In the Matter of the Arbitration between
East Meadow Teachers Association
and
Board of Education, Union Free
School District No. 3

The stipulated issue is:

Is Constance Fountas entitled to seven days accumulated sick leave for December 18 through December 22, 1972 and January 2 and 3, 1973 under the contract?

A hearing was held at the offices of the Board of Education on June 21, 1973. Mrs. Fountas, hereinafter referred to as the "grievant," and representatives of the East Meadow Teachers Association, hereinafter referred to as the "Association," and the Board of Education, Union Free School District No. 3 hereinafter referred to as the "Board," appeared, and were afforded full opportunity to offer evidence and argument and to examine and cross examine witnesses.

The Arbitrator's oath was expressly waived.

On the date set forth in the stipulated issue the grievant was in Greece seeking and undertaking medical treatment. The Association contends that she complied with all the requirements of Article 5 Section 1 of the contract and should have been paid sick leave for those days. The Association seeks a recommendation from the Fact-finder that the Board pay the grievant for seven days sick leave plus 7% interest.

The Board's position is that the grievant's trip to Greece
for medical treatment was unnecessary; that she could have re-
ceived the same or better treatment in the United States; and
that she used the trip to Greece, whether she received medical
treatment there or not, as a device to expand her Christmas re-
cess (which covered the period December 23 to January 1.)

Based on the record, it is evident to me that the grievant
had every reason to believe that the Board had no objection to
her seeking medical treatment in Greece and that she would be
paid sick leave pursuant to Article 5 for the days in question.

The grievant had been under medical treatment by a physici-
an in New York City. Following his diagnosis and treatment,
she desired further consultation with and treatment by a second
physician. A doctor in Greece, known to and respected by some
of her relatives (the grievant is of Greek nationality) was
recommended to her. She discussed the possibility of seeing
him with her New York physician and he agreed. Thereafter she
notified her school principal that she would be travelling to
Greece prior to the Christmas recess for medical treatment and
expected to be away for the period of time set forth in the
stipulated issue. That amount of time was what the Greek phy-
sician indicated would be the minimum needed for the treatment
he expected to render. The grievant also notified her Associa-
tion representative. Both her principal and her Association
representative so informed the Board's Administrative Assistant
to the Superintendent. The Administrative Assistant expressly
stated that so long as she authenticated her medical treatment
upon her return, there would be no problem. All of this was
done in advance of her departure. There was adequate time for the Board to reject her request, or to indicate that she would be ineligible for sick leave benefits, or to ask for further specific information regarding the medical treatment she sought. The Board did none of these things. Rather the Board's officer clearly indicated that all she needed to be eligible for sick leave benefits was to provide authentication of medical treatment she received in Greece when she returned.

Upon her return the grievant provided the requisite confirmation of medical treatment, a medical certificate from the Greek physician. This type of authentication (albeit from American physicians) has been regularly accepted by the Board, as a practice, entitling teachers to sick leave pay.

There is no evidence in the record that the grievant did not suffer from a medical condition or that she did not seek and receive bona fide medical treatment in Greece. That she may have received the same or better treatment in the United States is immaterial. The contract does not confine an employee to the location where accredited medical treatment for an undisputed ailment is sought. And here, where the grievant was clearly led to believe by an authorized representative of the Board that there was no objection to her seeking medical treatment in her native country so long as she authenticated it upon her return, she should not now be deprived of her sick leave pay merely because the Board and its doctor think that equally good or better medical treatment could have been obtained in this country. Nor per force is there evidence that
her intent was to prolong the Christmas vacation. On the contrary, that recess seemed an appropriate time to go. Had it been at some other time, the grievant may have used even more of her sick leave entitlement, thereby increasing the Board's expense in replacing her.

Accordingly the Undersigned, having been duly designated as the Fact-finder pursuant to the Agreement dated September 1, 1970, and having duly heard the proofs and allegations of the above named parties, makes the following Recommendation:

Constance Fountas is entitled and should be paid seven days accumulated sick leave pay for December 18 through December 22, 1972 and January 2 and 3, 1973. I find nothing in the contract or the facts which would authorize the addition of interest. Accordingly, the Association's request for 7% interest is denied.

Eric J. Schmertz
Fact-finder

DATED: June 1973
STATE OF New York
COUNTY OF New York

On this day of June, 1973, 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.

Case No. 1339 0356 73
In the Matter of the Arbitration between
Cineffects Color Laboratory, Inc.
and
Motion Picture Laboratory Technicians' Local 702, I.A.T.S.E., AFL-CIO

CASE #72Q2

The Undersigned as Permanent Arbitrator under the collective bargaining agreement between the above named parties; and having duly considered the evidence presented, renders the following Opinion and Award:

For at least the last five years under the terms and conditions of the collective bargaining agreement, and with the knowledge of and without objection from the Union, bargaining unit maintenance mechanics have been periodically and regularly assigned to and have performed certain work in the "Optical Section". As to that particular work (the disputed work herein) this consistent practice, over an extended period of time during which successive collective agreements were negotiated, pierced and eliminated any "corporate veil" between the Company and the Cineffects, Inc. (a sister corporation at the same location) and effectively classified the disputed work performed by the maintenance mechanics at the Cineffects, Inc. or Optical Section location as bargaining unit work under the collective agreement between the Company and Union even though Cineffects, Inc. as a corporate entity is a not a signatory to the contract.

