the lubrication and regular maintenance overtime on Saturday and Sunday, the dispute was settled by Respondent's agreement to train other maintenance men to lubricate all developing equipment and thus divide the overtime among all. This was the first occasion during Francis' tenure that rotation of Sunday overtime had been the subject of a grievance. Although it is not clear whether Respondent at this conference repeated its complaint about Francis' giving orders to employees, in this period Kanis had another private talk with Gramaglia in which he complained that Francis was "manufacturing grievances and was a stickler for the contract," and that Kanis could not "get along with him."

C. The discharge of Francis

The events leading to the discharge arise out of operations of printers in the printing room. The printer's duty is to thread negative prints into printing machines which then make positive prints. Before threading the negative into the machine, the printer must examine the reel of film to make sure it is in good shape for printing, and this includes examining the "academy leader" to make sure it is long enough and not broken. If the printer finds that leader a bit short, he splices a short length of waste leader onto it, using a splicing block kept near his printing machine; the operation takes only a fraction of a minute and is done at irregular intervals by printers only when and if the academy leader is short. Printers had been splicing waste leader thus as part of their regular work for many years without complaint from the Union. This work had never been done in the negative room, Francis was well aware of the practice, for he had done it himself between 1949 and 1955 under the supervision of Hinkle, then printing room supervisor, and he knew that it continued after he became shop steward. However, although Francis says he knew it was a violation of the contract prohibition against a worker handling two classifications of jobs at the same time, he admits that he never gave any orders or advice to employees about

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13 The facts of the Kirby incident are based on credited and mutually corroborative testimony of Van Nest, Girraputo, and Kanis, as corroborated in part by that of Francis.

14 Academy leader is a long length of raw film stock, with no pictures or sound track on it, which is spliced to the beginning of a negative proper in the negative room when the negative is being prepared for printing. The leader is needed for threading into the printing machine so that it can "lead" the developable portion of the negative into the machine properly, before it begins printing. Under plant practice, no part of the negative from the "start" mark on the academy leader (the point where audio or visual intelligence is first imprinted on the negative) to the end of the negative can be spliced, repaired, or changed by a printer: only a negative room worker can do that, because it involves problems of checking coextensivity of picture and synchronization of sound, which a printer is not competent to handle. The printer is allowed, and expected, only to attach "waste" leader to the end of the academy leader if needed.
it, or discussed it with management, prior to the events of April 1962, set forth in the ensuing paragraphs.  

On Thursday evening, April 19, 1962, Francis was told by three employees, including printer Alex Hoseu, that Louis Troell, printer on the midnight shift, had spliced leader to negative while his printing machine was running, turning away from the machine to make the splice. Respondent had a longstanding and valid rule in the plant which prohibited printers from leaving their machines (while running) for any purpose, the only exception being their duty to splice on waste leader in emergencies with a handsplicer located near the printing machines, as found above. It was well known to Francis (a printer for 5 years) and other employees that violation of the rule was ground for discipline, including possible discharge. Francis knew that in the past at least one printer had been discharged for violating the rule, which had resulted in substantial damage and waste of film. The Union had interceded for that employee to have the penalty reduced to a suspension.

The facts above are based on credited and mutually corroborative testimony of Hinkle, Garvin, Max Kamm, and Alex Hoseu, as corroborated in part by admissions of Francis.

Francis knew that in the past at least one printer had been discharged for violating the rule, which had resulted in substantial damage and waste of film. The Union had interceded for that employee to have the penalty reduced to a suspension.

These facts are based on testimony of Francis, corroborated in part by testimony of Hoseu. Troell did not testify, having died earlier in 1962.

On midnight shift, there were only 5 workers in the negative room, as against 10 on day shift, and Tomeo was the only man who handled preparation of 16 millimeter negatives for printing, including splicing of academy leader thereon. Knowing these facts and the past practice of printers in splicing waste leader themselves, Kamm concluded, as he testified on cross-examination, that Tomeo was upset when Hoseu came to him for that work, and while he was in the midst of preparing other negatives for printing. As Kamm is an old-timer of over 35 years of experience in all the jobs in the industry, he knew intimately all the plant operations and the men running them. I credit and accept his inference that Tomeo was concerned because Hoseu had twice in 1 day asked him to do jobs which printers had been doing for years, even though Tomeo did not specifically mention Hoseu or Francis by name.

**DECISIONS OF NATIONAL LABOR RELATIONS BOARD**

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to tell anyone how to run operations around here? You have been doing this too long. It is about time you got wise to yourself and stopped giving orders around here, but follow the regular procedure." Francis denied that he was giving orders, but said he had a right to advise any union worker, and "I intend to do so," and that he was "living up to the contract." Kamm told him that management was running the plant and giving the orders, and that if Francis claimed there were any contract violations, he should take them up with Kanis, that Kamm took his orders only from Kanis, and repeated that Francis could not give orders or interfere with the operation. As both started to walk out of Kamm's office, Kamm told Francis he ought to "bow your head in shame" because he came in with "such a trivial grievance" about splicing leader on negative, when everyone was troubled and engaged in a search for an important negative which had been lost. Francis said he was sorry about the lost negative, that all the employees were looking for it, "but that does not mean we should permit violation of the contract." Kamm said he had told Francis to see Hinkle in the morning. Francis refused, saying he would talk to Kanis many times he would get himself in trouble. Francis replied "Don't worry about me getting myself in trouble, I can take care of myself." By this time, both men were angry, and at one point Francis said "We are going to get you." Kamm said, "Don't threaten me." Francis replied "I am not threatening you, I will never threaten you on company premises; if I wanted to do that, I will wait until you are outside the plant." Kamm said he had a "good mind to have you punch your card and send you home," to which Francis replied "if you want me to go home, I'll go, but I won't punch any card, you will have to punch it." Francis then walked away, and Kamm walked into another room to help in the search for the lost film.

An Saturday afternoon, April 21, Kamm telephoned Kanis and told him he had been threatened by Francis during an argument about orders given by Francis to the night printers not to splice leaders on negatives. Kanis told Kamm to come to his office Monday morning to discuss it.

Early on Monday morning, April 23, Kanis received a report from printer Troell that Francis had ordered him directly that in the future all damaged or short leader must be taken to the negative room for repair, and could not be fixed by printers. At a later conference that day, Kamm reported to Kanis and Hinkle his whole discussion with Hossu and Tomeo, his later argument with Francis about giving orders, and Francis' threat to him. No decision was reached by management on the problem at that meeting, but on Tuesday morning, the 24th, Kanis told Hinkle that he had decided he "had had it with Francis," and that he would suspend and discharge him and notify him and the Union under the contract. That morning Kanis sent Francis a telegram stating "this to serve as notice that you are suspended for cause. Please contact your office," and sent a telegram of similar import to the Union, following it with a letter of the same date advising the Union of Francis' suspension "for insubordination and threatening a member of management of this company," and stating "any further discussion will be at your request." Kanis then telephoned the Union the 24th, and that afternoon he and Gramaglia had a conference with Kanis, Hinkle, and Kamm, at which Francis and Kamm stated that the respective versions of the Hossu incident and their ensuing argument. Kanis then told Gramaglia that this was not the first instance involving Francis, that he had spoken to him before about not giving orders in the plant, and had also spoken twice to Gramaglia about it, and that "as far as I am concerned, I've had it." At this point, the discussion about Francis apparently ended, for Kamm left the room, and Francis brought up a grievance involving another employee, which was settled after a discussion between the employees, Hinkle and Gramaglia.

The facts as to the argument between Francis and Kamm is a synthesis of the testimony of both men on that point, as they agreed on the salient parts of the conversation, while stating many of the remarks in somewhat different terms and at times placing remarks in different sequence.

Article 10(b) of the contract provides that, after at least 4 weeks of employment, the Employer may discharge any employee for cause, but must give the Union 24 hours' notice prior to its "election" to discharge for cause, and during such 24-hour period the Employer may suspend the employee affected. Upon failure of the Union to concur in the just cause, the matter shall be treated as a dispute to be submitted to arbitration as provided in article 15.

The events of April 21, 23, and early 24 are based on credited and uncontradicted testimony of Kamm and Kanis, stipulated facts and documentary proof.
After discussion of other matters, the meeting broke up. As Gramaglia was leaving, he asked Kanis to reinstate Francis. Kanis refused. Gramaglia threatened to shut the plant down. Kanis told him to go ahead and do it, but that Respondent had a right to ask for arbitration under the contract, and would not protest. That night, April 26, 1962, filed a request with the New York State Mediation Board for arbitration, pursuant to the contract, but there is no evidence that that proceeding was prosecuted or concluded by a decision. A day or so after the meeting of April 24, Gramaglia conferred privately with Kanis, saying he had a serious problem in the Francis case, and asked Kanis whether he would consider taking him back if in the Francis case, and asked Kanis whether he would consider taking him back if Gramaglia removed him as shop steward, saying he had made a mistake in appointing Francis. Kanis refused, reminding him of the past trouble with Francis pointing Francis. Kanis refused, reminding him of the past trouble with Francis.

About a week later John J. Francavilla, a union executive board member, asked Kanis at the union office to reinstate Francis as a regular worker, if necessary not as shop steward, to save his job and long seniority. Kanis refused, saying he had "lived with this situation as long as I could bear it."

About two weeks after his discharge, Francis sought employment at another film processing laboratory. When that employer called Kanis for a recommendation on Francis, Kanis asked where he intended to use Francis, and on learning that he was being considered for a developer's job, Kanis said his work with Respondent as a developer was excellent and recommended that he be hired. Francis was hired by that employer shortly thereafter.

**Contentions of the Parties, and Concluding Findings**

General Counsel contends that: (1) Respondent violated the Act because it discharged Francis only for questioning Supervisor Kamm about an order he had given, in the course of investigating a grievance about the splicing procedure, and this was a protected activity in the course of performing his duties as shop steward, in accordance with the contract grievance clause and procedures which Respondent and the Union had established thereunder; and (2) this protected activity was only the latest of a long series of grievances which Francis had prosecuted zealously and for the most part successfully in his tenure, which had irritated management to the extent that it had repeatedly charged him with too zealous adherence to the contract, and threatened reprisals against him if he did not moderate his enforcement of the contract. It is clear from the facts found above that (1) during his tenure Francis was aggressive and meticulous in processing grievances, and achieved a large degree of success in procuring settlements favorable to the employees, in the course of which (2) Francis succeeded in getting management to change some work practices and methods of operation of longstanding, which (3) irritated management to the extent that one supervisor (Girraputo) pointedly warned him that he might meet the fate of a former supervisor (Kamm) who had been a "wise guy like you," Kanis later warned him not to get a "bad reputation" in the industry, if he wanted to stay in it as a career, and shortly after in an outburst of temper upbraided him for bringing up so many grievances, threatening to discharge him and "blackball" him in the industry, and Kanis in February 1962, told Gramaglia that he could not get along with Francis because he was "manufacturing grievances and was a stickler for the contract"; and (4) Francis' angry argument with Kamm on the night of April 20 and 21 occurred when he sought out the superintendent to verify his issuance of an order on splicing which Francis considered a violation of the contract. His inquiry of Kamm was clearly a valid step in the accepted grievance procedure outlined above, and was a protected activity. These circumstances, standing alone, support the inference that Respondent was becoming more and more provoked, as time went on, with Francis' meticulous, and perhaps overzealous, adherence to the terms of the contract, and his constant prosecution of grievances, both large and small, arising from methods of operation of longstanding which, while long countenanced by the Union, may have violated the letter of the contract. In this aspect, the cited circumstances clearly support the conclusion that

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Francis started with Respondent in 1948 as a porter and general utility man at a low wage rate. Over the years he worked up through various job classifications, including that of printer, on the basis of merit and seniority, to the job of developer at a base pay of about $180 a week, which was his work at time of discharge. In these 14 years, his general work performance had been satisfactory. The events of the afternoon of April 24, and ensuing dates, are found on credited testimony of Kanis, Kamm, Gramaglia, and Francis, which is mutually corroborative in many respects. Testimony of any of these witnesses in conflict with the findings is not credited.
Francis was discharged for aggressive and overzealous performance of his steward's duties in rigid enforcement of the contract. It is well settled that a discharge for this reason is a violation of the Act. Monsanto Chemical Company, 130 NLRB 1097, 1104; Seaboard Diecasting Corporation, 137 NLRB 536; Pontiac Motor Division, General Motors Corporation, 132 NLRB 413; Metal Blast, Inc., 139 NLRB 142. Kanis and Girrapinto are also members. Van Nest was in it from 1939 to about 1959.

At the outset it must be noted that management at New York had long had amicable relations with the Union. Besides operating under successive contracts with the Union for at least 10 years past without any apparent lack of harmony, at least five of the management personnel involved in this case are or had been members of the Union, and Kanis was on good terms with all of them. Thus management was well aware of the Union's organization, operation and its working rules, and accustomed to dealing with union members and shop stewards in the day-to-day application of the union contract and bylaws in plant operation. Stewards before Francis had been day-shift employees with ready access to Kanis at all times for discussions of grievances and contract matters. When Francis was appointed, Kanis readily made special arrangements for regular and special daytime conferences with him, because he worked at night. They solved over 90 percent of the grievances between themselves, at the first stage of the grievance procedure. Francis never found it necessary to do more than bring Gramaglia into discussions at times. When Respondent took over the equipment and many employees of another closed film plant in the summer of 1961, both Gramaglia and Francis cooperated with Kanis in resolving promptly and amicably various placement, transfer, seniority, and other problems arising from the integration of the acquired employees into Respondent's work force. These circumstances denote the very opposite of employer union animus in any sense, and in this context Kanis' early comments to Gramaglia and Francis about the troubling integration of the acquired employees into Respondent's work force. These circumstances support the complaint. At the outset, Francis was openminded and judge Francis solely on his performance as steward, shortly thereafter expressed gratification about his cooperation, and for nearly 14 months continued to confer readily, regularly and amicably with him on grievances. The same reasons also attenuate the otherwise coercive implications of Kanis' later warnings to avoid conduct which might give Francis a bad reputation in the industry, or his single angry outburst in 1962 in which he threatened Francis with "blackball" in the industry; the latter incident appears all the more as an isolated temperamental but not sinister outburst from a busy top executive since Kanis promptly apologized to Francis as soon as he cooled off, continued to confer with Francis in normal manner for the following 2 months up to his discharge, and after that event recommended him as an employee to a new employer, which in itself is the very antithesis of a "blackball." Another important set of circumstances is the manner in which Francis changed his handling of grievances, and Respondent's reaction to the change. In the early months of his tenure when Francis became aware, in one of instances of an employee handling two jobs at once, and in another of a forearm handling prints, both in possible violation of the contract and union rules, he told the worker to continue

**Kanis and Kamm were charter members of the Union and are still members in good standing. Kanum had been its first shop steward after its organization in 1938. Hinkle and Girrapinto are also members. Van Nest was in it from 1939 to about 1959.**

**As vice president in charge of operations at New York, Kanis is directly responsible to top management for all operations in a plant of over 400 employees.**

**I have found that the "blackball" threat occurred in 1902, but even if I found that it occurred in mid-1961, as Francis testified, any inference of discriminatory resentment arising from it would be even weaker, since Respondent continued to put up with Francis and his mode of operation for about 10 months before discharging him.**
The union bylaws charged Francis with the duty to "enforce all union rules in the laboratory," and it is clear that he and other union members knew that if a union member violated a union working rule or rejected advice of the shop steward about the rules, he could be charged, tried, and punished by the Union under its bylaws. Hence, as Hossu testified and Francis admitted, employees regarded advice from Francis that their actions violated the rules and contract, and that they should desist from certain conduct, or operate differently, as an "order" which they dare not disobey if they wanted to avoid a trial or jeopardize their union standing.

Hence, as Hossu testified and Francis admitted, employees regarded about the rules, he could be charged, tried, and punished by the Union under its bylaws. Hence, as Hossu testified and Francis admitted, employees regarded advice from Francis that their actions violated the rules and contract, and that they should desist from certain conduct, or operate differently, as an "order" which they dare not disobey if they wanted to avoid a trial or jeopardize their union standing. Hence, Francis was giving direct orders to employees when he told Mathias in February 1962, to stop doing two jobs on one shift, called a group of printers from their work shortly after to tell them not to use electric rewinders, in the same period ordered machinist Kirby to do only one type of work on Sunday overtime, and finally ordered Troell and Hossu to stop splicing. These orders effectively changed work practices of longstanding in the plant. In addition, the orders were given without prior notice to or discussion with management. Hence, Francis was giving direct and effective orders to employees which caused unilateral work stoppages or substantial changes in plant operations, in direct violation of the contract grievance procedure. In the electric rewinder incident, he went further by deliberately refusing to leave the room (and thus allow printers to get back to work) on orders of a foreman, doing so only when Hinkle intervened and took him to the office where he warned him about his conduct. This type of conduct certainly justified supervisors' refusal to change their operations at Francis' suggestion until he saw Kanis and they got orders from Kanis, their complaints to him and Kanis that he was trying to change longstanding plant practices, and Kanis' warnings to him and complaints to the Union that he was violating contract grievance procedures by giving orders. I find nothing sinister in these actions of management, because it is clear that Respondent did not act abruptly or arbitrarily. Supervisors' on-the-spot complaints and even warnings to Francis were only natural reactions where his "orders" purported to change longstanding operating practices in their departments. Nevertheless, Kanis did not treat the first complaints about Francis seriously.

When they continued to come in, he at first gave Francis friendly but private warnings to stop giving orders and adhere to the contract procedures. In the same period, he asked Granaglia several times to talk to Francis about his conduct. These appear to be mild and entirely reasonable efforts to keep Francis within the proper bounds of his duties as delineated by the contract. It was not until the final and serious Troell-Hossu incident that management made up its mind to get rid of Francis, and I think the circumstances of that incident fully justified Respondent's action. Here, Francis violated the contract, not only by his unilateral orders to both workers which effectively changed a longstanding and business-like practice which was countenanced by the contract, but which he himself had followed in the past, and also knew about but did not object to during the previous 13 months of his stewardship, but also by his signal failure to make any attempts to discuss

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28 This is clear from article 17, particularly section 1(e), of the bylaws, and admissions of Francis.
29 The view in this procedure was not alleviated or condoned by Respondent in the Kirby case, as General Counsel claims, by Respondent's failure to raise the issue of Francis' conduct during the discussion of that grievance, for the record shows that Kanis promptly complained to Granaglia about Francis' conduct before the grievance was settled.
30 Kanis' consideration for Francis and his position was shown when he made no attempt to balloon any of these warnings into formal, public grievances by confronting Francis with the supervisors who complained about him.
31 Article 17(b) of the contract provides: "The parties agree that present methods of operation within the laboratory shall continue without change, except that the Employer may, if it so elects, change its operations from a single to a dual operation of machines, so that one operator may operate two machines, provided such dual operation is presently or may hereafter be in existence in a laboratory operating under a collective-bargaining agreement with the Union. In the event of any such change the Employer will pay the base rate applicable to such dual operation."
32 Francis admitted that as steward he was obligated to process grievances not only on complaints of employees, but on all working conditions and operations which he person-
the problem with management until after he learned from Hossu that management had overruled his order. His immediate remark to Hossu “We will see about that!” and prompt inquiry of Kamm about the countermand, which precipitated Kamm’s criticisms of Francis and ensuing angry argument culminating in Francis’ threat to him, convinces me that he was indignant and angry because management had overruled his order. Although Francis came to Kamm to discuss the matter as a grievance, Kamm was obviously disturbed about the orders he had given to the printers and naturally questioned Francis’ right (as an employee) to give them. Francis defended his action by saying he had a right to advise employees under the contract. He did not suggest that the printers continue splicing until he had discussed the validity of the practice with Kanis, which probably would have mollified Kamm. Hence, the real issue between them at the time was clearly whether Francis had a right to give unilateral orders to employees. That Francis had apparently arrogated this managerial prerogative to himself and felt the matter was closed by his order to Troell, is clear from his admission that, after Troell admitted the violation, he did not try to talk to his supervisor about it, his contention that he was not required to speak to supervisors before he gave such “advice” to workers, and his admissions that, after Troell admitted the contract violation and promised to stop it, he did not investigate the practice further or go to management, explaining that when an employee admits a contract violation and promises to stop it, it is in his discretion whether to take it up with management. This would be a credible explanation if the Troell incident involved only an isolated instance of contract violation, but I cannot accept it as a sincere or valid explanation, where Francis knew that his orders to Troell and Hossu would be obeyed and would effectively change a longstanding practice, which would probably cause specific objection by management, as in the past.

Furthermore, it appears that the Union recognized that Francis had been exceeding his authority as steward and that Respondent had just cause for some discipline of him, because in the discussions with Kanis after the discharge, the union officials apparently did not attempt to challenge the reason for the discharge, but merely tried to persuade Kanis to reinstate Francis as a rank-and-file employee as a matter of grace, to protect his substantial seniority. Another indication that the Union itself may have tacitly recognized that Francis had overstepped his authority in the splicing incident, lies in the fact that the printers have continued to handle emergency splicing of waste leader, as before, and the Union has apparently not tried to prosecute a grievance against that practice, at least to the time of the hearing.

General Counsel recognizes the force of these circumstances in support of Respondent’s defense, for he presents the unusual argument that, assuming Francis gave orders to employees, “this was part and parcel of a company practice in permitting on greater or less occasions the shop steward to exercise some management authority, in reliance on testimony of Gramaglia, adduced in rebuttal, concerning two occasions when Kanis called on Gramaglia for assistance in handling plant operations. The record shows that on the first occasion, in March or April 1961, Kanis had been ordered by top management late on a Friday night to have a special film job processed over the weekend for use by Monday morning. When plant officials were unsuccessful in persuading employees to work overtime for that job, Kanis called Gramaglia after normal work hours, explained the emergency nature of the job, and asked for his help and that of Francis in recruiting the necessary crew. Gramaglia called Francis to the laboratory and try to round up a crew. After some difficulty, Francis managed to get a crew to work. On the second occasion, apparently observed and considered contract violations. He also admitted he had seen Troell acting leader on negative, but did nothing about it.

Francis admits that Troell’s supervisor was available for discussion on midnight shift Friday, but he did not speak to him after giving the order to Troell, as he had done in the case of Mathias and Kirby, or in several instances in March 1961. He admits he made no attempt to see Kanis about the splicing practice later on Friday, or on Monday, despite his statement to Kamm that he would see Kanis. Nor did he bring it up as a grievance at the Tuesday conference, with Gramaglia at his side, although they did settle another grievance with Respondent at that session.

Troell’s admission that his splicing was a contract “violation,” made to his aggressive shop steward whose “advice” on the contract clearly had the force of law to the employees, is of little value, since Francis’ testimony about it was clearly self-serving and could not be contradicted or explained by a dead man. Moreover, it is not binding on Respondent, which promptly repudiated the idea of a “violation” through Kamm’s insistence that Hossu continue the practice, and by continuing it ever since.

I find these facts on credible testimony of Kanis, as against denials of Gramaglia.
ently sometime in 1962, the first reel of an importing negative was unaccountably lost, and when normal search procedure during production did not turn it up, Kanis decided to resort to the unusual procedure of stopping all production and turning on the "white" lights in all departments, which required a complete stoppage of all processing work and entailed special protective measures to prevent unexposed film from being ruined. Before doing this, he called Gramaglia, told him of the serious problem, and asked his cooperation in trying to find the film. They agreed that there should be a complete shutdown, all lights should be turned on, protective measures taken, and all personnel should join in the search, that Kanis would give the proper orders to supervisors to turn on the lights, and Gramaglia would tell Francis what was being done and order him to cooperate in the search in every way. I find that, in the first case, Respondent did no more than seek and procure the cooperation of the Union and Francis in recruiting employees to work overtime on a weekend. Gramaglia admits that it was normal for Respondent to try to get a crew to work most weekends, from which I infer that this was merely another case in which Respondent had the normal problem of persuading reluctant employees to give up their weekends to work overtime, and that on this occasion, Respondent had more trouble than usual and finally had to call on the Union and its steward to use their personal influence with the employees. The second case discloses no more than that Respondent, in a serious emergency, had to take the unusual and drastic action of a complete shutdown, with all the attendant complications and effects on working conditions, and took the precaution of advising the Union beforehand and securing its cooperation through the steward and assistant stewards throughout the plant so that the shutdown and search would proceed with expedition. At best, both incidents were merely situations where one veteran union member (while a management official) turned to other union members for help in certain predicaments in which he found himself. Neither instance amounts to substantial proof that Respondent had relinquished or allocated any managerial authority to the Union or Francis.

General Counsel and the Union try to impugn the stated motive for the discharge by pointing to Kamm's somewhat confused testimony about the altercation with Francis and the nature of his report to Kanis on the incident, the fact that he did not consider Francis' remarks to him as a threat to him personally, and that he did not discipline Francis on the spot, although he had authority to do so. I have carefully considered Kamm's confusion on some details of these events while under vigorous cross-examination of General Counsel, in making the findings about them set forth above, and I am convinced from all his testimony that he considered Francis' orders to printers and his defiant remarks to Kamm defending them, including "We will get you," as an insubordinate challenge to his managerial status and to management in general. No matter what he said in his first report to Kanis, the latter took no action until he heard Troell's story Monday and then heard both sides in open meeting Tuesday, at which time I think Kanis was fully justified in concluding that the threat to Kamm, whether personal or a general defiance of management, was insubordination, and that he discharged Francis on the basis thereof, as the latest and most serious in a series of acts of insubordination. I find no significance in Kamm's failure to report these Francis' once; although he probably had authority to do so, and he was so incensed at Francis' remarks to him that he held him that he felt like doing so, I am convinced that he decided to leave the discipline of an employee, particularly a shop steward, to Kanis, because discipline of employees, such as suspension or discharge, had long been handled directly by Kanis. Nor is it significant that Kanis did not have another private discussion with Francis about his misconduct, before discharging him, for Francis was given his hearing on Tuesday while under suspension, with Gramaglia present to speak for him, and was then discharged. Considering the repeated prior warnings about his conduct, and Respondent's complaints to the Union, I think he was given no less consideration than Leo Fried, who some years before had been discharged by Kanis after being confronted with physical evidence of bad work. It should also be noted that, after Francis' discharge, Kanis

*In normal production operations, developing and printing of the photographic film must be done under special dim or colored lights.

**These findings are based on credited testimony of Kanis and Gramaglia, which is mutually corroborative in most aspects. I do not credit Gramaglia's conflicting testimony that Kanis asked him to have Francis go through the laboratory, turn on the lights and order all hands to make the search, because Gramaglia told contradictory stories on the exact arrangement they made, and finally admitted that Kanis did not give him authority to tell Francis to turn on the lights, but that they agreed that Kanis would tell his supervisors, and Gramaglia would tell Francis at the same time, to find the negative at all costs and, if need be, turn on all the lights.
nevertheless gave him a favorable recommendation for employment elsewhere, just as he had done in Fried’s case. 17
 After careful consideration of all factors pro and con bearing on the issue, I am convinced that those supporting the conclusion of a discharge for cause, when considered in their proper perspective, counterbalance and override those relied on by General Counsel to show a discriminatory discharge, and that Respondent has sustained the burden of going forward with probative evidence adequate to rebut the case developed by General Counsel. Considering all aspects of the case, I must conclude that the most that can be said for the case of General Counsel is that, after Francis achieved marked success in settling grievances and in the process caused Respondent to change some longstanding practices in the plant, Respondent became irritated at his aggressive enforcement of the letter of the contract, and it may well have welcomed any opportunity to get rid of an overzealous and troublesome shop steward, but it did nothing about it until after Francis began to overstep his authority and invade the province of management by giving unilateral orders to employees, changing methods of operation, and persisted in this despite repeated warnings and attempts by Respondent, directly and through the Union, to persuade him to confine himself to contract procedures. Francis’ duties and position as shop steward under the contract gave him no privilege or authority to go beyond the terms of the contract or take over any management responsibilities. I am convinced, and find, that his unwarranted and continued assumption of such privileges and authority to defiance of management was the real and immediate cause of his discharge. I conclude that General Counsel has not sustained the ultimate burden of proving on the record considered as a whole that he was discharged and refused reinstatement because of any legitimate activities as shop steward in administration of the contract. I shall therefore grant Respondent’s motion to dismiss the complaint, and recommend that the Board issue an order accordingly. 18

Upon the basis of the foregoing findings of fact and conclusions of law, I make the following:

CONCLUSIONS OF LAW
1. Respondent is engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. In its discharge of, and refusal to, reinstate Alphonso Francis, Respondent has not engaged in unfair labor practices as alleged in the complaint within the meaning of Section 8(a)(3) and (1) of the Act.

RECOMMENDATION

Upon the basis of the foregoing findings of fact and conclusions of law, and on the entire record in the case, I recommend that the complaint be dismissed in its entirety. 19

20 In light of a Kain’s overall reasonable approach to the problem of handling Francis’ conduct, I cannot agree with General Counsel that his remarks to Troell on Monday evidence a desire or attempt to build a pretext for discharge of Francis, but merely show a reasonable attempt to get firsthand evidence about another instance of Francis’ giving of orders, before taking action.

21 See Creweble Steel Casting Company, supra; Pinellas Packing Company, Inc., supra; and Softexure Farms, Inc., 128 NLRB 764, 766.

Donaldson Sales, Inc. and Heritage Employees Association, Petitioner. Case No. 2-RC-12022. April 12, 1963

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before I. L. Broadwin, hearing officer. The hearing officer’s rulings at the hearing are free from prejudicial error and are hereby affirmed.

141 NLRB No. 116.

708-005—64, vol. 141—64
NEW YORK STATE BOARD OF MEDIATION

In the Matter of the Arbitration:

-between-

PATHE LABORATORIES, INC.

-and-

MOTION PICTURE LABORATORY TECHNICAL UNION, LOCAL 702, IATSE

BEFORE:

ISRAEL BEN SCHWARTZ, Arbitrator

APPEARANCES:

For the Company:

Poletti, Freider, Prashker, Barnett, Esqs.
by Eric Rosenfeld, Esq.
Kurt E. Karis, Vice Pres.
Harold Hinkle, Production Mgr.
Walter Lockwood, Night Supt.

For the Union:

Pinto & Stein, Esqs.
by Benjamin D. Stein, Esq.
Joseph D'Agostino, Grievant
Dominick D'Agostino, Grievant
Richard Gramaglia, President
Cosmo Viltello, Exec. Vice Pres.

THE ISSUE

This grievance arises out of the discharge of the brothers Dominick D'Agostino and Joseph D'Agostino on July 19, 1963 for excessive absences and as stipulated by the parties is:

"At the time of the discharge of Dominick D'Agostino and Joseph D'Agostino did just and sufficient cause exist for such action? If not, what shall the remedy be?"

THE FACTUAL BACKGROUND AND CONTENTIONS

According to the company, on July 3rd, the 24th, and 13th consecutive workday of unexplained absences for Dominick and Joseph respectively, the company notified the union of its determination to
to discharge them because it believed that during the period of their absences when they claimed to have been too sick to work, they had both worked at the installing of fences for Best Homes Improvement Co., which they owned together with a third person who was not employed by this company.

The company has submitted exhibits 5 and 5a, which summarize the time-card records of the attendance of the two grievants for the period of about 2 1/2 years prior to the discharge.

From these records, it appears that for the period from January 1, 1963 through July 3, 1963 which included two weeks of vacation and four holidays under the labor management contract, a period of 118 working days, Dominick was absent 36 days, 34 of which preceded a weekend or a holiday and tardy another 33 days; that Joseph was absent 34 days, all 34 of which preceded a weekend or a holiday and tardy another 37 days; and that 24 of Dominick's 35 days of absence and Joseph's 34 absent days were days on which both were absent.

Thus, it appears that each was absent about one work day out of every three, and from the time-card records invariably a day next to another "off" day, and usually a day on which his brother was also absent, and was tardy another workday out of every three.

The company presented proof that this pattern was substantially the same for the entire year of 1961 and 1962. (Co. Ex. 5)

The Night Shift Superintendent Walter Lockwood testified that they repeatedly "stretched" their two nightly relief breaks and lunch periods; that their combined records for absenteeism or tardiness or "stretching" their breaks was the worst of all midnight-shift employees that he had to repeatedly criticize them not only about their absenteeism but about their failure to report absences as well as their tardiness; and that it was necessary for him to speak both to the Shop Steward and to
their father who was a supervisor at this plant since 1941, about the misconduct of these two grievants with no improvement; so that two or three months before their discharge it became necessary for the Plant Manager, Harold Hinkle to speak to them in the presence of the Night-Shift Superintendent Walter Lockwood about their absenteeism.

