In the Matter of the Arbitration: 
between 
Local 702 I.A.T.S.E. 
and 
Technicolor Film Laboratory : 

OPINION AND AWARD

The stipulated issue is:

Is Philip Lamendola entitled to the job as a working foreman in the negative developing department? If so what shall be the remedy?

A hearing was held on March 23, 1990 at which time Mr. Lamendola, hereinafter referred to as the "grievant," and representatives of the above-named Union and Company appeared. All concerned were afforded full opportunity to offer evidence and argument and to examine and cross-examine witnesses. The Arbitrator's Oath was waived.

In May 1989, Vincent Villane retired from the position of working foreman in the negative developing department. Prior to his retirement there were two working foremen in the development department - Villane in negative developing and Vincent Masillo, in positive developing.

With Villane's retirement, the Company chose not to replace him, but rather assigned Masillo to cover both negative and positive developing, as working foreman. Because of that staffing decision, the grievant's bid for the job vacated by Villane was denied by the Company and his grievance, which is the subject of this arbitration, followed.

It is the Union's position that historically and by practice, there has been a working foreman assigned to each department, one in negative developing and one in positive developing.
As the departments are separate, with separate overtime and vacation charts, the elimination of a working foreman for the negative department exclusively, was improper. And because the grievant was the most senior negative developer and had performed the working foreman job when Villane was on vacation or otherwise out, he was entitled to the job, and that its actual or constructive elimination by the Company, with the appointment of Masillo as the working foreman for both departments, to save money, was improper.

The Company denies that there has always been a separate working foreman for each department. It points out, without refutation by the Union, that for a two year period, from 1987 to 1989, Villane was the working foreman covering both the negative and positive departments following the retirement of Ben Helfman as working foreman in the positive department in 1987. Additionally, the Company points out, again without dispute from the Union, that six departments do not have working foremen, namely cleaning, projection, expediting, timing, shipping and chemical mixing.

The Company also defends its action on the reduced complement in the positive crews. Prior to 1982, there were six positive crews. In 1982 and through the present, the positive developing complement was reduced to and has been two. On that basis, argues the Company it does not need two working foremen; that one is adequate to supervise the work of both departments.

Finally, the Company claims that its action to appoint one working foreman for both departments was discussed with and agreed to by the then local union president and steward. Specifically, because Masillo was the most senior employee, plant-wide, (i.e. in both departments), and on that basis, senior to the grievant, it was agreed that he would get the job.

I understand the grievant's frustration. There is no doubt that he is qualified for the working foreman position. I further
understand and respect his belief that because he has seniority in the negative developing department, and because there was a predecessor working foreman in that department, he should have been appointed as the successor.

However, the issue before me is not an equitable one, but rather whether the Company's staffing decision violated the contract or uniform past practice. I find that it did not. I find nothing in the contract that requires a working foreman in each of the negative and positive departments. Article 16(d) of the contract prohibits the Company from:

"increasing the number of Working Foremen or Sub-Foremen without the consent of the Union" (emphasis added).

Impliedly, therefore, there is no contract bar or limitation on the Company's right to decrease working foremen unilaterally. Indeed, if it was the intent of the parties to bar any such reduction, or to maintain a fixed basic crew of working foremen, those constraints could have and should have been included in Article 16(d).

Moreover, the Union's reliance on past practice is not supported by the undisputed facts. For two years, from 1987 to 1989, both departments were covered by a single working foreman. Also, any binding practice and hence requirement that each department have a working foreman, is effectively negated by the fact that six other departments do not have working foremen at all.

Finally, the Company has shown a logical and rational operational basis for its decision. The crew sizes have been significantly reduced, making reasonable the present coverage of both departments with one working foreman. That it may represent a cost saving to the Company is not wrong, because it parallels and reflects that reduction in crew complement, and is therefore justified.
With the foregoing analysis, I cannot find a contract or practice violation by the Company's decision to assign a working foreman job, covering both the negative and positive departments, to Masilla, who holds greater Company-wide seniority than the grievant. Therefore I need not make any determinations regarding any alleged agreements between the Company and prior union leadership.

The Undersigned, Permanent Arbitrator under the collective bargaining agreement between the above-named parties, and having duly heard the proofs and allegations of said parties, makes the following AWARD:

Philip Lamendola is not entitled to the job as a working foreman in the negative developing department.

DATED: April 3, 1990
STATE OF New York ) ss.: COUNTY OF New York )

I, Eric J. Schmertz do hereby affirm upon my Oath as Arbitrator that I am the individual described in and who executed this instrument, which is my AWARD.
TELECOPIER COVER LETTER

TO: ERIC ROSENFELD
FROM: ELIO PESATO
DATE: 4/16/90

TOTAL NUMBER OF PAGES, INCLUDING COVER PAGE 5

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PERMANENT ARBITRATOR MOTION PICTURE
FILM LABORATORY INDUSTRY

In the Matter of the Arbitration

- Between -

LOCAL 702, I.A.T.S.E.

and

TVC and PRECISION LABORATORIES

The stipulated issues are:

1. Did the Employer (TVC) violate the contract by failing to promote JOHN SALVATORE to the position of Shipping Foreman? If so, what shall be the remedy?

2. Did the Employer (TVC) violate the contract by laying off JAMES GARRETT? If so, what shall be the remedy?

3. Did the Employer (TVC) violate the contract by failing to pay an annuity to STEPHEN PERTAKAKIS? If so, what shall be the remedy?

4. Did the Employer (TVC) violate the contract by failing to make proper employee medical benefit contribution? If so, what shall be the remedy?

5. Did the Employer (TVC) violate the contract by failing to make contributions to the Defined Contribution Pension Plan? If so, what shall be the remedy?

6. Did the Employer (Precision) violate the contract by failing to pay severance, vacations, sick pay, short time notice pay and annuity payments? If so, what shall be the remedy?

A hearing was held at the offices of Local 702 on August 26, 1991 at which time representatives of the above-named Union and Employer(s) appeared and were afforded full opportunity to offer evidence and argument and to examine and cross examine witnesses. The arbitrators oath was waived.
ISSUE NO. 1

Pertinent to this issue is Section 13, Paragraph (d) of the Collective Bargaining Agreement which reads:

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 of an employee absent for any reason, or in emergencies.

It is the Union's contention that from June 1, 1990 until December 10, 1990, the grievant, JOHN SALVATORE worked as a Foreman of Shipping in the Shipping Department; that because this period exceeded the amount of time referred to in the aforesaid contract provision, he should have been promoted to the Foreman position effective December 10, 1990 with an upward retroactive pay adjustment. The Union seeks an order from this arbitrator directing the Company to promote SALVATORE to that position; to assign him to it in the Shipping Department; and to make him whole in pay retroactive to December 10, 1990.
The Company does not deny that the grievant performed the Foreman of Shipping job duties during the period from June 1 to December 10, 1990. Nor does it dispute the claim that the work over that period of time was performed on a regular basis, thereby satisfying the contractual time requisite of "three days or more per week for a period of thirteen consecutive weeks." The Employer's defense is that the grievant was filling in for the regular Foreman who was absent due to illness; that the circumstances fell within the contractual exception of Section 13(d) of the contract; and that therefore the grievant is not eligible for the promotion.

The question is narrowed to whether the grievant's assignment to the Foreman duties and responsibilities was as a "replacement for an employee absent for any reason" or whether actually or constructively the assignment was of an unconditional nature for which an official promotion to the Foreman classification was justified and contractually mandated.

The evidence shows that prior to June 1, 1990, the grievant also worked as the Foreman in the Shipping Department covering for the Department's foreman, MIKE MCNAMARA who was absent due to illness. He worked in that capacity from the middle of August in 1977 until the middle of November 1987. In January, 1988, he was assigned to the Shipping Department to cover for another employee, classified as a Shipper. But from that date and
for the next couple of years until June 1, 1990, he also covered for MCNAMARA on several occasions and for various periods of time when MCNAMARA was absent due to illness. It is undisputed that each time he was assigned to cover for MCNAMARA, the grievant was paid the Foreman's rate of pay.