Accordingly I render the following AWARD:

1. The maintenance mechanics have no right to refuse to accept or to refuse to perform, and the Union has no right to direct them to refuse assignments of work which maintenance mechanics have previously performed in the Optical Section.
2. When so assigned during the life of the collective bargaining agreement and under its terms and conditions, the maintenance mechanics shall continue to perform that particular work.

3. If the Union's notice directing employees not to perform the work is still posted the Union shall remove that notice forthwith. If the Union does not do so, the Company may remove the notice.

4. The Arbitrator's fee and expenses shall be borne by the Union.

DATED: February 12th, 1973
STATE OF New York )ss:
COUNTY OF New York)

On this 12th day of February, 1973, 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.

Eric J. Schmertz
Permanent Arbitrator
The Undersigned as 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 time limit for rendition of the Award as set forth in Section 15(b) of the contract was waived.

There is just cause for the discharge of Dennis Torres.

In accordance with Section 15(f) of the contract, which provides that the fee and expenses of the Arbitrator shall be paid by the losing party, the Arbitrator's fee and expenses in the amount of $2000, shall be borne by the Union. To expedite payment thereof (which the Arbitrator believes he has the right to expect) said sum shall be paid to the Arbitrator by the Company, and the Union shall reimburse the Company in that amount.

Dated: April 16, 1973
State of New York ss.
County of New York

On this 16th day of April, 1973, 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.
The stipulated issue is:

Whether the Company violated the Collective Bargaining Agreement in failing to make proper wage payments to Orlando Temple? If so what shall be the remedy?

A hearing was held on July 17, 1973 at which time Mr. Temple, hereinafter referred to as "the grievant" and representatives of the above named parties appeared and were afforded full opportunity to offer evidence and argument and to examine and cross-examine witnesses. The Arbitrator's Oath and the contract time limit for rendition of the Award were expressly waived.

The grievance is denied. I find that the disputed 25 cents and hour attached to certain work performed within the Expediter classification, and that the grievant first received that additional sum when and because he performed "CBS" expediting in that classification.

Based on the record before me I find that the grievant agreed to assume the Expediter classification in January, 1967 provided he continued to receive his higher Negative B rate of pay plus a shift differential. The 25 cents in addition thereto was not part of his pay when he was a Negative B worker but was added to the rate he carried over from that classification when he commenced work as an Expediter, because it was expressly and
uniquely applicable to the work of the latter classification and "authorized by CBS." Therefore I consider it immaterial, whether as a payroll error as contended by the Company, or otherwise, that he retained the 25 cents an hour after he returned to the Negative B classification in September, 1967 and for an extended period of time thereafter. The fact is that inasmuch as the additional 25 cents attached to and was paid for certain Expediter work, he acquired no contract right to that additional pay when, as now, he is no longer in the Expediter classification. Though the Company may not recoup any such payments during the period he worked as a Negative B worker following his word as an Expediter, it is not now required to continue such payments from May 18, 1970 when he resumed the Negative B classification following a period of time as a Printer No. 3.

Whether he would again be entitled to the additional 25 cents if and when he is reclassified as an Expediter is not presently before me and therefore need not be decided until and unless that situation occurs.

The Arbitrator's fee and expenses totalling $210 (representing one half-day hearing, one-half day for preparation of this Award, and room rental at the American Arbitration Association) shall be borne by the Union.

DATED: August 1, 1973
STATE OF New York ss:
COUNTY OF New York

On this first day of August, 1973, 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.

Eric J. Schmertz
Arbitrator
In the Matter of the Arbitration
between
District Lodge #15, International
Association of Machine and Aerospace
Workers, AFL-CIO

and
Fairchild Camera and Instrument
Corporation

Award

The Undersigned Arbitrator, having been designated in accordance with the Arbitration Agreement entered into by the above-named Parties, and dated April 1, 1972 and having duly heard the proofs and allegations of the Parties, Awards, as follows:

Union Grievance #4664 is denied.

Eric J. Schmertz
Arbitrator

DATED: March 21, 1973
STATE OF New York )ss:
COUNTY OF New York)

On this 21 day of March, 1973 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.
In the Matter of the Arbitration between
District Lodge #15, International Association of Machine and Aerospace Workers, AFL-CIO
and
Fairchild Camera and Instrument Corporation

In accordance with Article XV Step 4 of the Collective Bargaining Agreement dated April 1, 1972 between District Lodge #15 International Association of Machine and Aerospace Workers, AFL-CIO, hereinafter referred to as the "Union," and Fairchild Camera and Instrument Corporation, hereinafter referred to as the "Company," the Undersigned was designated as the Arbitrator to hear and decide a dispute involving the Union's grievance #4664.

A hearing was held at the offices of the American Arbitration Association on March 20, 1973 at which time representatives of the Union and Company appeared and were afforded full opportunity to offer evidence and argument and to examine and cross examine witnesses. The parties expressly waived the Arbitrator's oath.

Grievance #4664 in pertinent part reads:

The Union is aggrieved at Management for knowingly violating Article IX Section 16 of the Agreement. Management is well aware of the six week time limit imposed by the contract but they chose to ignore it ...