In this connection, it is of interest to note that when he applied for a promotion to the position of working foreman some six months before the hearing of the present grievance, Dominick admitted that Mr. Hinkle denied his request because of "my absenteeism." According to the testimony of Plant Manager Hinkle the record of these two grievants for absenteeism, tardiness, overstaying breaks, and failing to report absences was the worst of any employees in the plant. Also, Joseph's work record was criticized for low production footage.

Finally, it was testified by Vice President Kurt Kanis, without contradiction, that because of the generally poor attendance at this company's plant it became necessary for him to discuss this problem with the president of this local union and that the union president in November 1960 for the purpose of protecting the job security of the union members, issued a warning in writing that "abnormal and unexcused absences" were grounds for discharge and that failure to "contact your superior immediately if absent for any reason" would endanger their positions. It was further testified by Vice President Kanis that he had talked over the same problem with the present Shop Steward Volpo and again in early 1963 with the local president.

Turning now to the contention of the company that Dominick and Joseph as co-partners and together with Mr. James Guarino the owners of Best Homes Improvement Co., what do we find? On April 16, 1960 the Best Homes Improvement Co. through Dominick one of its owners entered into a contract with the Perth Amboy, New Jersey branch of Sears Roebuck
and Co., (Co. Ex. 2) under which Best Homes agreed to "accept all jobs for the installation of (fencing) which may be tendered" and to "employ sufficient, competent and adult workmen to complete each job with utmost dispatch."

Likewise, according to the Application Blank (Co. Ex. 1) which was signed at the same time by Dominick on behalf of the Best Homes Improvement Co., it was agreed that the partnership would regularly employ the three partners "Dominick, Joseph and James Guarino and no one else."

From that point on, Best Homes in accordance with the agreement did fence installation work for Sears Roebuck as well as on "private jobs" and the resultant income was divided equally amongst the three partners. Apparently, the "busy season" for Best Homes was during the months of May and June and the partnership was paid for 16 jobs during May and for 15 jobs during June 1963.

While the testimony regarding the private jobs was not as clear as that presented in connection with the number of Sears Roebuck jobs, the employer has presented proof that these private jobs came to somewhere between 28 to 36 jobs which the employer contended were done during this "busy season."

Dominick and Joseph took their annual two-week vacation during May 1963 and these vacations ended May 12.

From the record, it is also clear that each took the last two Fridays in May off and that Joseph also took a non-vacation off in May.

It is significant that Guarino likewise took a two-week vacation in May from his regular job at which his working hours were, until July last, from 8 a.m. until 5 p.m.

From this it is clear that each of the 3 partners took about half of his regular working days off and that Guarino did his regular work for the remaining half of his scheduled work-days during the daytime.
From this, the company concludes that the partnership did about 16 jobs for Sears Roebuck as well as a significant share of the estimated 28 to 38 private jobs during the "busy season."

Of great significance is the volunteered testimony of the partner Guarino that toward the latter part of May the 3 partners discussed the question of how they could be most able to tend to their fence installation business for the month of June which Guarino who had previously worked for the fence construction company's prior owner knew would be a very busy month.

Again Guarino volunteered the statement that he told the two D'Agostino brothers about the large number of orders that would be coming in and that he intended to take time off from his regular job during June and that "if they wanted to they could do the same thing."

When shortly thereafter Guarino's regular employer refused to give him a leave of absence for the month of June, Guarino nevertheless took all but 5 working days off during that month and as a result when he returned to work in July he was put on the Night Shift.

After this conversation, it appears from the record that Dominick failed to give the employer a single day of work during the month of June while Joseph worked only the first week.

In support of the claim of these two grievants that their absence from work was due to illness, Guarino testified that Dominick while on fence installation jobs during the month of June "buckled up" a "couple of times" and that he then told his brother Joseph or the younger brother John "to take him home."

It is significant that during the month of June when the company did about 15 jobs for Sears Roebuck and according to Pathe a significant share of the estimated 28 to 38 private jobs, the grievant Dominick failed to do any work for his regular employer and Joseph put in 5 days of work
for that employer. From the evidence as applied to Dominick's 24 work-
day terminal absences from Pathe, bearing in mind that Dominick's last
day of work for Pathe was May 29 and Joseph's, June 7, and from the evidence
produced by Sears Roebuck under subpoena, Pathe urges that the denials
of Dominick and Joseph that they worked for Best Homes during those ab-
sences from Pathe, is certainly discredited.

Since the problems created by excessive absenteeism become
ever more serious where the employee fails to give the employer notice
of his inability to report for work, it is important to examine this
phase of proof.

On the record, there is testimony from each brother that he or
someone on his behalf had on two occasions reported his inability to re-
port for work.

Dominick testified that on June 2 at about 10:30 p.m. he personally
phoned from a drugstore in a Hazelwood shopping center that he would show up
for work. The company's record fails to show that this call was received
and if it had actually been received it would have covered only the second
work-day of his final absence. Dominick likewise testified that he had
been reported sick to his supervisor by his brother Joseph, some 2 hours
later at 12:30 a.m. on Monday, June 3rd.

This was subsequently confirmed by the testimony of Lockwood. Also,
the records of Pathe show a report of the absence of the two brothers
having been made on Sunday, June 16 at midnight.

With respect to the testimony of Joseph that his wife who failed
to testify had reported him absent on Sunday night June 9th, the records
of Pathe fail to reveal that it received such a report. Of interest too
are the facts which appears from the five summarized doctors' statements
which were offered in evidence by the grievants. They show that:
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<th>Subject</th>
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<td>Disability Benefits</td>
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<td>May 31</td>
<td>July 5</td>
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<td>U. 3</td>
<td>Local 700 Welfare Fund</td>
<td>July 1</td>
<td>May 31</td>
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<td>U. 4</td>
<td>To Whom It May Concern?</td>
<td>Aug. 24</td>
<td>June 1</td>
<td>July 29</td>
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<tr>
<td>Joseph</td>
<td>Co. 7</td>
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<td>To Whom It May Concern?</td>
<td>July 9</td>
<td>June 17</td>
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According to Patho, these statements raise the following questions but fail to answer any of them: "why didn't Dominick and Joseph report to Patho, on the basis of Co. 4, U. 3 and Co. 7, when they would be able to return to work? Is it just coincidence that the "return" dates of Co. 4 and Co. 7 fall at the end of Best Home's "busy season"? Why didn't Joseph tell his doctor, as he told the Arbitrator, that he had been in bed for the first five of the 10 days preceding the date his doctor twice said (Co. 7, U. 6) was the date from which he was unable to work? Did Dominick's doctor on July 1 (U.3) extend Dominick's return date from July 5 to July 20 because Best Home's busy season promised to extend into July?"

No adequate defense has been advanced for the grievant's record of tardiness but in defense of the record of absenteeism the union has properly contended that what an employee does outside of his regular working hours in order to supplement his income would not constitute a basis for discharge. With respect to Joseph's production record it was contended that as a test printer working several types of machines, it was inevitable that he should produce less footage than if he had had only one machine instead of jumping from one to another.
The failure of both employees to report when absent is dismissed as "hardly worthy of comment" and great stress is laid upon the claim that while the disciplinary action here involved was stated to be on one set of grounds, it actually was for different reasons and that such procedure "borders on trickery."

It is urged that the records of the grievants during their 6 years of employment with this company was "practically unblemished" and that the volunteered testimony of Guarino that he "took off the month of June from his job after his request for leave of absence was denied by his employer has no binding effect on Dominick or Joseph nor does his alleged suggestion to Dominick to request a leave of absence" have any bearing on the cases of Dominick or Joseph.

Similarly, attempts are made to describe conflicts in the testimony of Guarino and that of Dominick as being "a reasonable error" and above all it is urged that there is no proof whatsoever that either Dominick or Joseph worked during their period of disability.

The fact that a week or 10 days elapsed between the beginning of Joseph's illness and the time when he finally sought medical aid is dismissed as being not unusual so that in the opinion of the union's counsel "the employer has failed dismally in its proof that Dominick or Joseph or either of them performed any work for Best Homes" during the period of the absences and therefore that the grievants should be restored to their position and made whole.

**DISCUSSION**

That Management has the right to expect employees to report promptly for their scheduled work assignments, and when unable to do so, to give reasonable notice of that fact, is generally recognized, and requires no extended discussion.
It is similarly recognized that absenteeism is excusable only for good cause, and that excessive absenteeism is subject to severe discipline, including the extreme penalty for discharge.

Even in cases where bona fide illness exists, if it lasts for an extended period of time, a basic principal of labor relations implies that an employee will be physically able to do his work properly and regularly, and if he shows over a considerable period of time that he is unable, due to ill health, to show up with reasonable regularity for his work assignments, this in the absence of very special circumstances, will justify his termination.

Here it is not disputed that the considerable absenteeism and tardiness actually occurred. Nor can it be denied that standing by themselves, the number of failures to report for work constitute excessive absence. The tardiness record of these two Grievants has neither been denied nor even explained.

What is in dispute here is whether the absenteeism of these Grievants was due to bona fide illness, as claimed by them, or to the fact that the time which they should have spent on their job with Pathe was improperly diverted to their activities as co-partners with Mr. Guarino in the Best Home Improvement Company.

The issue then becomes one of credibility, - the testimony of the Grievants and their one witness, Guarino, that of the three Company witnesses, - the manner and the demeanor of the witnesses as they testified, - the degree of their respective interests, - and last but not least, the inherent probabilities of the situation when subjected to these tests. What do we find?

The Grievant's co-partner, Guarino, who had been employed as a helper by the prior owner of the Best Homes Improvement, and who persuaded these two Grievants to join him in buying out that business, testified that since May and June were the busy months in installing fences, that in the early
part of May he told the two Grievants: "I'm going to take time off from my job during May and June, and that they should do so also. They said they'd put in for time off in May and June, and I did."

"Afterwards, I told Dominick and Joe I applied for leave and it was refused, but I would take time off anyway."

The efforts of their attorney were greatly handicapped and it certainly was no help to their cases that during the course of their testimony, Dominick and Joseph repeatedly under cross-examination gave answers next to which the Arbitrator's notes have many notations of "evasive" or "unconvincing."

After Dominick volunteered the statement that when he started for the store at which he claims to have made the call, that he would not show up for work, he stated that when he started to walk towards the drug store, he had no intention of making the call. Furthermore, that he didn't know to whom at the Fathe business he had made the call. "I don't know his name. It might have been a porter. It might have been the elevator operator." "Yes, I had a phone at home but I didn't use it, only for business." Then the grievants gave a long series of answers such as:

"I can't say exactly."
"I imagine so."
"I don't know if I can remember."
"I couldn't say when."
"I don't know."
"I can't say."
"I guess so."
"I don't remember."

Serving two mistresses is never an easy undertaking. This is particularly true when it involves an extra curricular affair with one, while basically obligated to the other. Here, while the Grievants were free to use the time which they did not owe to Fathe, as they saw fit, they were definitely obligated not to let their interest in the Best Homes Improvement Company interfere with the obligations of their job at Fathe.
A basic Labor Management principal is that Management is entitled to a dependable work force not only in order to meet competition, but be able to give well paid employment and the numerous "fringe benefits" such as paid holidays, vacations, insurance, and the many others, which organized labor has been able to obtain for its members. Thus it may be said that the individual employee, who is guilty of excessive absenteeism and tardiness, is thereby not only seriously interfering with the ability of Management to meet its commitments to its customers, but also interfering with its ability to provide satisfactory pay and good working conditions and benefits to the work force of which he is a part.

These Grievants have had the benefit of a very strong presentation of their weak cases by the Union, both at the hearing and through the comprehensive post-hearing brief filed on their behalf.

However, despite all the efforts made to gloss over the extremely damaging testimony of their witness, Guarino, and the much less than helpful, evasive, unpersuasive testimony of the two Grievants themselves, balanced against the undisputed facts and the clear, consistent credible testimony of the Company's witnesses, proved beyond all reasonable doubt that these Grievants were guilty of excessive absenteeism and excessive tardiness. This was the fact at the time of their discharge regardless of whether the proof was then in the possession of the employer or not.

However, even in the circumstances of this case, while discipline is clearly justified, discharge is still the extreme penalty and should not be lightly applied.

Did the Grievants throughout the two hearing days, show any realization that their conduct was improper or express any regret for it? The record makes it abundantly clear that this was not the case, and that their attitude throughout was one of injured innocence. To sustain these
grievances would only convince the grievants and their fellow workers that they had "gotten away" with it and would be injurious to the morale of the work force and the attempt of management to obtain the regularity of attendance essential to any well run business.

Were the Grievants given fair previous warning? Not even they can deny it.

Were their respective lengths of employment such as to entitle them to special consideration by reason of a presumably good record over a substantial number of years? The records of neither of these Grievants indicate such long continued, considerable deposits of good work and good conduct as to entitle them in their time of need, to be able to draw against them to an extent sufficient to reverse the action of the Company.

FINDINGS

1. It cannot be, nor is it denied, that these Grievants are guilty of excessive absenteeism and tardiness.

2. This definitely places the burden and obligation on them to prove beyond all reasonable doubt that it was caused by no fault of their own and was excusable. This responsibility they have failed to meet.

3. Their employment records do not contain sufficient deposits of good work and good conduct to mitigate the discharge, thereby making it impossible for the Arbitrator to reverse the clearly justified action taken by the Company.

4. At the time of the discharge of Dominick and Joseph D'Agostino just and sufficient cause did exist for such action.

Dated: November 26, 1963

[Signature]

Israel Ben Schleifer, Arbitrator
NEW YORK STATE BOARD OF MEDIATION

In the Matter of the Arbitration

-between-

FATHER LABORATORIES, INC.

--and--

MOTION PICTURE LABORATORY TECHNICIANS UNION, LOCAL 762, IATSE


AWARD

The discharge of the D'Agostino Brothers

I, the undersigned Arbitrator, ISRAEL BEN SCHREIBER, having been designated in accordance with the arbitration agreement entered into by the above-named Parties, and having duly heard the proofs and allegations of the Parties, AWARD as follows:

At the time of the discharge of Dominick D'Agostino and Joseph D'Agostino just and sufficient cause did exist for such action.

DATED: November 26, 1963

ISRAEL BEN SCHREIBER, ARBITRATOR

State of New York )
County of New York )

On this 26th day of November, 1963 before me personally came, ISRAEL BEN SCHREIBER, to me known and known to me to be the individual described in and who executed the foregoing Award, and he duly acknowledged to me that he executed the same.

NOTARY PUBLIC OF THE STATE OF NEW YORK

IRVING D. NOVICK
NOTARY PUBLIC, State of New York
No. 41-2912650
Qualified in Queens County
Term Expires March 30, 1965
In the Matter of Arbitration

between

MOVIELAB FILM LABORATORIES, INC.

- and -

MOTION PICTURE LABORATORY TECHNICIANS,
LOCAL 702, OF THE I.A.T.S.E.

This Arbitration grows out of a refusal on the part of the employees of Movielab, Inc., to obey an order of the Company requiring continuous operation. This order was issued sometime in the latter part of August, 1963 by the Vice President of Movielab, Inc., in charge of production.

The employees of the Company, all members of Local 702, refused to comply with the order because, in their opinion and in the opinion of Local 702, it violated the collective bargaining agreement between the parties (Section 17 (B)) which provides as follows:

"(B) The parties agree that present methods of operation within the laboratories shall continue without change . . . ."

Continuous operation as defined by both parties, means taking raw stock inventory at the printing machines rather than have each
printer turn it in at the end of the shift for a succeeding printer
to pick it up at the stockroom on his way to his job; or as the Union
puts it:

Continuous operation means raw stock left on the machines
by an outgoing shift to continue the operation by an incoming shift
on a relay fashion.

Two hearings were held at the office of the Movielab, Inc.
Both parties were ably represented by counsel. Several witnesses
testified, including representatives of the Company and the Union.
All of the evidence was fully and fairly presented.

The position of the parties, as described at the hearings
and in subsequent legal briefs submitted by respective counsel, may
be summarized as follows:

The employer argues that under the contract it has always
had the right to continuous operation and its order of August, 1963
was not in violation of the contract. It has had this right, moreover,
with union consent. Its order of August last was nothing new. It was
the result of an emergency borne out of expanding business. Continuous
operation represents, in the Company's view, a management prerogative
for which the Company has compensated its employees in several
ways, particularly by time and wage adjustments, and it is not up to
the Union to decide the method of operation the Company shall adopt.

The Union's position in rebuttal is that in the past, it has
permitted continuous operation on all printing machines as an exception and not as a rule; it has permitted it in times of need and emergency but not as a "regular, general, normal and usual method of operation." "For years, with rare exception," it argues, "the usual method of operation was for each printer to return his stock to the stockroom at the end of his operation and for the next printer to pick it up in the stockroom and proceed to his job."

The Union argues further that Section 17 (B) has been in the industry-wide collective bargaining agreement and bargained for by a multi-employer negotiating committee, of which Movielab, Inc., is one, for upwards of fifteen years and that never during these fifteen years did Movielab or any other employer request a modification of the contract. The Union questions the right of the Arbitrator to "rewrite" the agreement or "alter" its terms.

It seems to the Arbitrator that there is agreement between the parties to the effect that the Company may have continuous operation. But this is subject to Union consent and is not a right which the Company can exercise whenever it sees fit without Union consent, tacit or otherwise.

The Company cannot, on its own initiative, regardless of the Union, effect an overall change from a mixed operation to an exclusive continuous operation as evidenced in the August order.
All the witnesses at the hearings except one testified clearly to the practice over the years and up to the time of the October order of a mixed operation or to the use of continuous operation only as an exception and not as a rule in the every day use of the machines.

The Company's contention that its adjustment of hours on the second and third shift without reduction of pay was a concession in lieu of the right to operate continuously is not borne out by the evidence. Witness Tronolone stands out alone in this contention and his testimony is in conflict with the testimony of other competent witnesses, including members of the Company's own supervisory staff.

It seems to the Arbitrator, that while it is true that the practice of continuous operation has been going on for years, as the Company contends, it is equally true that it has been going on for years as an exceptional and not as a normal practice and with Union consent.

It is obvious to the Arbitrator, therefore, that the order of August last calling for overall continuous operation can be and should be negotiated and effected by mutual consent of the parties. It cannot be imposed upon the Union without violation of Section 17 (B), since it constitutes a "change" within the meaning of that Section.
The Arbitrator therefore rules that

AWARD

The Company's order of August, 1963 calling for continuous operation is in violation of the collective agreement between the parties.

Dated: New York, N.Y.
March 3, 1964

Edward Corsi, Arbitrator

ACKNOWLEDGEMENT

STATE OF NEW YORK )
COUNTY OF NEW YORK)

On this 3rd day of March, 1964, before me personally came and appeared EDWARD CORSI, to me known and known to me to be the individual described in and who executed the foregoing instrument, and he acknowledged to me that he executed the same.

HYMAN LIECHT
NOTARY PUBLIC, State of New York
No. 3537-1939
Qualified in Nassau County
Commission Expires March 30, 1965
NEW YORK STATE BOARD OF INDUSTRIAL

In the matter of the Arbitration:

between:

NOVEXAB, INC.,

and:

LOCAL 703, MOTION PICTURE LABORATORY—

TECHNICIANS

Pursuant to agreement between the parties, the
undersigned was designated as Arbitrator to hear and determine
the issue as to the proper complement of employees to be
assigned on 3 and 4 strands color-positive developing machines.
A hearing was held before me on November 13, 1965, at my office,
277 Broadway, New York City, at which time the parties submitted
oral and documentary evidence in support of their allegations.

After due deliberation, I Award as follows:

1. The strands going developing machines shall operate with each complement as
   at present. The complement of men on 3 Strands Color Developing Machines
   shall be 7.

2. The complement of men on 4 Strands Color Developing Machines shall be 9,
   plus one extra or spare developer who may be used at any place in the plant
   at any time. For example, the extra may be used as a replacement in the
   event of absence, vacations, or for relief.

3. The Company is permitted to use
   split machines in cases of emergency,
   such as a breakdown of one of the other
   machines, or when such other machine
   shall be out of order or not in op-
   eration because of maintenance needs.

Dated: New York, N. Y.,

January 19, 1966.

(Initials)

Arbitrator

[Signature]

County of New York

Secretary's Signature

On the 30th day of January, 1966, before me personally appeared JOSUA P. PATZ, to me known and known to me to be
the individual deposed in and who executed the foregoing instruc-
tions and he acknowledged that he executed the same.

[Signature]

Secretary Public
NEW YORK STATE BOARD OF MEDATION

In the Matter of the Arbitration:

between:

MOVIELAB, INC.,

and:

LOCAL 702, MOTION PICTURE LABORATORY TECHNICIANS

APPLICATION

The following appearances were noted at the hearing held on November 18, 1964:

For the Union - Pinto and Stein, Esqs., by Benjamin Stein, Esq.
270 Madison Avenue
New York 16, N. Y.

For the Company - Earle, Bennett & Fullen, Esqs., by Herbert S. Omlitza, Esq.
29 Broadway
New York, N. Y. 10006

ISSUE

The parties agreed to the wording of the issue as follows:

"What is the proper complement of employees for 3 and 4 strands color-positive developing machines? Under what conditions is the use of split machines to be permitted?"

The Union contends that the proper complement of employees is 6 men on three strands color-positive developing machines and 10 men on four strands color-positive developing machines.

The Company contends that the proper complement for those machines is 6 and 8 respectively. The Company also contends that it has the right to use split machines during emergencies. There is a dispute as to what constitutes an emergency.
EVIDENCE

Both sides offered in evidence a copy of the 1961 contract and referred to Section 17-C thereof to indicate the basis for this arbitration proceeding, namely, failure by the parties to reach an agreement as to the complement of men to operate 3 and 4 strands color-positive developing machines.

The Company's attorney offered in evidence a copy of a memorandum of understanding which had been reached by the parties as a result of prolonged negotiations. More particularly, the Arbitrator's attention was called to Section 10 of the said memorandum of understanding. The attorney for the Union objected to the use of this memorandum on the ground that while it had been signed by the Union it was never signed by the Company and, therefore, there was no meeting of the minds and thus no agreement. After due consideration as to the use of this memorandum, I have decided to receive it in evidence because Section 10 does indicate the thinking of the parties on the issue of proper complement of men.

Section 10 of the memorandum of understanding, dated June, 1964, reads as follows:

"10. 4 strands of Color-Positive - the crew for this operation shall be nine men. In addition, the Company has agreed to employ an extra or spare developer, who may be used at any place in the plant at any time. For example, the extra may be used as a replacement in the event of absences or vacations or for relief.

Two strands shall operate with crew complement as at present. If three strands are operated, the crew complement shall be 7 men. There will be no use of split machines, except in emergency or when other machines are not operating."

By letter dated June 19, 1964, the Union advised the Company that as to item 10 of the above memorandums of understanding, "Item No. 10 was to exclude the use of split machines without any exception and, to my recollection, was so dictated."

In the memorandum of understanding which was signed by all parties and which is dated October 1, 1964, the parties crossed out Section 10 thereof and indicated that this part will be arbitrated.

During the course of the hearing, both parties requested me to decide the issue of what constitutes an emergency so as to permit the use of split machines as mentioned in Section 10 of the aforesaid agreement.

The Union's attorney further contended that there is further proof to show that there had been no agreement as to the complement of men to operate these machines. Mr. Stein pointed out that even after the alleged memorandum of understanding of June, 1964, which was signed only by the Union, the Company used 6 men for 3 strands and 10 men for 4 strands.

The Company's attorney, however, stated that a difference of opinion had arisen as to the use of split machines, as revealed in the letter of Mr. Stein dated June 19, 1964, and that in order to avoid any other misunderstanding they decided to use 8 and 10 men respectively for 3 and 4 strands machines until the terms of the whole contract could be agreed upon. Pending the complete resolution of any dispute or disagreement, and in order to avoid any other difficulty with the Union, Management decided to use 8 men on 3 color strands machines and 10 men on 4 strands color machines, pending final agreement on all other items of the contract.
The Union, on the other hand, contends that the Company's use of 8 and 10 men on the 3 and 4 strands machines shows a waiver of its prior position and a recognition that this was the proper number of men needed for the operation of those machines.

Part of the dispute as to the proper complement of men needed for these color developing machines revolved on the use of duplex machines.

The Union's position is that the conceded proper complement of the two machines which are not duplex is five men and that the remaining two machines are not strictly duplex and therefore should require a similar complement of five men making a total of ten men for the four strands.

The Company's position is that the two machines are duplex and should require no more than three men as their proper complement, basing their contention on two prior arbitration awards which were offered and received in evidence. A great deal of discussion was had concerning the technical aspects of the operations of single machines and duplex and the amount of control required to operate them.

The parties also disagreed as to the conditions under which the Company would be permitted to use split machines. The parties had agreed that split machines could be used in the event of emergencies. However, there was no agreement as to what is to be deemed an emergency.

CONCLUSION

Having fully considered the contentions of the parties and the discussion of the equipment and operators required in this Company's business, I conclude that the proper
complement of men to be used on 2 strands color developing machines shall be the same as at present; on three strands color developing machines the complement of men shall be 7; and on four strands color developing machines the complement of men shall be 9, plus an extra or spare developer who may be used at any place in the plant at any time. For example, the extra may be used as a replacement in the event of absences, vacations, or for relief.

As to the permissible use of split machines, it is my opinion that such use shall be permitted in cases of emergency which shall include a breakdown of one of the machines, or the case when such a machine might be out of order or in need of maintenance. I am not now deciding whether or not the Company may be permitted to use split machines when one of the machines is not operating. I shall leave this to the parties to decide on the basis of actual experience and for them to resolve it as the occasion arises. At such a time that the parties shall be unable to agree as to the use of split machines when another machine is not in operation, then the parties are to re-submit the entire issue of the use of split machines for arbitration.

I would like to note the capable manner with which this difficult matter was handled by counsel for the parties.

Dated: New York, N. Y.,
January 20, 1965.

[Signature]
Arbitrator
In the Matter of the Arbitration

between

DU ART FILM LABORATORIES, INC.,

and

MOTION PICTURE LABORATORY FILM
TECHNICIANS, LOCAL 702, I.A.T.S.E.

Present for the Employer:

Gold, Lazar & Cooper, Esqs.
Leonard Cooper, Esq. of counsel
Paul Kaufman, Executive Vice-President
Arthur Miller, General Manager

Present for the Union:

Pinto & Stein, Esqs.
Benjamin D. Stein, Esq., of counsel
Richard Gramaglia, President
Henry Luck, Shop Steward
Joseph Martucci

Pursuant to a collective bargaining agreement effective October 1, 1961 and terminating on October 1, 1965, the undersigned was appointed arbitrator by the New York State Board of Mediation. A hearing was held on May 13, 1965. The parties agreed to submit the following issue to arbitration.

whether positive developers who operated developing machines in excess of 150 feet per minute were paid the proper rate for the time so engaged, under the terms of the Collective Bargaining Agreement. If not, what was the proper rate?

On May 20th both parties filed a complaint. The dispute is governed by Section 17(c) of the contract which states:

"(c) Employer shall be permitted to install and operate new, unusual and reconstructed equipment, and accelerate the speed of existing equipment after
wages and conditions with respect thereto with the Union. In the event that Employer and the Union shall fail to agree within 72 hours after Employer shall request such negotiations as aforesaid, then the matter shall be deemed in dispute and referred to arbitration, as provided in this agreement. Pending the decision of the arbitrator, Employer shall have the right to operate such new, unusual, reconstructed or accelerated equipment and the decision of the arbitrator shall be retroactive to the date of such operation.

However, if such new unusual, reconstructed or accelerated machinery or equipment is the same as presently or may hereafter be operated in any other laboratory with which the Union has a collective bargaining agreement, then the Employer shall have the right, upon notification to the Union and upon the mutual agreement that said machinery or equipment is the same, to operate such equipment in the same manner as the other laboratory upon payment of the base rate of wages applicable to the machine or equipment operated in such other laboratory. In the event that the Employer and the Union shall fail to agree within 72 hours that said new machinery or equipment is the same, then the matter shall be deemed in dispute and referred to arbitration, as provided in this agreement. Pending the decision of the arbitrator, Employer shall have the right to operate said new machinery or equipment and the decision of the arbitrator shall be retroactive to the date of such operation.

The contract under consideration is the latest in a series of collective bargaining agreements which extend over the past 20 or more years. Although it is a uniform agreement signed by all employers in the industry within metropolitan New York, there is no association of employers. Bargaining is conducted by the union and the employers acting jointly. To accommodate individual variations in working conditions among the various employers, supplemental or "side" agreements are negotiated on an individual basis. However, to maintain the
integrity of the master agreement, the second paragraph of Section 17(e) of the contract provides that when an employer operates new or unusual machines or accelerates the speed of existing machines and negotiates with the union a wage rate for such machines, then another employer who subsequently adopts the use of such equipment may operate same "in the same manner as the other employer upon payment of the base rate of wages applicable to the machine or equipment operated in such other laboratory". Disagreement over whether the machine or equipment is the same is referrable to arbitration.

Prior to 1964, the employer operated its developing machines at speeds up to 150 feet per minute. In January and February 1964, two newly designed machines were placed in operation which were capable of much higher speeds. For a short period they ran at 240 feet per minute and then were cut back to 210 feet per minute. As of the date of the hearing, however, it would appear that speeds of the machines do not exceed 150 feet per minute. It is conceded that there was neither negotiation nor agreement upon the wages of the operators of the machines when they were operated at speeds in excess of 150 feet per minute.

Schedule A of the Contract contains the classification of work and rates applicable thereto. Under developing department (positive) it lists wage rates for various machines. Although the schedule does not explicitly state the speed of the so-called "normal" machine, both parties agree that such speed may be defined as up to 150 feet per minute. Neither does the schedule state the speed of the "fast" machine but it does give a higher rate to the operator of such a machine. Thus the operator of a "fast" machine receives a premium ranging from 10 to 24 cents per hour, depending upon the particular machine.
The union contends that a machine operated in excess of 180 feet per minute is a "high speed" machine. It seeks a premium of ten percent over the wage rate of the operator of a comparable "fast" machine.

The employer denies that there is any such classification as "high speed" machine. It contends that there is no upper limit on the speed of "fast" machines. Consequently it argues that it may run its machines as rapidly as it likes, the only proviso being that it pay the operator the appropriate "fast" machine rate.

At the threshold, the question to be answered is whether 180 feet per minute is a cut-off speed for a "fast" machine rate. The union argued that 180 feet per minute is widely accepted in the industry as the upper limit of a "fast machine"; that all laboratories in the industry observe this limit and whenever said limit is exceeded they pay a 10% premium. Upon cross examination it developed that only 2 of 15, namely Movie Laboratory and Pathe Laboratories, operate machines at speeds exceeding 180 feet per minute. Both of these employers pay the 10% premium. A third laboratory, Consolidated Film Industries, did operate machines at "high speed" and did pay the 10% premium. However, Consolidated went out of business in July, 1960. Both Pathe's and Consolidated's 10% premium for "high speed" machines were the result of arbitration awards, the former in 1955 and the latter in 1956.

There is no question that at the time the current agreement was negotiated in 1961 and prior thereto, the employer operated its machines at speeds less than 180 feet per minute. For all practical purposes, therefore, 180 feet per minute was the top speed of the employer's "fast" machines despite the absence of any definition of speed in Schedule A. Furthermore, the
The arbitrator is of the opinion that the employer was aware of both the Pathe and Consolidated opinions and awards which established the 10% premium for "high speed" machines. Even though there is no employers association the lines of communication between individual employers are not closed. It seems unlikely that these two arbitration awards went unnoticed in the industry. The arbitrator is therefore constrained to find that it was an obligation of the employer to negotiate with the union a new wage rate prior to accelerating the speed of its equipment.