At the end of May, 1990, or commencing June 1, 1990, MCNAMARA, who was suffering from cancer, was placed on permanent disability. Thereafter, he did not return to work. The legal question posed by the facts, is simply, whether from June 1 on MCNAMARA was still "absent" within the meaning of Section 13(d) of the contract. If so, the grievant was not entitled to calculate the period from June 1, 1990 as time worked within the Foreman classification for purposes of a promotion. On the other hand, if MCNAMARA was no longer "absent" within the meaning of Section 13(d), the grievant was no longer replacing an absent employee, but rather, constructively, if not legally, was occupying the job in his own right.

In my view, and as a matter of law, an employee who is "permanently disabled" and who leaves his job for that reason, is no longer "absent." The status of being "absent" implies and carries with it the possibility and right to return to the job at a later date, especially if the absent is due to illness. However, when deemed "permanently disabled" and when a job is vacated for that reason, there is no longer a possibility of a return to the
job at a later date (nor a legal right to do so) and the position has become contractually vacated. In my judgement that is what happened here.

Accordingly, although the grievant replaced McNamara who was absent due to illness for several periods of time prior to June 1, 1990, from that latter date until December 10, 1990 when for reasons unrelated to this case, the grievant was returned to a job in the vault, the grievant worked as the Foreman of the Shipping Department not as a replacement for an employee absent but as the unconditional Foreman, albeit defacto. Under the provisions of Section 13(d) he is entitled to promotion to that higher classification, dejure.

The Employer asks that if SALVATORE's grievance is granted, any back pay award have offset from it a $60 a week wage increase which he has received since July of 1987 when he apparently began "supervisor training." The record does not show any connection between that $60 a week premium and his work in the Shipping Department. The fact is that when he worked as the Shipping Department Foreman (as a replacement for McNamara and after June 1, 1990) he received the Foreman's rate (which is the rate for the classification plus ten (10%) percent) and also continued to enjoy the additional $60 which he states the Employer "let him keep." Clearly, therefore, the $60 was compensation related to some other activity; had its origins in some other and earlier type of supervisory training, and the Employer gratuitously
allowed him to retain it when he filled in for or became the Shipping Department Foreman: That being so, I think it would be inequitable and even in the nature of a penalty to order that the $60 "bonus" now be deducted from the back pay award, especially when the record is unclear in its origin and the consideration for it. That the Employer allowed him to keep it during the extended period that he was performing the Foreman's duties persuades me that he would have retained it and therefore is entitled to retain it from the time that he is officially classified as the Foreman, whether originally promoted by the Employer voluntarily, or as now, promoted by this arbitration decision.

ISSUE NO. 2

The grievant, JAMES GARRETT, was a Raw Stock Splicer. He was the only one so classified in the bargaining unit. He worked the shift from 8:00 A.M. to 4:00 P.M. He began work on June 3, 1990 and was laid off May 3, 1991.

At the arbitration hearing, the Company explained that the grievant was laid off because of a diminution of work within the Raw Stock Splicer classification and also because his work performance was not satisfactory.

Let me deal with the latter reason first. At no time prior to the arbitration hearing did the Employer tell the grievant or the Union that the grievant's work was not satisfactory or in any way deficient. It was not an Employer defense during the grievance procedure. Asserted for the first time at the
arbitration hearing, the Employer offered no probative evidence in support of the charge. I conclude therefore that not only is that particular charge unproved, but that it was not a basis for the grievant's layoff.

The Employer's contention that the available work to be assigned to the Raw Stock Splicer had diminished to the point where his further active employment was unnecessary, is simply not supported by the evidence. The testimony and evidence adduced by the Union, which stands basically unrefuted by the Employer is that supervisory employees and bargaining unit employees from the Printing Department are now performing duties within the Raw Stock Splicer classification which the grievant performed before his layoff. Specifically, picking up film ordered from outside sources, logging of inventories and the distribution of stock to the Printers are being performed by the Printers themselves, by a supervisor (HOLY), by a non-bargaining unit courier (ANTHONY MUSCADO) and by a bargaining unit can carrier (J. ORTIZ).

As I stated, the Employer has not refuted this evidence and testimony. Indeed, the Employer representatives admit that "the work is getting done" and that "someone is doing it." They were not able to identify who has been doing the work since the grievant's layoff, but with the acknowledgement that the work continues to be performed, I must conclude that it is being performed by persons not in the Raw Stock Splicer classification. Hence, I do not find any diminution of work which would justify the grievant's layoff.
That the available Raw Stock Splicer work may be on a different shift than the shift the grievant worked, is immaterial. Obviously, as the work belonged in his classification, the grievant was entitled to and should have been given the opportunity to transfer to the shift on which the work was available and where he could continue to perform it.

ISSUE NO. 3

PERTAKAKIS claims an annuity of $750 representing the $1.00 an hour contributed by the Employer to the Annuity Plan for the 750 hours he worked before his termination.

The Employer contends that no employee is eligible for any annuity until he has completed at least 1,000 hours of service.

Article V of the contract which provides for the Employer's contributions to the Plan defines a "year of service" as "at least 1,000 hours of service." It also provides for an Employer contribution to the Plan or Trust of "an amount equal to $1.00 for each hour of service performed during said Plan year."

However, Article V does not make any reference to a threshold minimum amount of service before an annuity is to be paid. At best, the language of Article V is ambiguous and does not support the Employers interpretation with the clarity required to resolve the ambiguity in the Employer's favor.

It is obvious that the parties recognized that ambiguity by clarifying it at a meeting on March 12, 1987 of the Trustees of the Plan. Indeed, the minutes of that meeting, participated in by
Employer and Union Trustees is dispositive of the issue in dispute in this arbitration, and supported by a practice subsequent thereto. Both affirm the Union's case in this arbitration.

As the minutes were transmitted to the Trustees and to counsel for the Trustees by the Employer, I conclude that the minutes also were recorded by the Employer. Section 1 of the minutes is entitled:

How do we treat temporary employees vis-à-vis contributions?

The pertinent part of that Section reads as follows "...:

No employee goes into the Plan until he or she has reached 1,000 hours. Monies will be put aside for them and will be paid to them if they leave before having reached 1,000 hours..." (Emphasis added)

There is no evidence that the minutes lack authenticity, and there is no evidence that the Trustees had not reached that agreement. Significantly, the last paragraph of Section 1 reads:

"All Trustees agree with the resolution of this question. The Plan will be changed accordingly."

Additionally, the Union has introduced unrefuted evidence of seven instances over the period from March 26, 1987 to March 3,
1989 in which the Employer granted monies to departing employees equivalent to the Employer contributions on their behalf to the Plan for periods of employment less than 1,000 hours.

Accordingly, based on the explicit minutes agreed to by the Trustees and supported by an unvaried practice thereafter, PERTAKAKIS is entitled to the $750 he claims.

ISSUE NO. 4

This issue is not disputed. When the Employer changed its medical plan coverage from U.S. Health Care (Blue Cross/Blue Shield) to the Travelers Insurance Company four present employees and two former employees were left uncovered. (The latter two had been covered by COBRA).

In the course of the hearing, the Employer conceded that all six should have been and should be covered by medical insurance. The Employer represented that shortly after Labor Day all six will be covered and that if any of them had incurred insured medical expenses during the period that they were not covered, the Employer would reimburse them for those expenses.

My Award shall reflect that foregoing acknowledgement and representation. The six employees should have been and shall be covered retroactive to the date that they lost coverage and shall be reimbursed for any medical costs incurred during the interim period, if such costs would have been covered by the medical plan.

ISSUE NO. 5

This issue is also not disputed. The Employer acknowledges that it has not made contributions to the Defined
Contribution Pension Plan since September 30, 1990 and admits that he was and is obligated to make those contributions.

Accordingly, my Award shall direct the Employer to make payments to the Defined Contribution Pension Plan for the Fourth Quarter of 1990 and for the First and Second Quarters of 1991, up to and including June 30, 1991.

**ISSUE NO. 6**

This issue has not yet been heard. A hearing on it has been duly scheduled for Monday, September 30, 1991.

... 

The Undersigned, Permanent Arbitrator under the Collective Bargaining Agreement between the above-named parties and having duly heard the proofs and allegations of said parties makes the following Award:

1. The Employer (TVC) violated the contract by failing to promote JOHN SALVATORE to the position of Shipping Foreman. He shall be promoted to that position and made whole for wages lost from December 10, 1990.