The pertinent part of Article IX Section 16 reads:

If an employee is temporarily transferred into an occupation in which there are laid off Employees, the transfer in this case shall not be continued
beyond the period of two weeks, provided, however, that two extensions of two weeks each may be added to the above period, and provided further, that in each case of such extension the Company will meet with the Union and discuss the reasons therefor.

The Union contends that the foregoing Section permits the Company to transfer only one employee into an occupation in which there are laid off employees and that that single transferred employee may remain in the occupation a total of no more than six weeks. The Union asserts that the Company does not have the right to go beyond a single transfer -- that the temporary transfer of two or more employees into an occupation in which there are laid off employees would be violative of the foregoing contract language. Alternatively the Union argues that if the Company temporarily transferred more than one employee into an occupation in which there are laid off employees, the total cumulative time of all transferred employees may not exceed six weeks or 240 hours in that occupation. For example, without conceding the Company's right to temporarily transfer more than one employee, the Union contends that if two employees are so transferred they both may work no more than three weeks each, or any combination which jointly totals no more than six weeks or 240 hours.

The Company interprets Section 16 differently. It finds no limitation on the number of employees it may temporarily transfer to jobs in an occupation. It asserts each transfer may not exceed six weeks duration under the procedures set forth in Section 16. It disputes the Union's interpretation that the six week period is a totality of time worked by all employees.
so transferred. Instead it argues that each occupation covered by a temporarily transferred employee may not be so covered for longer than six weeks, but that the six week time limit, running consecutively, affixes to each particular job so covered separately. (In the instant case two employees were temporarily transferred and worked four weeks each. A few days after they were originally transferred the Company temporarily transferred two additional employees who worked three weeks. At some point, a fifth employee was temporarily transferred and he worked for five days. For the most part, the periods of time overlapped.) Under the Union's first theory the mere temporary transfer of more than one employee constituted a contract breach.

Under the Union's second theory the temporary transfers consumed a total of approximately fifteen weeks (though simultaneous for the most part) or nine more than allowed by the contract.

Under the Company's interpretation all five temporary transfers into occupations in which there were laid off employees, were consistent with Section 16 of the contract in that each was to a separate job and was for less than the maximum of six weeks.

The Company concedes that it may not use the device of consecutively assigning a series of employees, each for less than six weeks, to cover one particular job where there are laid off employees in that occupation. It freely admits that such a procedure, which could place temporary transferred employees into a particular job for a period well beyond six weeks, (although each employee so assigned would work no more than six weeks) would be an improper circumvention of Article IX Section 16 of the contract. But it is undisputed that that
device has not been employed by the Company and is not involved in the instant dispute.

Hence the issue is narrow. As I see it the question simply is whether the Company can make more than one temporary transfer at a given time under the provisions of Article IX Section 16 and if so whether the maximum six week coverage period attaches to each transfer separately or to all of them cumulatively.

I am unable to accept the Union's interpretation. The title of Section 16 is: Temporary Transfers. It is in the plural. As I see it the first paragraph of Section 16 which reads:

The Company may temporarily transfer Employees into another occupation but such transfer shall not be for a period of less than a full work day

is generally applicable to all temporary transfers referred to thereafter, including temporary transfers into an occupation in which there are laid off employees. That introductory paragraph is also in the plural, i.e. it refers to the Company's right to temporarily transfer employees. It sets the minimum amount of time for which a temporary transfer of employees may be made. In my view, the disputed part of Section 16 which follows, is designed to fix the maximum amount of time for which temporary transfers may be made into occupations in which there are laid off employees -- a maximum of six weeks.

Read together, as they should be, Section 16 allows temporary transfers of more than a single employee, including temporary transfers into occupations in which there are laid off employees; but in the latter case for no longer than six weeks.
Moreover the phrase "an employee" upon which the Union relies in arguing that the disputed language was intended to afford the Company the right to make only a single transfer, cannot be construed as a modification of the pluralized introductory paragraph. The phrase "an employee" is found elsewhere throughout the Collective Bargaining Agreement. I doubt, for example, that the Union would argue that the reference to "an employee" in virtually all of the other Sections of Article IX, including those covering Seniority, Layoff, Transfers out of the Bargaining Unit and Permanent Transfers, limit the effectiveness and application of those Sections to a single employee or a single instance. Manifestly the reference relates to the rights of an employee so affected but is not intended to limit those contract sections to a "one shot" application or implementation. Hence I reject the Union's assertion that Section 16 permits the Company to make only a single temporary transfer to jobs within an occupation in which there are laid off employees.

In light of this interpretation the Union's alternative argument must also be rejected. As the Company has the right to make multiple temporary transfers, the contract language referring to the initial two weeks and the subsequent two two-week periods must per force apply to each separate transfer the Company makes.

The contract phrase "the transfer in this case" can have only one logical meaning, and that is that each job to which a transferred employee is assigned may not be covered by a
transfer for more than two weeks initially and thereafter for
two additional two week periods after discussion with the Union.
Indeed this interpretation is buttressed by the requirement
that the Company discuss with the Union the reasons for "each
case of such extension" (underscoring supplied). If the six
week period, as the Union argues, is to be made up of the total
amount of time of all the transferred employees cumulatively,
there would be no reason for the parties to discuss the reasons
for a second or third week two week extension in "each case of
such extension."