The more difficult question is to decide what premium should be paid for "high speed" machines. As the employer points out, the operator of a two strand machine puts out twice as much production as the operator of a one strand machine. Yet, the differential in wage rates, depending upon the type of machine, varies from 10 to 24 cents per hour. This differential is exactly the same as the differential applied to "fast" as opposed to "normal" machines. It is, therefore, hard to see why a machine which is speeded from 180 feet to 210 feet per minute, yielding an increase of 1/6th or 162/3% in productivity, should command a wage increase of from 29.7 cents to 32.8 cents per hour, when a 100% increase in productivity commands a premium wage of only 10 to 24 cents! Yet the arbitrator recognizes that in an industry which enjoys a master agreement it is undesirable to write a new wage rate for one employer which will establish a competitive advantage. Reluctantly, then, the arbitrator finds that the 10% premium is proper for "high speed" machines, with the hope that the parties will pay attention to this problem at their next negotiations which should commence very soon.
I, hereby issue the following

AWARD

The positive developers who operated developing machines in excess of 180 feet per minute were not paid the proper rate for the time so engaged under the terms of the collective bargaining agreement.

The proper rate for such work was an amount ten percent larger than the rates set forth in Schedule A of the agreement.

Dated: New York, N.Y.
June 1, 1965

Robert Silagi, Arbitrator

STATE OF NEW YORK
COUNTY OF NEW YORK

On this 1st day of June, 1965, before me came ROBERT SILAGI, to me known to be the individual described in and who executed the foregoing instrument, and acknowledged that he executed the same.

JEAN A. MESEN
Notary Public

JEAN A. MESEN
Notary Public, State of New York
No 31-5126775
Qualified in New York County
Cert.Filed in Kings County
Commission Expires March 30, 1971
In the Matter of the Arbitration

between

PATHE LABORATORIES, INC.

and

MOTION PICTURE LABORATORY TECHNICIANS UNION, LOCAL 702, I.A.T.S.E.

OPINION

The dispute submitted for determination herein arises out of a request by the Company to transfer two employees from the day shift to the afternoon and midnight shifts, to which transfer the Union has refused to consent. The employees are named Frank Spataro and Jack De Carlo who, according to the Company, are classified as plumbers. The Company seeks the transfer of Mr. Spataro to the afternoon shift and Mr. De Carlo to the midnight shift. There is no classification, or reference, in the agreement to plumbers, as such, and the Union contends that they are classified as maintenance mechanics under the agreement.

Both parties agree that the Company has the right to transfer employees from one shift to another. The dispute revolves around the manner in which employees who are to be transferred are to be selected. Both parties agree that employees to be transferred are to be selected on the basis of
seniority within their classifications and that, in the case of a transfer from the day shift to the afternoon or midnight shift, employees with least seniority in the classification are to be the first to be transferred.

The Company contends that plumbers are a separate classification; that Messrs. Spataro and De Carlo are the two employees with least seniority in that classification; and that consequently it has the right to transfer them. The Union contends that the employees to whom the Company refers as plumbers are part of a classification known as maintenance mechanics, and that two other maintenance mechanics, named Gerard Grosell and Paul Doerrer, have less seniority than Messrs. Spataro and De Carlo and should, therefore, be the ones transferred. Paul Doerrer is, however, already working on the second shift and the only three employees involved are Messrs. Spataro, De Carlo and Grosell, all of whom are working on the day shift. Of these three, Mr. Grosell has the least seniority; Mr. De Carlo is next lowest; and Mr. Spataro has the most seniority.

The Union points out that, under the agreement between the parties, all of the job classifications, and the wage rates for each, are clearly set forth in a schedule attached thereto, designated as Schedule A. That schedule lists all classifications by department. In the Mechanical Department the schedule lists three classifications, as follows:
"(a) Apprentice machinists
(b) Maintenance mechanic, general
    machinists, and all types of
    maintenance mechanics on air
    conditioning equipment
(c) Precision machinist"

The Union points out that under the agreement, Messrs. Spataro and De Carlo are in classification (b), set forth above, along with all other employees to whom the Company refers as plumbers and other maintenance mechanics.

In support of its argument that plumbers are a separate classification distinct from maintenance mechanics, the Company argues that the nature of the work of the plumbers differs from that of maintenance mechanics; that the two groups have separate supervision; that under the records maintained by the Company, maintenance mechanics and plumbers are grouped separately and that such records are used for purposes of lay-off and recall; that the maintenance mechanics and the plumbers are also treated as separate groups for purposes of keeping attendance records, assigning vacations, and assigning overtime work. It points out that in 1961 Mr. De Carlo was transferred for one year to the midnight shift, although Mr. Grosell had been hired and was working for approximately two months at the time. It also refers to a previous arbitration award by Professor Herbert Wechsler, which, it states, is res judicata of the issue here presented.

The Union contends that the Company is merely attempting to protect Mr. Grosell, a valued maintenance
mechanic, who does no plumbing work and whom the Company desires to retain on the day shift. It argues that the employer is attempting to isolate one group of specialized maintenance mechanics by "dubbing them plumbers" but that the classification set forth in the agreement embraces both such employees and other maintenance mechanics. It argues that all such employees perform both preventative and remedial maintenance work on the printing and developing machines. It contends that the award of Professor Wechsler is irrelevant; that in other establishments covered by the same agreement no distinction is made between plumbers and other maintenance mechanics; and that the duties of all of the employees involved are vital to the proper production of the machines. It argues that the administrative procedures adopted by the Company are irrelevant to the issue. The Union also argues that the fact that Mr. Grosell may refuse the transfer or quit is no valid reason for the non-application of the established shift transfer procedure; that no one man is indispensable; and that the parties will soon be negotiating a new agreement, at which time the issue may be discussed.

It appears from the evidence that the maintenance mechanics are concerned principally with remedial and preventative maintenance on printing and developing machines; that they do maintenance repair work, and for such purpose use grinders, lathes and a drill press in the printing maintenance room. They are employed on all three shifts. Plumbers do maintenance and repair work principally on pumps
and compressors, which the Company refers to as auxiliary equipment. They also do construction work on developing machines. The equipment on which they work generally has water running through it; hence the title of "plumber." They are also responsible for water supply and for the filtering of water coming into the plant. They repair sinks and toilets and other equipment related to water. In the repair or re-construction of machines, their work is generally limited to "pipe work," which is their specialty. No plumber has previously been employed on the second and third shifts, except for one year in 1961-62. When plumbing has been necessary on the second and third shifts it is done by the maintenance mechanics, although occasionally a plumber has been called in to do it.

It is apparent that the employees involved, that is, the employees referred to as plumbers, and those referred to by both parties as maintenance mechanics, work on the machines or on the auxiliary equipment. Both groups use specialized skills. Maintenance mechanics, unlike plumbers, do not work on the auxiliary equipment. Plumbers' work is limited, for the most part, to compressors, pumps and water filters related to the developing machines, although they occasionally work on the printing machines.

It appears from the evidence that a maintenance mechanic possesses somewhat greater skill than a plumber and can perform piping or plumbing work, or can easily be trained
to do so, but that plumbers can not all perform the work of maintenance mechanics without long periods of training. On one occasion a plumber was transferred to the work of maintenance mechanic and returned to his original position after 3-1/2 weeks.

The difficulty with the Company's position, however, is that the agreement clearly states that all maintenance mechanics, including plumbers, are within the same classification; there is no reference anywhere in the agreement to a plumber classification, as such. It is not unusual for collective bargaining agreements to continue to retain, in one classification, employees who possess different or specialized skills, or who have developed different skills in production or maintenance work through specialization. In some such instances, where the agreement provides for the application of seniority on a classification basis, it is coupled with the requirement of ability to do the work. Unfortunately, there is no such additional requirement here. Rather, the parties have agreed that strict seniority is to be applied.

The issue then is whether, in the face of the explicit language of the agreement, the arbitrator may determine from the evidence that the parties have created a separate classification of plumbers. The evidence that plumbers are considered separately for bookkeeping purposes, or for supervisory purposes, or for the purpose of maintaining records of absenteeism, is no indication that the parties intended
thereby to vary the contract, or to treat them contractually as a separate classification. There is no reference in the agreement to such administrative matters.

The only purposes which may be considered relevant are those relating to the allocation of vacation, overtime, lay-offs and transfers between shifts. With regard to lay-offs, the agreement provides that they are to be made by department and by classification within the department. There was no evidence that any lay-offs within the groups involved have taken place, or the manner in which such lay-offs were made. In the case of shift transfers, Mr. Grosell was junior to Mr. De Carlo at the time the latter was transferred to the midnight shift in 1961. However, Mr. Grosell was at that time already employed on the afternoon shift and the situation presents no precedent with regard to a transfer from the day shift. In the case of vacations, the agreement provides, in Section 6(d), that "Vacations, as far as is practicable, shall be granted... on a seniority basis" and that "The Union may discuss with the Employer any proposed variation of the vacation seniority rule." The agreement thus does not provide for strict seniority, and it is practicable to allocate vacation periods separately amongst the plumbers, for reasons of efficiency. With regard to overtime, the agreement provides, in Section 9, that "All overtime work shall be equitably rotated among the employees within each classification of work." The unrefuted evidence was that overtime has been allocated separately within the
The arbitration award of Professor Wechsler, which the Company claims is *res judicata*, was issued as the result of a claim by the Union that Messrs. De Carlo and Spataro were entitled to be paid at the contract rate for a precision machinist, rather than the lower rate for maintenance mechanic, on the ground that the other employees in the "plumbing unit" were receiving the higher rate. Professor Wechsler denied the grievance. The Union, in that case, argued that by paying the rate for precision machinists to other employees in the unit the Company had in fact established a classification for plumber that Schedule A did not provide. The arbitrator held that "there is no reason to regard this as the purpose or the meaning of what happened." He also held that the practice did not obliterate the maintenance mechanics category, "in defiance of the very language of the contract." There is no holding in the award that plumbers are a separate classification and the award may not be interpreted as such.

The case then reduces itself to the question of whether the fact that the Company has allocated overtime amongst the plumbers as a separate group, notwithstanding the language of the agreement, requires the finding that the parties have created a separate classification of plumbers. It would be, the opinion of the arbitrator, stretching that
fact beyond its limited significance to reach such a result. The departure by the parties from one, or even two, of the provisions of the agreement should not be said to result in a modification of other clear terms.

While the Company's request is understandable and realistic, the arbitrator can not accept the sweeping claim of the Company that the facts set forth have resulted in the creation of a new classification of plumber, distinct from maintenance mechanics, for all purposes, in disregard of the explicit language of the agreement. While, because of their specialized work, plumbers may be treated administratively as a separate group, more than that is required to reach the result that the seniority and classification provisions of the agreement have been modified. Realistically, the issue is one to be settled by the parties themselves in their forthcoming negotiations, rather than by arbitral contract interpretation.

The Union's position must, therefore, be sustained in this proceeding. The Company does not have the right to transfer Mr. De Carlo and Mr. Spataro ahead of Mr. Grosell. Should it decide to transfer Mr. Grosell, and to assign, as it contended at the hearing would be necessary, the work of a maintenance mechanic, other than plumbing work, to Mr. Spataro, and either of them is unable to perform the work assigned to him, the parties must be guided by the provisions of the agreement applicable to such circumstances.
AWARD

I, the undersigned, to whom was submitted for determination a certain issue in dispute between the parties hereto, having duly heard the proofs and allegations, and after due deliberation, award as follows:

1. No separate classification of plumbers exists under the agreement between the parties, but the employees so referred to are a part of the classification of maintenance mechanics and general machinists in the Mechanical Department.

2. Transfers from the day to the afternoon and midnight shifts are to be made according to seniority within such classification.

Dated, New York, July \( \sqrt{\ } \), 1965.

I. Robert Feinberg, Arbitrator

STATE OF NEW YORK )
COUNTY OF NEW YORK)

On this \( \sqrt{\ } \) day of July, 1965, before me personally appeared I. ROBERT FEINBERG, to me known and known to me to be the individual described in and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same.

JACQUES J. BENJAMIN
NOTARY PUBLIC, State of New York
No. 30-0241500
In the Matter of the Arbitration
Between
COLOR SERVICE COMPANY, INC.
And
MOTION PICTURE LABORATORY TECHNICIANS,
LOCAL 702, I.A.T.S.E.

This arbitration is brought by COLOR SERVICE COMPANY,
INC. (herein referred to as "Company"), under Article 15 of the
Collective Bargaining Agreement between the Company and
MOTION PICTURE LABORATORY TECHNICIANS, LOCAL 702, I.A.T.S.E.
(herein referred to as "Union"), dated May 23, 1966, wherein
the undersigned was designated Permanent Arbitrator to hear and
determine disputes arising under said Agreement.

APPEARANCES:

HAROLD L. YOUNG, Esq., for the Company

BENJAMIN STEIN, Esq., for the Union

ISSUE

Whether or not, pursuant to its Collective Bargain-
ing Agreement, Company may require a color printer to loop
print two machines in a dual operation.
OPINION

A hearing was held at the premises of the Company, at which the Company and Union were duly represented. Testimony was given by witnesses for both Company and Union. The operation of the machines, reduction color printers, which are the subject of this arbitration, was observed by the undersigned.

For the purposes of this arbitration, the parties agreed that the terms and provisions of the 1961 Collective Bargaining Agreement (herein referred to as "Bargaining Agreement") between the parties will govern.

The sole question for determination is the right of the Company to require an operator, classified as a Group 5, Color Printer (c), in Schedule A annexed to the Bargaining Agreement, to operate two machines with looping arrangements at the same time. At the present time, an operator runs one machine with a "looping arrangement", and one conventional up and down printer at the same time. The Company has been operating these machines in this manner for more than five years. The loop printing arrangement is accomplished by having a cabinet, which holds a number of negatives that have been attached together to make a large roll of negative film, adjacent to and connected with the printing
machine. Such negative film is then run in a looping manner through the printer so that a specified number of positive prints can be made without removing or changing the negatives. In the case of the conventional up and down printer, a negative is threaded into the machine, one print made therefrom, then the negative is removed, and the operation repeated.

The Company contends that it has the right to have a Group 5(c) operator run two printing machines with the looping arrangements attached thereto, by virtue of the Note at the bottom of Group 1 Classifications of Printers in Schedule A, which states: "Any above machines may be run with loops"; and the provision in Group 3(g) Classification, which states: "Any two machines in Group 1 may be operated by a single operator".

Therefore, the Company argues that inasmuch as it could operate any two printing machines running with loops in the Group 1 Classification with one operator, it has the right to require the operator of the machines in question, who is classified as Group 5(c) Printer, to operate two color printing machines with loops.

The Union disagrees with the Company's contention, claiming that the permissive language referred to in Groups 1 & 3 relates solely to black and white printing machines, and
has no application to color printing machines; that, while the permissive language relating to loops was incorporated as a result of negotiations between the parties, there have been no negotiations between the parties for a similar provision with respect to color printing.

Article 17(b) of the Bargaining Agreement governing machine operation is not applicable, as there was no testimony that the dual operation the Company desires to initiate is presently in operation in any other laboratory operating under the Collective Agreement with the Union. There was mention made that, on one or two occasions, another laboratory was granted special permission in an emergency situation to have a color printer operate two machines with loops. The parties agreed that the occasional granting of such permission did not bring this operation under the provisions of Section 17(b).

The fact that the Union's permission was sought and obtained for such operation tends to negate the contention of the Company that it has the right to such operation.

I do not agree with the Company's argument that the permissive language set forth as a Note to the end of the Group 1 Printing Department Classifications in Schedule A should be made applicable to another group. The absence of
such permissive language from the Color Printer Classifications is fatal. It is not within my province to incorporate new provisions or conditions which do not appear in the classification of work and rates applicable thereto in the Printing Department.

An examination of the Printing Department Classification of work and rates applicable thereto (Schedule A), containing thirty-four separate classifications in five separate Groups, discloses ample evidence of the care with which the Printing Department Classifications have been determined by the parties.

**AWARD**

The award, therefore, is that the Company does not have the right to require a Group 5(c) Color Printer to loop print two machines in a dual operation.


[Signature]

JOSEPH E. McMAHON
Permanent Arbitrator

STATE OF NEW YORK
COUNTY OF NEW YORK

On this 7th day of July, 1966, before me personally came JOSEPH E. McMAHON, to me known, and known to me to be the individual described in and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same.

[Notary Public Signature]

PHILIP WILHELM
Notary Public, State of New York
No 61-419276
Qualified in Queens County
Commission Expires March 30, 1967
In the Matter of the Arbitration
between
DU-ART FILM LABORATORIES, INC.
and
MOTION PICTURE LABORATORY TECHNICIANS,
LOCAL 702, I.A.T.S.E.

This arbitration is brought by DU-ART FILM
LABORATORIES, INC. (hereinafter referred to as "Company") under
Article 15 of the Collective Bargaining Agreement between the
Company and MOTION PICTURE LABORATORY TECHNICIANS, LOCAL 702,
I.A.T.S.E. (hereinafter referred to as "Union"), dated May 22,
1966, wherein the undersigned was designated Permanent Arbitrator,
to hear and determine disputes arising under said Agreement.

The dispute between the parties arises from the
operation of a color reversal processing machine made by the
Pako Manufacturing Co., and will be referred to herein as the
"Pako" machine. The Union contends that the proper man complement
for the operation of said machine is three, with the color negative
developing rates applicable thereto. The Company maintains that
the proper man complement is two, with the color positive developing
rates being applicable.
ISSUES

The issues to be determined are (1) the rate of pay for the operators of the Company's Pako machine; and (2) the proper man complement.

The parties agreed, for the purposes of this arbitration, that the terms and provisions of the 1961-1965 Collective Bargaining Agreement (herein sometimes referred to as "Bargaining Agreement") between the parties shall control. The parties hereto have been operating under Collective Bargaining Agreements negotiated on an industry basis since 1945.

OPINION

There is no disagreement between the parties that the Pako machine is a "new" machine within the meaning of 17(c) of the Bargaining Agreement, which reads, in part, as follows:

"Employer shall be permitted to install and operate new, unusual and reconstructed equipment and accelerate the speed of existing equipment after negotiating wages and conditions with respect thereto with the Union..."
The type of work performed by the Pako machine is the crux of this dispute. The machine processes color reversal film stock. However, since part of the operation involves developing of a negative image, the Union argues that the work should be classified as negative developing, and the rates and man complement for the Negative Development Department apply. The Company, on the other hand, contends that since no negative film is produced as an end product, but, on the contrary, positive film is produced, the work should be considered positive developing and the rates, etc. for that Department apply.

There can be no doubt that the Pako machine differs from the conventional negative and positive developing machines, in length, type of film processed, and end product. All three machines have certain common features. Each has a part of the machine in a dark room, where the film is placed on the machine. This section is called the "Wet End"; the man working there is classified as the "Wet End" operator. The Wet End is separated by a partition or wall from the other end called the "Dry End", located in a room with ordinary light. The film, after passing through the Wet End section, goes through an opening in the partition or wall into the Dry End. The man in the Dry End is classified as a "Dry End" operator.
The Pako machine Dry End section is shorter than the conventional developing machine. This section measured 16 ft. against 31 ft. for conventional machines operated by the Company. (The length of the Wet End section need not be considered, as all machines require a Wet End operator.) There was testimony that Columbia Broadcasting System has in operation a machine with an over-all length of 9 ft. which processes color reversal film stock.

Admittedly, there is a material difference in the type of film processed by the Pako machine, when compared to the ordinary conventional negative developing machine, which develops negative film, and the positive developing machine, which develops positive film. The Pako machine processes color reversal film stock. This film is used as original camera stock, from which an image is developed, with a resulting end product being a positive print. Thus, this machine accomplishes the work that ordinarily is done in two steps; first, by developing an original negative; and then, printing from negative to positive stock, and the developing of the same.

Consequently, the Pako machine does not fall squarely within either the Positive or Negative Developing Department. Schedule A attached to the Bargaining Agreement sets forth the rates for the Wet End and Dry End operator in each Department.
There is a 13¢ per hour differential in favor of the Negative Department. Since the Pako machine was not in use in any laboratory with whom the Union had the Bargaining Agreement in 1961, and considering the nature of the work performed, I am of the opinion that it cannot be held that either the negative or positive developing rates must apply. However, in view of the fact that an original image is developed on color reversal stock, I feel that the operators of this machine are entitled to the same rate of pay as the negative developing color operators.

The next question to be decided is the proper number of men needed to operate the Pako machine. There was testimony by Company's employees, who had operated said machine for several months, that two men would be sufficient — one in the Wet End, and one in the Dry End section. It was their opinion that there would be nothing for a third man to do, particularly since the machine is fully automatic. The Union stated, with respect to existing color negative developing machines, that a three-man crew is now employed for the one strand operation, and five men for the two strand operation. This, however, is a matter of contract. The note in Schedule A, relating to color negative developing, fixes the crew complement. That provision is not binding here, in view of my previous determination that the Pako machine does not come within the Negative Developing Department.
There was testimony that Columbia Broadcasting System, with the Union's consent, uses two men to operate a machine processing color reversal film stock. The Union pointed out that the C.B.S. machine over-all length was only 9 ft. However, it was stated that the film to be processed was prepared in a separate adjoining closet (dark room) by one of the operators before it was placed in the machine; that the C.B.S. men mixed the chemical, whereas, in the case of the Pako machine, there is a separate chemical mixer who did this work.

Based upon examination of the Pako machine, and taking into full consideration all of the testimony presented at the hearing, I am of the opinion that a two-man crew is sufficient to operate the Company's Pako machine.

AWARD

The award, therefore, is that (1) the rate of pay for the operators of the Pako machine be the same as the rate paid to Color Negative Developing Department operators; and

(2) That the Company is entitled to operate its Pako machine with a two-man complement, i.e., one Dry End and one Wet End operator.

Dated: July 14, 1966.

JOSEPH E. MCMahon
Permanent Arbitrator
STATE OF NEW YORK  )
COUNTY OF NEW YORK  )

On this 14th day of July, 1966, before me personally came JOSEPH E. McMAHON, to me known, and known to me to be the individual described in and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same.

PHILIP WEINSTCIN
Notary Public

PHILIP WEINSTCIN
Notary Public, State of New York
No. 41-4199701
Qualified in Queens County
Commission Expires March 30, 1967
In the Matter of Arbitration

between

MOVIELAB FILM LABORATORIES, INC.

and

MOTION PICTURE LABORATORY TECHNICIANS,
LOCAL 702, I.A.T.S.E.

This arbitration was brought by MOTION PICTURE
LABORATORY TECHNICIANS, LOCAL 702, I.A.T.S.E. (herein referred to
as "Union"), under Article 15 of the Collective Bargaining Agreement
between the Union and MOVIELAB FILM LABORATORIES, INC. (herein
referred to as "Company"), dated June 23, 1966, wherein the under-
signed was designated Permanent Arbitrator to hear and determine
disputes arising under said Agreement. A dispute has arisen between
the Company and the Union relative to the continuous operating of
printing machines during lunch and relief periods.

ISSUE

The parties have agreed that the issue to be determined
is as follows:

Is the Company in violation of the Collective Bargain-
ing Agreement by assigning printers to relieve other printers during
lunch and break periods?
OPINION

A hearing was held at which witnesses for both parties gave testimony regarding the Company's practice of assigning printers to relieve other printers during lunch and break periods. That such relieving was done is not denied. However, there was a sharp difference of opinion in the testimony of the witnesses as to the extent of such relieving and the length of time it has been done.

The parties hereto rely upon the provision of Article 17, sub-division (b) of the Collective Bargaining Agreement, the pertinent portion of which reads as follows:

"The parties agree that present methods of operation within the laboratories shall continue without change..."

The Company contends that the relieving of one printer by another in the Printing Department during break and lunch periods is, and has been, a present method of operation within the laboratory. The Union opposes this contention, claiming that such relieving of one printer by another in the Printing Department is not a present method of operation within the laboratory and, therefore, would be a change in the present method of operation prescribed by the contract absent agreement of the parties.

In explanation of the relief of one printer by another, which concededly has occurred in the laboratory, the Union maintains
that such reliefs were few in number; that, under the circumstances, they could not constitute an established method of operation; that such acquiescence by the Union was permissive; and that such reliefs occurred only in cases of "emergency".

The Company submitted two witnesses, both of whom are supervisory employees, who testified that the practice of having a printer relieve another printer during lunch and break periods had been in effect for more than ten years, and that the transfers of employees for such relief purposes were being made, as a rule, three, four or five times a week. The Union submitted three witnesses, all of whom work in the Printing Department, whose testimony was, in essence, diametrically opposed to the testimony of the Company's witnesses with respect to the frequency with which transfers for relief purposes were made. These employees had worked as printers for ten, eight and seven years respectively. Their collective testimony was that such relieving was only done occasionally when either the volume of work or the necessity of getting some particular work out promptly created what they called an emergency situation.

While the Company's witnesses testified that the practice of transferring employees for relief purposes has been in effect for many years and was a weekly occurrence, nevertheless, they indicated that it was not a normal, general operation. As a matter of fact, all witnesses, in referring to relief, connected this procedure with specific types of printing machines. It, therefore, appeared that these transfers were
made on specific occasions when the necessity for increasing productive output arose. The fact that employees cooperated with the Company and did not formally object to the relieving of another employee is an indication of what would be considered normal cooperation by employees with their employer. Furthermore, the fact that the Union may have, from time to time, acquiesced in such cooperation by the employees with the Company does not, in my opinion, justify the Company from assuming that such acquiescence constitutes a waiver of the Union's right to object to this method of operation.

In passing, I wish to note that, generally speaking, employees in the Printing Department usually have full and complete knowledge and information regarding the operation of their Department, and the fact that an employee might not be able to actually see each and every printing operation is of little consequence.

It is my opinion that the relieving of one printer by another in the Printing Department was an occasional and somewhat irregular practice which was never utilized on a daily basis as part of its normal and general operation; that the cooperation of the employees and the Union in assisting the Company to meet production schedules did not result in a waiver on the part of the Union to its rights to object to such practice by the Company.
AWARD

The award, therefore, is that the assigning of printers to relieve other printers during lunch and break periods is a violation of the Collective Bargaining Agreement between the parties.


JOSEPH E. McMAHON
Permanent Arbitrator

STATE OF NEW YORK ) ss.:  
COUNTY OF NEW YORK )

On this 16th day of September, 1966, before me personally came JOSEPH E. McMAHON, to me known, and known to me to be the individual described in and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same.

PHILIP WEINSTEIN
Notary Public

PHILIP WEINSTEIN
Notary Public, State of New York  
No. 41,1199/01  
Qualified in Queens County  
Commission Expires March 10, 1967
MOVIELAB, INC. V. GRIMAGLIA

—Motion to vacate an arbitration award on the ground that the arbitrator exceeded his powers is denied and the cross-motion to confirm the award is granted. The award was clearly within the confines of the issue submitted to the arbitrator by the parties. Settle order.
MOVIELAB, INC. v. ORAMAOLIA

Motion for an order for leave to reargue is denied. The instant application is unauthorized, no permission to make same having first been obtained (N. Y. Central RR. v. Beacon Milling Co., 184 Misc. 187, 53 N. Y. S. 2d 403; Ellis v. Central Hanover Bank and Trust Co., 198 Misc. 212, 102 N. Y. S. 2d 377). In addition, the arguments now advanced were heretofore thoroughly considered upon the occasion of the original submission of the motion.
In the Matter of Arbitration

between

MECCA FILM LABORATORIES

and

MOTION PICTURE LABORATORY TECHNICIANS,
LOCAL 702, I.A.T.S.E.

This arbitration was brought by MECCA FILM LABORATORIES
(herein referred to as "Company") under Article 15 of the
Collective Bargaining Agreement between the Company and MOTION
PICTURE LABORATORY TECHNICIANS, LOCAL 702, I.A.T.S.E. (herein
referred to as "Union"), dated June 23, 1966, wherein the under-
signed was designated Permanent Arbitrator to hear and determine
disputes arising under said Agreement. The dispute herein con-
cerns the right to the Company to use negative developers to do pos-
itive developing, and positive developers to do negative developing.

ISSUE

The parties have agreed that the issue to be determined
is as follows:

Whether or not the Company has the right to require
negative developers to do positive developing, and positive
developers to do negative developing.
A hearing was held on September 27, 1966, at which both parties were represented and produced witnesses who gave testimony regarding the disputed issue. The witnesses for the Company testified that, in the past, it had both negative and positive developing crews. While it used to have two shifts of negative developers, due to a decline in the volume of negative developing, it now has the negative developers on one shift. The Company testified as it is installing color developing machines, it desires a determination of the present dispute that has arisen with the Union.

Due to a decline in the volume of negative developing work, the Company attempted to have the negative developers do positive developing, when there was no negative developing work. The Union objected and the negative developers would not do such work. The Company testified that it had opportunities to secure some negative developing work to be done on the second shift, but it was unable to accept such work as the positive developers would not do any negative developing. The Company contends it has the right, under its Collective Bargaining Agreement, to use the negative developers to do positive developing, and, conversely, to use positive developers to do negative developing, whenever the necessity arises. The Union disagrees with this contention, claiming
among other things, that it would, in effect, deprive the positive developers of overtime, as the Company would then have the right to bring in negative crews on Saturdays and Sundays.

The situation here appears to come within the provisions of the Temporary Transfers clause. The pertinent article of the agreement relating to temporary transfers reads as follows:

"13. TEMPORARY TRANSFERS:

(a) Temporary transfers shall be made from lower classifications as far as practicable, provided that such transfers shall not deprive another employee of actual employment or result in an employee performing two separately classified operations simultaneously.

(b) Temporary transfer of an employee from a higher classification to a lower classification shall not result in any reduction in pay, and any employee temporarily required to fill the place of a higher classification shall be paid the rate for said higher classification on a daily basis."

It was agreed by the parties that all employees are working a full work-week. Thus, the transfers in question would not deprive another employee of actual employment. Moreover, under sub-division "(b)", positive developers who are used to develop negatives would receive the negative developers rate for the entire day, irrespective of the amount of time actually spent in negative developing. On the other hand, if a negative developer, whose rate of pay is higher than a positive developer, is required to develop positives, he would continue to receive his rate as a negative developer.
In my opinion, the foregoing Article 13 is applicable and controlling here and, so long as the employees are working full time, the Company has the clear right under the Temporary Transfers clause to have negative developers do positive developing work when the necessity arises; and also to have positive developers do negative developing work when necessary. The overtime provision in the contract, in my judgment, has no bearing on the issue, because it relates to the distribution of work within a job classification, and not between classifications. The schedule of classifications clearly establishes that negative developers are a separate and distinct classification from positive developers.

AWARD

The award, therefore, is that the Company has the right, under Article 13 of the Collective Bargaining Agreement, to require negative developers to do positive developing, and positive developers to do negative developing.


JOSEPH E. McMAHON
Permanent Arbitrator
On this 4th day of October, 1966, before me personally came JOSEPH E. McMAHON, to me known, and known to me to be the individual described in and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same.

PHILIP WEINSTEIN  
Notary Public, State of New York  
No. 41-199701  
Qualified in Queens County  
Commission Expires March 30, 1967
This arbitration was initiated by MECCA FILM LABORATORIES (herein referred to as "Company") under Article 15 of the Collective Bargaining Agreement between the Company and MOTION PICTURE LABORATORY TECHNICIANS, LOCAL 702, I.A.T.S.E. (herein referred to as "Union"), dated June 23, 1966, wherein the undersigned was designated Permanent Arbitrator to hear and determine disputes arising under said Agreement. The dispute herein revolves around the right of the Company to require a printer operating a color printing machine with "loop attachment" to use a velvet pad to wipe the negative while the machine is in operation.

ISSUE

Does the Company have the right to require a printer operating a color printing machine with "loop attachment" wipe the negative with a velvet pad while the machine is in operation?
The Company maintains that it has the right to require an operator of a color printing machine with loop attachment wipe the negative with velvet, under the provisions of the Collective Bargaining Agreement, Article 17, which provides that "present methods of operation within the laboratory shall continue without change" since operators of black and white printing machines with "loop attachment" have, for many years, wiped negatives with a piece of velvet. The Union does not deny that such was the practice for the operators of the black and white printing machines. It is the Company's position that there is no difference in the method of operation in the printing of color film as compared with black and white. The Company contends that the operation is simpler, as the color printing machines are automatic. Therefore, since, admittedly, operators of black and white printing machines have wiped negatives with velvet for many years, it follows that the Company has the right to require the operators of color printing machines to continue this practice.

The Union, while conceding the right of the Company to continue the past practice insofar as black and white printing is concerned, denies that the method of operation of the color printing machines is the same as the operation of the black and white machines. The Union claims the following differences in the operations:
(1) The color printing machine operates at 180 ft. a minute; whereas, the black and white printing machine operates at 90 ft. a minute;

(2) The color printing room is darker than the black and white printing room;

(3) The physical operation of the operator of the color printing machine is different from that performed by the operator of the black and white machine;

(4) Wiping of the negative with velvet is essentially a cleaning operation and, therefore, the operator would be performing two separately classified operations simultaneously, which is prohibited by the collective Bargaining Agreement.