2. The Employer (TVC) violated the contract by laying off JAMES GARRETT. GARRETT shall be reinstated to the position of Raw Stock Splicer and made whole for wages lost from the period of his layoff to the date of his reinstatement.

3. The Employer (TVC) violated the contract by failing to pay an annuity to STEPHEN PERTAKAKIS. The Employer shall pay PERTAKAKIS the sum of $750.
4. The Employer (TVC) violated the contract by failing to make proper employee medical benefit contributions on behalf of employees ERNEST DECOTIIS, GEORGE DUTTENHOFER, ANGEL GUERRERO AND CATHLEEN SALVATORE and former employees RASSO and MILAZZO. The Employer is directed to provide the contractually required medical coverage and insurance for those six persons retroactive to the date that their coverage ended and to reimburse any of said employees for medical expenses they incurred during the interim period, provided such expenses were or would have been covered by the required insurance or policy.

5. The Employer (TVC) violated the contract by failing to make contributions to the Defined Contribution Pension Plan. The Employer is directed to make the following quarterly payments:

For the Fourth Quarter 1990.................$16,826.50
For the First Quarter 1991..................$35,055.25
For the Second Quarter 1991, ending June 30, 1991..........................$32,980.25

DATED: September , 1991

STATE OF NEW YORK
COUNTY OF NEW YORK

I, Eric J. Schmertz do hereby affirm upon my Oath as Arbitrator that I am the individual described in and who executed this instrument, which is my AWARD.
PERMANENT ARBITRATOR MOTION PICTURE
FILM LABORATORY INDUSTRY

In the Matter of the Arbitration
- Between -
LOCAL 702, I.A.T.S.E.

and

TVC and PRECISION LABORATORIES

The Undersigned, Permanent Arbitrator under the collective bargaining agreement between the above-named parties, and having duly heard the proofs and allegations of said parties, makes the following AWARD:

To the affected eligible employees on a schedule that has been agreed to by the parties and is in the possession of the parties, TVC and Precision Laboratories owes:

- A second week of short time notice pay in the amount of $10,179.20
- Sick leave pay in the amount of $4,526.33
- Annuities for the fourth quarter of 1990 in the amount of $14,335.25
- Severance pay to the Estate of Richard Sweeney in the amount of $405.36
Said Laboratories are directed to pay said amounts to Local 702 I.A.T.S.E. for the benefit of the listed employees. Remaining in dispute for a later Award, and over which I retain jurisdiction, are the amounts owed by TVC and Precision Laboratories for:

The first week of the short time notice pay.

Bonuses.

Vacation pay.

Annuities for the first, second and third quarter of 1990.

Eric J. Schmertz
Permanent Arbitrator

DATED: November 25, 1991

STATE OF NEW YORK
COUNTY OF NEW YORK

I, Eric J. Schmertz do hereby affirm upon my Oath as Arbitrator that I am the individual described in and who executed this instrument, which is my AWARD.
December 31, 1991

Eric Rosenfeld, Esq.
Seyfarth, Shaw, Fairweather & Geraldson
767 Third Avenue
New York, New York 10017-2013

Re: Precision and Local 702,
Issue No. 6

Dear Eric:

I enclose two (2) arbitration Awards between Local 702 and TVC and Precision Laboratories. These are the only two (2) Awards I have rendered in the Motion Picture Film Laboratory Industry since my return to arbitration.

Sincerely yours,

Eric J. Schmertz

EJS/ps
Enclosures

2. Nov. 25, 1991 - copy here with to your files.

Any comments?

Happy New Year.

Eric Rosenfeld
12-31-91
In the Matter of the Arbitration
between
LOCAL 702 I.A.T.S.E.
-and-
DU ART FILM LABORATORIES, INC.

The stipulated issue is:

Does the Company have the right to operate color negative developing machines #60, 61 and 62 on a continuous basis with a crew of no more than seven operators?

A hearing was held on July 21, 1992 at which time representatives of the above-named Union and Company appeared. All concerned were afforded full opportunity to offer evidence and argument and to examine and cross-examine witnesses. The Arbitrator's Oath was waived.

The stipulated issue notwithstanding, the question arbitrated dealt with the present operation of the machines with a crew of seven operators. My Award will respond to that and not to the as yet unjoined issue of the operation of the machines with less than seven operators. On that, which is not now or yet before me, the rights of the parties are expressly reserved.
The Union bases its case on two points. The first is the contract provision appearing in the Note under Negative Developing Department of Schedule A. That Note reads:

Note: Color Negative Developing

3 Man Crew: One Strand
5 Man Crew: Two Strands

The Union argues that as that Note requires three operators for one machine and five operators for two machines, it follows logically and compellingly that eight operators are contractually required for three machines operating side-by-side. Put another way, the addition of a single, third machine, requires the same manning as one machine -- three operators.

The second is the assertion that without an eighth operator the incumbent seven operators cannot be and are not relieved adequately for needed breaks, meal periods and for personal requirements.

The parties are reminded that the Arbitrator is bound to the terms of the contract. His authority is confined to deciding whether the use of seven operators to work machines #60, 61 and 62, operating continuously side-by-side, is violative of the contract. It is not within the Arbitrator's authority to base his decision on what he thinks would be the most convenient or even beneficial arrangement for the operators.

On that ground, I cannot accept the Union's contractual argument. The Note is silent on the question of the manning of three machines operating side-by-side. It is confined to the manning of a single machine and to the manning of two machines. The parties negotiated nothing further within the meaning of the Note, and therefore I can find no basis to extend its meaning beyond its express terms.
The Union's case of an alleged inadequacy of relief opportunities with only seven operators, has not met the requisite standard of proof required of the grieving party. The Union's witnesses were not operators from the machines involved and, indeed, were not employees on the shift on which these machines run. It is true that one, at least, is a Union steward who legitimately reported the complaints made to him by the affected operators. But they were unable to testify of their own knowledge of any circumstance where an operator was not or could not be relieved, when such relief was needed or requested. The Arbitrator recognizes and would uphold the right of the operators to reasonable breaks and relief opportunities in a continuous operation despite the fact that the contract does not specifically provide for such breaks. But the record before me does not adequately show that the incumbent operators have not been able to gain needed relief breaks. The Union's case on this point is limited to bare allegations, and that is not enough to sustain the grievance.

Under the circumstances set forth in Section 17, the Arbitrator has the authority to fix a manning level when the parties are in dispute. Here, the Company has given evidence of the history of the machines in question; their evolution from ECN(1) to ECN(2) and the changes in their operations. I make no new determinations in this proceeding under the authority of Section 17 because I am not persuaded that there has been enough of a showing of the kind of significant changes required by that Section to warrant consideration of an arbitral change in the present seven operator manning. Indeed, it is unclear to me how or whether the current operators are affected by the fact that the machines are now shorter and run faster, with greater productivity. Without making a determination, my inclination is to think that the work, responsibilities
and care that confront the highly skilled negative developers, handling original negative film, are about the same as before.

The reference to an earlier decision by me in a case between the Union and Technicolor involving the use of a third operator "primarily for relief" when a "particular machine" ran continuously, has not been shown to be applicable to or based on facts similar to the instant case, and therefore is not precedential.

The Undersigned, Permanent Arbitrator under the collective bargaining agreement between the above-named parties, and having duly heard the proofs and allegations of said parties, makes the following AWARD:

The Company has the right to operate color negative developing machines #60, 61 and 62 on a continuous basis, as it has been doing, with a crew of seven operators.

Eric J. Schmertz
Permanent Arbitrator

DATED: August 4, 1992
STATE OF NEW YORK )
COUNTY OF NEW YORK )

I, Eric J. Schmertz do hereby affirm upon my Oath as Arbitrator that I am the individual described in and who executed this instrument, which is my AWARD.
At a hearing held in New York City on March 13, 1958, both of the above-named parties were represented. The following question was submitted to the undersigned, duly selected arbitrator, for decision:

"Whether positive developers who operated developing machines in excess of 180 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?"

**DISCUSSION**

This dispute involves an interpretation of the agreement and, particularly, Section 17 thereof which relates to "the operation". Schedule A of the agreement contains, on general rates which were to be paid to employees in the positive developing department for "fast" operation. Nowhere in the agreement is there any definition or limitation on the word "fast".