It seems to me that had the parties intended Section 16
to be applied in the manner argued by the Union, namely that the
Company has a "total pot" of six weeks or 240 hours within which
it may make only one or more temporary transfers to jobs in
which there are laid off employees, Section 16 would have said
so explicitly. Certainly it would not have included the present
language which is more susceptible of being interpreted to apply
the initial and succeeding two week periods, to a maximum of
six weeks, to "each case" of a temporary transfer.

I agree with the Union that Section 16 was intended to pro-
tect the recall rights of employees on layoff. But I think the
parties have done so. A particular job in an occupation which
a laid off employee is eligible to fill may not be covered by
a temporary transfer for more than six weeks. And as to that
particular job, the Company may not extend the six week period
by temporarily assigning a series of employees thereto for
periods of less than six weeks each. In other words as to a
particular job the Company may not defer a laid off employee's right to recall for more than six weeks. And I am persuaded that this is the contractual protection of the recall rights of the laid off employees which the parties agreed to in Article IX Section 16.

[Signature]

Eric J. Schmertz
Arbitrator
On October 2, 1972 I rendered an Award in a dispute captioned as above, which read:

The resolution proposed by the Unions' Trustees and marked as Exhibit A, except as to the appointment of an "actuary" is a proper exercise of the corporate powers and privileges of the Funds within the meaning of Sections B 19-44.0 and B 19-64.0 of the Administrative Code.

Accordingly the proposed regulation as set forth in Exhibit A shall be adopted by the Boards of Trustees of said Funds.

The Award, together with its Opinion are incorporated by reference herein and made a part hereof.

In my judgment that Award was fully responsive to the issue as then stipulated by the parties, and met the Arbitrator's responsibility and authority as defined by that issue. The stipulated issue was:
The Trustees of the Funds having been deadlocked on whether to adopt by resolution proposed regulations marked as Exhibit A and Exhibit B in the record, the Arbitrator is authorized pursuant to Sections B 19-42.0d and B 19-62.0d of the Administrative Code to decide which proposed regulation is to be adopted by the Boards of Trustees of said Funds.

Exhibits A and B Respectively read:

**EXHIBIT A**

Section 11. STAFF AND FACILITIES. In addition to the staff provided pursuant to subdivision f of Section B 19-42.0 of the Code, by the Fire Commissioner, the Board shall employ such administrative, legal or expert assistance as it deems necessary, and further, the Board shall lease premises and purchase or lease materials, supplies and equipment as it shall deem necessary.

**EXHIBIT B**

Section 11. ADMINISTRATIVE STAFF. Pursuant to subdivision f of Section B 19-62.0 of the Code, the Fire Commissioner shall assign to the Variable Supplements Fund Board such number of clerical and other assistants as may be necessary for the performance of its functions. Clerical and other assistants assigned to such Board shall not receive, directly and indirectly, any pay or emolument from the Variable Supplements Fund for their services.

However, on April 2, 1973 Judge Peter A. Quinn, a Justice of the New York State Supreme Court granted a motion to vacate the Award on the grounds that "the resolution which the Arbitrator upheld is silent on the subject of source of funds from which moneys shall be drawn to pay for whatever particular personnel, premises and materials the Funds may further resolve to authorize" and that "absent an explicit determination by the Arbitrator specifying the fiscal source or fund, and the extent to which moneys therefrom shall be lawfully derived to execute the power to incur operational expenses, his decision is im-
perfectly implemented so as to be merely interlocutory and inconclusive, if not wholly academic."

Thereafter Judge Quinn "Ordered that the matter hereby is and the same be remanded to the Arbitrator, Eric J. Schmertz for further proceedings in conformance with the Opinion of this Court, and so that he may make a final and definite Award upon the subject matter submitted to him for decision."

Following that Order representatives of the above named parties submitted various documentary material in support of their respective positions, and waived further oral hearings.

Accordingly, based on the entire record before me, and consistent with the remand Order of Judge Quinn I render the following AWARD:

1. The Award of October 2, 1972 is reaffirmed and reiterated herein, to wit:

   The resolution proposed by the Unions' Trustees and marked as Exhibit A, except as to the appointment of an "actuary," is a proper exercise of the corporate powers and privileges of the Funds within the meaning of Sections B 19-64.0 and B 19-44.0 of the Administrative Code.

   Accordingly the proposed regulation as set forth in Exhibit A shall be adopted by the Boards of Trustees of said Funds.

2. The costs and expenses in implementing the regulation as set forth in Exhibit A for the Firemen's Variable Supplements Fund shall be paid by the Firemen's Variable Supplements Fund.

3. The costs and expenses in implementing the regulation as set forth in Exhibit A for the Fire Officers Variable Supplements Fund shall be paid by the Fire Officers Variable Supplements Fund.
4. The payments of said costs and expenses by said Funds is a lawful exercise of the corporate powers and privileges of the Funds within the meaning of Sections B 19-44.0 and B 19-64.0 of the Administrative Code.

5. The Arbitrator's fee for this proceeding in the amount of $400 shall be paid $200 by the Firemen's Variable Supplements Fund and $200 by the Fire Officers Variable Supplements Fund.