The Company denies that the wiping of a negative with velvet is, in essence, a cleaning operation, pointing out that cleaning is accomplished by the use of a cleaning solution, and simply wiping dust from a negative cannot be construed as a cleaning operation. In reply thereto, the Union stated that the cleaning of negatives is not accomplished solely with cleaning solutions, as there are also ultra-sonic and dry cleaning processes.

Whether or not the wiping of a negative is tantamount to cleaning thereof is not determinative of this dispute. In my opinion, the essential point to determine is whether or not the wiping of a negative with velvet by the operator of a color printing
Machine is the "same method of operation" as performed by the operator of a black and white printing machine so as to bring it within the permissive language of the contract, which allows a company to continue "present methods of operation" which would otherwise be prohibited. The Company maintains that the operation is the same. The thrust of the Union's argument is that the operation is different.

In view of the diametrically opposite positions taken by the parties, I personally visited the laboratory with representatives of each party, for the purpose of examining both the black and white and color printing operations. The fact that the color printing machines run twice as fast as the black and white machines, while of some significance, is not, in my opinion, a controlling factor when considered alone. An examination of the printing rooms substantiated the Union's claim insofar as the degree of darkness is concerned. The color printing room was markedly darker than the black and white printing room. I might state, for the record, that both rooms would be considered dark to the ordinary layman, but there is no question that the color printing room is considerably darker than the black and white printing room.

Regarding the physical work by the operator of the printing machines, the operator of the black and white machine indicated that she would wipe the negative as she was seated before the printing machine. This would be done by taking the velvet pad in her
hand and wiping the negative as it proceeded into the printing machine. The left hand of the operator would be about shoulder level, although she pointed out that she could, if she wanted, wipe the negative by extending her hand higher. In the color printing department, the operator stated that while seated before the machine, she would wipe the negative by reaching down, approximately to the level of her knee, in order to do this work. In addition, it is necessary to take into consideration that the printing machine is run twice as fast as the black and white machine, and that the degree of vision is more limited because of the greater darkness.

It is my opinion, after evaluating all the factors involved, that the wiping of the negative by the operator of a black and white machine is not the same as the wiping of a negative by the operator of a color printing machine, in view of the different physical method of performing the work taken in conjunction with the conditions under which such work is performed.

In my opinion, the physical work of the operator of the color printing machine differs from that of the operator of the black and white machine.

AWARD

The Company does not have the right to require a printer operating a color printing machine with loop attachment to wipe the negative with a velvet pad while the machine is in operation.


JOSEPH E. McMAHON Permanent Arbitrator
In the Matter of the Arbitration

between

DU-ART FILM LABORATORIES, INC.

and

MOTION PICTURE LABORATORY TECHNICIANS,
LOCAL 702, I.A.T.S.E.

This arbitration was initiated by DU-ART FILM LABORATORIES, INC. (hereinafter referred to as "Company") under Article 15 of the Collective Bargaining Agreement between the Company and MOTION PICTURE LABORATORY TECHNICIANS, LOCAL 702, I.A.T.S.E. (hereinafter referred to as "Union"). dated May 23, 1966, wherein the undersigned was designated Permanent Arbitrator, to hear and determine disputes arising under said Agreement.

The dispute herein revolves around the operation of a magnetic sound 16 mm. contact printing machine when operated solely as a 16 mm. contact picture printing machine. The Union maintains that the operator of this machine must be classified as a Group 4 Printer, by virtue of an agreement entered into between the parties, even though the magnetic sound head is not utilized. The Company contends that when the magnetic head is disengaged, or is not in operation, the machine functions as an ordinary 16 mm. contact picture printer, and that the operator thereof, in such event, should be classified as a 16 mm. contact picture printer.
ISSUE

The issue here may be stated as follows: Does the Company have the right to classify the operator of the magnetic sound 16 mm. contact picture printing machine as provided in the Collective Bargaining Agreement between the parties when the magnetic head is disengaged or inoperative, or must the operator be classified as a Group 4 Printer?

OPINION

The problem presented here had its origin in 1958 when the Company added a magnetic sound head attachment to a conventional 16 mm. contact picture printer. The machine, as then constructed, was capable of printing, in addition to the picture, the sound track on the film at the same time. As there was no rate in the then current Collective Bargaining Agreement for such an operation, the parties entered into negotiations to establish a rate for operators of this machine as reconstructed. The principals who participated in these negotiations were present and testified at the hearing. None of the witnesses had any documents reflecting the ultimate agreement that was admittedly entered into between the parties, namely, that the operator of the magnetic sound 16 mm. picture printing machine would receive the rate of a Group 4 Printer. Mr. Cooper, attorney and sole negotiator for the Company in those negotiations, testified that the Group 4 rate was agreed upon for this machine with the
magnetic head attachment operating. Mr. Waugh, the Union representative in those negotiations, testified that the Group 4 rate was to cover the operator of said machine, irrespective of whether or not the magnetic head was in operation. Mr. Cooper stated that there were absolutely no discussions of a rate for the operator of the machine without the head in operation.

It is the Company's contention that, when the machine in question is operated without the magnetic head in operation, it functions as a conventional 16 mm. contact picture printer. Under the Collective Bargaining Agreement in existence in 1958, there was one rate for the operator of a single 16 mm. contact picture printer, and another rate for the operator of two such machines, the rate in both cases being less than the rate for a Group 4 Printer. Admittedly, the basis and justification for an increased rate for the reconstructed machine was predicated upon the magnetic head attachment. Mr. Waugh testified that the Union sought a rate higher than the Group 4 rate eventually agreed upon.

Bearing in mind that these witnesses were testifying to negotiations which occurred eight years ago, the more probable and reasonable version is the one stated by Mr. Cooper. It is inconceivable that the Company would have agreed to pay a printer a Group 4 rate for operating this machine with the magnetic head inoperative, when it could have the same work done by paying a rate which was less than the Group 3 rate.
Under the Collective Bargaining Agreement that existed at that time, the Company could have had the right to operate two 16 mm. contact picture printers with one operator receiving the Group 3 rate. It would be unrealistic to assume that the Company would agree to pay a Group 4 rate to the operator of a machine that was functioning as an ordinary 16 mm. contact picture printer. I doubt seriously that any thought or consideration was given, at that time, to what rate would apply to the machine if the magnetic head was not operating. They were concerned about the operation of the machine with the magnetic head functioning, and that was the basis on which the Group 4 rate was established. I am of the opinion that no consideration was given, or agreement reached, with respect to this machine without the magnetic head in operation.

The Union testified that some time in 1963 the Company installed a new and second machine, with the magnetic head built into the machine, and that, for a short time, the Company ran the original machine and the new machine as a dual operation, with the magnetic head inoperative, by one man to whom they voluntarily paid a Group 5 rate until stopped by the Union as violative of the 1958 Agreement. There was some confusion in the testimony as to the length of time when these machines were so operated. Apparently, the machines were operated in this manner by one man for a couple of days, and another for possibly a month. The testimony was not clear on this point.
As soon as the Union learned of the dual operation, it insisted that it be stopped. Mr. Cooper claimed that he was not aware of it, and the testimony is not clear as to how this situation developed.

No claim was made by the Company, at that time, that it had the right to operate the two magnetic sound 16 mm. contact printing machines as conventional 16 mm. contact picture printing machines, and to pay the operator accordingly. On the contrary, the action in 1963 of both the Union and the Company was consistent with the Union's claim that the Group 4 rate was applicable to these machines, and that it was violative of the 1958 Agreement for one man to operate these two machines in a dual operation, even though the magnetic heads were inoperative. The Company's failure to take any action, at that time, is not in accord or consonant with its present position.

In my opinion, the 1958 Agreement established one thing, namely, that the operator of the magnetic sound 16 mm. contact picture printing machine would receive the rate of a Group 4 Printer. There were no exceptions or qualifications. To hold now that the operator of that machine should receive a different rate because the magnetic head was inoperative would be tantamount to a modification of that Agreement to include therein something that was not agreed to by the parties.
AWARD

The award, therefore, is that the operator of the magnetic sound 16 mm. contact picture printing machine must be classified as a Group 4 Printer regardless of whether or not the magnetic head is in operation.

Dated: October 14, 1966.

JOSEPH E. McMAHON
Permanent Arbitrator

STATE OF NEW YORK
COUNTY OF NEW YORK

On the 14th day of October, 1966, before me personally appeared JOSEPH E. McMAHON, to me known, and known to me to be the individual described in and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same.

PHILIP WEINSTEIN
Notary Public
Notary Public, State of New York
No. 41-4199701
Qualified in Queens County
Commission Expires March 30, 1967
In the Matter of the Arbitration

-between-

MOTION PICTURE LABORATORY TECHNICIANS,
LOCAL 702, I.A.T.S.E.

-and-

MOVIELAB, INC.

This controversy was submitted to arbitration by

MOTION PICTURE LABORATORY TECHNICIANS, LOCAL 702, I.A.T.S.E.

(hereinafter referred to as "Union"); and MOVIELAB, INC. (hereinafter referred to as "Company"), pursuant to Article 15 of the Collective Bargaining Agreement between the parties, dated May 23, 1966, wherein the undersigned was designated Permanent Arbitrator to hear and determine disputes arising under said agreement.

The dispute herein revolves around the crew complement for the operation of "split" color negative developing machines. A split operation occurs when the machines involved are not adjacent to one another. In this case, the two negative color developing machines, designated as Machine #1 and #5, are in the same room with three color positive developing machines, which are designated #2, #3 and #4. These five machines are parallel to each other, with the dry-end of each machine being in the same room. The three color
Positive machines are located between the two color negative machines. As a matter of fact, Machines #1 and #2 are attached together. There is a space of approximately 4 ft. between the other machines so that it is approximately 25 ft. from Machine #1 to Machine #5.

The Union contends that, with this arrangement, there should be a three-man crew complement for each of these machines, which it considers a one strand operation. The Company maintains that the five-man crew complement is proper, as it considers this arrangement as a two strand operation.

**ISSUE**

While the parties originally were not in complete agreement as to the phraseology of the issue to be submitted, I believe that it may be properly stated as follows:

Is the Union correct in its claim that the continuous operation by the Company of the two color negative developing machines #1 and #5 in a "split" operation, with a crew consisting of two dry-end operators, two wet-end operators, and one examiner-relief man, is violative of the provisions of the current Collective Bargaining Agreement?
The Company contends that the note appearing at the end of the Negative Developing Department classification on Page 26 of the Collective Bargaining Agreement permits the Company to operate the color negative developing machines #1 and #5 with five men. That note reads as follows:

"NOTE: Color Negative Developing:
1 Man Crew: One Strand
5 Man Crew: Two Strand"

There is no dispute that, if these two machines were operated side by side, the Company's contention would be correct. Because the machines are not adjacent to one another, but are separated by some 25 ft., the Union contends that each machine must be treated as one strand, and the crew complement for each machine would be three men. The Company points out that there is no exception in the contract as to when or where the five man crew two strand operation applies. While that is correct, it is equally correct that there is no exception or restriction as to when the three man crew one strand operation applies.

A Supervisor of the Company, Puttaman, testified that the fifth machine is operated on the second and third shifts; that #1 machine is operated on the third shift when there is sufficient work to justify its operation. The Company took the position that the distance between the machines is of no consequence; that
it would not matter if the machines were 200 ft. apart, or in a
different room, or even on a different floor in the same building,
as there would still be two strands, which the Company could oper-
ate with a five-man crew.

The reason of the Company's position apparently
results from the work, or lack of work, of the fifth man of the
crew, namely, the examiner-relief man. In a two strand operation,
this man would relieve each of the other four operators for a
30 minute lunch period. He would also relieve them 20 minutes a
day during a shift for a "coffee break", so that his relief work
would consum three hours and 20 minutes of his day's work. Since
the Company claims he has no other work to do except to relieve,
it would make no difference as to the amount of distance between
one machine and the other.

On the question of exactly what the relief man does,
the witness for the Union testified that, in addition to his relief
duties, the relief man was required to check the negative stock in
the dry room, set it up for the wet-end man; that he would be held
responsible for any mistakes in not advising the wet-end man of the
speed at which the negative was to be developed. He also testified
that the relief man was required to check scratches at the beginning
of the drying box. The Company claimed that the relief man cannot
check scratches.
The Company maintained that there would be no work for the sixth man to do. This is not exactly true, as he would do half of the relief work that the relief man would do on a five-man operation. Whether or not five men are necessary for a two-strand operation, or three men for a one-strand operation, is not germane to the issue here, since the parties by agreement have agreed to such crew complements. What the arbitrator is asked to decide is whether in the Company's plant, under the present location of the color negative developing machines, the operation can be considered two strand so as to permit the Company to operate these machines with five men; or whether, due to the location of the machines, the operation should be considered a single strand operation with a three-man complement for each machine.

The agreement is silent as to how close the "two-strand" operations must be, or how far apart they may be in order to come within the purview of the note on Page 26 thereof. I could find nothing in the agreement to clarify this point. The Company's contention, if correct, would mean that so long as it had two color negative developing machines in the laboratory, irrespective of where they were, located in different rooms - different floors - the "five-man crew" complement would apply. In my opinion, this position is untenable. Agreement with the Company's claim would be equivalent to reading into the Collective Bargaining Agreement
a new provision, namely, for every two one-strand color negative developing machines, a five-man crew would be sufficient. It is not within my authority to undertake to re-write the agreement for the parties.

I wish to make it clear that I am deciding upon the factual situation presented herein, nothing more or nothing less.

It is my conclusion that we have two one-strand operations; consequently, a five-man crew is violative of the Collective Bargaining Agreement.

AWARD

The Union is correct in its claim that the continuous operation by the Company of the two color negative developing machines #1 and #5 in a "split" operation, with a crew consisting of two dry-end operators, two wet-end operators, and one-examiner-relief man, is violative of the provisions of the current Collective Bargaining Agreement.

Dated: November 7, 1966.

JOSEPH E. McMAHON
Permanent Arbitrator

STATE OF NEW YORK )
COUNTY OF NEW YORK )

On the 7th day of November, 1966, before me personally came JOSEPH E. McMAHON, to me known, and known to me to be the individual described in and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same.

Notary Public
In the Matter of the Arbitration

-between-

PATHE LABORATORIES, INC.,

-and-

MOTION PICTURE LABORATORY TECHNICIANS, LOCAL 702, I.A.T.S.E.

This arbitration was commenced pursuant to the provisions of the Collective Bargaining Agreement between

MOTION PICTURE LABORATORY TECHNICIANS, LOCAL 702, I.A.T.S.E.

(hereinafter referred to as "Union"), and PATHE LABORATORIES, INC. (hereinafter referred to as "Company"), by the terms of which the undersigned was designated Permanent Arbitrator to hear and determine disputes arising under said Agreement. Hearings were held on November 1st and November 14, 1966 before the undersigned.

APPEARANCES:

For the Union:
PINTO & STEIN, Esqs.
By: Benjamin Stein, Esq.

For the Company:
ERIC ROSENFIELD, Esq.
This dispute arises from the promotion of four employees to a position of Junior Timer. The Union contends that the promoted men had less seniority than other men. The Company claims that the promotions were based on qualifications and the rule of seniority.

**ISSUE**

The issue is whether or not the Company violated the provisions of the Collective Bargaining Agreement by promoting Messrs. Kucharski, Foti, Patricolo and Cavaliere to position of Junior Timer.

**OPINION**

The Company is a commercial film laboratory. Its business is the processing of motion picture and television film. This involves developing and printing of professional film, inspecting, cleaning, and the shipment thereof. All of the departments listed on Schedule A are, for the most part, directly engaged in the handling of film itself, with the exception of the Electrical, Mechanical and Maintenance Departments.

Certain facts are undisputed, to wit:

(a) The Company posted a notice that it had four openings in the Junior Timer Classification;

(b) Eight employees bid for these positions, namely, Messrs. McCall, Milker, DiCrescenza, Francavilla, Kucharski, Foti, Patricolo & Cavaliere;

-2-
(c) The Company promoted Kucharski, Feti, Patricolo and Cavaliere.

(d) McCall, Miller, DiCrescenzo and Francavilla each individually had more plant seniority than any of the promoted men.

Article 14(a) of the Collective Bargaining Agreement provides as follows:

"(a) Promotions to higher classifications shall be based on qualifications and the rule of seniority."

The Company takes the position that the men who were not promoted, while having greater seniority, did not have the qualifications it deemed necessary to become a Timer. The Union maintains that, since the men had seniority, they should have been afforded an opportunity to qualify.

The Collective Bargaining Agreement provides that a Junior Timer will advance to a Timer, which is the highest paid classification (except Chief Timer) of the 125 job classifications listed on Schedule A attached to the Collective Bargaining Agreement. The position of Junior Timer requires an extended training period, as evidenced by the Note appearing after the classifications in the Timing Department, which reads as follows:

"NOTE: Junior Timer works on two-year training period with automatic increases at six month intervals, based on 1/4th the differential between Junior Timer and Timer."
Where an employee is promoted to a higher classification requiring a training period, the provisions of Article 14(c) would govern. That sub-division reads as follows:

"(c) If a promotion to a higher classification requires a training period, then for the first four (4) weeks of work in said higher classification, the employee shall retain the rate of pay formerly received by him in the lower classification. After said training period, said employee shall receive the base rate provided in this Agreement for the higher classification to which he has been promoted."

Thus, the ordinary training period is four weeks, except that the training period for the Junior Timer is as noted above.

With respect to the men who were not promoted, the testimony disclosed that McCall has been employed as a Maintenance Mechanic or Machinist for the past 30 years; Miller as a Machinist, Machine Operator or Maintenance Mechanic for the past 29 years; DeCrescenzo as a Maintenance Mechanic for the past 21 years; and Francavilla in the Machine Shop and Maintenance Department for the past 30 years.

With respect to the four men who were promoted, the testimony disclosed that Kucharski has been employed in the Printing Department for the past 20 years; Petti in the Film Department for the past 23 years, 11 years as a Printer and the last 12 years as a Developer; Patricolo in the Developing Department for the past 10
years; and Cavaliere, for the past 10 years has been a Developer, and for three years prior thereto, was a Negative Worker.

The employment records alone of the four men who were promoted show that they had many years of experience in the Film Department, in employment that included handling of film; whereas, the men who were not promoted had, for practical purposes, no such experience.

The Company produced witnesses who testified as to the technical nature of the work of a Junior Timer, of certain abilities and qualifications an individual would require in order to develop into a competent Timer. There is no doubt that the Timer's job is one that requires the greatest technical training, and a certain innate ability which is practically impossible to define, and can only be determined after a training period. A Timer must have a sensitivity to color and light since his work involves the determination of light and color density in matching scenes. He must also have manual dexterity and the ability to handle negative film properly.

None of the witnesses for the Company could recall any instance where a man from the Maintenance Department had been promoted and trained to be a Timer. In this connection, the testimony of Mr. Arthur J. Miller, an admitted expert, was quite persuasive. This witness had 44 years of experience in the film processing business, and had been Technical Supervisor and Production Supervisor
in the largest laboratories in the East. Mr. Miller testified that the basic qualification for the promotion of a person to Junior Timer would be experience in handling film, whether as a Printer, Developer, Hand Inspector, etc. He pointed out that a Timer's work involved the handling of a customer's original negative before any protective prints had been made. Therefore, it was essential that such negative be not damaged or scratched. He stated that he could not consider, and had never, promoted a man with no experience in handling film.

The testimony indicated that it was practically impossible to determine in advance of training whether or not a person could become a Timer. The witness, Miller, pointed out that, in the case of a Maintenance Man or Machinist, there would be two operations involved. First, he would have to be taught to handle film properly. Then, and only then, could his training as a Junior Timer begin. Mr. Belella, testifying for the Company, stated that it would take about six months to determine whether the man had the capabilities of becoming a Timer. Mr. Miller was of the opinion that it might take less time. Both agreed that it would depend upon the individual. There was testimony that, on occasion, Maintenance men have been promoted into the Developing Department.

There was testimony by the Union that, on occasions, Maintenance Men ran test film on developing machines, for the purpose
of ascertaining whether or not the machine would scratch the film. However, the film used was scrap film.

At first blush, it would appear that the Company's position would forever prohibit or prevent employees from the Mechanical, Maintenance and Electrical Departments from promotion. The testimony produced at the hearing was to the contrary. In this connection, it is pertinent to note that Miller, one of the men who was not promoted, was promoted into the Developing Department in 1965, but after three weeks voluntarily withdrew and went back to the Maintenance Department.

Furthermore, the Union testified to instances where a Porter was promoted to a Negative Developer; a Shipper to the Negative Room, Porters to Printers, Truck Driver to Negative Worker. Such testimony negates any claim that the non-promoted men were condemned to a "dead end". Such promotions are consistent with the Company's testimony that Maintenance Department employees would obtain experience in handling film, the qualification the Company contends is a prerequisite to a promotion to Junior Timer.

The testimony indicated that the Union relied primarily upon the rule of seniority and disregarded the provision of the contract relating to qualifications. The Company offered what appeared, in my opinion, to be sound reasons for insisting that anyone who is to become a Junior Timer must have experience in handling film. This
prerequisite seems mandatory from the testimony given by the Company's three expert witnesses. It is the Company which will invest time, money and effort to train an employee to become a Timer. In making a promotion to Junior Timer, in my opinion the Company is justified in requiring that a person so promoted have film handling experience. This does not mean that the Company would be justified in completely disregarding seniority. In view of the long tenure of service of the employees who were promoted, it is apparent that the Company has also taken seniority into consideration in making these promotions.

For some unknown reason, counsel for the Company at the hearings, and in his brief, continues to insist on labeling the non-promoted men as Plumbers, even though Arbitrator Feinberg, in his award of July 1965, in a dispute between the same parties, held that no separate classification of Plumbers existed under the Agreement between the parties, and that the employees referred to are part of the classification of Maintenance Mechanics and General Mechanics in the Mechanical Department. No such classification is contained in the current Agreement between the parties.

AWARD

The Company did not violate the provisions of the Collective Bargaining Agreement by promoting Messrs. JUCHARSKI, FOTI, PATRICOLO and CAVALIERE to the Position of Junior Timer.


JOSEPH E. MCMANON
Permanent Arbitrator
STATE OF NEW YORK

COUNTY OF NEW YORK

On the 7th day of December, 1966, before me personally came JOSEPH K. McMAHON, to me known, and known to me to be the individual described in and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same.

Notary Public

[Signature]
In the Matter of the Arbitration

between

DE LUXE LABORATORIES, INC.

and

MOTION PICTURE LABORATORY TECHNICIANS LOCAL 702, I.A.T.S.E.

This arbitration was instituted by Motion Picture Laboratory Technicians Local 702, I.A.T.S.E. (herein referred to as "Union") under Article 15 of the Collective Bargaining Agreement (herein referred to as "Union Contract") and Deluxe Laboratories, Inc. (herein referred to as "Company") as a result of dispute between the parties of the proper manpower of the Duplex color positive developing machines. The undersigned is the permanent arbitrator named in the Union Contract.

APPEARANCES:

For the Union:

PINTO & STEIN, Esqs.
By: Nicholas Pinto, Esq.

For the Company:

POUER & TULIN, Esqs.
By: Eric Rosenfeld, Esq.

Hearings were held at the company's laboratory on July 11 and 13, 1967. The parties were afforded full oppor-
opportunity to offer testimony, examination and cross-examination of the witnesses. Post hearing briefs were filed by the parties.

ISSUE

The submitted issues as agreed upon by the parties were as follows:

As a result of the increasing of the speed of two Duplex color positive developing machines (four strand), from 150 to 175 feet per minute, should the crew complement for such machines be increased? If so, what should the complement be?

BACKGROUND

The company operates two duplex color positive developing machines, hereinafter referred to as "the machines", with a crew complement of eight. This crew complement was fixed in an 1955 arbitration award of Lloyd H. Bailer. From 1955 until about a year ago, these machines operated at a speed of approximately 140 to 150 feet per minute. In the arbitration proceedings before Bailer, the proper crew complement was the issue and the question of speed was not in that case. On the contrary, at that time these machines operated at a slower speed than black and white machines. Certain statements made by Bailer in his decision concerning working conditions have not changed according to the testimony given
herein; for example, there was less light in the color machine area and there were more film tanks for the developer to watch. It was Bailer's opinion that the operators of the machines had a somewhat less pleasant and perhaps more onerous duty to perform than the other operators of the black and white machines. However, Bailer indicated that the employees assigned to these machines received higher wages and that the differential was in large measure to reflect less desirable working conditions.

In 1966 the speed of these machines was increased to 175 feet per minute.

POSITION OF THE PARTIES

The Union contends that the work and job duties at the increased machine speed calls for additional personnel and that the increased speed of approximately 20% is sufficient to warrant the use of extra men. In addition to the speed-up, there is an increase in the temperature of the developing solution, extra requirements of the IBM cards, extra supplies entailed in the use of "black bags", dimmer lights, and extreme difficulty in making double splices.

Five reasons were advanced by the Company in opposition to an increase in the crew complement:

1. The lack of jurisdiction or authority of the arbitrator;

2. That the arbitrator is bound by the Bailer award;
3. Violation of the contract provision;

4. The present man complement is excessive and not needed; and

5. Increase expense to Company.

DISCUSSION

In support of its position, witnesses for the Union, one of whom was an experienced developer working on the machines, testified that the speed-up of the machines made it more difficult to make double splices and that the temperature of the developing solution was increased due to the speed-up. He enumerated extra steps entailed in the use of "black bags" which contained reels of film delivered to the developers; certain extra requirements due to the use of IBM cards, and mention was made of the dimmer light. The Union argues that all of these factors when considered collectively are sufficient to justify the assigning of additional personnel to the operation of these machines. Although there was considerable testimony as to the difficulty of making a double splice while the machines were operating, nevertheless, the witness stated that he could and had made double patches.

There was no testimony as to the number of times the operators make a patch (or double patch) in a day. Apparently, there were no records kept on this point. The Union stated that another laboratory, Movielab, operated color positive developing machine (4 strands) with a crew complement of nine men and a floater, and Pathé Laboratory operated a similar
machine with a ten man crew. However, neither the Movielab nor Pathe machines is a duplex machine. It is my opinion that the crew complement of the said Movielab or Pathe machines is not pertinent to the issue here.

Four of five reasons advanced by the Company have, in my opinion, little if any substance. The argument that I have no authority is without merit. Section 17(c) covers this situation when there has been an acceleration of the machine speed. The time to challenge jurisdiction is before arbitration, not after the issue has been submitted. There is no merit in the argument that I am bound by the Bailer award made in 1953.

The only sound basis advanced which merits serious consideration is the contract provisions relating to the machines. In Schedule A (under the Positive Developing Department dealing with speeds of Color-Positive Developing Machines), the applicable provision reads as follows: "Speeds to 180 feet per minute shall be deemed normal."

Consequently, the increase of machine speed from 150 to 175 is deemed normal under the contract by whose terms I am bound. Since the speed of the machine (by contract) is deemed normal, it follows that the work and duties of the operators of the machines must likewise be deemed normal.
Therefore, under the circumstances, there appears to be no sound reason for increasing the crew complement of the machines. In reaching this conclusion, I am not unmindful of the fact that the machines have been operated at the increased speed with the present complement for approximately a year.

AWARD

There should be no increase in the crew complement for the two Duplex color positive developing machines (four strand) as a result of the increasing of the speed of such machines from 150 to 175 feet per minute.

Dated: August 23, 1967

JOSEPH E. McMAHON
Permanent Arbitrator

STATE OF NEW YORK )
COUNTY OF NEW YORK

On the 23 day of August, 1967, before me came JOSEPH E. McMAHON, to me known, and known to me to be the individual described in and who executed the foregoing instrument and duly acknowledged to me that he executed the same.
In the Matter of the Arbitration

-between-

MOVIELAB, INC.

-and-

MOTION PICTURE LABORATORY TECHNICIANS,
LOCAL 702, I.A.T.S.E.

This arbitration was commenced by MOVIELAB, INC. (hereinafter referred to as "Company") under Article 15 of the Collective Bargaining Agreement (herein referred to as "Union Contract") between the Company and MOTION PICTURE LABORATORY TECHNICIANS, LOCAL 702, I.A.T.S.E. (hereinafter referred to as "Union"), dated May 23, 1966, wherein the undersigned was designated Permanent Arbitrator, to hear and determine disputes arising under said Union Contract.

Hearings were held at the laboratory of the Company on November 15 & November 17, 1966.

APPEARANCES:

For the Company:

POLIER & TULIN, Esqs.
By: ERIC ROSENFELD, Esq.

For the Union:

PINTO & STEIN, Esqs.
By: BENJAMIN D. STEIN, Esq.
At the close of the oral hearings, the Arbitrator granted the parties additional time to file post-hearing memoranda, which have been received by the Arbitrator.

In this proceeding we have three separate disputes as to the proper crew complement and the rate of pay for the operators of three different types of film printing machines presently operated by the Company. The machines are identified and referred to herein as follows: "Machine B", a 35 mm. DR contact printer; "Machine C", Debrie 35 mm. split optic reduction printer; "Machine E", snake-over 16 mm. contact tracker. DR, as used herein, mean "double rank". Each machine prints two images side by side on 35 mm. DR positive film raw stock; thereafter the film is split into two strands.

ISSUES

The parties have submitted to me for determination the following:

(a) Is Machine "B" covered by Section 17(c) of the Union Contract; if the determination is "no", does Group 5(c) apply in color and Group 3(g) apply in black and white (B&W) respectively; if the answer is "yes", what shall be the rate and manpower for said machine (1) color, (2) B&W?

(b) Is Machine "C" covered by Section 17(c) of the Union Contract; if the determination is "no", does
Group 5(c) classification apply for color and
Group 2(c) and Group 3(g) for B&W; if the determination
is "yes", what shall be the rate and the manpower for
said machine (1) color, (2) B&W?

(c) With respect to Machine "E", does Group 5(c) apply
for color and Group 2(d) or Group 3(g) for B&W?

The hourly rates and crew complement referred to above, as
set forth in the Union Contract, are as follows:

"Group 5(c) Color Printer - one or two machines -
one operator - $3.53

Group 3(g) Any 2 machines in Group 2(a), (b), (c), (d),
(e) - one operator - $3.17

Group 2(c) 16 mm reduction, picture or sound - & $e)
16 mm contact, picture and/or sound - $3.06"

The parties at the hearing agreed that Machines "C" & "E"
are new machines within the meaning of Section 17(c) of the Union
Contract, but disagreed as to Machine "B".

Section 17(c) of the Union Contract reads, in part, as
follows:

"(c) Employer shall be permitted to install and
operate new, unusual and reconstructed equipment, and
accelerate the speed of existing equipment after nego-
tiating wages and conditions with respect thereto with the
Union. In the event that Employer and the Union shall fail
to agree within 72 hours after Employer shall request such
negotiations as aforesaid, then the matter shall be deemed
in dispute and referred to arbitration, as provided in Section 15. Pending the decision of the arbitrator, Employer shall have the right to operate such new unusual, reconstructed or accelerated equipment and the decision of the arbitrator shall be retroactive to the date of such operation. . . . . . . . Pending the decision of the arbitrator, Employer shall have the right to operate said new machinery or equipment and the decision of the arbitrator shall be retroactive to the date of such operation."

**OPINION**

The Union claims that each of the three machines involved herein is a "new" machine within the intent and meaning of Section 17(c). Said section, in substance, provides and permits the installation of new, unusual, reconstructed equipment by the Company, and the operation thereof, even though there is a disagreement as to the rate of pay and the crew complement for such equipment. The parties are in agreement that Machines "C" & "E" are "new" machines; however, the Company maintains that Machine "B" is not a "new" machine.

The Union has requested the assignment of one man for each machine, and a higher rate of pay for the operators thereof. In support of its request, the Union maintains that these machines are more difficult to operate, require greater skill, impose greater responsibility upon the operator, and that the end product, due to the printing of two images on one strand of film, results in double production.

The Company, on the other hand, claims that these machines are not more difficult to operate, do not require greater skill, impose
no greater responsibility on the operator. As to double production, it is an end product of the machine's operation; it is not due to additional work, skill or responsibility of the operator.