For a period from April 1956 to April 1957 the company ran a new laboratory, operated its positive developing machines, on occasion, at speeds of from 180 to 250 feet per
minute. From the inception of the operation, the Union represented
the employees and maintained a steward on the premises so that it
was assumed that the Union had knowledge of the fact that,
commencing in April 1956, the positive developers were operating
at speeds of up to 250 feet per minute. Prior to this time, the
employer had never operated its machines at more than 180 feet per
minute. It is the Employer's contention that (1) there is nothing
in the agreement which precludes the payment of the existing "fast"
rates for the operation of positive developers at speeds of more
than 180 feet per minute and (2) that the Union by its silence,
during a period of from four to six months in 1956, waived any
right to demand retroactive pay to the operators even if it were
to be held that such payment was required.

Section 17(a) states that:

"The wages and conditions specified in this
agreement shall apply to the machines presently
in operation in any laboratory with which the
Union has a collective bargaining agreement."

It is clear that the wages set forth in Schedule A of the agreement
apply only to the machines which were in operation as of October
1955. This conclusion is buttressed by the language of Section
17(c) under which the:

"Employer shall be permitted to install and
operate new, unusual and reconstructed equip-
ment, and accelerate the speed of existing
equipment after negotiating wages and condi-
tions with respect thereto with the Union."

follows a procedure by which a dispute on this point may be

conciliated. The second paragraph of Section 17(c) provides that:

"... 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 noti-
ication 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.

It is a fact that Pathé Laboratories, with which the Union has an agreement, pays a higher rate of speed for operation of positive developing machines at speeds to 250 feet per minute. There is no doubt but that, from the Union's argument during the hearing, the 10% premium payment is
amount that the Union believes is proper.

The second paragraph of Section 17, like the first paragraph, states that the Employer will notify the Union of its intention that its new, unusual, reconstructed or accelerated machinery is the same as is operated in another laboratory and that, therefore, the rate of pay should be the same as exists in such other laboratory. There is provision in this paragraph also for the reconciliation of any dispute on this point.

Under these circumstances, the arbitrator believes that the Union cannot be said to have waived its rights for higher pay for the employees involved in the operation by its failure formally to notify the Employer of its dissatisfaction with existing rates for a period of several months. Further, the arbitrator believes that, in the light of all the circumstances, the employees who operate the positive developers were not paid the proper rate, which should be set at 10% above the rates shown in Schedule A.
AWARD

The undersigned hereby makes the following award:

1. The positive developers who operated developing machines in excess of 180 feet per minute were not paid a proper rate for the time so engaged under the terms of the Collective Bargaining Agreement.

2. A proper rate for such work was an amount 10% larger than the rates set forth in Schedule A.

Respectfully submitted,

[Signature]

Thomas A. Knowlton

April 10, 1958
In the Matter of the Arbitration

- between -

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

- and -

DUART FILM LABORATORIES, INC.

Re: Ferenc Szajko: Discharge

The undersigned, having been duly designated as the arbitrator in this case in accordance with the collective bargaining agreement of the parties and having duly heard the proofs, allegations and contentions of the parties and after due consideration and deliberation with respect thereto, hereby finds, decides, determines and renders the following:

AWARD:

Confirming and formalizing the oral award issued at the conclusion of the hearing, the grievant, Ferenc Szajko, is reinstated to employment effective Thursday, November 11, 1976 without loss of seniority and without back pay for the following two (2) days, to wit, November 9, 1976 and November 10, 1976, said two day period being as and for a disciplinary suspension constituting appropriate corrective discipline in the setting and under the particular facts and circumstances of the case.

Dated: November 11, 1976

Burton B. Turkus, Arbitrator

STATE OF NEW YORK
COUNTY OF NEW YORK

On this 11th day of November, 1976, before me personally came and appeared Burton B. Turkus, 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.

ANNA M. DEVITO
NOTARY PUBLIC, STATE OF NEW YORK
No. 03-4622295
Qualified in Bronx County
Commission Expires March 30, 1977
BURTON B. TURKUS
ATTORNEY AT LAW

TELEPHONE
PL 8-7170

November 11, 1976

Duart Film Laboratories, Inc.
c/o Poletti Freidin Prashker & Gartner, Esqs.
1185 Avenue of the Americas
New York, New York 10036
Attention: William E. Malarkey, Esquire

Motion Picture Laboratory Technicians,
Local 702, I.A.T.S.E.
c/o Gerald Schilian, Esquire
540 Madison Avenue
New York, New York 10022

- to -

Burton B. Turkus

---------------------------------------------

JOINT STATEMENT

PROFESSIONAL SERVICES RENDERED AS ARBITRATOR

Re: Motion Picture Laboratory Technicians,
Local 702, I.A.T.S.E.
- and -
Duart Film Laboratories, Inc.

Issue: Ferenc Szajko: Discharge

Expeditied hearing on November 10, 1976 at the offices
of the arbitrator of the proofs, allegations and con-
tentions of the parties; due consideration and analysis
thereof and the issuance of an expedited oral award de-
termining the dispute followed by the preparation and
execution of a formal written Award confirming and
finalizing the said oral award; inclusive of adminis-
trative costs and expense . . . . . . . . . . . . . . . . . . . . . . . . . . **$500.00

* One-half ($250.00) to be paid by the Company
One-half ($250.00) to be paid by the Union

(D.S.)
The issue is the Union’s grievance as set forth in its letter dated March 23, 1993.

In pertinent part, that letter from Mr. Gerard Salvio of the Union to Mr. Robert Smith of the Company, reads:

"...we are in dispute regarding a clause in our Collective Bargaining Agreement. Primarily, the Clause #7, relates to work distribution and layoffs.

A hearing was held on April 15, 1993 at which time representatives of the above-named Union and Company appeared. All concerned were afforded full opportunity to offer evidence and argument and to examine and cross-examine witnesses. The Arbitrator’s Oath was waived.

The Union claims that ASTON TAYLOR was involuntarily and improperly transferred from the job of Printer in the Printing Department to Negative Cleaner in the Negative Department to fill a vacancy created by a retirement. The Union asserts that that transfer as a layoff from the higher rated Printer classification; that as a layoff it was not processed in accordance with the requirements or options set forth in Article 7 and was violative of the contractual proscription on "transfers from one department to another."
The Union seeks as a remedy, Taylor's restoration to the Printer job; payment for the difference in wages between that classification and Negative Cleaner; and a directive by the Arbitrator that prospectively the Company follow the options of Article 7 if it chooses to layoff Taylor from the Printer job.

The Company asserts that Taylor's transfer was not a layoff; that for that reason and because its language is permissive not mandatory, Article 7 is not applicable nor determinative; that Taylor's transfer was not involuntary but rather requested by him; that the transfer was approved by the Union's shop steward and the Union's business agent; and that but for the transfer to the vacancy, Taylor would have been laid off. Because his active employment was preserved and no bargaining unit employee was injured, the Company argues that an equitable as well as a contractual case is established in its favor.

If the evidence showed that there was an agreement between the Union and the Company on Taylor's move from the Printing Department to the Negative Department, that would be dispositive of this case. The parties may, of course, make bilateral agreements that are binding, even if contrary to the contract.

But the evidence falls short of establishing any such agreement. Mr. Smith may have drawn the impression that the Union's representatives understood and agreed that unless the transfer was made, Taylor would be laid off. But I am not satisfied that there was a clear and unequivocal agreement on the transfer. The testimony was imprecise and inconclusive and there was no written memorandum or stipulation affirming any such arrangement.

What is not dispositive is the Company's assertion that Taylor sought the transfer and agreed to it. That he may have done so is
immaterial. It is well settled that an arrangement between an employer
and an individual employee that is inconsistent with the contract and
without the approval of the authorized bargaining agent, is not
enforceable.