6. The unpaid balance of the Arbitrator's fee for the original case, in the amount of $300, shall be paid by the Firemen's Variable Supplements Fund.

DATED: September 26, 1973
STATE OF New York )
COUNTY OF New York)

On this 26 day of September, 1973 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.
AMERICAN ARBITRATION ASSOCIATION, ADMINISTRATOR

Voluntary Labor Arbitration Tribunal

In the Matter of the Arbitration
between

International Union of Electrical, Radio and Machine Workers, AFL-CIO
Local 161

and

General Electric Company
Salem, Virginia

Opinion and Award

The stipulated issue is:

Was there just cause for the discharge of Kenneth Jennings? If not, what shall be the remedy?

Hearings were held in Roanoke, Virginia on August 30 and October 24, 1973 at which time Mr. Jennings, 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 expressly waived.

This is an "expedited case" calling for, at most, a short Opinion. However, from time time there are cases where, because of particular circumstances, a specific Opinion, no matter how short, serves no useful purpose to either the winning or losing party. In my judgment the instant case falls in that category. However, if requested by either side I will issue a more specific or definitive Opinion at a latter date.

Suffice it to say that based on the entire record before
me, which is most thorough and complete because of the very able presentations by the spokesmen for both sides, I am satisfied that, for a disciplinary case, the evidence is overwhelmingly supportive of the Company's allegations herein and meets the requisite substantial and convincing standard to justify the penalty imposed.

Additionally the grievant's explanations and defenses are a compendium of simply too many improbabilities surrounding the same incident to be believable.

Accordingly the Undersigned, having been duly designated as the 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 discharge of Kenneth Jennings was for just cause. The Union's grievance is denied.

Eric J. Schmertz
Arbitrator

DATED: December 10, 1973
STATE OF New York )ss:
COUNTY OF New York)

On this 10th day of December, 1973, before me personally came and appeared Eric J. Schmertz to be 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.

Case No. 3130 0055 73
In the Matter of the Arbitration

between

International Association of Machinists,
and Aerospace Workers Local Lodge 1871

and

General Dynamics Corporation
Electric Boat Division

INTERIM ORDER

Grievance M-8

The Undersigned Arbitrator having been duly designated in accordance with the arbitration provisions of the Collective Bargaining Agreement between the above named parties, and having duly heard the positions of the parties at a hearing on July 26, 1973, renders the following Interim Order:

The Company and the Union will strive through a policy of mutual cooperation to achieve a situation wherein no employee will be assigned to work beyond his scheduled shift into the hours of the succeeding shift, which will deprive a succeeding shift employee of work except:

1. where the succeeding shift has been fully scheduled or called in, or

2. where there are no employees on the succeeding shift capable of performing the job assignment, or

3. where there may be a disruption of the continuity of the operation, or

4. where the work involved does not exceed two (2) hours past the scheduled shift of the employee performing the job in question, or

5. where the employer representative responsible for making the decision does not have reasonable time to call in the succeeding shift employee, or
6. where it is required to maintain the continuity of operations, a shift in excess of eight (8) hours may be scheduled, for example a bearing-rollout or a core loading.

The above is applicable only to Outside Machinists, and further is only applicable to Saturday, Sunday and holiday work. Additionally the foregoing is without prejudice to the contract regarding any other situation or occupational title.

Moreover all of the foregoing is without prejudice to the rights of either party under the current collective bargaining agreement between the Metal Trades Council and Electric Boat Division of General Dynamics Corporation. If at some future time either party finds the terms of this Interim Order to be unsatisfactory, it may raise that issue and the Undersigned Arbitrator, who retains jurisdiction in case M-8 will resolve the grievance in that case.

Eric J. Schmertz  
Arbitrator

DATED: July 30, 1973
The Undersigned was selected as the Arbitrator to hear and decide the following stipulated issue:

Was there just cause for the discharge of John Tiedeman? If not what shall be the remedy?

Hearings were held on October 1 and 8, 1973 at which Mr. Tiedeman, 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.

I see no useful purpose in an extensive Opinion. I find credible the testimony of Donald Wisel of the A & T Glass Company. I see no reason why he would falsify his testimony. By testifying as he did, he implicated himself in misconduct and I consider it doubtful in the extreme that he would do so if it were not the truth. Moreover I see no advantage to the A & T Glass Company from his testimony. That Company has lost the business of the Company herein and Mr. Wisel's testimony would hardly be a basis for a later resumption of a business relationship between the two.

Additionally, evidence potentially favorable to the grievant, more accessible to the grievant and Union than to the Company,
namely testimony by Raul Ruiz, was not offered by the Union. In view of the evidence before me, especially the testimony of Mr. Wisel which explains other circumstantial evidence damaging to the grievant, I can only conclude that Mr. Ruiz would not or could not support the grievant's defense.

I conclude that the Company has met the burden of establishing its case against the grievant by clear and convincing evidence, and considering the nature of the offense, the penalty of discharge was proper.

AWARD:

The discharge of John Tiedeman was for just cause.