In addition, the Company, in its memorandum, takes a somewhat ambiguous position by expressing doubt as to whether Section 17(c) was intended to apply in situations such as presented here. The Company states, after reflection, that "it seems highly unlikely that the parties ever meant to empower an arbitrator to resolve a matter of such industry-wide importance on the basis of the testimony of one member of one employer's management and two Union employees, which is about all the arbitrator has to go on in this case". This position is inconsistent with the issues submitted to me for determination. The Company's representatives participated in the actual phrasing of the issues, which were read to, and approved by the parties. If the Company had any question or doubt as to whether, or not, the issues presented here were arbitrable under the Union Contract, a determination of such doubt could, and should, have been submitted to a court of law. Not having done so, the Company, in my opinion, is estopped from raising that issue now.

The Union representatives testified that the threading up of these machines was more difficult because the sprocket holes on the film raw stock were smaller than those on the conventional raw stock film. In addition, the 35 mm. DR stock, which the operator of the "B" Machine receives before threading, bears an "a" or "b" wind designation,
indicating forward or reverse, and which the operator must carefully segregate before he threads the machine. There also was testimony that it takes longer time to thread up these machines than a conventional machine utilizing standard 35 mm raw stock.

Mr. Gaski, a witness for the Company, testified that the threading up of these machines was no harder or easier than the threading up of any other printing machine. While it may take longer to thread up these machines, that is of little consequence, as the operators are paid on an hourly basis. Moreover, the longer the time utilized in threading, the less time the machine is operating. He testified further that no greater skill is required to operate these machines properly than to operate any other printing machine. He indicated that the basic work of the operator of these machines consists principally in threading up. Once that operation is completed, these machines run automatically and, if a break occurs in the film, the machines stop automatically.

The Company claims that Machine "B" is not a "new" machine. However, there was no evidence or testimony given that there are similar machines in operation in the industry. The testimony generally was concerned with the end product of machines which result in substantially the same or greater productivity, rather than with the physical characteristics of the machine itself. A representative of Pathe Laboratories testified that they operate a 4-1 Head 35 mm Printer and they pay the operator the Group 4 rate. This machine has no application here, as a
specific agreed rate appears in the Union Contract for that machine. Based upon the evidence and testimony presented, I conclude that Machine "B" is a "new" machine within the meaning of Section 17(c).

The basic thrust of the Union’s claim is predicated upon the so-called "double production". This is the principal reason why the Union is requesting additional or premium pay for the operation of these machines and the assignment of one man to a machine. I will now direct my attention to this point. The processing of film with double images is not new. The Consolidated Film Industries case, 15 LA 252 (1950), referred to by both of the parties, is noteworthy even though the issue in that case involved the inspection of film, whereas, here we are concerned with printing. That case, which was decided in 1950, was concerned with two images printed on 32 mm. film that was subsequently split into two 16 mm. strands. Here we are concerned with two images on 35 mm. film which is subsequently split into two 16 mm. strands. Obviously, members of the Union have been printing and developing film with double images thereon for many years. If the Union’s position is correct, it would logically follow that other employees who in any way engage in the processing of film bearing double images would, likewise, be entitled to additional compensation or premium pay. I do not agree with this position. Where two printing machines each print 1,000 ft. of film, the amount of footage processed is identical; that 1,000 ft. is from a conventional 35 mm. machine and 1,000 ft. is from the "B" Machine
does not alter this basic fact.

I do not feel it is incumbent upon me to award additional or premium pay solely because of what is on the film. If additional compensation is to be paid based upon the end product of the machine, then it should be obtained through negotiation or over the bargaining table. The only justification for awarding additional compensation to operators of these machines would be clear unequivocal evidence that the operation of these machines requires more work, greater skill, and imposes greater responsibility. I was not persuaded by the testimony or evidence presented that the work, skill or responsibility required of the operators of these machines was greater than the work, skill or responsibility required of the operators of any other printing machine.

The primary and basic work of the operator of any printing machine is to see that the machine is properly threaded, and a competent operator is required to be able to thread up a machine even if more than one negative is involved, and to make the necessary mechanical adjustments in the machine so that it will function properly after it commences operation; that it takes longer to thread up is not sufficient justification for the payment of premium rate. Therefore, I conclude that the operators of these machines are not entitled to additional compensation solely by virtue of the fact that these machines give the Company what the Union characterizes as double production.
The Company maintains that the arbitrator should allocate to these machines the rates of pay therefor as set forth in the contract, irrespective of whether or not any of the three machines are found to be "new, unusual and reconstructed equipment". The Company further argues that the merits of the case require no decision whatsoever on the applicability of Section 17(c), for the plain terms of the contract compel the same answer whether Section 17(c) is applicable, or not. With this conclusion, I cannot agree. If Section 17(c) applies, as I have decided it does, then it follows that I have the power and obligation to decide the issues presented. It does not follow that I am bound by the rates set forth in the contract.

The rate of pay for the operator of a "B", "C" & "E" machine is fixed in the award.

There remains one final issue to be determined, namely, the manpower or crew complement. The Union has requested that one man be assigned to each machine. Under Section 17(c), the Company had the right to operate these machines without restriction pending determination of the arbitrator, whose decision would be retroactive to the date of the operation of the machines. The undisputed testimony was that the Company has been operating the "B" machine since January 1965, and the "C" & "E" machines since July 1965, with one operator, which would seem to imply that this is the proper man complement. At no time during these hearings was there
any testimony that such operations were without prejudice to the Company's right to have an employee operate two of these machines. It must be assumed that the Company knew it had the right under Section 17(c) to operate these machines under such terms and conditions as it deemed proper, subject to arbitration. However, since dual operations are permitted in many of the printing classifications, I am not prepared to deny the Company the opportunity to avail itself of dual operation. I have, therefore, fixed in my award the rates of pay to apply to the operation of two machines by one operator.

AWARD

The award, therefore, is as follows:

(a) Machine "B" - 35 mm DR contact printer - is covered by Section 17(c) of the Union Contract. The rate of pay and the manpower for this machine is fixed as follows:

**Color Printer:**

One machine - one operator - $3.53  
Two machines - one operator - $3.73

**Black & White Printer:**

One machine - one operator - $3.06  
Two machines - one operator - $3.27

(b) Machine "C" - Debrie 35 mm split optic reduction printer - is covered by Section 17(c) of the Union Contract. The rate of pay and the manpower for this machine is fixed as follows:
Color Printer:
One machine - one operator - $3.53
Two machines - one operator - $3.73

Black & White Printer:
One machine - one operator - $3.06
Two machines - one operator - $3.27

(c) Machine "E" - Snake-over 16 mm contact tracker -
is covered by Section 17(c) of the Union Contract. The rate of pay
and the manpower for this machine is fixed as follows:

Color Printer:
One machine - one operator - $3.53
Two machines - one operator - $3.73

Black & White Printer:
One machine - one operator - $3.06
Two machines - one operator - $3.27

Dated: January 9, 1967.

STATE OF NEW YORK )
COUNTY OF NEW YORK ) ss.:

On this 9th day of January, 1967, before me personally
came JOSEPH E. Mcmahon, to me known, and known to me to be the individ-
dual described in and who executed the foregoing instrument, and he
duly acknowledged to me that he executed the same.

Notary Public
PHILIP WEINSTEIN
Notary Public, State of New York
No. 41-41-377-41
Qualified in Queens County
Commission Expires March 30, 1967
BEFORE JOSEPH E. McMAHON, Esq.,
ARBITRATOR

In the Matter of an Arbitration
between

MOVIELAB, INC.
and

MOTION PICTURE LABORATORY TECHNICIANS,
LOCAL 702, I.A.T.S.E.

Arbitration Case
No.702-66-A6

DECISION ON
APPLICATION TO
MODIFY AWARD

MOTION PICTURE LABORATORY TECHNICIANS, LOCAL 702,
I.A.T.S.E. (herein referred to as "Union"), by notice dated
January 18, 1967, applied to the undersigned Arbitrator, pur-
suant to CPLR 7509, subdivision (c) thereof, for a modification
of an award made by me on January 9, 1967, upon the following
grounds:

1. That by determining that one man may
operate two machines in each category of
machines B, C and E, and fixing a rate for
such operation, you awarded upon a matter
not submitted to you for your resolution.
The rate and manpower awarded by you for the
simultaneous operation of two of such machines
in each of said categories was outside the
scope of and not within the purview of the
submission herein, which by its express terms
authorized you to fix the rate and manpower
per machine only.

2. That in awarding the rate of pay for
the operation of each of said machines B,
C and E, the Arbitrator miscalculated the
figures therein contained and mistakenly
described the same in his Award as applica-
tive to such operation.
The gravamen of the Union's Claim #1 is that, in establishing a rate of pay for the operation of two machines by a single operator, I exceeded the scope of the issues submitted, and decided a matter that was without the scope of the issues. It should be noted that the Company's and the Union's representatives both participated in the actual phrasing of the issues submitted, which was read to, and approved by the parties. In my opinion, it was clearly within the issues for me to fix the rate and the manpower for the B, C & E machines, if I decided, which I did, that Section 17(C) of the contract was applicable. Therefore, the request contained in Claim #1 to modify my Award is denied.

The thrust of Claim #2 is that the rates of pay set forth in the original Award for the operation of Machines B, C & E were miscalculated, and resulted in a different rate of pay for the operators of the same machine. It was not my intention to fix a different rate of pay for the operators of the same machine. Under the circumstances, I feel it encumbent upon me to indicate and clarify exactly what my Award was intended to accomplish, and how the rates therein awarded were calculated.

As stated in the Opinion accompanying the Award, I concluded that the operators of the B, C & E machines were not entitled to any additional compensation. By the same token, there
was no intention on my part to reduce the rate of pay for the operators of these machines. The rates of pay were calculated and based upon which I understood was the current rate of pay then being paid to the operators of these machines. At no time was any request ever made by either party for a reduction in the rates then being paid, and to the extent that my Award accomplished such purpose, it would appear that it went beyond the scope of the issues.

To summarize, it was my intention and purpose to fix as the rate of pay for the operators of the B, C & E machines the current rate then being paid, plus an additional 20¢ per hour if an employee operated two machines. Since it appears that the rates specified in the Award were calculated upon an erroneous base, the request contained in Claim #2 to modify my Award is granted, and the Award made herein on January 9, 1967 is hereby modified as follows:

"The rate of pay for the operators of Machines B, C & E shall be the rates paid to the operators of said machines on November 15, 1966 (the date of the first hearing); provided, however, that if an operator is required to simultaneously operate two of said machines, such operator shall receive an additional 20¢ per hour."


/JOSEPH E. McMAHON
Permanent Arbitrator
In the Matter of the Arbitration

-betweend-

MOTION PICTURE LABORATORY TECHNICIANS, LOCAL 702, I.A.T.S.E.

-and-

MOVIELAB, INC.

This arbitration was held pursuant to Article 15 of the Collective Bargaining Agreement herein referred to as Union Agreement, between MOTION PICTURE LABORATORY TECHNICIANS, LOCAL 702, I.A.T.S.E. (hereinafter referred to as "Union"), and MOVIELAB, INC., (hereinafter referred to as "Company"), dated May 23, 1966, wherein the undersigned was designated permanent arbitrator to hear and determine disputes arising under the Union Agreement.

A hearing was held at the laboratory of the Company on January 20, 1967.

APPEARANCES:

For the Union:

PINTO & STEIN, Esqs.,
By: Nicholas Pinto, Esq.

For the Company:

POLIER & TULIN, Esqs.,
By: Eric Rosenfeld, Esq.
At the close of the hearing the Arbitrator granted the parties additional time to file post-hearing memoranda which have been received by the Arbitrator. This proceeding is concerned with the proper rate of pay for the operator of a color-printing machine, described and referred to as a Panel printer. The machine prints two 16 MM images side by side and two sound tracks on 35 MM, double-rank raw stock film. Thereafter the film is split into two strands.

ISSUE

The parties have submitted for determination the following:

What shall the rate of pay be for the operation of one Panel printer in color?

The Company contends that the proper rate should be $3.53 per hour and the Union contends that the rate should be 15% over $3.63, the rate of pay presently being received by the operators of this machine. The parties agreed that the Panel printer is a new machine within the meaning of 17(c) of the Collective Bargaining Agreement, which reads as follows:

17(c) "Employer shall be permitted to install and operate new, unusual and reconstructed equipment, and accelerate the speed of existing equipment after negotiating wages and conditions with respect thereto with the Union. In the event that Employer and the Union shall fail to agree within 72 hours after Employer shall..."
request such negotiations as aforesaid, then the matter shall be deemed in dispute and referred to arbitration, as provided in Section 15. Pending the decision of the arbitrator, Employer shall have the right to operate such new, unusual, reconstructed or accelerated equipment and the decision of the arbitrator shall be retroactive to the date of such operation. However, if such new, unusual, reconstructed or accelerated machinery or equipment is the same as presently or may hereafter be operated in any other laboratory with which the Union has a collective bargaining agreement then the Employer shall have the right, upon notification to the Union and upon the mutual agreement that said machinery or equipment is the same, 'to operate such equipment in the same manner as the other laboratory upon payment of the base rate of wages applicable to the machine or equipment operated in such other laboratory.' In the event that the Employer and the Union shall fail to agree within 72 hours that said new machinery or equipment is the same, then the matter shall be deemed in dispute and referred to arbitration, as provided in Section 15. Pending the decision of the arbitrator, Employer shall have the right to operate said new machinery or equipment, and the decision of the arbitrator shall be retroactive to the date of such operation."

The Company, in support of its contention that $3.53 is the proper rate, maintains (1) that the operation of the Panel printer does not require greater work, skill, or responsibility than a conventional, non-multiple rank, pedestal printer; and, (2) the Panel printer is the "same" as the Pathe Mat printer, within the meaning of Section 17(c) which authorizes an employer "to operate such equipment in same manner as the other laboratories upon payment of the
base rate of wages applicable to the machine or equipment operated in such other laboratory." The Pathe rate is $3.53.

Mr. Kowalak, a Company Vice President and Head of its Color Technology, testified that the Panel printer had been deliberately designed in such a manner so as to make its operation easier. He described the mechanical factors which, in his opinion, resulted in far less work for the operator. He testified that it takes the operator between 30 to 40 minutes to thread up a machine before it could be operated.

Mr. Hinkle, Plant Manager of Pathe Film Laboratories, testifying on behalf of the Company, stated in his opinion the Panel printer was practically the same as a Pathe machine described as Pathe Mat printer. He pointed out the differences between the Pathe machine and the Panel printer. It was clear from this testimony that the end result product-wise of these machines was the same. Mr. Hinkle stated the overall length of the Pathe machine was six to seven feet without loop cabinets, as compared to the approximately eleven feet, six inches for the Panel printer. He said he thought the Panel printer was easier to operate; that it would take three to four minutes to thread up the Panel printer; that it took from four to five minutes to thread up the Pathe machine.
In his testimony, Mr. Hinkle distinguished and compared the Panel printer and the Pathe Mat printer on the basis of the number of heads and sprockets, the length of the machine, spacing of parts for the purpose of threading, working conditions, etc.

The Union claimed that the operator of the Panel printer does more work, must have greater skill and assume greater responsibility than the operator of the conventional non-rank pedestal printer. Mr. Courtney, an experienced printer, was the principal witness for the Union. He stated he was presently engaged in operating the Panel printer. He testified at considerable length as to the manner and method of doing the preparatory work, including the threading up of the machine, prior to placing it in operation. He described the manner in which the film was threaded over the rollers on sprockets. He compared additional equipment, rheostats, light tapes, cleaners, heads, sprockets, etc., with the Model C Bell & Howell 16 MM Contact Printer, non double-rank Printing Machine. In conclusion, he stated that the operation of the Panel printer required substantially greater amount of movement on his part than a conventional printer. Mr. Courtney testified that he and the other men who were operating the Panel printer were being paid $3.63 per hour.
We have here the conventional type of a dispute where the positions of the parties are diametrically opposite. First, as to the amount of work, skill and responsibility involved and; secondly, as to whether or not the Panel printer is the same as the Pathe machine within the meaning of Section 17(c) of the Union Agreement. I will first consider the second point. While I had the opportunity to examine the Company's Panel printer, I did not have the opportunity to examine the Pathe machine and, therefore, accept the testimony of Mr. Hinkle in this regard. The difference in size alone is substantial and, with the different number of strands of film being used in these machines, the difference in number of sprockets and other auxiliary equipment, taken collectively, indicate the machines themselves are sufficiently different as not to be the "same." It was apparent from Mr. Hinkle's testimony that the machine cannot be the same from physical factors. It is my conclusion that the Panel printer and Pathe machine do not fall within the definition of the word "same" as used in Section 17(c). Turning next to the principal issue, concerning the amount of work and skill required of the operator of this Panel printer and his responsibility, we have the testimony of the man who has been operating this machine for a number of months. It is plain from an observation
of this machine that the operator would of necessity be required to traverse a greater distance in threading up the machine and also in supervising the function of the machine while it is in operation. In this connection, it is extremely significant that both Mr. Courtney and Mr. Kowalak who designed the machine, were in agreement that it would take the operator from 30 to 40 or 45 minutes to thread this machine so as to have it ready for operation. It should be noted that the evaluation of the operation of each machine must be judged on its own particular facts. Here we are dealing with a machine which requires from 30 to 45 minutes of the operator's time to thread it up and ready for operation. It is, therefore, not comparable to machines that take from five to fifteen minutes for the same work. Mr. Hinkle's evaluation must be considered in the light of his statement that the Panel printer could be threaded up in three to four minutes and that the Pathe machine could be threaded up in four to five minutes. I assume that Mr. Hinkle's statement is correct insofar as the Pathe machine is concerned, but I cannot accept his evaluation insofar as the Panel printer is concerned in view of the greater difference between his opinion and the testimony of both Messrs. Courtney and Kowalak, the Company's expert witness. If, as Mr. Hinkle
claimed, the Pathe printer can be threaded up in four to five minutes, it follows that the amount of work required of the operator of that machine is considerably less than that required of the operator of the Panel printer. Furthermore, the difference in size of the machine likewise reduces the area that the operator would have to supervise while the machine is in operation. I, therefore, conclude that the operator of the Panel printer is required to do more work and, by the very nature of the work, needs more skill, all of which tends to impose a greater responsibility. Having reached this conclusion, the next question is the proper rate of pay for the operator.

The Company argues that the fact that it has been paying $3.63 to the operators of the Panel printer should be disregarded, on the theory that these men had been receiving $3.63, the contract reprint rate and the Company did not reduce their pay when they were assigned to the Panel printer. The Company requests a $3.53 rate for any new operator assigned to said machine. Since the Company contended its machine was the same as the Pathe Mat printer, it would have been consistent to have paid the operators $3.53. It wasn't necessary to assign $3.63 men to this machine. On the other hand, it may be that they considered the men they assigned
more capable of operating the Panel printer. Acceptances of the Company request would mean that different men operating the same machine would receive a different rate. Such an arrangement would be contrary to sound labor policy. There was no evidence or testimony that the paying of $3.63 was anything other than a voluntary act on the part of the Company. As the Company gratuitously paid this rate, I could not in good conscience set a lower rate. However, for the reasons I have indicated above, I am of the opinion that the operators of the Panel printer are entitled to an increase over the rate presently being paid.

**AWARD**

This award, therefore, is as follows:

The rate of pay for the operation of the Panel printer in color shall be $3.83 per hour.


JOSEPH E. McMAHON
Permanent Arbitrator

STATE OF NEW YORK )ss.:
COUNTY OF NEW YORK

On this 13th day of March, 1967, before me personally came JOSEPH E. McMAHON, to me known, and known to me to be the individual described in and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same.

PHILIP WEINSTEN
Notary Public, State of New York
No. 4199701
Qualified in Queens County
Commission Expires March 30, 1967
In the Matter of the Arbitration

-between-

DE LUKE LABORATORIES, INC.,

-and-

MOTION PICTURE LABORATORY TECHNICIANS,
LOCAL 702, I.A.T.S.E.

ARBITRATOR'S
OPINION & AWARD

This arbitration is brought by De Luxe Laboratories, Inc. (hereinafter referred to as "Company") under Article 15 of the Collective Bargaining Agreement between the Company and Motion Picture Laboratory Technicians, Local 702, I.A.T.S.E. (hereinafter referred to as "Union"), dated May 23, 1966, wherein the undersigned was designated permanent arbitrator to hear and determine disputes arising under said agreement.

A hearing was held on March 9, 1967.

APPEARANCES:

For the Company:

POLIER & TULIN, Esqs.,
By: Eric Rosenfeld, Esq.

For the Union:

PINTO & STEIN, Esqs.,
By: Nicholas Pinto, Esq.
At the close of the hearing, the arbitrator granted the parties additional time to file post-hearing memoranda which had been received.

This case arose from the refusal by certain developing employees on January 17, 1967 to accept temporary transfers to the black and white developing department engaged in processing Universal newsreel work.

**ISSUE**

The issue as stated in the letter of the Company requesting arbitration was stated as follows:

Does the Company have the right under Section 13 of the Collective Bargaining Agreement: (a) to transfer an entire crew to another section or department where there is work available in the crew's "home" section or department; (b) to transfer negative developers to positive developing.

In addition, the Company made the following request:

"There is a related dispute concerning the Company's right to make transfers under Section 13, where the Union disagrees as to the applicability of Section 13, pending arbitration. The Company hereby submits that related dispute to you and requests not only that you determine the question of whether such transfers in the interim pending arbitration violate Section 13, but also that you issue a permanent injunction against Local 702, its members, attorneys, officers, shop stewards and agents, etc., prohibiting and restraining them from in any way refusing such transfers or causing them to be refused, and affirmatively requiring Local 702, its members, etc., to accept said transfers and cause them to be accepted."
FACTUAL BACKGROUND

The dispute herein stems from the refusal of certain developing employees to accept the transfer to another department in their section. In order to understand the reasons for such refusal, it is necessary to consider the testimony given at the hearing.

There was undisputed testimony that sometime in the fall of 1966 the Company was successful in securing the Universal newsreel work. As this type of work would require irregular starting hours and certain amount of overtime, the Company requested, and obtained from the Union representative, an agreement covering the working hours and conditions of those who would be required to do this work. The work we are specifically concerned with here is the black and white positive developing of the newsreel. The normal working hours for the day and night shift are from 8:00 a.m. to 4:30 p.m. and from 4:00 p.m. to 12:30 a.m. By agreement with the Union, the Company scheduled the newsreel makeup work, which is done on Tuesdays and Thursdays, as follows: The night crew would start on Tuesdays at 4:00 p.m. and end on Wednesday at 6:30 a.m. The day crew would start at 6:00 a.m. and end at 4:30 p.m. on Wednesday. The same hours would be scheduled starting Thursday afternoon and continuing through Friday. This schedule continued
in effect for a number of months until Tuesday, January 17, 1967 when at about 5:30 p.m. the Company ordered a crew of color-positive developers and certain negative developers to shut down their machines and go to work in the black and white positive developing department on newsreel work. The employees so directed (apparently at the advice of their shop steward) refused to accept such transfer. It was not until 9:00 p.m. after several telephone calls between Union representatives and Company officials that the men accepted such transfer. The acceptance of such transfers was under protest by the Union, who claimed that the Company did not have the right to make such transfers. It was undisputed that at the time the proposed transfers were made there was work in the department of the men who were to be transferred. There was further testimony, which was undisputed, that if the proposed transfer was made as originally contemplated, the men on the night shift, who regularly worked on newsreel makeup, would not be required to work overtime.

The Company takes the position that under Article 13 of the Collective Bargaining Agreement it had and has the right to make the proposed transfer; that there is nothing in that section which prohibits it from transferring an entire crew from one department to another, even if there is work
in the transferred crew's home department and that the Company has the right to utilize its working force in the most economical and efficient manner.

The Union maintains that the proposed transfer was not temporary in nature; that the Company does not have the right to transfer a crew from one department to another when there is work available in the crew's home department; that the Company does not have the right to transfer negative developers to positive developing; that the elimination of overtime was tantamount to depriving an employee of actual employment; in any event, since the employees and the Union objected to the proposed transfer of January 17, the Company was not permitted under Section 15(g) to effectuate the proposal and, on the contrary, the operation was to remain unchanged and held in status quo until the determination of the right of the employer to make such transfer.

**OPINION**

The issues submitted by the Company are of such nature and scope as to indicate a request for a determination much more extensive than the issues created by the refusal on January 17, 1967 of certain employees to accept a transfer.
It is not my function to decide issues that are academic or may arise. Therefore, I will confine myself solely to the dispute before me that arose on January 17, 1967 and the issues specifically created by such dispute and nothing more.

It would seem advisable to determine first whether or not the employees and the Union in refusing to accept the proposed transfer of January 17, 1967 were acting contrary to the provisions of the Collective Bargaining Agreement. There can be no doubt that the mutual agreement for irregular working hours and regular overtime for the newsreel crew established working conditions for the newsreel operation. This being so, when the Union or its members objected to the proposed transfer, the provisions of 15(g) became applicable. Sub-division 15(g) reads as follows:

"Pending the final determination of any dispute, there shall be no strike or lockout, nor shall there be any change of working conditions or methods of operation as they existed prior to the dispute except as they may be otherwise permitted by this Agreement."

Under the foregoing provisions the Company did not have the right to change working conditions pending the determination of the dispute.

Having determined that there was a dispute, the next question is whether or not the Company had the right
to make the proposed transfer under the provisions of Section 13, which reads as follows:

"(a) Temporary transfers shall be made from lower classifications so far as practicable, provided that such transfers shall not deprive another employee of actual employment or result in an employee performing two separately classified operations simultaneously.

"(b) Temporary transfer of an employee from a higher classification to a lower classification shall not result in any reduction in pay, and any employee temporarily required to fill the place of a higher classification shall be paid the rate for said higher classification on a daily basis.

"(c) Holiday pay and vacation pay for temporary transferees are covered under Sections 5 and 6.

"(d) If a classification of work has been manned by an employee or employees from a lower classification for three days or more per week for a period of thirteen consecutive weeks, the Employer agrees to make a promotion to the higher classification in accordance with Section 14, except in cases of temporary transfers made for the replacement for an employee absent for any reason, or in emergencies."

The issues herein depend upon whether or not the proposed transfers were temporary or not, and as a secondary issue, whether the elimination of overtime is tantamount to depriving an employee of actual employment. No real effort was made by the Company to show the transfers as temporary. In fact, the contrary was testified to. Therefore, from the testimony of the circumstances and conditions that surrounded the proposed transfers, I am of the opinion that such transfers are not, nor were they intended to be, temporary (as provided
for in Section 13). Reference is made in the Company's Brief to a prior decision (Mecca Film Laboratory and Local 702, case #702-66A4) as being directly in point. A careful reading of the facts of that case and this one will clearly show the difference between a "temporary transfer" (as provided for in Section 13) and a "permanent working schedule."

The plan, as proposed by the Company here, cannot be construed as temporary and is not permitted by Section 13.

Having reached this conclusion, it is not necessary to determine the secondary issue as to whether or not the elimination of overtime in this particular situation falls within the exception of Section 13. I wish to make it absolutely clear that my decision herein relates solely to those issues arising from the dispute on January 17, 1967 and nothing more.

The request contained in the letter of January 27, 1967 to "issue a permanent injunction against Local 702, its members, attorneys, officers, shop stewards and agents, etc., prohibiting and restraining them from in any way refusing such transfers or causing them to be refused, and affirmatively requiring Local 702, its members, etc., to accept said transfers and cause them to be accepted," is denied.

The statement in the Company's post-hearing memorandum with respect to the lapse of 41 days between the
Company's demand for arbitration (January 27) and the hearing on March 9, is worthy of some comment. The Company's letter was received on January 30, and this case was set down for hearing on February 7. The hearing was subsequently adjourned and not at the request of the arbitrator, to February 20, then to March 6 and finally to March 9. The parties then asked for time to submit briefs which was not done until March 28.

**A W A R D**

The award, therefore, under the facts and circumstances presented herein, is as follows:

(a) The Company did not have the right, under Section 13 of the Collective Bargaining Agreement, to transfer an entire crew to another section or department, where there was work available in the crew's "home" section or department.

(b) The Company did not have the right to transfer negative developers to positive developing.

STATE OF NEW YORK )

COUNTY OF NEW YORK)

On this 26th day of April, 1967, before me personally came JOSEPH E. McMAHON, to me known, and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

JOSEPH E. McMAHON
Permanent Arbitrator
In the Matter of the Arbitration

-between-

MOTION PICTURE LABORATORY TECHNICIANS,
LOCAL 702, I.A.T.S.E.

-and-

MOVIELAB, INC.

This arbitration was held pursuant to Article 15 of the Collective Bargaining Agreement between MOTION PICTURE LABORATORY TECHNICIANS, LOCAL 702, I.A.T.S.E. (hereinafter referred to as "Union"), and MOVIELAB, INC., (hereinafter referred to as "Company"), dated May 23, 1966, wherein the undersigned was designed permanent arbitrator to hear and determine disputes arising under the Union Agreement.

A hearing was held on March 2, 1967.

APPEARANCES:

For the Union:

PINTO & STEIN, Esqs.,
By: Nicholas Pinto, Esq.

For the Company:

POLIER & TULIN, Esqs.,
By: Eric Rosenfeld, Esq.
ISSUE

The issue here is whether or not Eustis Beckles, who was promoted to wet-end-positive developing, was given a fair and reasonable trial period and, if not, what would be the remedy.

OPINION

Mr. Beckles was promoted to wet-end-positive developing in October of 1966. During the next four weeks, he divided his working time between the Developing Department and the Chemical Mixing Department in which he had worked the previous 7-1/2 years. There was conflicting testimony as to the amount of time he received training in the Developing Department. Beckles claims that in the four-week training period, he received training for 100 hours. In addition, Beckles testified that during the four-week period he spent approximately four hours a day for the first three weeks, or 50% of his time, helping out in the Chemical Mixing Department from which he had been promoted. Company witnesses testified that Beckles received training for 120 hours. One Company witness agreed that approximately 50% of Beckles time during the first two weeks was spent in the Chemical Mixing Department. He testified, however, that in the third
and fourth weeks Beckles spent all of his time in the Developing Department. The only significant disagreement is on the number of hours Beckles spent in negative developing department is confined to the third week, which represented a difference of 20 hours.

The dispute here revolves around sub-paragraphs "c" and "d" of Section 14 of the Collective Bargaining agreement between the parties.

The Union contends that Beckles did not receive a fair and reasonable trial since he did not receive four weeks training or an aggregate of 160 hours training on the job. They also pointed out that he was transferred back and forth from the Developing Department to the Chemical Mixing Department and all of these factors considered cumulatively resulted in a denial to Beckles of a fair and reasonable trial as provided under the Collective Bargaining agreement. The gist of the Union's position is that Beckles was entitled to an uninterrupted training period of four weeks, aggregating 160 hours.

The Company maintains that its obligation is to afford a promoted employee a fair and reasonable training period. The Company contends that the purpose of sub-division "c" is to fix the time at which a promoted employee becomes
entitled to receive the higher rate. It argues that the four weeks referred to in that sub-division has nothing to do with the fairness or reasonableness of the trial, only with the rate of pay. The Company argues that its primary obligation is governed by sub-division "d" and that its entire obligation to a promoted employee is to afford him a fair and reasonable trial to perform the work in the higher classification and that the Company is not required to give a promoted employee a four-week training period if the Company concludes, after what it considers a fair and reasonable trial, the employee is incapable of performing the assigned work.

In attempting to limit the application of sub-division "c" to the rate of pay a promoted employee is entitled to receive during the training period, the Company elects to disregard the second sentence in that sub-division which states "after said training period said employee shall receive the pay rate provided in this agreement for the higher classification to which he has been promoted."

On the basis of the evidence presented, I have reached the conclusion that Beckles was not given a fair and reasonable trial as provided in sub-paragraphs "c" and "d" of Section 14 of the Collective Bargaining Agreement. As more
than four months have elapsed since Beckles worked in the Developing Department, the Company's suggestion that he should be given an additional 40 or 60 hours of training if I decide as I have, is not acceptable. He is entitled to a training period of 160 hours, if necessary, and during such period he should not be required to work in another department.

AWARD

The award, therefore, is as follows:

Mr. Eustis Beckles did not receive a fair and reasonable trial period. He is entitled to a training period of 160 hours and, during such period, he shall not be required to work in another department.