Was the transfer inconsistent with the contract? I conclude it
was. I reject the Company's argument that the word "may" in the
introductory paragraph of Article 7 makes the provisions and procedures
thereof permissive or discretionary with the Company. If that is the
interpretation, Article 7, dealing elaborately with Work Distributions and
Layoffs, would have no binding effect whatsoever. As such it could be
ignored by the Company with impunity. In short, it would be meaningless.
I am convinced that the parties did not negotiate Article 7, and did not
set forth therein procedures for work distribution and layoffs for a
meaningless purpose. Rather, the word "may" must be interpreted to mean
that the Company has the right to effectuate layoffs or reduce the work
week, but must do so under the conditions and procedures set forth in the
sub-paragraphs that follows. Indeed, the dictionary definitions of "may"
as "according permission" or as "expressing contingency especially in
clauses indicating conditions, purposes, results, etc."¹ is the proper
interpretation in this case.

The Company concedes that if Taylor had not been transferred he
would have been laid off because of a reduction in available work in the
Printing Department. Under Article 7, to reduce the Printing Department
for that reason, the Company could effectuate a layoff with six week's
notice, or without notice with the payment of two weeks pay; or it could


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rotate the available work amongst the employees for no less than three work days a week. The Company did none of these with regard to Taylor.

I am persuaded that Taylor's transfer in lieu of layoff was a layoff or at least a constructive layoff from the Printing Department, and as such was subject to the conditions of Article 7. The last sentence of Article 7 (1) clearly prevents, and I conclude was intended to prevent, a circumvention of the layoff procedures by transferring an affected employee from one department to another. It is unconditional. It states:

"In no event shall an employee be transferred to another department unless he had previously been employed in that department." (emphasis added).

Positioned as part of the work distribution and layoff provisions of the contract, that prohibition must relate to the circumstances where, as here, a layoff was scheduled but was obviated only by the transfer of the employee to be laid off from one department to another. As Taylor had not previously worked in the Company's Negative Department, the foregoing contract language specifically precludes and prohibits such a transfer.

I understand the equitable argument the Company makes. Taylor would have been laid off and would have lost his active employment. Instead he continued to work but in a different department at a lessor rated job. In the Company's view, and correctly so, to have a job is better than to be laid off. But equitable considerations do not overturn or prevail over contract provisions otherwise, especially where the contract language is so absolute.

It is well-settled that where contract language and equity are in conflict, the former is pre-eminent. Here, the express contract language, "in no event shall an employee be transferred to another department unless he had previously been employed in that department."
department..." was bilaterally negotiated. Either side may require adherence to it unless there is a different mutual agreement.

Accordingly, Taylor's transfer is reversed. He shall be restored to the Printing Department as a Printer. But, as apparently he would have been laid off but for the transfer, his claim for differential pay is denied.

The Undersigned, duly designated as the permanent Arbitrator under the collective bargaining agreement between the above-named parties and having duly heard the proofs and allegations of the parties makes the following AWARD:

The transfer of Aston Taylor from the Printing Department to the Negative Cleaning Department violated Article 7 of the contract. The transfer is reversed. Taylor shall be returned to the Printing Department and to the job of Printer. The Union's claim for back pay in the amount of the difference between Taylor's job as a Printer and his job as a Negative Cleaner, is denied. If the Company chooses to effectuate a layoff of Taylor from the Printing Department, it must do so in accordance with the provisions of Article 7.

Eric J. Schmertz
Permanent Arbitrator

DATED: May 4, 1993
STATE OF NEW YORK )
COUNTY OF NEW YORK ) ss.: I Eric J. Schmertz do hereby affirm upon my Oath as Arbitrator that I am the individual described in and who executed this instrument, which is my AWARD.
In the Matter of the Arbitration  
- Between -  
LOCAL 702, I.A.T.S.E.  
and  
TECHNICOLOR EAST COAST, INC.  

OPINION AND AWARD

The stipulated issue is:
Did the Company violate the collective bargaining agreement by putting a Supervisor in the Receiving Department? If so, what shall be the remedy?

A hearing was held on January 10, 1995 at which time representatives of the above-named Union and Company appeared and were afforded full opportunity to offer evidence and argument. The Arbitrator's Oath was waived.

It is undisputed that the Supervisor referred to in the stipulated issue, Robert Marino, performs a significant amount of bargaining unit work (about half his duties, the Company acknowledges) in the Receiving Department, yet he is not a member of the bargaining unit.

The Union seeks an order directing that he be required to join the Union, and be classified as a bargaining unit Receiver.

Two pieces of evidence clearly show that the Company and the Union recognize that significant parts of the Supervisor's assigned duties (i.e. the duties of Receiving) fall within the jurisdiction of the bargaining unit. The collective bargaining agreement expressly lists the Receiver as a bargaining unit job within the Receiving Department. I am persuaded that the statement therein, "Receiver-limited to one man in department"
means that what Receiving work there is to be performed exclusively by a bargaining unit Receiver -- though the Company may arrange the performance of that work by assigning no more than one Receiver to do it. It does not, in my view, mean that non-bargaining unit employees may do Receiving work, even if one bargaining unit Receiver is present as well.

This analysis is supported and re-enforced by the second piece of evidence, namely an agreement between the Company and the then Union business agent in 1987. By letter dated April 6, 1987, Mr. Edward Beyer of the Union agreed with Mr. Elio Pesato of the Company that one Robert Minnie "shall be reclassified as Customer Service Supervisor, but be allowed to continue to perform the same duties he currently is performing as a customer serviceman."

It is undisputed that Minnie performed the same duties as presently performed by Marino and that those duties included bargaining unit work as a Receiver. (Receiver and Customer Serviceman are, apparently synonymous). The impact of that letter agreement was to allow Minnie to do Receiving work and still be a non-bargaining unit Supervisor.

Clearly that letter was a mutual recognition that the Receiving work to be done by Minnie was bargaining unit work, and that by agreement of the Union, he was being excepted from bargaining unit membership and coverage. Obviously, without that agreement, Minnie would have had to be in the Union. Otherwise, there would have been no need for the letter agreement.

The instant issue is whether the Minnie agreement remains in force and effect for Marino, who is a successor to Minnie in title and for performance of the disputed work assignment.
The Company relies on the Minnie agreement as an ongoing exception to the contract, and as a presently applicable and enforceable "side agreement."

The present Union leadership asserts that it did not know of the Minnie arrangement; that it did not know that that arrangement was maintained during the incumbency of two successors to Minnie in the job, (Messrs. Grovia and Samone) before Marino was appointed; that, if valid, the Minnie agreement was limited to Minnie's incumbency and did not perpetuate itself to his successor; and finally, in any event, as contrary to the contract, the Union can now nullify it.

The Company is correct when it argues that "side agreements" are as binding and enforceable as the contract itself. I so held in my Award of January 16, 1984 which the Company cites.

But the real question to be answered is whether the Minnie side agreement is still applicable for enforcement or whether it expired with the end of Minnie's incumbency.

The April 6, 1987 letter agreement is ambiguous. Logically it could be limited to Minnie, and not intended to extend to his successors in the job. Or it could be interpreted as on-going until or unless changed or terminated by bilateral agreement of the parties. Hence, on its face, I cannot determine if it represents a continuing and enforceable exception to the contract or whether it has expired.

Where a "side agreement" is relied on as a contract variation, and that side agreement is ambiguous, the burden is on the party asserting its validity and enforceability, here the Company, to clarify its ambiguousness. The Company has not done so.
There was no testimony or evidence offered by either side on whether the agreement was intended by its negotiators to be on-going and to attach to the job of Supervisor -- Customer Serviceman, or whether it was confined to the then person in the job, Robert Minnie, and only to his incumbency.

Absent that evidence, and without that clarification, I cannot sustain the Company's contention that the Minnie agreement is still applicable to and controlling for the Marino appointment.

What then is the status of the situation, and particularly the import of the incumbency on the job of the non-bargaining unit employees, Grovia and Samone, following Minnie and before Marino. I conclude that those incumbencies, for the periods involved, constituted a "past practice," that differed from the contract. I find it was implemented by the Company in the good faith belief that it was consistent with the Minnie agreement, and I also find that it was unknown to the present Union leadership, albeit acquiesced in, constructively.

The arbitral rule in that circumstance is well settled. A "practice" inconsistent with the contract may be maintained so long as it is agreeable to both the union and the employer. But, either party to the contract may effectively and prospectively terminate a practice that is contrary to the contract and require thereafter that the contract be adhered to.