DATED: Nov. 12, 1973
STATE OF New York ] ss:.
COUNTY OF New York)

On this 12 day of November, 1973, 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.
IMPARTIAL CHAIRMAN, NEW YORK CITY TAXICAB INDUSTRY

In the Matter of the Arbitration between

Trustees, New York City Taxicab Industry Local 3036, AFL-CIO Benefit Fund

and

Iona Garage, Inc.

The Undersigned, as Impartial Chairman under the contract between the above named parties, and having duly considered the evidence presented at the duly noticed hearing of October 2, 1973 makes the following AWARD:

As of June 30, 1973 Iona Garage, Inc. is delinquent in payment to and owes the New York City Taxicab Industry, Local 3036, AFL-CIO Benefit Fund the sum of NINE THOUSAND EIGHT HUNDRED NINETY DOLLARS AND THIRTY FIVE CENTS ($9890.35). Accordingly said Employer is directed to pay said amount to the Fund forthwith.

DATED: October 19, 1973
STATE OF New York ) ss:
COUNTY OF New York

On this 19 day of October, 1973, 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.

Eric J. Schmertz
Impartial Chairman

George Maxwell
Notary Public, State of New York

[Stamp]
In the Matter of the Arbitration between
United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), Local 379
and
The Jacobs Manufacturing Company

In accordance with Article VII of the Collective Bargaining Agreement dated November 1, 1972 between Local 379 UAW, hereinafter referred to as the Union and The Jacobs Manufacturing Company, hereinafter referred to as the Company, the Undersigned was designated as the Arbitrator to hear and decide the following stipulated issue:

Did the Company violate Section 1(c) of Article XIV of the contract when it denied the bid of Joseph Dionne for Set-up Utility Man labor grade 5? If so what shall be the remedy?

A hearing was held in Hartford, Connecticut on June 28, 1973 at which time representatives of the parties appeared and were afforded full opportunity to offer evidence and argument and to examine and cross-examine witnesses. The Arbitrator's Oath was expressly waived.

The Union's grievance is meritorious. Article XIV Section 1(c) reads:

Employees bidding on open incentive jobs in labor grades 7 through 3, and on open non-incentive jobs in labor grades 8 through 3, shall be selected on the basis of ability and skill. When these are relatively equal, seniority shall govern.
By agreeing with the Union to post the job Set-up Utility Man labor grade 5 for bids in accordance with Article XIV Section 1(c) the Company is estopped from claiming that the job was not a "new job or vacancy" or an "open" job within the meaning of that contract section. Moreover, in my judgement, implicit in that agreement, and in order for it to be implemented in good faith, is the condition that not only would the job be treated as "an open incentive job" and a "new job or vacancy," without an incumbent, but that the bidders would be treated as if they were not or had not occupied that position. And perforce that none of the bidders would receive credit in evaluating ability and skill, from an incumbency in the job. Any other arrangement, which accorded ability and skill credit because of incumbency would be manifestly inconsistent with the agreement that the job be treated as "open" and "new.....or vacan(t)."

However in the instant case, the Company, did just that. In weighing the relative ability, skill and seniority of the grievant with that of Mr. Raposo (to whom the job was awarded), it gave determinative consideration to the skill, ability and other qualifications which Raposo acquired and demonstrated during his incumbency in the position (which predated, and continued through the bidding process, and which continues to the present). It is clear, indeed undisputed, that the Company selected Raposo because "of the good job that he has been doing in the job over the last five years." Had his work performance
as the incumbent not been considered, as I conclude it should not have been within the intent of the agreement to post the job as "open, new and vacant," I am not persuaded that the grievant would not have possessed relatively equal ability and skill.

The fact is that the job is relatively simple. Based on his unrefuted testimony I am persuaded that the grievant can readily perform it. As an Inspector he inspected the very work performed by the Set-up Utility Man. And previously, was denied a trial period on the job when Raposo was on vacation, not because he did not possess the skill and ability, but rather because he was "too valuable in his present job and couldn't be spared." To my mind that means that the Company did not dispute his skill and ability to perform the Set-up Utility Man classification but only did not want to take him away from his regular job where his presence was needed.

Consequently, the grievant who has greater seniority than Raposo by more than three years should have been awarded the job of Set-up Utility Man labor grade 5 inasmuch as his ability and skill to perform that work were relatively equal to that of Raposo within the meaning and intent of Article XIV Section 1(c) of the contract.
Accordingly the Undersigned, having been duly designated as the Arbitrator under the Collective Bargaining Agreement dated November 1, 1972 between the above named parties and having duly heard the proofs and allegations of said parties makes the following AWARD:

The Company violated Section 1(c) of Article XIV of the contract when it denied the bid of Joseph Dionne for Set-up Utility Man labor grade 5. The Company shall place Dionne on that job and make him whole for any difference in pay since the date that the job was filled following the posting of March 6, 1973.

Eric J. Schmertz
Arbitrator

DATED: July 20, 1973
STATE OF New York )ss:.
COUNTY OF New York )

On this twentieth day of July, 1973, 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.
In the Matter of the Arbitration

between

New York Typographical Union No. 6

and

Long Island Daily Press

The Undersigned Arbitrators having been duly designated in accordance with the Arbitration Agreement dated March 31, 1970 to March 30, 1973 and having been duly sworn, and having duly heard the proofs and allegations of the above named parties, make the following AWARD:

A. Grohmann, A. Siebold and S. Green are entitled to a shift's pay for August 19, 1972. A. Grohmann and A. Siebold are entitled to a shift's pay for September 2, 1972.