STATE OF NEW YORK )

ss.: COUNTY OF NEW YORK)

On this 28th day of March, 1967, before me personally came JOSEPH E. McMAHON, to me known, and known to me to be the individual described in and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same.

CHARLES LAKE
Notary Public, State of New York
No. 41-222020, Queens County
Term Expires March 30, 1967
In the Matter of the Arbitration

-between-

MOVIELAB, INC.

-and-

MOTION PICTURE LABORATORY TECHNICIANS,
LOCAL 702, I.A.T.S.E.

This arbitration was instituted by MOVIELAB, INC. (herein referred to as "Company"), under Article 15 of the Collective Bargaining Agreement (herein referred to as the "Bargaining Agreement") between the Company and Motion Picture Laboratory Technicians, Local 702, I.A.T.S.E. (herein referred to as "Union"), based upon a dispute as a claimed right of the Company to decrease the number of working foremen. The undersigned is the permanent arbitrator named in the aforesaid Bargaining Agreement.

A hearing was held on May 11, 1967.

APPEARANCES:

For the Company:

POLIER & TULIN, Esqs.,
By Eric Rosenfeld, Esq.

For the Union:

PINTO & STEIN, Esqs.
By: Nicholas Pinto, Esq.
**ISSUE**

The issue as submitted by the parties was stated as follows:

"Does the Company's proposal to reduce the number of working foremen in the printing department violate the Bargaining Agreement?"

**OPINION**

The Company has a number of working foremen who, under the agreement receive no less than 10% above the highest base rate in their respective departments. They are members of the Union and are covered by the Bargaining Agreement. Their duties in the main consist of distributing work in the printing department, designating who shall operate certain machines, preparation of negligence and other reports and, to some extent, operating printing machines.

Article 16 of the Bargaining Agreement entitled "Supervisory Employees", establishes the working conditions of supervisory employees, including working foremen, whose rate of pay is fixed by sub-division (e). By the very nature of their work, the working foremen fall in a type of hybrid category, inasmuch as part of their duties involve supervisory work though they continue to be covered by the Bargaining Agreement.
The Company proposes to eliminate working foremen through attrition though it does not intend to demote such employees. It is the stated purpose of the Company to ultimately replace working foremen by supervisory employees who will not be covered by the Bargaining Agreement. It is the Company's position: (1) That there is no provision in the Bargaining Agreement which prohibits it from adopting its proposal. Attention was directed to the provisions of Section 16(d) of the Bargaining Agreement which limits the Company's right to increase the number of working foremen without the consent of the Union. (2) That there is no limitation or prohibition against decreasing the number of such foremen. Said Section 16(d) reads as follows:

"Employer agrees not to increase the number of Working Foremen or Sub-Foremen without the consent of the Union."

(3) The Company further claimed that the working foremen have not performed properly the managerial duties they are expected to perform, in that they have failed to submit proper reports due to negligence and breakdowns; that they have not given fair evaluation of employees who have been promoted to the printing department on a trial basis and that the failure to perform their managerial duties was primarily due to the fact that they are members of the Union and the bargaining unit which includes those employees they are required to supervise.
It is the Union's contention that the Company's proposal violates Sections 2, 16(a), and 17(b) of the Bargaining Agreement, which sections refer to "Discrimination," "Supervisory Employees" and "Machine Operations", respectively. In addition, the Union contends that the Company is attempting to rewrite the Bargaining Agreement with respect to the existing job status of the working foremen.

At the hearing, the Company introduced testimony to support their contention that the working foremen were not properly performing their supervisory duties. The Union's testimony for the most part was contradictory of the Company's testimony with respect to this charge. These charges and countercharges are irrelevant to the issue.

With respect to the position of the Union, I am of the opinion that Section 2, which is a standard discrimination clause, likewise has no application to the issues herein. Nor does Section 16(a), which prohibits a supervisory employee from engaging in production or performing the work of another employee, except insofar as such work may be incidental to their duties. I am not persuaded that Section 17(b), which relates to machine operations, is applicable to the present issue.

The question to be determined here is whether
there are any provisions in the Bargaining Agreement which prohibits the Company from implementing its proposal as set forth. The only provision in the Bargaining Agreement relating to the number of working foremen is Section 16(d). This Section limits and prohibits the Company from increasing the number of such foremen without the consent of the Union. It is equally significant that there is no limitation or prohibition upon the Company in decreasing the number of such foremen without the consent of the Union. Therefore, the clear import of Section 16(d) is to give the Union control over the number of its members who may be assigned to quasi managerial jobs. If the Union's contentions are to be sustained, it would be tantamount to inserting into Section 16(d) the words "or decrease". This, I cannot do. Therefore, it is my opinion that the Company's proposal as stated, to reduce the number of working foremen, does not violate the Bargaining Agreement. No opinion is intended regarding the method to be employed to accomplish this objective.

AWARD

The award, therefore, is that the Company's proposal to reduce the number of working foremen in the printing department is not in violation of the Collective Bargaining Agreement.

Dated: May 31, 1967

JOSEPH E. McMAHON
Permanent Arbitrator
STATE OF NEW YORK )
COUNTY OF NEW YORK)

On this 2nd day of June, 1967, before me personally came JOSEPH E. McMAHON, to me known, and known to me to be the individual described in and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same.

Philip [Signature]

the maintenance crews are made up of members of several departments, there has been no act on the part of the Company and no agreement between the parties which would have the effect of setting up a new and separate Department.

Certainly the Union does not have the authority to set up such a Department unilaterally and the fact that one official of the Company erroneously assumed that such a Department was being organized, and gave expression to this idea, does not in itself establish a new Department. The official publication and the payroll records of the Company refute conclusively the contention of the Union that [H.] was promoted to a post outside the Instrument Department.

**Award**

The Company in permitting [H.] to return to the bargaining unit after working as a supervisor for eleven months, did not violate Section V of the Agreement. Consequently, the Grievance is denied.

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**Background**

The Company has a number of working foremen who, under the agreement receive no less than 10% above the highest base rate in their respective departments. They are members of the Union and are covered by the Bargaining Agreement. Their duties in the main consist of distributing work in the printing department, designating who shall operate certain machines, preparation of negligence and other reports and, to some extent, operating printing machines.

Article 16 of the Bargaining Agreement entitled “Supervisory Employees”, establishes the working conditions of supervisory employees, including working foremen, whose rate of pay is fixed by sub-division (e). By the very nature of their work, the working foremen fall in a type of hybrid category, inasmuch as part of their duties involve supervisory work though they continue to be covered by the Bargaining Agreement.

The Company proposes to eliminate working foremen through attrition though it does not intend to demote such employees. It is the stated purpose of the Company to ultimately replace working foremen by supervisory employees who will not be covered by the Bargaining Agreement. It is the Company’s position:

1. That there is no provision in the Bargaining Agreement which prohibits it from adopting its proposal. Attention was directed to the provisions of Section 16(d) of the Bargaining Agreement which limits the Company’s right to increase the number of working foremen without the consent of the Union.
2. That there is no limitation or prohibition against decreasing the number of such foremen. Said Section 16(d) reads as follows:

> “Employer agrees not to increase the number of Working Foremen or Sub-Foremen without the consent of the Union.”

3. The Company further claimed that the working foremen have not performed properly the managerial duties they are expected to perform, in that they have failed to submit proper reports due to negligence and breakdowns; that they have not given fair evaluation of employees who have been

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McMAHON, Arbitrator: ISSUE: The issue as submitted by the parties was stated as follows: ‘‘Does the Company’s proposal to reduce the number of working foremen in the printing department violate the Bargaining Agreement?’’

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promoted to the printing department on a trial basis and that the failure to perform their managerial duties was primarily due to the fact that they are members of the Union and the bargaining unit which includes those employees they are required to supervise.

It is the Union's contention that the Company's proposal violates Sections 2, 16(a), and 17(b) of the Bargaining Agreement, which sections refer to "Discrimination", "Supervisory Employees", and "Machine Operations", respectively. In addition, the Union contends that the Company is attempting to rewrite the Bargaining Agreement with respect to the existing job status of the working foremen.

At the hearing, the Company introduced testimony to support their contention that the working foremen were not properly performing their supervisory duties. The Union's testimony for the most part was contradictory of the Company's testimony with respect to this charge. These charges and countercharges are irrelevant to the issue.

[Discussion]

With respect to the position of the Union, I am of the opinion that Section 2, which is a standard discrimination clause, likewise has no application to the issues herein. Nor does Section 16(a), which prohibits a supervisory employee from engaging in production or performing the work of another employee, except insofar as such work may be incidental to their duties. I am not persuaded that Section 17(b), which relates to machine operations, is applicable to the present issue.

The question to be determined here is whether there are any provisions in the Bargaining Agreement which prohibit the Company from implementing its proposal as set forth. The only provision in the Bargaining Agreement relating to the number of working foremen is Section 16(d). This Section limits and prohibits the Company from increasing the number of such foremen without the consent of the Union. It is equally significant that there is no limitation or prohibition upon the Company in decreasing the number of such foremen without the consent of the Union. Therefore, the clear import of Section 16(d) is to give the Union control over the number of its members who may be assigned to quasi managerial jobs. If the Union's contentions are to be sustained, it would be tantamount to inserting into Section 16(d) the words "or decrease". This, I cannot do. Therefore, it is my opinion that the Company's proposal as stated, to reduce the number of working foremen, does not violate the Bargaining Agreement. No opinion is intended regarding the method to be employed to accomplish this objective.

[Award]

The award, therefore, is that the Company's proposal to reduce the number of working foremen in the printing department is not in violation of the Collective Bargaining Agreement.

TOWN OF WEST HARTFORD and BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 531


Overtime—Daily v. Weekly Overtime

An employee who worked nine and one-half hours during one day of a workweek, but who worked (for pay purposes) only a total of 40 hours during the entire week was not entitled to premium rates for the overtime on the disputed day. Notwithstanding an alleged oral agreement to the contrary, the contract clearly placed overtime computation on a weekly basis. And, in practice, it was clear that premium rates had never been paid under circumstances similar to those prevailing here. Accordingly, straight time rates for the full 40 hours were proper.


[Text of Award]

STUTZ, Arbitrator: MATTER FOR ARBITRATION: The issue presented for arbitration is as follows:

Was [H.] properly paid during the week of April 17, 1967 under the "incentive" method of payment for Town employees?

Pertinent Contract Clauses

"ARTICLE IV, GRIEVANCE PROCEDURE: Should any employee or group of employees feel aggrieved concerning his
On July 7, 1967 a hearing in a matter in dispute between Pathe Laboratories, Inc. (herein referred to as "Company"), and Motion Picture Laboratory Technicians, Local 702, I.A.T.S.E. (herein referred to as "Union"), was held before the undersigned, the permanent arbitrator in the Collective Bargaining Agreement (herein sometimes referred to as "Union Contract") between the parties. Both parties were afforded full opportunity to offer argument and evidence and to examine and cross-examine witnesses. The undersigned, at the request of the parties, examined the work area and the equipment involved in the controversy. Post-hearing briefs were filed by the parties.

**APPEARANCES:**

For the Company:

POLIER & TULIN, ESQ.,
By: Eric Rosenfeld, Esq.

For the Union:

PINTO & STEIN, ESQ.,
By: Nicolas Pinto, Esq.
THE ISSUE

The issue submitted by the parties is as follows:

Does the Company's operation of black and white positive developing machines numbers 2 and 3 by three men as a pair violate the Union Contract?

BACKGROUND

In the past the Company has operated as many as seven black and white positive developing machines. Due to lack of work for these machines, the number 5, 6 and 7 machines are shut down, and more recently the Company shut down machine number 4 and plans to operate machine number 1 only eight hours a day. We are concerned here with the operation of machines #2 and #3, which are side by side. The crew complement for machines run in pairs has been three men for a pair and three men for a single machine. The Company intends to run machine #1 as a single, and machines #2 and #3 as a pair.
POSITION OF THE PARTIES

It is the Union's position that operating in pairs means the operation of machines 1 and 2, and 3 and 4, and therefore the Company cannot operate 2 and 3 as a pair; that such operation is in violation of Sections 17(a) and (b) of the Union Contract and of the Agreement between the parties dated March 15, 1961.

It is the Company's position that 2 and 3 can be operated as a pair and that the meaning of "as a pair" is the operating of two contiguous machines with three men; that Sections 17(a) and (b) are not relevant and that such operation is permissible under the Agreement of March 15, 1961.

DISCUSSION

The Union contends that Sections 17(a) and (b) of the Union Contract, which cover machine operations, are relevant and controlling on the submitted issue. At the hearing an agreement dated March 15, 1961 was introduced in evidence by the Company. This agreement specifies the conditions under which the black and white positive developing machines may be operated, to-wit:
1. 3 men on each 2 machines; single machine—3 men.

2. Machines to be operated in pairs (1 and 2, 3 and 4, etc.).

9. Provisions hereof shall survive the expiration of the contract between the parties."

There was testimony by the Company that only three men are needed to operate machines 2 and 3, and the Union is attempting to burden the Company with unnecessary personnel. Whether or not more than three men are required to operate machines 2 and 3 is immaterial in view of the contractual agreement between the parties. The time and place to determine proper manpower is in negotiation.

The Company's contention that the meaning of "as a pair" is operating two contiguous machines with three men is inaccurate. The agreement of March 15, 1961 relates to the operation of machines "in pairs" (1 & 2) (3 & 4), and not as a pair. Thus said agreement clearly refers to "pairs" and identifies them. Moreover, while providing for three men on each two machines, there was handwritten and initialled the phrase "single machine-three men". Significantly enough, item "9" of said agreement was likewise handwritten and initialled.

I agree with the Company's statement that the parenthetical material "(1 and 2, 3 and 4, etc.)" simply renders the intent of contiguity unmistakeable. However, interpretations may be different. There is a distinction between linking two machines as a pair and operating machines "in pairs".
The Company, in arguing that the phrase "3 men on each 2 machines" in item "1" of said agreement is conclusive in its favor, elects to disregard completely the balance of the item which reads "single machine-3 men". If considered alone, this item is contradictory. However, it is necessary to bear in mind that said agreement relates to dual operations and item "2" must be read in conjunction with item "1". Item "2" states "Machines to be operated in pairs" and then identifies the pairs as 1 & 2 and 3 & 4. Nothing in said agreement, in my opinion, permits the operation of #2 and #3 machines "as a pair". Even if one were to disregard the agreement of March 15, 1961, which I cannot do, an examination of the machines clearly and unmistakably disclosed that these machines, in fact, were constructed and designed to operate "in pairs". At the wet end of machines 1 and 2 is a control panel controlling the operations of these two machines. The control panel is situated at the end of the machines and horizontal thereto. Similarly, a control panel is located at the end of machines 3 and 4. Thus, an operator controls machines 1 and 2, and another operator controls 3 and 4. There is a space between the two control panels of approximately four to five feet. It is my opinion that the manner in which these machines were installed plainly shows that the Union's position is correct, since there was no apparent intention to operate machines 2 and 3 as a unit. To operate in the manner desired by the Company would require an operator to be continually moving from one control panel to the other while machines 2 and 3 were operating. It is my conclusion from the construction and layout
of machines #2 and #3 that they were not intended to be operated as a pair and that this conclusion is further substantiated by the agreement of March 15, 1961. In view of my determination it is unnecessary to pass upon the relevancy of Sections 17(a) and (b).

AWARD

The award, therefore, is that the Company's operation of black and white positive developing machines numbers 2 and 3 as a pair is in violation of the Union Contract.

Dated: July 31, 1967.

JOSEPH E. McMAHON
Permanent Arbitrator

STATE OF NEW YORK

COUNTY OF NEW YORK

On the 31st day of July, 1967 before me personally came JOSEPH E. McMAHON, to me known, and known to me to be the individual described in, and who executed the foregoing instrument, and duly acknowledged to me that he executed the same.

PHILIP WEINSTEIN
NOTARY PUBLIC, State of New York
No. 41-419701
Qualified in Queens County
Commission Expires March 30, 1963
August 4, 1967

Fathe Laboratories, Inc.
105 East 106th Street
New York, New York 10029

Re: Fathe Laboratories, Inc. - Local 702

Gentlemen:

I am enclosing my opinion and award in the
above entitled arbitration.

Very truly yours,

JOSEPH E. McMAHON

Enc.

cc.: Motion Picture Laboratory
Technicians, Local 702
165 West 46th Street, N.Y., N.Y. 10036

Eric Rosenfeld, Esq., Polier & Tulin,
22 East 40th Street, New York, N.Y. 10016

Nicholas Pinto, Esq., Pinto & Stein,
270 Madison Avenue, New York, N.Y. 10016
In the Matter of the Arbitration

-between-

MOVIELAB, INC.

-and-

MOTION PICTURE LABORATORY TECHNICIANS,
LOCAL 702, I.A.T.S.E.

On June 20th and June 27, 1967 hearings in a matter in dispute between Movielab, Inc. (herein referred to as "Company"), and Motion Picture Laboratory Technicians, Local 702, I.A.T.S.E. (herein referred to as "Union"), were held before the undersigned, the permanent arbitrator in the Collective Bargaining Agreement (herein sometimes referred to as "Union Contract") between the parties. Both parties were afforded full opportunity to offer argument and evidence and to examine and cross-examine witnesses. Post-hearing briefs were filed by the parties.

APPEARANCES:

For the Company:

POLIER & TULIN, ESQS.,
By: Eric Rosenfeld, Esq.

For the Union:

PINTO & STEIN, ESQS.,
By: Nicholas Pinto, Esq.
THE ISSUE

The submitted issue, as agreed upon by the parties, is whether the exercise by the supervisors in the printing department of certain rights and authorities violates the Collective Bargaining Agreement. Those rights and authorities are:

1. To determine work flow.
2. To deliver pre-print and auxiliary material to the printers and elsewhere.
3. To direct working foremen to operate printing machines and/or hand out work as a supervisor sees fit.

BACKGROUND

A supervisor is a managerial employee, not covered by the Union Contract. The Company has also employed in the printing department a working foreman who is covered by the Union Contract. The working foreman receives no less than ten percent above the highest base rate in the department. In a recent arbitration the right of the Company to reduce the number of working foremen was upheld. Since the Company ultimately plans to eliminate working foremen, the clear definition of the work that a supervisory employee can perform becomes a paramount issue.
Subdivision 16(a) of the Union Contract which governs certain aspects of the work supervisory employees may perform reads as follows:

"Supervisory employees, who are not classified as Working Foremen or Sub-Foremen, shall not engage in production or perform the work of another employee except insofar as such work may be incidental to their duties."

POSITION OF THE PARTIES

It is the contention of the Company that the supervisor has the right:

(1) to determine the work flow, meaning the right to determine the nature of work to be done, when, in what order, by whom and on which machines;
(2) to deliver pre-print and auxiliary material to the printers and elsewhere. Witnesses for the Company testified that the supervisors have historically performed such work, that such work will be done by the supervisor or the working foreman, or anyone else as the supervisor may decide and;
(3) to direct a working foremen to operate a printing machine or hand out work as the supervisor may determine.

The Company further contends under the provisions of 1(f), a working foreman is not "another employee" whose work is prohibited by 16(a).
The Union argues that the duties of a working foreman cannot be incidentally assumed by a supervisor; that the Company does not have the right to assign all the duties of a working foreman, except infrequent work, to supervisors; and that the Company does not have the right to assign the duties of a working foreman to a supervisor; that the Contract provides no manner, means or right for the Company to divest the working foreman of one or more of his duties in favor of another employee in another classification, not a supervisor.

DISCUSSION

Parts one and two of the submitted issues are to a certain degree co-related and will, therefore, be considered jointly. There can be no disagreement, nor was there any, that the primary duties of a supervisor would include, in the case of a supervisor in the Printing Department, the assignment of personnel to various machines, the designation of the type of work to be performed and the order and sequence thereof. The performance of such duties by the supervisor would not be violative of the provisions of the Union Contract, even though a working foreman may perform substantially the same duties, or some of them, in the absence of or under the direction of the supervisor; nor can there be any disagreement as to the
working foreman being under the jurisdiction and the control of the supervisor. It therefore follows that he would have required to distribute work to other employees as directed by the supervisor and, if ordered, to operate a printing machine. That the Company may have only required a working foreman to occasionally engage in production work does not mean that a working foreman cannot be required to do production work regularly. The very term “working foreman” implies that such employee can be required to do production work.

The most crucial part of the submitted issue and the one provoking the most disagreement is number two which relates to the right of the supervisor to deliver pre-print and auxiliary material to the printers and elsewhere. It is the Union’s position that the supervisor is not permitted to do such work as he would actually be doing the work of the working foreman. Apropos this contention, it should be noted that while under the Union Contract a Company may appoint a working foreman with the consent of the Union, there is no corresponding obligation that a working foreman be appointed. In a prior arbitration between these parties, I held that the Company has the right to reduce the number of working foremen. It is my opinion that the extent to which a supervisor may deliver pre-print material must be considered in light of the qualifying language
of Subdivision 16(a) which limits the right of supervisors
to do the work of another employee "except insofar as such
work may be incidental to their duties." I believe that this
restrictive provision applies irrespective of whether one
considers a working foreman another employee or not. There
was ample testimony as to the work a supervisor performs.
There was, however, no testimony as to the amount of time
employed in the incidental phases of his work. No time study (if
made) was presented by either party. Thus, as the submitted issue
was general in scope and considering the type of evidence presented,
my ruling, likewise, must be general. It is not possible under
the testimony and evidence as presented to precisely and
definitely pinpoint what percent of the work of the supervisor
was incidental. It appears that the delivery of pre-print work
has historically been part of the duties of a supervisor.
Thus, such activities (delivery of pre-print work) would be incidental
to his general duties. When, however, a supervisor performs
"incidental work" to such an extent that it can no longer be con-
sidered as within the protective language of 16(a) cannot and is
not determined at this time.

AWARD

The award, therefore, is that the exercise by the
supervisor in the Printing Department of the following rights and
authorit...
1. To determine work flow,

2. To deliver pre-print and auxiliary material to printers and elsewhere,

3. To direct working foremen to operate printing machines and/or hand out work as a supervisor sees fit,

does not violate the Union Contract.


[Signature]

JOSEPH E. McMahan
Permanent Arbitrator

STATE OF NEW YORK )

COUNTY OF NEW YORK

On the 3 day of August, 1967, before me personally came JOSEPH E. McMahan, to me known, and known to me to be the individual described in and who executed the foregoing instrument, and duly acknowledged to me that he executed the same.

[Signature]

CHARLES LAKE
NOTARY PUBLIC, State of New York
No. 30-2235590, Nassau County
Term Expires March 30, 1969
In the Matter of the Arbitration:

between:

DE LUXE LABORATORIES, INC.

and

MOTION PICTURE LABORATORY TECHNICIANS:
LOCAL 702, I.A.T.S.E.

This arbitration was instituted by Motion Picture Laboratory Technicians Local 702, I.A.T.S.E. (herein referred to as "Union") under Article 15 of the Collective Bargaining Agreement (herein referred to as "Union Contract") and DeLuxe Laboratories, Inc. (herein referred to as "Company") as a result of dispute between the parties of the proper manpower of the Duplex color positive developing machines. The undersigned is the permanent arbitrator named in the Union Contract.

APPEARANCES:

For the Union:

PINTO & STEIN, Esqs.
By: Nicholas Pinto, Esq.

For the Company:

POLIER & TULIN, Esqs.
By: Eric Rosenfeld, Esq.

Hearings were held at the company's laboratory on July 11 and 13, 1967. The parties were afforded full oppor-
tunity to offer testimony, examination and cross-examination of the witnesses. Post hearing briefs were filed by the parties.

ISSUE

The submitted issues as agreed upon by the parties were as follows:

As a result of the increasing of the speed of two Duplex color positive developing machines (four strand), from 150 to 175 feet per minute, should the crew complement for such machines be increased? If so, what should the complement be?

BACKGROUND

The company operates two duplex color positive developing machines, hereinafter referred to as "the machines", with a crew complement of eight. This crew complement was fixed in an 1955 arbitration award of Lloyd H. Bailer. From 1955 until about a year ago, these machines operated at a speed of approximately 140 to 150 feet per minute. In the arbitration proceedings before Bailer, the proper crew complement was the issue and the question of speed was not in that case. On the contrary, at that time these machines operated at a slower speed than black and white machines. Certain statements made by Bailer in his decision concerning working conditions have not changed according to the testimony given.
herein; for example, there was less light in the color machine area and there were more film tanks for the developer to watch. It was Bailer's opinion that the operators of the machines had a somewhat less pleasant and perhaps more onerous duty to perform than the other operators of the black and white machines. However, Bailer indicated that the employees assigned to these machines received higher wages and that the differential was in large measure to reflect less desirable working conditions.

In 1966 the speed of these machines was increased to 175 feet per minute.

POSITION OF THE PARTIES

The Union contends that the work and job duties at the increased machine speed calls for additional personnel and that the increased speed of approximately 20% is sufficient to warrant the use of extra men. In addition to the speed-up, there is an increase in the temperature of the developing solution, extra requirements of the IBM cards, extra supplies entailed in the use of "black bags", dimmer lights, and extreme difficulty in making double splices.

Five reasons were advanced by the Company in opposition to an increase in the crew complement:

1. The lack of jurisdiction or authority of the arbitrator;

2. That the arbitrator is bound by the Bailer award;
3. Violation of the contract provision;
4. The present man complement is excessive and not needed; and
5. Increase expense to Company.

DISCUSSION

In support of its position, witnesses for the Union, one of whom was an experienced developer working on the machines, testified that the speed-up of the machines made it more difficult to make double splices and that the temperature of the developing solution was increased due to the speed-up. He enumerated extra steps entailed in the use of "black bags" which contained reels of film delivered to the developers; certain extra requirements due to the use of IBM cards, and mention was made of the dimmer light. The Union argues that all of these factors when considered collectively are sufficient to justify the assigning of additional personnel to the operation of these machines. Although there was considerable testimony as to the difficulty of making a double splice while the machines were operating, nevertheless, the witness stated that he could and had made double patches.

There was no testimony as to the number of times the operators make a patch (or double patch) in a day. Apparently, there were no records kept on this point. The Union stated that another laboratory, Movielab, operated color positive developing machine (4 strands) with a crew complement of nine men and a floater, and Pathe Laboratory operated a similar
machine with a ten man crew. However, neither the Movielab nor Pathe machines is a duplex machine. It is my opinion that the crew complement of the said Movielab or Pathe machines is not pertinent to the issue here.

Four of five reasons advanced by the Company have, in my opinion, little if any substance. The argument that I have no authority is without merit. Section 17(c) covers this situation when there has been an acceleration of the machine speed. The time to challenge jurisdiction is before arbitration, not after the issue has been submitted. There is no merit in the argument that I am bound by the Bailer award made in 1955.

The only sound basis advanced which merits serious consideration is the contract provisions relating to the machines. In Schedule A (under the Positive Developing Department dealing with speeds of Color-Positive Developing Machines), the applicable provision reads as follows: "Speeds to 180 feet per minute shall be deemed normal."

Consequently, the increase of machine speed from 150 to 175 is deemed normal under the contract by whose terms I am bound. Since the speed of the machine (by contract) is deemed normal, it follows that the work and duties of the operators of the machines must likewise be deemed normal.
Therefore, under the circumstances, there appears to be no sound reason for increasing the crew complement of the machines. In reaching this conclusion, I am not unmindful of the fact that the machines have been operated at the increased speed with the present complement for approximately a year.

**AWARD**

There should be no increase in the crew complement for the two Duplex color positive developing machines (four strand) as a result of the increasing of the speed of such machines from 150 to 175 feet per minute.

Dated: August 23, 1967

JOSEPH E. McMAHON
Permanent Arbitrator

STATE OF NEW YORK
COUNTY OF NEW YORK

On the 23 day of August, 1967, before me came JOSEPH E. McMAHON, to me known, and known to me to be the individual described in and who executed the foregoing instrument and duly acknowledged to me that he executed the same.

CHARLES LANE

[Notarization stamp]
In the Matter of The Arbitration

between

DE LUXE LABORATORIES, INC.

and

MOTION PICTURE LABORATORY TECHNICIANS
Local 702, I.A.T.S.E.

This arbitration was instituted by De Luxe Laboratories, Inc. (herein referred to as "Company") under Article 15 of the Collective Bargaining Agreement (herein referred to as "Union Contract") and Motion Picture Laboratory Technicians Local 702, I.A.T.S.E. (herein referred to as "Union"), as a result of a dispute between the parties concerning the right of the Company to temporarily transfer negative developers to the B and W positive developing department. The undersigned is the permanent arbitrator named in the Union contract.

APPEARANCES:

For the Union:

PINTO & STEIN, Esqs.
By: Michael F. Pinto, Esq.

For the Company:

D. E. Quigley
Personnel Manager

Hearings were held at the Company's laboratory on August 21 and 23, 1967. The parties were afforded a full opportunity to offer testimony, examination and cross-examination of the witnesses.
The submitted issue as agreed upon by the parties, was as follows:

Did the Company have the right under Section 13 of the Union Contract, to transfer negative developers to B and W positive developing, when the positive developers refused to work normal overtime.

FACTS

The Union did not dispute the facts presented by Mr. Quigley.

On the two days a week which were newsreel days, the Newsreel Crew works a shift starting at 4:00 P.M. to 12 midnight and usually continues until 5:00 A.M. the following morning. The Day Crew normally reporting at 8:00 A.M. on these days, is often asked to come in an hour earlier, namely 7:00 A.M., and the Afternoon Crew starting at 4:00 P.M. is asked to come in four hours earlier to complete this newsreel.

On August 8, 1967, the Company was unable to get the 4:00 P.M. men to come in at 12:00 noon; there were available two positive black and white developers in the tube room and a leader man. Mr. Quigley spoke to Vitello who objected to the use of the tube room leader man. Despite this, Quigley used the two positive men and the leader man from the tube room, that day.

On the following Tuesday, August 15, the same problem arose. The men on the 4 o'clock shift refused, or were unwilling to report at 12 noon, so the Company assigned three B and W negative developers to the positive machine over the objection of Vitello.

Mr. Quigley stated that on the 15th, eight positive developers were on vacation, seven being color, and one, B and W; that on August
8, the same number were on vacation; that on the 15th, one B and W positive man was absent and on the 8th, two positive B and W men were absent. He further stated that in view of the fact that the Company could not get positive men to come in, they were forced to use negative men to fulfill their newspaper work contract obligations.

That on Thursday, August 17th, the three B and W positive men who normally stayed over from midnight until 5:00 A.M., refused to work beyond midnight. There were two other positive men available; of the five, the Company was unable to induce anyone to stay over. This request of the five positive men had been made shortly after the start of the shift, at 4:00 or 4:30 P.M. the preceding afternoon. They all refused, offering various reasons. Mr. Quigley reminded them it was the Union's position in a previous case that this overtime work was to be done only by the positive men and the Union would see to it that they were available.

On the 17th, when the five refused, and all the other B and W positive men likewise refused the overtime, the Company shut down a machine in the color positive department, and used three color positive men to man the B and W positive machine.

On the morning of August 18th, the Company telephoned all positive developers on the afternoon shift, both color and B and W, in an attempt to get three men to come in at noon. They either got no answer or outright refusals.

On the 18th, when three negative developers reported at noon, Vitello was in the plant; the three negative men were
brought into Mr. Marshall's office together with Mr. Quigley, Mr. Vitello and Mr. Danzo. Vitello stated that they could not use negative men, and if they were used, he would have to remove all negative developers; he suggested to the Company that they use two working foremen and a leader man from the positive developing department. The Company disagreed, stating that it was management's right to manage and to make assignments as required; that the foreman in the positive room had 25 men to supervise and could not be spared. Mr. Quigley then requested the three negative developers to man the positive machine; Vitello instructed them not to do so and the men thereupon refused to do the work.

POSITION OF THE PARTIES

Mr. Pinto, on behalf of the Union, argued that the Company was attempting to secure under these circumstances, interchangeability of operation; that for 30 years, the Local had resisted the use of men from different departments; that the employers had repeatedly offered very substantial inducements to the Union if management were given the right of interchangeability in their shifting and transferring of manpower; that this was but another attempt under the guise of temporary transfers to open the door to interchangeability. If negative developers could replace positive developers, then he saw no reason why a timer could not replace a printer, or a can carrier with experience, replace any other classification of work at which he might be qualified. Further, he pointed out there had been
no showing by the Company that the positive developers in the tube room could not have been used. Flexibility of this kind simply meant that if the negative developers were not busy, the Company would, of course, find it more expedient to use them rather than to shut down a positive machine which had work in operation.