That is what the Union is doing in this case. And in the absence of persuasive evidence that the Minnie agreement was intended to carry over and apply to Minnie's successors, it has the right to do so.
Accordingly, the Undersigned, Impartial Chairman under the collective bargaining agreement between the above-named parties, and having duly heard the proofs and allegations of said parties, makes the following AWARD:

The Company violated the collective bargaining agreement by putting a Supervisor in the Receiving Department.

The Company shall require that Supervisor to join the Union and to be included in the bargaining unit; or, alternatively the Company shall remove from his duties any and all Receiving bargaining unit work he performs.

[Signature]
Eric J. Schmertz, Impartial Chairman

DATED: January 20, 1995

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

I, Eric J. Schmertz do hereby affirm upon my Oath as Impartial Chairman that I am the individual described in and who executed this instrument, which is my AWARD.

[Signature]
The stipulated issue is:

Did the Company pay the following Timers the proper rate of severance pay when they were laid off in March 1971? James Sills, Michael Parella, Angelo Russo, Gene Zippo, Ronald Ergen, Peter DiMarco, Stellios Zacharopoulos. If not what shall be the remedy?

I interpret the word "week(s)" under the column headed Severance Pay in Section 11(a) of the contract to mean the actual pay which the affected employee was receiving when laid off or terminated under the provisions of that Section.

Up to their layoff the grievants had been receiving a weekly rate of pay in excess of the contract or "book rate." In other words their rates of pay were "red circled." It is the red circled rate which constituted their actual weekly compensation, and it is that pay to which they were entitled when laid off. The Company erred when it paid them the weekly "book rate" only.

Accordingly, the Undersigned as Permanent Arbitrator under the Collective Bargaining Agreement between the above named parties, and having heard the proofs and allegations of the parties, makes the following AWARD:

The Company did not pay the grievants the proper rate of severance pay when they were laid off in March 1971. The Company shall pay them the differ-
ence between the "book rate" and the "red circled" weekly compensation which they had been receiving up to the time of their layoff in accordance with the schedule set forth in Section 11(a) of the contract.

The Arbitrator's fee shall be borne by the Company.

(Dated) May 6, 1972
STATE OF New York )
COUNTY OF New York)

On this 6th day of May, 1972 before me personally came and appeared Eric J. Schmertz 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.

[Signature]
Eric J. Schmertz
Permanent Arbitrator
In the Matter of the Arbitration

Between

De LUXE LABORATORIES, INC.,

-and-

MOTION PICTURE LABORATORY TECHNICIANS,
LOCAL 702, INTERNATIONAL ALLIANCE OF
THEATRICAL STAGE EMPLOYEES, A. F. L.

The undersigned was duly designated as the Arbitrator by the Federal Mediation and Conciliation Service to hear and determine a dispute between De LUXE LABORATORIES, INC. (hereinafter referred to as "De LUXE") and MOTION PICTURE LABORATORY TECHNICIANS, LOCAL 702, INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES, A. F. L. (hereinafter referred to as the "UNION").

The UNION and De LUXE, subsequent to said designation and by Submission Agreement in writing dated April 19, 1954, attached herewith, agreed to submit the said dispute to the undersigned as Arbitrator as follows:

All terms and conditions of employment of union members, with exception of present color printers, in connection with new color process introduced by employer.

The hearing was held on April 19, 1954 at the offices of the Arbitrator, 11 East 44th Street, New York, New York, with the consent of and for the convenience of the parties, their respective witnesses and their counsel.
The disputants were represented by counsel of outstanding experience and impressive skill in labor-management controversies, and each side was given and availed itself of full opportunity to present its evidence, testimony and argument.

The case on both sides was meticulously prepared and the issues encompassed within the Submission were contested vigorously and zealously, albeit with neither rancor nor bitterness. Every fact having any materiality or bearing upon the issue was adduced, and at the conclusion of the hearing the parties were afforded time to and did submit briefs or memoranda in support of their respective contentions.

**THE SUBMISSION**

On or about October 12, 1953, the Employer commenced the processing of a new type of color film, which is known in the industry as the Eastman Process. In connection therewith, the Employer constructed new developing tanks, and introduced new chemicals (as distinguished from types theretofore employed) for use in said tanks. The introduction of the Eastman Color Process brought with it changes from the methods theretofore employed in the processing of other types of color film.

In conformity with the existing Collective Bargaining Agreement of the parties, and more particularly paragraph 17, subdivision (c) thereof, the tanks and such other equipment as was required in connection with the Eastman Color Process was installed and put into operation. At that time the parties attempted to negotiate wages and conditions for members
of the UNION engaged in the processing of this Eastman Color Film. Having failed to agree on such wages and conditions, the matter became a dispute subject to arbitration by the terms of the aforesaid Section of the agreement with all wage adjustments as may be awarded retroactive to October 12, 1953, the date of the installation and operation of the Eastman Color Process. This briefly constitutes the historical background which preceded this arbitration and the execution of the Submission Agreement heretofore referred to.

THE UNION'S POSITION

The UNION urges that six classifications of workers are directly affected by the introduction of this new process (Eastman Color Process), and that by reason thereof and in consonance with the existing Collective Bargaining Agreement between the parties, the wages and conditions of the following enumerated employees require adjustment, to-wit:

1. Positive Developers, "Wet" and "Dry" End;
2. Chemical Mixers;
3. Inspectors;
4. Cleaners;
5. Splicers;
6. Timers.

The new process affects the above classified employees in the following manner:

Positive Color Developers: The new process of color developing introduced by DeLUXE involves the use of new chemical formulae and a somewhat different type of developing machine.
In the ordinary processing of black and white negative (original film) this original or negative film is placed into the so-called "wet" end of a developing machine. The room in which said machine is housed is in total darkness, with the exception of a dull, diffused green light. As this film proceeds through the developing tanks, it comes out at the so-called "dry" end of the developing machine. This end is housed in a room with substantially brighter light than the "wet" end.

In the developing of positive black and white film (the same being a copy of the original negative film), the danger of light diffusion being substantially lessened, the entire developing process takes place in a comparatively brighter lighted room than that devoted to the developing of original or negative film.

The UNION contends that DeLUXE, under its present production setup, is developing only positive Eastman Color Film. Because of the extreme Sensitivity of this film to light, the positive developing of such film requires that the machines be in rooms substantially darker than those used for positive developing of black and white film.

With respect to the light conditions under which developers are required to work, the UNION does not contend that the degree of light renders the room as dark as that required for the developing of negative black and white. However the UNION does maintain that the degree of light for the developing of positive color film is much less than the degree of light adaptable to the developing of positive black and white film, thus rendering working conditions more difficult.
for the operators, affected. In this connection, the UNION urges that because of these factors, the developers engaged in this work should receive the same rates of pay as negative developers. In support of this claim, the UNION points to Subdivision (c) of Section 17 of the existing agreement between the parties, which reads as follows:

"(c) Negative developing shall consist of all types of film requiring development in panchromatic light or total darkness".

It is the UNION'S contention that the light in the "wet" end of the development process of positive color film, although admittedly not in total darkness, is, in fact, in panchromatic light.

With respect to the complement of workers necessary for the operation of a color developing machine, the UNION contends that a minimum complement is three (3) men per line, or a total of six (6), for a duplex two-strand machine.

The UNION maintains that in addition to the fact that the development of this positive color film falls squarely within the category of negative film, as defined in the foregoing cited Section of the collective agreement, the additional hazards imposed upon the workers by reason of the new chemicals employed in color developing justify the services of one additional operator. The ordinary crew for the developing of black and white negative film consists of a minimum of five (5) men for a duplex two-strand machine, or three (3) men for a single-strand machine.

In any event the minimum safe complement should not be less than five (5) for positive duplex color development.
In this connection, the UNION points to the second paragraph of subdivision (c) of Article 17 of the collective agreement, the pertinent portion of which provides as follows:

"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."

The UNION maintains that by agreement with two other laboratories employing similar processes as that of DeLUXE in connection with the developing of Eastman Color Film, it has been provided that the minimum crew required on Eastman Color Process developing is three (3) men on a single-strand machine, five (5) men on a double-strand or duplex machine; that of the five-man complement, three (3) men are to receive the "wet" end negative rate of pay and two (2) men are to receive the "dry" end negative rate of pay; and that a three-man complement is to consist of two (2) "wet" end men receiving the "wet" end negative rate of pay, and one (1) "dry" end man receiving the "dry" end negative rate of pay.