Eric J. Schmertz
Chairman

Roland Solomon
Concurring

Murray Richter
Concurring

Irving Newhouse
Dissenting

Nicholas Miranda
Dissenting
DATED: May 21, 1973
STATE OF New York ) ss:.
COUNTY OF New York)  

On this 21 day of May, 1973 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.

DATED:
STATE OF New York ) ss:.
COUNTY OF New York)  

On this day of May, 1973 before me personally came and appeared Roland Soloman 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.

DATED:
COUNTY OF New York) ss:.
STATE OF New York )  

On this day of May, 1973 before me personally came and appeared Murray Richter 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.

DATED:
STATE OF New York ) ss:.
COUNTY OF New York)  

On this day of May, 1973 before me personally came and appeared Irving Newhouse 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.

DATED:
STATE OF New York ) ss:.
COUNTY OF New York)  

On this day of May, 1973 before me personally came and appeared Nicholas Miranda 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.
AMERICAN ARBITRATION ASSOCIATION, ADMINISTRATOR

In the Matter of the Arbitration between
New York Typographical Union No. 6' and
Long Island Daily Press

Case No. 1330-0860-72

OPINION OF CHAIRMAN

The stipulated issue is:

Are A. Grohmann and A. Siebold entitled to shift's pay for August 19, 1972, and September 2, 1972, and is S. Green entitled to a shift's pay for August 19, 1972, because of the failure of the Long Island Press to employ them as substitutes on those occasions?

A hearing was held on December 13, 1972. Messrs. Irving Newhouse and Nicholas Miranda served as the Publisher members of the Board of Arbitration. Messrs. Roland Soloman and Murray Richter served as the Union members of said Board. Post hearing briefs were filed following which the Board of Arbitration met in executive session.

BACKGROUND:

The Composing Room of the Publisher is a non-departmental office without classifications - in trade parlance, a "vertical" office. In vertical offices, all regular situations and extra positions are consistently filled by the Journeymen having the highest priority standing, regardless of their specific area of competence. In order to balance potential
difficulties which this adherence to priority might create in meeting operational needs, the Publisher enjoys the unlimited right to effect transfers among the Composing Room work force. This arrangement is governed by Section 32 of the Agreement, which in relevant part states:

"In non-departmental offices without classifications where situations, when created, are consistently given out on a strict priority basis regardless of classifications, and where extras, when engaged, are consistently engaged in priority order regardless of classification (in compliance with extra work contract provisions) transfers may be made without limitation."

This concept has also governed the employment of substitutes. Administratively, the Chapel Chairman is advised by the Foreman how many vacancies need be filled on a given shift, and he provides the Foreman the given number of Journeymen from his list of Priority Substitutes. Should the Publisher require more Journeymen than the number of Priority Substitutes available, the Chapel Chairman turns to a secondary supply source known as "Pensioners". These are Journeymen who no longer hold full-time positions or seek regular employment. They are available only on a part-time basis and receive a fraternal pension benefit from the I.T.U. Their employment is governed by several restrictions. They may not be engaged on a given shift until all available Priority Substitutes have been employed. They may not fill "extra" positions (which call for additional compensation); only Priority Substitutes may do so. They may only fill-in on "dark" positions, i.e., those created by the absence
of a regular situation holder. And, finally, they may not work beyond a specified number of days in any month without losing their I.T.U. fraternal pension benefit. In a 4 week month they may work 8 days; in a 5 week month, 10 days.

Messrs. Grohmann, Siebold and Green, the claimants in this case, are Pensioners. Although it is unclear whether they formerly held Journeymen positions at the Press, they are not strangers to its Composing Room. In the first 7½ months of 1972, they filled night shift vacancies there on a number of occasions.

The night shift at the Press' Composing Room has two phalanxes (starting times). On Saturday nights, most regular situation holders report at 3:14 P.M.; the others at 6:00 P.M. At the 3:14 P.M. phalanx on Saturday, August 19, 1972, a total of seven (7) regular situation holders did not report. Transfers in assignment were made among the available work force (taking into consideration the fact that two regular situation holders were due in at 6:00 P.M.), and all four (4) Priority Substitutes available that afternoon were hired. Two (Godley and Roth) were assigned as Proofreaders; Scarff filled a Linotype Operator (Black Machine) job; and Olenyik worked the Floor. This left three (3) jobs dark: two Swiftape Operator positions, and a Markup Man. None of the grievants, it is conceded, were
technically competent to fill those specific vacancies. The Publisher, therefore, did not put them to work. Essentially, its reason was that it could make no further transfers to accommodate the skills they had. (Grohmann and Siebold were primarily Linotype Operators; Green's experience is unclear). Its failure to hire the grievants - apparently the first time a regular situation holder vacancy had been left dark when a substitute was still available for employment - gave rise to the instance grievance.

As it happens, the two regular situation holders due to report at 6:00 P.M. failed to show. The Publisher asserts it would have put two of the grievants to work at that time if they were still available; evidently, they had left. Thus, on August 19, a total of five jobs remained dark on the night shift.