The Company did not claim the right of interchangeability but based use of negative developers in a B and W positive developing on the fact that the regular newsreel crew and the B and W color positive developers refused to do the overtime on the dates hereinbefore mentioned. Therefore, the Company was forced to transfer the negative developers to do this work.

Section 13 of the Union Contract entitled "Temporary Transfers" reads, in part, as follows:

(a) Temporary transfers shall be made from lower classifications so far as practicable, provided that such transfers shall not deprive another employee of actual employment or result in an employee performing two separately classified operations simultaneously.

(b) Temporary transfer of an employee from a higher classification to a lower classification shall not result in any reduction in pay, and any employee temporarily required to fill the place of a higher classification shall be paid the rate for said higher classification on a daily basis.

OPINION

In order to fully appreciate and evaluate the present issue, it is necessary to refer to a prior arbitration between these
parties involving this newsreel work and the same contract provision, decided on April 20, 1967. In that case, the Union claimed the Company was attempting to make permanent transfers under the guise of temporary transfers, which, if permitted, would reduce or eliminate the normal overtime for the newsreel crew. I held in that case that the attempted transfer was not a temporary one and the action of the Company, in essence, constituted a breach of an agreement made with the Union as to work hours and conditions of the newsreel crew. Incidentally, the Union testified in that proceeding that under the agreement, the Union would furnish the necessary personnel to handle the normal overtime required in the newsreel work.

In this dispute we have the other side of the coin with the employees refusing to work usual overtime plus the refusal of the positive developers, both B and W and color, to do this work. Ultimately, even the negative developers refused, on instructions from the Union to do it.

The Union's arguments that the Company is attempting to obtain interchangeability of employees, has no application here because the employees themselves voluntarily created a situation where no one in the positive developing room would do the necessary work.

The arguments advanced by the Union would be germane if the Company's actions were based upon expediency. That is not the case. The transfer the Company attempted to make on August 18, was not one born of expediency, but rather, an emergency transfer caused solely by the action of the employees.
It is obvious from the undisputed facts that on or about August 8, the newscrew crew, in concert, refused to work overtime. It was no co-incidence that on August 17 and 18, the Company was unable to get any positive developers to do the overtime work, nor can one disregard the action of the Union representative, on August 18, in directing the negative developers to refuse to accept a temporary transfer.

In my opinion, based upon the undisputed facts and circumstances presented, the Company, on August 17 and August 18, was justified under the Temporary Transfer clause, in transferring negative workers to do the work of the B and W positive developers.

It should be noted that this award is predicated solely upon the particular facts and circumstances arising on the day in question.

Amend

Under the particular facts and circumstances involved, the Company had the right under Section 13 of the Union Contract, to transfer negative developers to B and W positive developing, when the positive developers refused to work normal over time.

Dated: September 8th, 1967.

STATE OF NEW YORK)
COUNTY OF NEW YORK

On the 8th day of September, 1967, before me came JOSEPH E. McKINNON, to me known, and known to me to be the individual described

- 7 -
in and who executed the foregoing instrument and duly acknowledged to me that he executed the same.

[Signature]

CHARLES LAKE, 
NOTARY PUBLIC, State of New York 
No. 30-2235390, Nassau County, 
Term Expires March 30, 1969
IN THE MATTER OF AN ARBITRATION

- Between -

MOVIELAB, INC.

- And -

LOCAL 702, MOTION PICTURE LABORATORY TECHNICIANS, I.A.T.S.E.

ARBITRATOR'S OPINION AND AWARD

This arbitration was instituted by MOVIELAB, INC., (hereinafter referred to as "Company"), pursuant to Article 15 of the Collective Bargaining Agreement between the Company and MOTION PICTURE LABORATORY TECHNICIANS, LOCAL 702, I.A.T.S.E., (hereinafter referred to as "Union"), dated June 23, 1966, wherein the undersigned was designed permanent arbitrator to hear and determine disputes arising under the Union Agreement.

A Hearing was held on January 5th and on January 29th, 1968 at which time both parties were given an opportunity to introduce testimony and to cross-examine witnesses.

APPEARANCES:

For the Company:

POLETTI FREIDIN PRASHKER
FELDMAN & GARTNER, Esqs.
By: Eric Rosenfeld

For the Union:

PINTO & STEIN, Esqs.
By: Nicholas Pinto, Esq.
At the close of the hearing, the Arbitrator granted the parties additional time to file Post-Hearing Memoranda which were received.

**ISSUE**

The issue stated as agreed upon by the parties was as follows:

Did the action taken by the Union on charges filed against Mrs. Theresa Augeri, a working forelady, violate Section 16 (b) and (c) and Section 15 (g) of the Contract (i.e., Collective Bargaining Agreement).

**BACKGROUND**

The dispute herein stems from certain actions taken by the Union with respect to charges filed against Theresa Augeri, a forelady. The undisputed and admitted facts are as follows:

a.) Charges were filed, with the Union, on or about July 26, 1967, by a fellow member claiming that between July 3rd and 7th and July 10th through 14th, Mrs. Augeri in violation of the Union By-Law and Union Rules, Section 1 (E), (I) and (P), committed the following acts:

"Did work as a forelady while her own printing machine was in motion. Did same when her machine was in motion or not, continually."

Said Sections 1 (E), (I) and (P) read as follows:

"Sec. 1. Any member found guilty after trial in accordance with these By-Laws of violating any of
working rules shall be subject to a fine of not less than Ten ($10.00) Dollars, suspension and/or expulsion.

** **

"(e) Performing the duties of two or more classified position at the same time.

** **

"(i) Engaging in regular production work by foremen, foreladies, subforemen or subforeladies.

** **

"(p) Failure to report to the Ship Steward or Union office knowledge of any contract violation or other grievance which may affect the good and welfare of the Union."

b.) On September 22, 1967 Mrs. Augeri was advised by the Union that charges against her were to be read-off at the next regular membership meeting. Subsequently she was notified that at a Union meeting, the members took cognizance of the charges brought against her and she was advised to be present at the Union office for trial proceedings on December 20, 1967. The Trial Proceedings were held by a Trial Board on January 11, 1968. No decision has been made as of this date.

** POSITION OF THE PARTIES **

It was the Company's position:

a.) That the action taken pursuant to the Union "By-Laws Procedures" for discipline of members on charges filed against Mrs. Augeri (i.e., the Union's presentation of those charges to a membership meeting and culminating at the hearing of January 11, 1968)
constituted "disciplinary action" within the meaning of Section 16 (b) of the Union Contract, which reads as follows:

"(b) Union agrees that no disciplinary action shall be taken against Working or Non-Working Foremen or Non-Working Sub-Foremen for any act or action relating to the performance of their duties relative to plant operations on behalf of Employer."

b.) That Union failed to comply with Section 16 (c) of the Union Contract which required the Union to have "taken up" this dispute with the Company in the first instance;

c.) That the processing by the Union of the charges against Mrs. Augeri is a "change in working conditions or methods of operations" in violation of Section 15 (g) of the Union Contract.

The Union contends:

a.) That there can be no "disciplinary action" until punishment is effectuated; that "disciplinary action" occurs only as and when some form of punishment is actually imposed upon the subject present; that this proceeding itself was pre-mature inasmuch as no punishment has as yet in fact been meted to Mrs. Augeri;

b.) That before anyone may consider the application of Section 16 (b) there must be a showing that the employee involved was a person who was qualified for protection of Section 16 (b); that the Company failed to show that the acts of Mrs. Augeri related to the performance of her duties relative to the plant operations on behalf of the Company;
c.) That Section 16 (c) was not violated in that there was uncontradictory testimony of the business representative of the Union that he had discussed the complaints of the Company with respect to Mrs. Augeri, with representatives of the Company;

d.) That Section 16 (g) was not violated as there was no testimony introduced showing any change in any working condition or methods of operation.

DISCUSSION

In order to resolve the submitted issue it is of primary importance and necessity to determine, a). If the proceedings against Mrs. Augeri constituted "disciplinary action" within the meaning of section 16 (b); and b). If the charges against Mrs. Augeri referred to acts or actions relating to the performance by her of her duties relative to the plant operation on behalf of the Company.

I do not agree with the Union that "disciplinary action" does not occur until punishment is effected. It is my opinion that the proceedings, held with respect to the charges made against Mrs. Augeri which included a trial thereof constituted "disciplinary action" within the meaning of Section 16 (b).

As to the second point to be determined it is pertinent to observe that Section 16 (b) was designed to protect a person, in the classification occupied by Mrs. Augeri, in the performance of their duties. Disciplinary Action in this instance requires credible testimony or evidence that the charges filed against Mrs. Augeri did not fall within the protection cloak of 16 (b). The only evidence presented was
the charges, the language of which standing alone clearly relate to acts or actions of Mrs. Augeri while working as a Forelady. Neither party offered any testimony or evidence to further substantiate or negate that conclusion.

With respect to the claimed violation of Sections 16 (c) and 15 (g) the Company presented no evidence to support the claimed violation of 15 (g); as to Section 16 (c) it appears that there was violation of this section although there was some discussion between the parties. As matters developed this violation of 16 (c) merged into and became in fact subordinate to the paramount claim presented herein namely the violation of 16 (b).

AWARD

This award, therefore, is as follows:

The action taken by the Union against Mrs. Theresa Augeri, a working forelady, Violated Section 16 (b) of the Contract.

Dated: March 4, 1968

JOSEPH E. McMAHON
Permanent Arbitrator

STATE OF NEW YORK ) ss.: COUNTY OF NEW YORK)

On this 4th day of March, 1968, before me personally came JOSEPH E. McMAHON, to me know, and known to me to be the individual described in and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same.
This arbitration was held pursuant to Article 15 of the Collective Bargaining Agreement (herein sometimes referred to as the "Contract") between DE LUXE LABORATORIES, INC. (hereinafter referred to as "Company"), and LOCAL 702, MOTION PICTURE LABORATORY TECHNICIANS, I.A.T.S.E. (hereinafter referred to as "Union"), dated February 2, 1968.

A hearing was held at the laboratory of the Company on February 2, 1968.

APPEARANCES:

For the Union:

PINTO & STEIN, Esqs.
By: Nicholas Pinto, Esq.

For the Company:

POLETTI, FREIDIN, PRASHKER
FELDMAN & GARTNER
By: Eric Rosenfeld, Esq.
At the close of the hearing the parties were granted additional time to file post-hearing memoranda, which has been received.

This proceeding was initiated by the Union under Section 17 (c) of the Contract for a determination of the rate for the operator of the Company's Modified Bell & Howell Model "J" Printing Machine, a reconstructed and accelerated piece of equipment recently introduced into Company's laboratory.

**ISSUE**

The issue submitted by the parties for determination was as follows:

"What shall the increase be, if any, in the rate for operators of the Modified "J" Printing Machine."

**BACKGROUND**

The Company's Modified "J" Color Printing Machine is operated at a speed of 225 feet per minute. Color printing machines operated by the Company and other Laboratories run at speeds that vary from 120 to 180 feet per minute. The operators of all color printing machines, including the Modified "J", are paid the Group 5 rate listed in the schedule covering the classification of work and rates in the printing department.

Resolution of this dispute requires determination as to whether the said Modified "J" is:

(a) a reconstructed or accelerated piece of equipment, or
(b) a "same" machine or equipment within the meaning of Section 17 (c) of the Contract.

The pertinent portions thereof read as follows:

"Employer shall be permitted to install and operate new, unusual and reconstructed equipment, and accelerate the speed of existing equipment after negotiating wages and conditions with respect thereto with the Union. In the event that Employer and the Union shall fail to agree within 72 hours after Employer shall request such negotiations as aforesaid, then the matter shall be deemed in dispute and referred to arbitration, as provided in Section 15. * * *

"However, if such new, unusual, reconstructed or accelerated machinery or equipment is the same as presently or may hereafter be operated in any other laboratory with which the Union has a collective bargaining agreement then the Employer shall have the right, upon notification to the Union and upon the mutual agreement that said machinery or equipment is the same, to operate such equipment in the same manner as the other laboratory upon payment of the base rate of wages applicable to the machine or equipment operated in such other laboratory. * * *"

POSITION OF THE PARTIES

It is the position of the Union that the acceleration by the Company of said Modified "J" printer to a speed in excess of 200 feet per minute, i.e., 225 feet, warrants a 30¢ per hour increase to the operators thereof based upon the following:

1. That said machine utilizes 35-32 mm raw stock with a 16 mm negative which requires of the operator an additional degree of care.

2. That the printing operation necessitates a rewinding of the entire negative by hand which is not the case with any
other color printer at the Company's laboratory.

3. That under 17 (c) when an existing machine is accelerated, the Union has the right to negotiate wages and conditions relative thereto.

4. That the speed and such other additional factors mentioned above clearly mandates that for any speed over 200 feet per minute a 30¢ per hour increase is fair and equitable.

The Company argues that the Contract Group 5 rate should continue, as:

1. The rate is based on comparisons of the Modified "J" Machine to various other printers of the same type at this Company's laboratory and other Laboratories;

2. In particular to Pathe's Modified "J" and whose operators are paid the minimum applicable Contract rate whatever the speed;

3. That the Contract's schedule of printing rates does not make speed a factor; and

4. That the operation of a printing machine over 200 feet per minute does not require more work, greater skill or impose greater responsibility of or upon the operator.

**DISCUSSION**

In attempting to show that the Company's Modified "J" is the same as other machines which are in operation in other laboratories, the Company relied principally upon a comparison with
Pathe's Modified "J" Machine. The latter machine according to the testimony of witnesses runs at a speed of 250 feet and utilizes either 32 mm or 16 mm B & W raw stock with a 16 mm negative. Mr. Sargent an employee of the Company for the past two and a half years testified that he had designed both the Pathe and this Company's Modified "J" Machine. Mr. Miller a witness for the Company, a former employee of Pathe was of the opinion that the Company's Modified "J" and Pathe's are the same. There was testimony that over four years ago the Pathe Modified "J" ran 250 feet processing B & W; that while any color machine can print B & W raw stock, the reverse is not true. The testimony and evidence presented failed to convince me that said machines are "the same". A color machine must of necessity have apparatus and equipment that is not on the B & W machine and the fact that the machines in question process different size raw stock i.e., 32 vs. 35-32 mm, points up further mechanical differences.

Since, in my opinion, the Company's Modified "J" is not a "same" machine it now becomes necessary to consider the Union's request for an increase in pay based upon the present speed of the Company's Modified "J" Machine. In this respect the Union clearly stated its position "an increased rate should be granted because the machine operates in excess of 200 feet." Further, in response to a direct question the Union's representatives said that if the machine operates at less than 200 feet they would not seek an increase. The testimony established that color printing machines run at speeds from 120 to 180 feet. An examination of the schedule of rates
applicable to printing machines shows all color printing operations fall within the Group 5 classification. Nothing in the printing department classification and rates furnishes any guideline with respect to speed. The Contract is devoid of any authority justifying the Union establishing 200 feet as a maximum speed. It is apparent that the Union is attempting unilaterally to establish such ceiling and if once established would give it the right to demand an increase in rate for any speeds in excess thereof. As the Union is not in effect asking for any increase for the speeds up to 200 feet, we are only concerned with the 25 feet that the machines run in excess of the 200 standard attempted to be set by the Union. I am not persuaded that under the conditions and circumstances that exist here, the accelerated speed is of such magnitude as should justify the establishment of an increased rate for the operation of the Modified "J". It is my further opinion that if speed is to be a material factor in establishing the rate of pay for color printing machines that it be a matter to be determined through the Collective Bargaining process.

**AWARD**

The Award, therefore, is as follows:

There shall be no increase in the rate for the operator of the Modified "J" Printing Machine (color work).

Dated: March 18, 1968

[Signature]

JOSEPH E. McMAHON
Permanent Arbitrator
On this 18th day of March, 1968, before me personally came JOSEPH E. McMAHON, to me know, and known to me to be the individual described in and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same.

PHILIP WEINSTEIN
NOTARY PUBLIC, State of New York
No. 41-4199701
Qualified in Queens County
Commission Expires March 30, 1969
In the Matter of the Arbitration

-between-

DE LUXE LABORATORIES, INC.

-and-

MOTION PICTURE LABORATORY TECHNICIANS,
LOCAL 702, I.A.T.S.E.

On February 7, 1968 a hearing was held with respect to a

dispute between De Luxe Laboratories, Inc. (hereinafter referred to
as "Company") and Motion Picture Laboratory Technicians, Local 702,
I.A.T.S.E. (hereinafter referred to as "Union") before the undersigned
pursuant to Article 15 of the Collective Bargaining Agreement (herein-
after referred to as "Union Contract") between the parties.

The parties were afforded full opportunity to examine and cross-
examine the witnesses. Post hearing memoranda were filed by the
parties.

APPEARANCES:

For the Union:

Pinto & Stein, Esqs.
By: E. Nicholas Pinto, Esq.

For the Company:

Poletti Freidin Prashker Feldman & Gartner
By: Eric Reisenfeld
ISSUE

The parties agreed that the issue to be determined is as follows:

"Did the Company's discontinuance of the payment of lunch money and overtime for six black and white negative developers violate the Contract."

BACKGROUND

Certain undisputed facts were presented which may be summarized as follows:

For the past fifteen to twenty years the Company did newsreel work and the crews on the black and white negative developing machines upon which newsreel work was processed "worked through lunch" in order to handle the volume of news work processed by the Company. This arrangement was instituted in order to enable the laboratory to process newsreel work when it came to the laboratory. As a compensation each of the three members of the news crew received one-half hour overtime pay and $1.50 lunch money.

With the demise of Universal News in November 1967 and Hearst News in January 1968 (Fox News ended three or fours years earlier) the Company having no more newsreel work discontinued the overtime and "lunch money".

The discontinuance of the newsreel work affected employees who did the newsreel negative developing work, six developers, three each on the day and midnight shifts and it to these six men that the issue relates.
POSITION OF THE PARTIES

The Union contends that the Company has violated Section 12 (a) of the Union Contract which reads as follows:

"12. WEEKLY AND HOURLY EMPLOYEES:

"(a) Nothing herein contained shall be deemed to have modified the rights and privileges presently enjoyed by weekly employees. Employer shall not change the status of any employee from weekly to hourly or from hourly to weekly without the Union's consent."

As the six employees were (1) weekly workers which has been conceded by the Company, (2) the payment of lunch money and overtime is a "right or privilege" as referred to in Section 12 (a), and (3) such right and privilege existed at the time of the execution of the Union Contract, the six developers having accepted employment in this department based upon these benefits as a condition of their employment, in addition (4) similar benefits have been paid to employees on the 16 mm black and white machines for approximately three to five years and to the 35 mm color developers for approximately four to six years although those employees did not do any news work.

The Company argues (1) that "weekly employees" means guaranteed forty hours of work a week, (2) that the "rights and privileges" of weekly employees means that they are guaranteed forty hours of work, a protection against a short week, restriction on transfer, and right to divide equally the pay of an absent crew member.

DISCUSSION

The genesis of the arrangement or working practice was given by Alan Freedman, retired executive of the Company, who was its chief
executive officer at the time the arrangement was instituted. Mr. Freedman testified he had approved the arrangement under which the men developing newsreel would work through their lunch hour and receive one-half hour overtime and $1.50 per day for lunch money. He testified that the purpose of this arrangement was to give continuity of operation on the newsreel; that such arrangement was continued even after the volume of news work and the number of news crews diminished because the necessity for such continuity did not change; that although the news crew had always done other work the arrangement was not suspended for the time spent on other work. He stated in addition that the news developing crew was never advised that their right to receive overtime and lunch money was dependent upon the newsreel work.

The Company's arguments have failed to overcome the contention that this long established arrangement had not in fact become a right and privilege for these particular negative developers. Such conclusion is supported by the evidence that men doing the news developing work had never been told that the arrangement for overtime and lunch money was dependent upon newsreel work. The Company itself never attempted to limit it to such work. The Company paid these benefits when these men were not working on newsreels. Under these circumstances, the company should not now be permitted to eliminate the right and privilege of the weekly employees which the Company voluntarily and unconditionally established prior to the current Union Contract.
AWARD

The Award, therefore, is that discontinuance of payment of lunch money and overtime to six black and white negative developers (weekly workers) violated the Union Contract.

Dated: March 25, 1968

[Signature]

JOSEPH E. McMAHON
Permanent Arbitrator

STATE OF NEW YORK ) ss:
COUNTY OF NEW YORK ) ss:

On this 25th day of March, 1968, before me personally came JOSEPH E. McMAHON, to me known, and known to me to be the individual described in and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same.

[Signature]

Notary Public

PHILIP WEINSTEIN
NOTARY PUBLIC, State of New York
No. 41-4105701
Qualified in Queens County
Commission Expires March 30, 1969
May 21, 1984

Mr. Robert M. Smith
Executive Vice President
Du Art Film Laboratories, Inc.
245 West 55th Street
New York, New York 10019

Mr. Elio Pesato
Vice President-Operations
Technicolor, Inc.
321 West 44th Street
New York, New York 10036


Dear Bob and Elio:

Enclosed for each of you is a set (Volume I and Volume II) of "East Coast Motion Picture Film Laboratories, Arbitration (and NLRB) Decisions, 1943-1984."

These volumes have been prepared by this firm for use by your two companies only. We have been representing your companies for over 10 years. We have been representing companies in the industry for about 25 years, starting with Pathe on East 106th St.

The two volumes contain 106 decisions, of the following types:

- Arbitration: 97
- NLRB: 5 (tabs 19, 71, 80, 81 & 82)
- Human Rights: 1 (tab 67)
- Federal court: 3 (tabs 100, 101 & 102)

We represented the laboratory in over 70 of the 106 cases.

Of the 97 arbitration cases, 28 were decided
by Joseph E. McMahon, the industry's first "permanent" arbitrator (1965-1969), and 42 by Eric J. Schmertz, the second (1969-77, 1983- ). Of McMahon's 28 decisions, 16 were in the laboratory's favor, and of Schmertz's 42 decisions, 27 have been in the laboratory's favor, bearing in mind that it is not always clear cut which side "won."

The 97 arbitration cases divide into the following major (and frequently overlapping) categories of disputes:

- disputes over machine complement under Article 17
- disputes over pay or other working conditions under Article 17
- discharges/suspensions (Article 10)
- other disputes over matters of pay, including holiday, severance pay, etc.
- work assignments
- temporary transfers under Article 13
- proper classification
- working foreman pay & duties (Article 16)
- promotions (Article 14)
- miscellaneous

Most of the decisions in these volumes come from our files. Bob Smith of Du Art supplied a number of
others from his files; many thanks to Bob. There are probably a number of other decisions out there which belong in these volumes but which neither Bob nor I had in our files.

To make the decisions accessible, I have listed all of them, with a summary of the "Issue" and the "Award" in each case, in the blue pages at the beginning of each volume. The summaries are not to be relied on as substitutes for reading the decision itself. Under no circumstances should Local 702 or any arbitrator be shown or given a copy of this listing.

I hope you will find these volumes useful. Onward -- together, I hope -- to Volumes III and IV!

Very truly yours,

Eric Rosenfeld

ER: rap
Enclosure
In the Matter of the Arbitration

- between -

MOVIELAB, INC.

- and -

MOTION PICTURE LABORATORY TECHNICIANS,
LOCAL 702, T.A.T.S.E.

On March 12, 1968 a hearing in a matter in dispute between Movielab, Inc. (hereinafter referred to as "Company"), and Motion Picture Laboratory Technicians, Local 702, I.A.T.S.E. (hereinafter referred to as "Union") was held before the undersigned, the permanent arbitrator in the Collective Bargaining Agreement (hereinafter referred to as "Union Contract") between the parties. The parties were afforded full opportunity to offer argument and evidence and to examine and cross-examine witnesses. Post-hearing briefs were filed.

APPEARANCES:

For the Company:

POLETTI FREIDIN PRASHKER
FEIDMAN & GARTNER, ESQS.
By: Eric Rosenfeld, Esq.

For the Union:

PINTO & STEIN, ESQS.
By: Nicholas Pinto, Esq.
ISSUE

The issue as agreed upon by the parties is as follows:

Does the distribution of work in the printing department by the Company's supervisors constitute a Violation of the Union Contract, if so, what shall the remedy be?

FACTS

There was undisputed testimony that Supervisors, who are not members of the bargaining unit, distribute work to printers in the printing department. The pertinent provisions of the Union Contract are as follows:

"16. SUPERVISORY EMPLOYEES:

(a) Supervisory employees, who are not classified as Working Foremen of Sub-Foremen, shall not engage in production or perform the work of another employee except insofar as such work may be incidental to their duties."

TESTIMONY

Union's witness Garlatti testified that for the past eight months work was distributed in color by an assistant supervisor and a working foreman. Formerly the work was distributed by a working foreman; that the distribution was done on the second shift by Supervisors. Similarly on the third shift distribution was made by the Supervisors and occasionally by a working foreman. In addition the Union produced witnesses who testified that at Pathe and Mecca the distribution of work in the printing departments was done by working foremen.
Mr. Cervone, a Supervisor in color printing on the first shift confirmed the testimony of Garlatti. He also stated that the assistant Supervisor spent on an average of three hours a day distributing work to printers; that some 80% of Company's color work is so called "short jobs", that as a result there is a continual distribution of work; that a printer could easily be handling 25 or even more different jobs a day; that he also participated in distribution of work particularly in the morning; that on occasion the working foreman operated machines all day; that there is a working foreman on the third shift, but not on the second.

POSITION OF THE PARTIES

It is the Union's position that the physical distribution of work by the Supervisors constitutes "production" and/or work of another employee which is prohibited by Section 16 (a) and; that the amount of time a Supervisor spends on any shift in distribution the work mandates the conclusion that this function is not "incidental".

The Company claims (1) the Union failed to make a prima facie showing that distribution of work by Supervisors was not "incidental" to other duties within the meaning of Section 16 (a); (2) that the record affords no basis for a determination that Section 16 (a) has anything to do with the subject of this case i.e. the distribution of work by Supervisors; (3) that the prohibition of Section 16 (a) was never meant to cover distribution of work by printing supervisors because such distribution was inherently and traditionally the right of management (4) that such work (distribution by Supervisors) was never thought of as
"production" or "work of another employee".

DISCUSSION

The precise issue presented here has been previously discussed (in part) in a prior arbitration between the parties, Case A-67-23. At that time I stated:

"It is my opinion that the extent to which a supervisor may deliver pre-print material must be considered in light of the qualifying language of Subdivision 16 (a) which limits the right of supervisors to do the work of another employee 'except insofar as such work may be incidental to their duties.' I believe that this restrictive provision applies irrespective of whether one considers a working foreman another employee or not. There was ample testimony as to the work a supervisor performs. There was, however, no testimony as to the amount of time employed in the incidental phases of his work. No time study (if made) was presented by either party. Thus, as the submitted issue was general in scope and considering the type of evidence presented, my ruling, likewise, must be general. It is not possible under the testimony and evidence as presented to precisely and definitely pinpoint what percent of the work of the supervisor was incidental. It appears that the delivery of pre-print work has historically been part of the duties of a supervisor. Thus, such activities (delivery of pre-print work) would be incidental to his general duties. When, however, a supervisor performs "incidental work" to such an extent that it can no longer be considered as within the protective language of 16 (a) cannot and is not determined at this time."

What is required is a determination of what meaning shall be given to the word "incidental" appearing in Section 16 (a) which permits Supervisors to engage in production or perform work of another employee's, insofar as such work may be "incidental" to their duties.
Section 16 (a) does not contain guidelines which would be helpful in explaining what was intended by the work "incidental".

"Incidental" is defined in the Webster's Third International Dictionary (Unabridged) as follows:

"...occurring mainly by chance or without intention, calculating; being likely to insue as a chance or minor consequences."

Thus it is plain that incidental means the opposite of regular or planned. No one can escape the conclusion that Supervisors duties are to supervise, which in the instant case would include the assigning of employees to specific machines; the allocation of work among the various employees; checking the quality and performance of the employees work; and giving assistance and instruction.

The testimony of the Company's Supervisor, Mr. Cervone, was of major significance. He testified on more than one occasion that at least three hours of the supervisor's time on the first shift was spent in distributing work. He further testified that 80% of the Company's work was "short jobs" so that a printer in the course of a typical day would probably handle 25 or more separate jobs. There was no testimony that the Company's supervisors have as a matter of past practice performed such work. On the contrary, it was only in the last eight months that the supervisors on the first shift have taken over this work which was formerly done exclusively by working foremen and it was only two years ago that supervisors assigned to the third shift assumed the duties of distributing work.
It is difficult to perceive how under these circumstances distribution of work can be considered "incidental" duties of a supervisor. The undisputed testimony of both parties was that supervisors do this work as a regular part of their duties. These facts force one to the conclusion that distribution of work is not an incidental part of supervisor's duties but on the contrary, a substantial and integral part of his work utilizing over one-third of his time. This is not a case where the amount of time spent by a supervisory employee in doing bargaining unit work is insignificant or minor. The amount of time involved here is major and significant.

The Company's argument that Section 16 (a) has nothing to do with the distribution of work by supervisors is erroneous. As a general rule labor agreements usually contain a provision that supervisory employees are prohibited from performing work of the employees in the bargaining unit. This principle is found in 16 (a) with a limitation thereof (in favor of the Employer) which permits a supervisor to do bargaining unit work to the extent that such work is incidental to the supervisor's duties. 16 (a) was designed and intended to prevent the practice that the Company has established. Any other conclusion under the circumstances presented here would emasculate this section and render it meaningless.

There are many decisions dealing with the disputes arising from the performance by Supervisors of the work of bargaining unit employees. Without exception in the cases examined, the work performed was of short duration arising from or caused by exceptional circumstances. See Archer - Daniels - Midland 48 LA 325; National Electrical Contractors.
It is axiomatic that each case must rest on its own facts. The ultimate decision reached herein is predicated upon all of the testimony presented, whether introduced by the Company or Union. My previous decision on this issue was clear in calling attention to the fact that "incidental work" might very well reach "an extent that it can no longer be considered as within the protective language of 16 (a)" (A-67-23 P.6). It is my opinion that in the instant case, such extent has been reached.

AWARD

The Award, therefore, is that the answer to the question is in the affirmative and the regular established practice of the distribution of work by supervisors in the printing department should be discontinued forthwith.

Dated: April 11, 1968

JOSEPH E. McMAHON
Permanent Arbitrator

STATE OF NEW YORK )
COUNTY OF NEW YORK)

On the day of April, 1968, before me personally came JOSEPH E. McMAHON, to me known, and known to me to be the individual described in and who executed the foregoing instrument, and duly acknowledged to me that he executed the same.

PHILIP WEINSTEN,
NOTARY PUBLIC, State of New York
No. 41-4199701
Qualified in Queens County
Commission Expires March 30, 1968
April 15, 1968

Movielab, Inc.
619 West 54th Street
New York, New York

Re: Movielab, Inc. - Local 702
(68 A 5)

Gentlemen:

I am enclosing Opinion and Award in the above entitled proceeding together with bill for services rendered in connection therewith.

Very truly yours,

JOSEPH E. McMAHON

JEM:ec
encls.
cc. Eric Rosenfeld, Esq.
N. Pinto, Esq.
Motion Picture Laboratory Technicians, Local 702
In the Matter of the Arbitration

- between -

MOVIELAB, INC.

- and -

MOTION PICTURE LABORATORY TECHNICIANS,
LOCAL 702, I.A.T.S.E.

ARBITRATOR'S
OPINION AND AWARD

On May 29, 1968 a hearing in a matter in dispute between Movielab, Inc. (hereinafter referred to as "Company"), and Motion Picture Laboratory Technicians, Local 702, I.A.T.S.E. (hereinafter referred to as "Union") was held before the undersigned, the permanent arbitrator in the Collective Bargaining Agreement (hereinafter referred to as "Union Contract") between the parties. The parties were afforded full opportunity to offer argument and evidence and to examine and cross-examine witnesses.

APPEARANCES:

For the Company:
POLETTI FREIDIN PRASHKER
FELDMAN & GARTNER, ESQS.
By: Eric Rosenfeld, Esq.

For the Union:
PINTO & STEIN, ESQS.
By: Nicholas Pinto, Esq.
The question to be decided here is whether or not the discharge of Walter Held on May 27, 1968 was for just causes, if not, what is the proper remedy.