The UNION urges that the Chemical Mixers engaged in mixing chemicals in huge tanks, which chemicals are then fed into the development tanks of the developing machine, have, by reason of the new chemical formulae necessary for the developing process of Eastman Color Film, been subject to greater hazards. The principal new additive to the chemical formulae is known as CD-2.
The Eastman Company has found it necessary, asserts the UNION, to publish an 8-page brochure explaining the occurrence of dermatitis following exposure to this chemical. The UNION claims that the dermatitis, or other serious irritations caused by this chemical, can be brought about not only by the handling of the chemicals, but, as indicated by the warning printed on the cartons containing this chemical, by breathing dust or mist from the chemical solutions. The dermatitis, the UNION asserts, is of a virulent type and varies all the way from a faint redness of the skin to a condition with water blisters, marked swelling, thickening and cracking and even breaking of the skin surface; the duration of which may vary from a few days to weeks or even months.

The UNION quotes from the aforementioned brochure on the subject by the Eastman Company:

"In general, though, the less the contact with the chemicals, the less the sensitization, and the less the dermatitis. since the more concentrated forms of the chemical are more likely to provoke sensitization, particular care should be taken in handling the chemicals during mixing and chemical recovery operations".

It is apparent from the foregoing, urges the UNION, that workers handling and coming into contact with these new chemicals are subjected to the added risks and dangers attendant therewith, as here contended.

Because of these added risks, the UNION requests an increase of ten (10%) percent in the base wage scale of chemical mixers.

The UNION maintains that Inspectors of color film, in addition to the usual duties required of them in connection with the inspection of black and white film, namely, recording
of scratches, abrasions, miss-lights, etc., are required, while inspecting this new color film, to determine color spread and color density which is peculiar to color prints.

These additional duties require greater skill and more intense concentration, and for this reason the UNION requests a wage adjustment of not less than ten (10%) per cent.

The UNION also maintains that the cleaning of color film requires added care by the operator in that the film itself comes through with a protective lacquer which requires more delicate handling to prevent the softening of such lacquer and the damaging of the negative itself.

By reason thereof the UNION requests an increase in base rate of cleaners engaged in the handling of color negatives, of ten (10%) per cent of their base rate.

While the splicing of color raw stock does not differ essentially from the splicing of ordinary black and white film, due to the extreme sensitivity to light of this new color film, the operation of splicing must be performed in a room of almost total darkness, making the operation of splicing much more difficult.

For this reason the UNION requests an increase in base rate for Raw Stock Splicers engaged in the splicing of color film, of ten (10%) percent of their base rate.

The UNION urges that the timing of the new process color film has imposed the added responsibility of color variations which, of course, were not required in the timing of black and white.
For this reason the UNION likewise requests a ten (10%) percent increase in the base rate of Timers engaged in handling color film.

The UNION points to the provisions of Section 17 of the Collective Agreement whereby wage adjustments and conditions when either negotiated between the parties or when determined by an arbitrator shall be retroactive to the date of the inauguration of the new process. Accordingly, since the new color process was introduced in the DeLUXE laboratory on October 12, 1953, all wage adjustments should be retroactive to said date.

In fine, the UNION maintains that in view of the fact that the positive developing of Eastman Film takes place under panchromatic light conditions, and in further consideration of the fact that two other laboratories have entered into agreements with the UNION for the operation of such machines for the developing of Eastman Color Film, which provide that a single-strand machine developing positive Eastman Color Film should not be manned by less than three (3) men, two of whom shall be paid the "wet" end negative rate of pay and the third of whom shall be paid the "dry" end negative rate of pay; and that a duplex two-stand machine shall not be operated by less than a crew of five (5) persons, three of whom shall receive the "wet" end negative rate of pay, and two of whom shall receive the "dry" end negative rate of pay; that the DeLUXE should not be permitted to operate said machines under conditions more favorable to it than those already in practice under the aforesaid agreements.
In view of the added risks, greater responsibility and inferior working conditions imposed on workers in the handling of the Eastman Color Film, it is submitted that the base pay rates of Chemical Mixers, Inspectors, Cleaners, Splicers and Timers should be increased a minimum of not less than ten (10%) percent of their base rates.

That in conformity with the provisions of the Collective Bargaining Agreement between the parties, which so permits, the costs of this arbitration should be assessed against DeLUXE.

The Position of DeLUXE

DeLUXE maintains that the UNION's position with respect to the matters in controversy can be summarized in simple concise language. DeLUXE contends that there is here presented a situation wherein, upon the installation of a new color film developing machine, the UNION claims that because of the alleged change in the working conditions surrounding the use of color film, and because of the alleged presumption of increased hazards created in certain departments by the type of chemicals used, the UNION, in fact, asserts that all employees engaged in the handling of the color material should receive increase in pay; and that, in addition, with respect to the Developing Department, the number of operating personnel on a twin processing machine should be doubled.

In support of its position that no modification of the present wage structure is either indicated or warranted, DeLUXE maintains that the equipment and machinery used in the processing of color film does not substantially differ from that being presently used in its laboratory for the processing.
of black and white film, which operations are now covered under its existing contract with the UNION. In this connection, DeLUXE points out that the processing of color film is handled within the same departments as black and white film; and the personnel engaged in color work have been transferred from regular black and white work.

DeLUXE further maintains that there has been for a period of approximately ten (10) years a color operation in its laboratory using the Kodachrome color process, which, except for the actual developing of the film, is identical with the Eastman Color Process, the subject of this arbitration. Some of this Kodachrome film was in 16mm or narrow gauge; and a considerable amount of it was also in 35mm or standard gauge, which is the identical size and type of the film involved in this controversy. This Kodachrome color work is now also covered by the provisions of the existing Collective Bargaining Agreement with the Union.

In its analysis of the controversy, DeLUXE both at the hearing and in its memorandum considered each specific Department involved, and urged that due consideration of all the factors compelled the conclusion that the installation of the new color developing machine does not create new and different working conditions or operations in its laboratory.

In the Negative Cleaning Department, DeLUXE points out that the same employees, who in the past cleaned Kodachrome Color Film, are now required to clean the new Eastman Color Film. Such change, asserts DeLUXE, is a change in name only. There is no real change or, in fact, any change in the operating technique and there is no change in the work load. In
plain unequivocal language, DeLUXE maintains, therefore, that
with respect to the Negative Cleaning Department, the existing
contract covers the operation and no consideration for a
change of pay status is accordingly indicated or warranted.

The identical situation prevails in the Timing Depart-
ment. Here, DeLUXE maintains the same men, formerly engaged
in Timing Color Film (and Kodachrome Color Process, as its
name implies is a color operation), are presently engaged in
the timing of the new Eastman Color stock. This operation,
being presently covered by the existing contract involves no
change in the operating technique or work load, and affords,
therefore, no basis for an indicated or warranted change of
pay status.

The operation of the Inspection Department consists
of projecting film on a screen for visual inspection of
physical condition and quality. It is identical with the
same operation heretofore carried on for both black and white
film and color film now covered by the existing union contract.
There is no change in operating technique or work load, and
again as with respect to the Negative Cleaning Department and
the Timing Department, there is no basis for a change of pay
status in the Inspection Department.

With respect to the Raw Stock Splicing Department,
DeLUXE contends that the only difference in working conditions
involved under the Eastman Color Process as compared with the
black and white operation is a slight difference in the light-
ing condition required. Other than the operation taking place
in a slightly darker room, DeLUXE asserts that there is no
change in the operating technique or the work load, and the slight difference in lighting does not provide an adequate basis and an upward change in the existing pay status of the employees engaged in the new color process.

In the operation of the Chemical Mixing Department, DeLUXE maintains that it is identical with that existing in the preparation of chemicals for use in processing black and white film, except in one particular. Here, DeLUXE concedes that the nature of the chemicals used in the processing of color film differs to some extent to that used in the processing of black and white film.