**FACTS**

The facts presented are relatively few and undisputed. Walter Held (employee) has been employed by the company since November of 1961. In a letter dated December 27, 1967, the company notified him that his attendance record was very poor, as he had been absent twenty-nine times and late twenty-nine times during the period of January 3, 1967 through December 8, 1967 and if he was not able to improve in this respect (his record), his status was subject to review which could result in further disciplinary action, including discharge.

On May 27, 1968 the company, by telegram, notified Mr. Held that he was discharged for "excessive absenteeism". He had been absent fifteen days in 1968.

**TESTIMONY**

Mr. Robert Amato the company's Director of Industrial Relations testified that on December 27, 1967 letters similar to the one sent to Heid were sent to nine other employees who had poor attendance records. The range of the absences of these employees was from twenty-five to fifty-four days. The attendance records, which were reviewed again in May of 1968, disclosed that of the men
who received the December 27, 1967 letter, two were listed as having poor records in 1968. One of the two was Heid who had been absent fifteen times. Based on this number of absences the company, following the contract procedure, first suspended and then discharge Heid for the reason previously noted, namely "excessive absenteeism".

Mr. Heid testified that some of his 1967 absences were due to visits to his son who was in a naval hospital as a result of wounds received in Vietnam; that the 1968 absences were due to illnesses. He submitted a doctor's statement which indicated that he visited the doctor on four occasions between March 8 and April 8, 1968.

There was no issue as to the quality of Heid's work, nor was there any evidence that his absences interfered with the company's operations.

**POSITION OF THE PARTIES**

It was the company's position that the absentee record of this employee in 1967 and in the first five months of 1968 was such as to justify his discharge for excessive absenteeism. The company attempted to introduce previous notices on this subject that had been sent to this employee in 1965 and in periods prior thereto, however, such testimony was disallowed.

The Union claims that the discharge was unjustified as the Company had no standard by which absences might be judged as excessive. Furthermore, Heide had valid reasons for his absences to wit, personal illness and the sickness in the family.
DISCUSSION

It should be noted that regularity in attendance is a basic employee responsibility and an employee obligation. It would appear twenty-nine times absent in 1967 and fifteen in the first five months of 1968 might well be considered excessive. The difficulty presented here is a lack of any standard by which the degree of absenteeism may be judged. The Company introduced no Company rules or regulations on this point, nor is the contract language helpful. Article 10 covering discharges provides that "After two or four weeks of employment, as the case may be, all discharges shall be for just cause only." Consequently, the burden is upon the Company to prove that its action in discharging this employee was justified. A typical statement relative to discharge for excessive absenteeism is set forth in Wilcox Electric Company, Incorporated and International Association of Machinists, et al. 67-2 ARB. 8661, as follows:

"The Company contends that such a record of excessive absenteeism is proper cause for discharge regardless of the reasons for any of the absences. It is well established in industrial practice and in arbitration practice and policy, and it has been emphasized in many arbitration decisions, that an employer may terminate an employee for excessive absenteeism; that, regardless of the cause, when chronic and intermittent absenteeism reaches the point where an employee cannot be depended upon, and where, because of his absenteeism, he is no longer a satisfactory employee and is no longer of value to the employer, his services may be dispensed with, and the Company's obligations to him may be terminated."
"But it is equally well established that discipline for excessive absenteeism should be of the progressive type, aimed at correction, and with every reasonable effort being made by the employer to correct the employee's shortcoming before discharge is justified."

In considering the facts and circumstances involved here a review of a number of decisions dealing with excessive absenteeism disclosed in practically every case where the discharge was upheld, that the employee had previously received warnings sometimes in the nature of a suspension shortly before the discharge. Such discharges usually grew out of a particular incident that resulted in such an action. Here there was nothing to indicate any particular incident gave rise to the Company's action, other than a general review of its attendance records in May. As to the fifteen absences in 1968, there was no testimony offered to show when they occurred. It is possible they could have occurred in January or in the first, second or third months of the year. The only testimony on degree of absenteeism at the Company's laboratory was that in 1968, sixty employees had been absent seven or more times and in 1967, thirty for fifteen or more days. There was no data as to an overall plant average. It seems to me under modern industrial practices, Heid normally would have been subjected to some disciplinary action such as a suspension before the Company resorted to the drastic action of discharge. In this respect, I feel that the company has not sustained the burden of proof, however, this does not mean that I condone or approve the unsatisfactory attendance
record of this employee. However, I am of the opinion that the discharge be treated as a final warning and suspension; that Heid be reinstated to his job promptly after the receipt of this award. He is not entitled to payment for the time lost. It is not to be inferred that the Company is under any obligation to tolerate any further unauthorized absenteeism of Heid. If he does not work regularly, the Company has the right to take whatever further action may be warranted.

AWARD

Heid was not discharged for just cause, however, in view of his record of attendance the discharge should be treated as a suspension without pay. The employer is directed to reinstate him promptly.

Dated: June 17, 1968

STATE OF NEW YORK ) ss.:1
COUNTY OF NEW YORK)

On the 18th day of June 1968, before me personally came JOSEPH E. McMAHON, to me known, and known to me to be the individual described in and who executed the foregoing instrument, and duly acknowledged to me that he executed the same.

PHILIP WEINSTEIN
NOTARY PUBLIC, State of New York
No. 41-4199701
Qualified in Queens County
Commission Expires March 31, 1988
June 20, 1968

Movielab, Inc.
619 West 54th Street
New York, New York

Re: Movielab, Inc. - Local 702
(68 A 11)

Gentlemen:

I am enclosing Opinion and Award in the above entitled proceeding together with bill for services rendered in connection therewith.

Very truly yours,

JOSEPH E. McMAHON

JEM:ec
encls.
c.c. Eric Rosenfeld, Esq.
  N. Pinto, Esq.
  Motion Picture Laboratory
  Technicians, Local 702
In the Matter of the Arbitration

- Between -

MOVIELAB, INC.

- and -

MOTION PICTURE LABORATORY TECHNICIANS,
LOCAL 702, I.A.T.S.E.

On May 8 and June 18, 1968 hearings in a matter in dispute between Movielab, Inc. (hereinafter referred to as "Company"), and Motion Picture Laboratory Technicians, Local 702, I.A.T.S.E. (hereinafter referred to as "Union") were held before the undersigned, the permanent arbitrator in the Collective Bargaining Agreement (hereinafter referred to as "Union Contract") between the parties. The parties were afforded full opportunity to offer argument and evidence and to examine and cross-examine witnesses. Post-hearing briefs were filed.

APPEARANCES:

For the Company:

POLETTI FREIDIN PRASHKER
FELDMAN & GARTNER, ESQS.
By: Eric Rosenfield, Esq.

For the Union:

PINNO & STEIN, ESQS.
By: Nicholas Pinno, Esq.
ISSUE

The issue herein is based upon the Union's claim that "threading up" and operating of a projector in the inspection room by a color customer complaint man violates the Union Contract. If the determination is in the affirmative, what shall be the remedy.

FACTS

The dispute herein revolves around the work performed by Dale Farkas, a color customer complaint man (CCC) in the service department which acts as a liaison with customers. It is Farkas' duty to check jobs rejected by customers. In the course of his duties and pursuant to instructions from his supervisors, he has threaded up and operated a projection machine in the projection department. He estimated that he has engaged in such work on the average of thirty minutes a day; that he might make as many as fifty thread ups in a week. The men operating the projectors in the "Inspection by Projection Department" are members of the Union and the work and rates of pay are set forth in the schedule attached to the Union Contract. Farkas is not a member of the Union, nor does his position come within its jurisdiction. Since his return from the Military Service in November of 1967 he has worked as a color customer complaint man. He basically did the same type of work in 1965 as a service department man before going into the Service, however, the department had become more formalized in 1967. Several months ago he was questioned as to whether or not he was a member of the Union and upon stating that he was not, a complaint was made by the Union against his doing this work.
The pertinent provision of the Union Contract is as follows:

1. "(f) This Agreement shall cover the employees in the respective classifications listed in Schedule A. It shall not cover employees who may be represented by other unions under contract with the Employer and such other employees as may be excluded under the Labor Management Relations Act of 1947. Any employee excluded from the provisions of this Agreement shall not regularly engage in the handling or processing of film except as may be otherwise herein provided."

TESTIMONY

As indicated in the statement of facts, there is no dispute as to Farkas doing the work to which the Union objects. That when he wanted to inspect some film he would do so. Usually four projectionists in the department were busy and he would thread up a machine that was not being operated. On one occasion he asked one of the inspectors to do the threading up and operating of a machine for him. Normally he did not use the inspectors as he was instructed not to do so. When he was queried by one of the projectionists, a union member, about a Union card he contacted personnel which instructed him to withhold projecting at that time. Subsequently, he was told by his supervisor he could project. He did this work because it was easier for him to do it himself and in his opinion there was no reason to give the inspectors the work he was supposed to do.

A Mr. Saxton, a projectionist in the inspection department, testified that when he saw Farkas operating a projection machine he complained to the shop steward. He stated he observed Farkas using the
projection equipment at least once a day, sometimes three or four times a day. He complained two or three times to the shop steward. The shop steward testified that Mr. Saxton had in fact made this complaint to him several times, however, he had been unable to actually "catch" Farkas doing this work, primarily because he worked on a developing machine on the eighth floor and consequently there was a considerable lapse of time between Saxton sending the message and when he was able to get down to the projection room; that he did not want to make a formal complaint until he actually saw Farkas doing this work.

POSITION OF THE PARTIES

It is the position of the Union that the threading up of the projection machine and its operation is a direct violation of Section 1(f) of the Union Contract, inasmuch as Farkas, the CCC man, is admittedly not covered by this agreement and that only employees covered by the Union Contract are permitted to engage in this work.

The Company claims:

(1) That the contract does not cover the CCC man, because he is not one of "the respective classifications listed in Schedule A" (Section 1(f), first sentence).

(2) That the contractual no-regular-handling prohibition applies only, as it says (Section 1(f), third sentence), to "Any employee excluded from the provisions of this Agreement."

(3) That "excluded" as used in Section 1(f)'s third sentence describes the same persons as it does in the second
sentence, in which "such other employees as may be excluded under the Labor Management Relations Act of 1947" refers to individuals employed by their parents, supervisors, and perhaps, also, other persons known to exist at large in the motion picture film processing industry in this City.

(4) That the CCC man, because he is not "such other employees as may be excluded under the Labor Management Relations Act of 1947," is therefore not subject to the no-regular-handling prohibition.

(5) The CCC man does not "regularly" engage in the handling or processing of film.

(6) The Union knowingly and without protestation acquiesced in the CCC man's open use of the projector.

**DISCUSSION**

We have here a situation in which an employee outside the bargaining unit and not within the jurisdiction of the Union is engaged in performing work which is covered by the Union Contract.

The Company by rather ingenuous reasoning argues that since the CCC man is not an employee excluded from the provisions of the Union Agreement within the meaning of the third sentence of Section 1 (f) that he is not subject to the no-regular-handling prohibition. Assuming for the purpose of argument that the CCC man is not excluded from the Union Agreement, it is likewise true that he is not a member of the Union, nor is his job, customers complaint man, covered by the Union Agreement. However, we are confronted with the CCC man performing work of employees who are covered by this agreement. To accept the
philosophy that the CCC man who is not a member of the Union and who under the Company's position is not excluded therefrom, can do the work in a covered classification is untenable. Even assuming for the purpose of argument that the prohibition clause does not apply to the CCC man, it does not follow that he is permitted to do the work of an employee in a classification covered by the Contract. The claim that Farkas does not "regularly" engage in handling the film is without merit. The Company's argument is that regularly apparently means doing the same thing at the same time every day is not acceptable. By Farkas' own testimony, he does the work complained of daily and certainly that constitutes regularity. The Company claim that when a CCC man threads up a projector, he is handling film only in a "literal sense" is frivolous. Incidentally, there are many job classifications covered by the Contract in which employees are engaged solely in handling film as compared with actually processing thereof. The only claim that has any substance of merit is the Company claim that the Union knowingly acquiesced in Farkas performing this operation. I was not persuaded by the testimony that this was the fact. On the contrary, it seems that the Union representatives were not successful in actually "catching" Farkas doing this work. Since the operation complained of is, in my opinion, a violation of the Contract, the failure of the Union to take diligent steps to force the discontinuance thereof would not convert an improper operation into a valid one. How difficult it was for the Union to verify the alleged violation of the Contract is manifest in the Company's brief, wherein in contending that
the CCC man does not regularly engage in the handling or processing of film. It stated "The very nature of his work makes it impossible to schedule or routinize or regularize the use of the projector. That is why the Union was, apparently, never able to catch a CCC man in the act."

AWARD

The Award, therefore, is that the threading up and operating of a projector in the inspection room by a color customer complaint man violates the Union Contract and the CCC man is ordered to cease and desist in this practice.

Dated: July 11, 1963

STATE OF NEW YORK )
COUNTY OF NEW YORK)

On the 17th day of July, 1968 before me personally came JOSPEH E. Mc mahon, to me known, and known to me to be the individual described in and who executed the foregoing instrument, and duly acknowledged to me that he executed the same.

JOSPEH E. MCMAHON
Permanant Arbitrator

PHILIP W. EVANS
St. Pl. Sec'y, City of New York, N. Y. 41-30
In the Matter of the Arbitration

- between -

MECCA FILM LABORATORIES

- and -

MOTION PICTURE LABORATORY TECHNICIANS,
LOCAL 702, I.A.T.S.E.

On June 27, 1968 a hearing in the matter in dispute between Mecca Film Laboratories (hereinafter referred to as "Company") and Motion Picture Laboratory Technicians, Local 702, I.A.T.S.E. (hereinafter referred to as "Union") was held before the undersigned, the permanent arbitrator in the Collective Bargaining Agreement (hereinafter referred to as "Union Contract") between the parties. The parties were afforded full opportunity to offer argument and evidence and to examine and cross-examine witnesses.

APPEARANCES:

For the Company: GEORGE H. BEUCHERT, JR., Esq.

For the Union: PINTO & STEIN, ESQs.
By: Nicholas Pinto, Esq.
ISSUE

The issue here is whether or not payment of $3.37 per hour to Steve Perdikakis during his training period as a Wet End Developer in the Positive Developing Department was in violation of the Union Contract.

FACTS

For a number of years prior to taking a job in the Positive Developing Department, Steve Perdikakis (hereinafter referred to as S.P.) was a Group 5 printer on the second shift. His rate of pay was $3.68 per hour, exclusive of a shift premium.

About two months prior to the hearing there was a job opening in the Positive Developing Department, to wit: Black & White Wet End Type 1, on the day shift. The rate for this job was $3.37 per hour. Information concerning this opening was posted on the Company's bulletin board on a "Promotional List." S.P. was a successful bidder. During the four week training period he required to qualify for his new job, he was paid $3.37 per hour.

POSITION OF THE PARTIES

The Union maintains that this employee's change in job constitutes a "promotion" and therefore he should have been paid $3.68 during the training period pursuant to Section 14 (c) of the Union Contract, the pertinent portions of which read as follows:

"(c) If a promotion to a higher classification requires a training period, then for the first four (4) weeks of work in said higher classification, the employee shall retain the rate of pay formerly received by him in the lower classification. After
The Union's position is predicated upon the fact that the maximum rate of pay in the Positive Developing Department is higher than the rate in the Printing Department; that by automatic progression therefore, through the different types of jobs in this department the employee could ultimately earn 30¢ per hour more than he was receiving as a Group 5 printer; that transfer from the Printing to the Positive Developing constitutes a promotion as there are only two classifications of work, namely, Dry End and Wet End; that the rate for the various types of work in these classifications do not constitute job classifications.

The Company argues that there was no promotion here as the employee voluntarily took a job which pays less and consequently Section 14 (c) is inapplicable. It contends it would be illogical for a person to receive a higher rate while training than his trainer and less after he had qualified; that there are twelve different job classifications in the Positive Developing Department; and the classification accepted by this employee resulted not in a promotion but in fact a demotion which the individual was not only willing, but anxious to accept for personal reasons.

DISCUSSION

It is clear from the undisputed facts and testimony, that S.P. undoubtedly wanted to work on the first shift. According to the Company's plant manager, prior to the posting of the opening in the
Positive Developing Department, he had requested a transfer to the first shift. As there was no opening at that time in the printing or any other department, his request could not be granted. Subsequently, when the opening appeared in the Positive Developing Department, this employee bid for this job with full knowledge that it meant being paid a lower rate per hour and necessitated learning the work of another department. It is plain that Section 14 (c) does not contemplate the type of a job transfer or change we are confronted with here. It covers the conventional situation where an employee moved from a lower to a higher classification and from the very language of this section, the rate to be received in the higher classification is of prime consideration. The rates of pay as received by those working in the Positive Developing Department are as follows:

**DRY END**

Type 1 - One Strand - Normal .................. $3.12 3.27
Type 2 - One Strand - Fast .................... $2.22 3.37
Type 3 - Two Strand - Normal .................. $1.22 3.37
Type 4 - Two Strand - Fast ..................... $3.39 3.54
Type 5 - Color - Normal ...................... $3.64 3.79
Striper ................................... $3.64 3.79

**WET END (Pre-determined control)**

Type 1 - One Strand - Normal .................. $2.22 3.37
Type 2 - One Strand - Fast .................... $3.34 3.49
Type 3 - Two Strand - Normal .................. $3.34 3.49
Type 4 - Two Strand - Fast ..................... $3.53 3.68
Type 5 - Color - Normal ...................... $3.83 3.98
Striper ................................... $3.83 3.98

I am not in agreement with the Union's contention that there are only two classifications in this department, namely, Wet End and Dry End. In my opinion there are six job classifications in both
the Wet and Dry End sections and thus when this employee bid on a job paying $3.37 he was in effect taking a demotion. While it is true that this man might eventually reach the $3.98 rate, this is a matter of speculation. Moreover, this is not a case where the employee was seeking to move into the Developing Department because of the possibility of greater advancement in the future. I am of the opinion, by the testimony, that this employee wanted to work on the first shift and that is the primary reason for the action that he took.

The fact that the job opening was listed on a promotional list is immaterial in this case.

AWARD

The Award, therefore, is that the payment to S.P. of $3.37 per hour during his training period as a Wet End Developer was proper and therefore did not constitute a violation of the Union Contract.

Dated: July 16, 1968

JOSEPH E. McMAHON
Permanent Arbitrator

STATE OF NEW YORK )
COUNTY OF NEW YORK)

On the 17 day of July, 1968 before me personally came JOSEPH E. McMAHON, to me known, and known to me to be the individual described in and who executed the foregoing instrument, and duly acknowledged to me that he executed the same.
In the Matter of the Arbitration

- between -

DE LUXE LABORATORIES, INC.

- and -

MOTION PICTURE LABORATORY TECHNICIANS,
LOCAL 702, I.A.T.S.E.

On June 20, 1968 a hearing in the matter between De Luxe Laboratories, Inc. (hereinafter referred to as "Company"), and Motion Picture Laboratory Technicians, Local 702, I.A.T.S.E. (hereinafter referred to as "Union") was held before the undersigned, the permanent arbitrator in the Collective Bargaining Agreement (hereinafter referred to as "Union Contract") between the parties. The parties were afforded full opportunity to offer argument and evidence and to examine and cross-examine witnesses. Post-hearing briefs were filed.

APPEARANCES:

For the Company: POLETTI FREIDIN PRASHKER
FELDMAN & GARTNER, ESQS.
By: Eric Rosenfeld, Esq.

For the Union: PINTO & STEIN, ESQS.
By: Nicholas Pinto, Esq.
ISSUE

The issues to be determined herein are as follows:

1. Was the assignment of three (3) men to one strand without a commitment to pay lunch money a violation of the Contract? No

2. Was the refusal of the men to accept such assignment a violation of the Contract? Yes

BACKGROUND

The undisputed testimony was as follows:

The Company has three Duplex color positive developing machines, as follows:

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<tr>
<th>No.</th>
<th>19</th>
<th>20</th>
<th>21</th>
<th>22</th>
<th>23</th>
<th>24</th>
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On March 15, 1963 early on the second shift (between 5:00 and 6:00) machine 22 broke down and stopped. There were eight color positive color developers on duty at the time. The Company assigned those eight, and two black & white positive developers freed by the shutting down of a black & white strand, to machines 20, 21 and 24. The men refused the assignment unless the Company would commit itself to pay all of them "lunch money." Lunch money meant one-half hour of overtime pay plus one dollar and a half. The men at the time placed their insistence for lunch money upon a remembered voucher found some months ago showing that on one occasion in 1963 or 1964, nine color positive developers were paid lunch money. The Company refused to concede to this demand and instead assigned the eight color developers to machine 21, 23 and 24. Three men to machine 21 and five men to machines 23 and 24.
POSITION OF THE PARTIES

The Company maintains:

(a) That the assignment of three men to one machine without a commitment to pay lunch money was not a violation of the Contract as there is no contractual provision requiring the Company to pay lunch money for a single strand; that the payment on a single occasion four or five years ago of lunch money to nine developers would not amount to a binding past practice.

(b) The refusal of the men to accept the assignment was a violation of the Contract. Such refusal was violative of Section 15 of the Union Contract providing discussion and arbitration as the exclusive means of resolving disputes under the Contract and in particular the part of Section 15 (g) prohibiting strikes pending final determination of any such dispute.

The Union contends:

(a) The assignment of three men to a machine without payment of lunch money violated the contract as the company on one prior occasion, insofar as the record would indicate paid lunch money.

(b) The refusal of the men to accept the assignment was not a violation of the Contract, as the company knew full-well when it attempted to run five strands with ten men it violated not only Section 17 (b) of the Contract but also violated the spirit and formulae set forth in three prior arbitration awards. These awards in essence laid down the formulae: 1 strand = 3 men; 2 strands = 5 men; 4 strands = 8 men. The attempt to add another strand making a fifth strand and utilizing an additional two men in its crew was a clear violation of
the awards. Essentially, therefore, when a Contract is breached by one party it releases the other.

TESTIMONY

It might be well to clear up a misapprehension on the part of the Union at the beginning. At no time during the hearing was there any testimony as to the intention or desire of the Company to operate five strands with ten men. On the contrary, the Company intended to operate machines 21, 23 and 24 (three strands) with ten men. Since the Company conceded that this assignment was based on the accepted crew complement of three men for one strand, (making nine men on three strands) the tenth man was present because in order to obtain an additional man, the Company was required to shut down a black and white machine thereby releasing two men and they assigned the extra man to this operation. The Company witness testified that the color developing crew claimed they did not want the tenth man, but they wanted lunch money for nine men. The demand for lunch money apparently was based upon a voucher which was found a few months previous which indicated lunch money was paid on one occasion when nine men operated four strands. Witnesses for the Company and the Union agreed that this voucher was discovered while Company and Union representatives were checking vouchers on another matter.

The Union shop steward testified that he was called down to talk to the men who were refusing to accept an assignment. However, by the time he arrived on the scene the Company had assigned the men to machines 21, 23 and 24. He did not instruct the men to refuse the assignment.
OPINION

The Union concedes that the Company had the right to operate a single strand with three men. After machine 22 broke down the Company assigned ten men to machines 20, 21 and 24. The Company’s assignment constituted the maximum crew complement plus an extra man. There is no contractual requirement that the Company pay "lunch money". The refusal to operate machines 20, 21 and 24 was predicated upon the discovery of a voucher covering a payment of lunch money made four or five years ago to nine developers for operating four strands. We are not concerned with four strand operations here. The Company’s assignment was proper and the demand for lunch money unwarranted. The payment of lunch money under the circumstances referred to on one isolated occasion some years ago does not, in my opinion, constitute a binding practice. The assignment of three men to one strand without a commitment to pay lunch money was not in violation of the Contract.

I do not agree with the Union’s position that a breach by one party of a contract automatically releases the other party from obligations found therein. Arbitrations, particularly labor arbitrations, usually arise when one party has violated or breached some provision of a contract. Grievance procedures are included in labor agreements to resolve such claims or disputes. The essential purpose of the grievance procedure is to establish the machinery by which such disputes can be resolved without a work stoppage. Neither party has the right to make unilateral determinations of alleged violations. There can be no doubt that the men were wrong in refusing to accept the assignment to operate machines 20, 21 and 24. This would be true even if it be assumed that the employees had been right in their demand for lunch money. Moreover,
the men would suffer no damage if their claim for lunch money was upheld at a later time. It is a well-established principal expressed in many arbitration awards that an employee must normally obey management orders even though he thinks it improper and his remedy is to follow the grievance procedure. He has no right to take it upon himself to disobey except in obvious situations, which are not involved here. In the absence of any such justifying factors, an employee has no right to disobey an order merely because in his opinion the order violated some rights under the Union Contract. Thus the refusal of the men to accept the assignment to operate machines 20, 21 and 24 constituted a violation of the Contract.

The Company suggests that in view of the seriousness of the Contract violation and in view of a previous history of other refusals of assignments by the same men, that I should fashion a remedy to deter similar violations in the future. Since the Company, for its own reasons, has not taken prompt disciplinary action, it is understandable why there is a repetition of these acts. I cannot issue a blanket prohibition against all future violations of Section 15 of the Contract by the Union of any of its officers or agents, and suggest the Company utilize the procedures available to it under the Contract. It should be noted that in this instance the employees who violated the Contract, did so on their own initiative and their action was not sanctioned or authorized by Union officials.
AWARD

The award, therefore, is answered in the negative as to Issue No. 1 and in the affirmative as to Issue No. 2.

Dated: August 15, 1968

[Signature]

JOSEPH E. McMAHON
Permanent Arbitrator

STATE OF NEW YORK )
COUNTY OF NEW YORK )

On the 19th day of August, 1968, before me personally came JOSEPH E. McMAHON, to me known, and known to me to be the individual described in and who executed the foregoing instrument, and duly acknowledged to me that he executed the same.

[Signature]

PHILIP WEINSTEIN
NOTARY PUBLIC, State of New York
No. 41-4199701
Qual. in Queens County
Commission Expires March 30, 1969
In the Matter of the Arbitration

-between-

DU ART FILM LABORATORIES, INC.

-and-

MOTION PICTURE LABORATORY
TECHNICIANS, LOCAL 702, I.A.T.S.E.

ARBITRATOR'S
OPINION & AWARD

68-A-13

This controversy was submitted to arbitration by Motion Picture Laboratory Technicians, Local 702, I.A.T.S.E. (hereinafter referred to as "Union"), and Du Art Film Laboratories, Inc. (hereinafter referred to as "Company"), pursuant to Article 15 in the Collective Bargaining Agreement (hereinafter referred to as "Union Contract") between the parties dated May 23, 1966, wherein the undersigned was designated Permanent Arbitrator to hear and determine disputes arising under said Agreement.

Hearings were held on July 24, 1968 and August 1, 1968, at which time the parties were afforded full opportunity to offer argument and evidence, and to examine and cross-examine the witnesses.

APPEARANCES:

For the Company:  LEONARD COOPER, Esq.

For the Union:  PINTO & STEIN, Esqs.
By:  B. Stein and N. Pinto
ISSUE

The issue, as agreed upon by the parties, is as follows:

(a) May the Company operate No. 2 and 3 color developing machines simultaneously with five men;

(b) May the Company operate No. 1 and 3 color developing machines simultaneously with five men.

BACKGROUND

The Company presently has in operation three color developing machines. Machine #1, which was installed in 1950, develops 16 mm negative or positive. Machine #2 installed in 1954 develops 35 mm negative and positive. Machine #3 installed in 1966 develops 16 mm positive. Machines #1 and #2 are on the same level with a platform known as a "bridge" between them. There are six steps leading to this bridge. Machines #1 and #2 are operated with a five man crew. There are four steps leading to the bridge between Machines #3 and #2 which is approximately 16 inches below the level of the bridge between Machine #1 and #2. The four steps leading to the bridge between #2 and #3 are wide; whereas, the six steps leading to the bridge between Machine #1 and #2 are narrow and steep and have handrails. Machine #3 is operated with a three man crew. Thus, when all three machines were operating, there was a total crew complement of eight men. Each machine had a wet-end man and a dry-end man. There was one man on the bridge between Machines #1 and #2, and one man on the bridge for Machine #3. When
the machines are processing positive film, it is necessary to have an applicator operating and one of the duties of the bridge man, in addition to observing the film as it goes through the bath, is to check on the functions of the applicator. I am attaching as an exhibit a sketch of those machines which indicate the position of the applicator on each machine. The position of the applicators are designated by Figs. A, B, & C, and where a bridge man would stand normally is indicated by Figs. D and E.

ORIGIN OF THE DISPUTE

Machine #1 broke down on or about April 1, 1968. The Company attempted to operate Machines #2 and #3 with a five man crew. However, the Union protested and insisted that the proper complement was six men, or three men to a machine. The Company is operating in that manner under protest pending the final determination of this dispute.

POSITION OF THE PARTIES

The Company maintains that it has a right to change the operation of Machine #3 by operating Machines #2 and #3 as a dual operation with a five man crew in the same manner that it has a right to operate Machines #1 and #2 with a five man crew; and, further, that it has a right under Section 17C of the Contract, to operate Machines #1 and #3 with a five man crew, as other laboratories under contract with the Union are presently and have been operating in such fashion.
The Union maintains that Section 17C does not apply, as no new, unusual, reconstructed equipment is involved, and that Section 17(d) would prohibit the contemplated use, as the Union has never agreed to a five man crew complement for a similar operation by any other Employer. The Union maintains that Section 17(b) which provides for continuance of present method is controlling here.

**OPINION**

A personal examination of the Company's three developing machines, the testimony and evidence, establish quite conclusively we do not in this situation have a three machine unit. Machines #1 and #2 constitute a unit, and the parties agree that the crew complement for this unit is five men. We have an entirely different condition with respect to Machine #3, which was designed, installed and operated as a single unit with a three man crew. This conclusion is further supported by the fact that the bridge between #3 and #2 is considerably lower than the common bridge between #1 and #2, and such bridge was not planned as, nor does it constitute, a common bridge.

The Company testified that Machines #2 and #3 were never operated as a pair. In addition, it appears that no attempt was made prior to the breakdown of Machine #1 to operate #3 and #2 or #3 and #1 with five men.
As considerable testimony was given concerning the work of a bridge man, in checking on the operation of the applicators on Machines #3 and #2 and #3 and #1, I should point out that, in my opinion, while the applicators could be seen, the distances are such that the bridge man will be unable to determine if the applicator was functioning properly. The applicator on #2 is so situated that it can be observed by a man on the common bridge between #1 and #2. When, however, this man is on the other bridge, he is looking at the rear of that instrument. Finally, the six narrow steps leading to the bridge between #1 and #2 must be negotiated with more than ordinary care by a man going from one bridge to the other. Therefore, I conclude that #3, being a single machine, it requires a three man crew and if either #1 or #2 is run singly, said machine would, likewise, require a three man crew.

Although I do not consider Section 17(c) applicable, it appeared from the testimony that the "set up" of the machines at Perfect and Movielab are not comparable to the conditions presented here.

AWARD

The Award, therefore, is that the Company may not operate #2 and #3 or #1 and #3 color developing machines simultaneously with five men.

Dated: August 23, 1968

[Signature]

JOSEPH E. McMAHON
Permanent Arbitrator
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<tr>
<th>MACH #3</th>
<th>MACH #2</th>
<th>MACH #1</th>
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<tbody>
<tr>
<td>WET END</td>
<td>WET END</td>
<td>WET END</td>
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<tr>
<td>DARK 16MM</td>
<td>DARK 35MM</td>
<td>DARK 16MM</td>
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<td>WALL FIG C</td>
<td>WALL FIG B</td>
<td>WALL FIG D</td>
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<td>4 STEPS</td>
<td>6 STEPS</td>
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<tr>
<td>DRY BOX</td>
<td>DRY BOX</td>
<td>DRY BOX</td>
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<td>3'10&quot;</td>
<td>21 6&quot;</td>
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</tbody>
</table>

**DISTANCES:**
FROM CENTER OF BRIDGE (FIGURE D) TO CENTER OF BRIDGE (FIGURE C) 7 FT 4 IN.

FROM APPLICATOR ON #1 MACHINE (FIG A) TO:
- APPLICATOR ON #2 MACHINE (FIG B) 4 FT 1 IN
- APPLICATOR ON #3 MACHINE (FIG C) 10 FT 1 IN

FROM APPLICATOR ON #2 MACHINE (FIG B) TO:
- APPLICATOR ON #3 MACHINE 6 FT 2 INCHES.