DeLUXE vigorously maintains that the nature of the material (chemicals) used in the processing of the Eastman Color Film creates no physical hazard to the men involved. In support of this position, DeLUXE made a thorough survey of operations in the industry which are identical with those existing in its laboratory, and have ascertained that during a period of eight (8) years in which color film has been processed in these laboratories in which the identical chemicals have been used, not a single compensable case, has arisen as a result of the operation. Insofar as the Eastman Company's printed statement on the cartons containing the chemicals necessary for the developing process of Eastman Color Film and its brochure is concerned, DeLUXE attributes the same to the usual precautionary attitude of the Company with regard to any of its chemicals used in the processing of film.

DeLUXE maintains that the new machine in use in the Color Developing department is identical with the machine.
presently being used by DeLUXE for the processing of black and white film, with two exceptions:

1. The new machine runs at a materially reduced rate of speed.

2. The new machine has a larger number of tanks made necessary by the difference in the process. There are differences in engineering design, but not in operation.

DeLUXE further urges that it presently uses, on a twin or double-strand Black and White Machine, a crew or complement of three (3) men. One of the crew acts as a feeder at the loading end of the machine. A second operator acts as a "stripper" at the dry end of the machine, and the third man acts as a general relief man for the crew. Because of the similarity in machines and the reduction in speed, DeLUXE asserts that a three-man crew is sufficient for the color operation. In that connection, DeLUXE points out that a competing laboratory using the identical process on a twin or double-strand machine which is equipped with sound-track applicators, regularly in use, is being serviced by a two-man crew; and, asserts DeLUXE, this two-man operation for a color developing machine in that laboratory is covered by the existing contract in force with the UNION here involved, a contract similar to the contract which DeLUXE has with this UNION. In addition, DeLUXE points out that although its machines are equipped with sound applicators, the nature of the DeLUXE operation is such that these applicators are not normally or regularly in use.

DeLUXE contends that the position of the UNION is illogical in seeking an increased complement or crew in the operation of the new color machines. In this connection,
DeLUXE argues that, on the one hand, the UNION contends that the potential hazard to the employees in the developing operation is a serious one and the basis or predicate of the UNION'S claim for additional compensation; and nevertheless, on the other hand, the UNION seeks a one hundred (100%) per cent increase in the operating crew or complement which would subject twice the number of employees to such alleged hazard. The two, says DeLUXE, are "hardly compatible."

DeLUXE, moreover, argues that Article 17 (c) of the Collective Bargaining Agreement now in existence between the Union and DeLUXE, and especially so much thereof as is set forth in the following excerpt, proscribes a limitation of adjustment of wages and conditions to the operation of the new machine only. The excerpt of the contract upon which DeLUXE relies in this respect reads:

"Employer shall be permitted to install and operate new, unusual and reconstructed equipment after negotiating wages and conditions with respect thereto with the Union. In the event that Employer and the Union shall fail to agree then the matter shall be deemed in dispute and referred to arbitration."

DeLUXE contends that the language aforesaid is a limitation which provides for negotiations with respect to the operation of the new machine, exclusively. It does not pertain, urges DeLUXE, to any of the other Departments such as the Negative Cleaning, Timing, Inspection, Splicing, and Chemical Mixing, wherein the UNION sought upward adjustments in the wage structure.

In brief, DeLUXE contends that the installation of the negative developing machine does not create different working conditions or operations in the laboratory.
nor does it involve any additional or further hazard to the health and welfare of its employees; that the Color Developing and Black and White Developing are handled by the same personnel and in the same manner; that any differences that might occur between the two processes are merely in the internal engineering operations of the machine itself, but not in its actual manual operation; and that the number of personnel and working conditions now in existence under the Collective Bargaining Agreement for Black and White film should likewise pertain to Color Film.

It should be here noted that the Arbitrator in setting forth the respective positions and contentions of the parties has done so with as much brevity as the intricacy of the problems involved would permit, and points up such high lights thereof as are necessary and conducive to a proper understanding of his conclusions, decision and award. Every argument and contention advanced by both sides during the course of the hearing, as well as those set out in the exhaustive memora\nanda of the parties, have nevertheless been carefully analyzed, weighed and considered in arriving at a resolution of the controversy.

FINDINGS AND DECISION

After careful consideration of the contentions, briefs and arguments of the parties and study of the evidence submitted, the undersigned finds and decides as follows:

1. The introduction of the new process of Eastman Color Positive Developing has brought about a working condition different than that heretofore existing in the normal positive development of either Black and White or other Color Film.
υποθέσεις και τις πιθανές επιπτώσεις που θα προκύψουν. Αυτό είναι κρίσιμο για την αποφασισμένη διαμόρφωση της ευρετήριος, προκειμένου να γίνει εντοπισμένη επιτυχημένα.

Προσαρμοσμένη εφαρμογή των προκειμένων ηλεκτρονικών εργαλείων θα οδηγήσει στην επίτευξη επιτυχημένων επιτόκιων. Στο συνολικό πλαίσιο της έρευνας, η εφαρμογή των επιτόκιων ως μέσων αναλύσης και επιπλέον δεν είναι προβληματική.

Ωστόσο, η επιλογή των επιτόκιων ως μέσων εφαρμογής είναι πολύ συγκεκριμένη, επειδή πρέπει να είναι υποκειμένος ανεπαρκών στοιχείων για την εφαρμογή τους. Αποδείχθηκε ότι η εφαρμογή των επιτόκιων ως μέσων εφαρμογής είναι πολύ συγκεκριμένη, επειδή πρέπει να είναι υποκειμένος ανεπαρκών στοιχείων για την εφαρμογή τους. Αποδείχθηκε ότι η εφαρμογή των επιτόκιων ως μέσων εφαρμογής είναι πολύ συγκεκριμένη, επειδή πρέπει να είναι υποκειμένος ανεπαρκών στοιχείων για την εφαρμογή τους. Αποδείχθηκε ότι η εφαρμογή των επιτόκιων ως μέσων εφαρμογής είναι πολύ συγκεκριμένη, επειδή πρέπει να είναι υποκειμένος ανεπαρκών στοιχείων για την εφαρμογή τους.
8. Pursuant to the provisions of subsection (c) of Section 17 of the existing Collective Bargaining Agreement between the parties, all rates of pay heretofore in effect and all other conditions of employment herein shall be continued in effect and shall be made in accordance with the terms of this Agreement.

9. The District National and local Bargaining Committees shall, among other things, recommend a system of cumulative wage adjustments, including the introduction of an additional hour of work in the base rate of pay for each hour of work.

10. In accordance with the foregoing provisions, the District National and local Committees shall recommend a system of cumulative wage adjustments, including the introduction of an additional hour of work in the base rate of pay for each hour of work.
and in consonance with the facts which were clearly and convincingly established, the undersigned Arbitrator, to whom the matter in controversy was duly and voluntarily submitted, makes the following:

AWARD

As to (a). POSITIVE DEVELOPING OF EASTMAN COLOR FILM: Duplex machines with two (2) strands of film in continuous operation, including lunch and/or relief periods shall be manned by a complement of four (4) operators, two (2) of whom shall be paid the "wet" and negative rate of pay of $2.50 per hour, two (2) of whom shall be paid the "dry" and negative rate of pay of $2.41 per hour. Upon the placing in operation of sound applicators, the complement of the said duplex operation shall be increased to five (5) men, the fifth of whom shall receive the "wet" and negative rate of pay of $2.56 per hour.

(b) SINGLE-STRAND DEVELOPING OPERATION OF EASTMAN COLOR FILM ON ANY MACHINE: Shall be manned by a complement of three (3) operators, two (2) of whom shall be paid the "wet" and negative rate of pay of $2.50 per hour, and the third of whom shall be paid the "dry" and negative rate of pay of $2.41 per hour, and said three-man complement shall apply irrespective of whether sound applicators are in use or not.

(c) CHEMICAL MIXERS: An increase in the base rate of pay of 10¢ per hour.

(d) RAW STOCK SPlicERS OF EASTMAN COLOR FILM: An increase in the base rate of pay of 10¢ per hour.

(e) The wage adjustments herein awarded shall be retroactive to October 12, 1953.

(f) The costs of this proceeding are to be borne by DeLUXE.

Dated: New York, New York,

April 26, 1953.

[Signature]
Arbitrator