The factual pattern with respect to Saturday night, September 2, 1972, is not meaningfully different. The Publisher's refusal to employ Grohmann and Siebold left two jobs dark that evening: a Swiftape Operator and a Paste Makeupman position. Its reasons were the same.

Between the September 2, 1972 incident and the date of the hearing (December 13, 1972), no further refusals to engage the grievants (or other pensioners) occurred. Grohmann worked on eight (8) other occasions; Siebold on 7; and Green on 9.

The narrow question presented here is whether the Company improperly refused the grievants work on the two nights in question.
Section 36, EMPLOYMENT OF SUBSTITUTES

"Foreman shall not select or designate a substitute. The regular or substitute shall be the person to select his own substitute, and shall in no way be responsible for the work performed by the same, but no foreman shall be compelled to accept a substitute who is incompetent or otherwise incapacitated, and if the regular's or substitute's selection should fail to appear on time or should be incapacitated, the foreman shall direct that another substitute shall be secured. A substitute selected according to the foregoing provisions shall receive a regular shift's pay.

Selection of substitutes by regular situation holders or substitutes shall not contravene Union rules or regulations not in conflict with Federal or State Law."

Section 8, LAWS

"Both parties agree that their respective rights and obligations under this contract will have been accorded by the performance and fulfillment of the terms and conditions thereof and that the complete obligation of each to the other is expressed herein. It is understood and agreed that the General Laws of the International Typographical Union in effect at the time of signing this contract, not in conflict with this contract or with Federal or State Law shall govern relations between the parties on conditions not specifically enumerated herein.

Nothing contained herein shall be construed to interfere in any way with the creation or operation of any rules not in conflict with Federal or State Law or this contract, but any chapel or by the Union solely for the conduct of its own affairs."

Section 9, PRECEDENTS

"No precedents or previous conditions, rules or agreements shall be recognized in any way or affect or modify the terms of this contract."
POSITION OF THE PARTIES:

The thrust of the Union's position is that the Publisher is obligated under the Agreement to fill all "dark" jobs created by the absence of a regular situation holder provided that a competent substitute is available. The substitute, it maintains, need not under this Agreement be necessarily competent to perform the work normally done by the absent regular situation holder. It maintains that transfers should be made, thereby accommodating the substitute with work he can perform. The sole requirement is that the substitute be a competent Journeyman - a description which it contends is applicable to the grievants. It disputes that the Publisher's assertion that no further transfers were possible on the nights in question. Its failure to engage the available substitutes on those occasions to fill dark positions was, it argues, entirely without precedent. It urges that the grievants be made whole for their lost work opportunity.

The Publisher does not disagree it has an obligation to engage available substitutes to fill the vacancies created by the absence of regular situation holders. It argues, however, that this obligation need be met only if the substitutes are competent to perform the absent regular situation holder's work or if a transfer can be made to accommodate the substitute. In this instance it points out there is no dispute that the grievants could not perform the Swiftpage or Markup duties. In view of this, it was up to the Composing Room Foreman alone to determine whether a transfer could be made. In his judgement, transfers were not possible on August 19 and September 2, 1972. His determination took in account the existing complement of the
Journeymen present and their ability to perform duties he required. It urges that if it were forced to engage a substitute whose skills are limited to one phase of the operation when transfers could not be made to accommodate him, it would be saddled with a non-productive employee. Such a construction of the Agreement, it asserts, is improper.

It contends, further, that regardless of the long-standing transfer practice, the clear language of the Agreement does not require it to accept a Journeyman who is not competent to perform available work if transfers cannot be made.

DISCUSSION

In its brief, the Publisher quoted at length from an award issued by the Chairman in a case arising in 1962 between the Jersey Journal and the Jersey City Typographical Union No. 94 (76 ANPA 646). That case presented an issue similar in several respects to the instant dispute. Involved was the denial of work to a substitute whose sole declared competency was that of proof reader. The Publisher, there, as here, asserted it need not engage a substitute when his competence was limited and transfers could not be made to accommodate the individual.

In that case, the Chairman stated:

"...I am persuaded that the right of a priority substitute to employment in a vacancy other than that of his declared competency has been and must continue to be conditioned upon the ability of the Publisher to make the needed transfer. Clearly the Publisher is not required to employ in duties of Linotype or Teletype or type setting or handman and markup, one whose sole competency is proof-reading. To so require him would be clearly violative of Sections 4 and 5 of the Collective Bargaining Agreement which entitles the Foreman to hire
journeymen of 'established competence'... and permits him to reject as a substitute one who is 'incompetent or otherwise incapacitated...' Rather the contract language regarding competency...means that the ... substitute shall be hired when a vacancy occurs, provided that a transfer in the shop can be made so that such...substitute can be used on work in his competency. The Publisher is thus adequately protected. If the vacancy is in the competency of the...substitute, there is no problem. If the vacancy is in some other classification, he need only hire the top priority substitute if he is able to make the transfer. If he can make the transfer he is required to do so..."*

Section 36 of the instant Agreement is identical to the clause interpreted in the Jersey Journal case. In my judgement, the reasoning expressed there is equally applicable here.

I am not prepared to conclude that Section 36 requires the Publisher to engage as a substitute an individual who is plainly "incompetent" in the normal meaning of that term. Nor am I prepared to conclude Section 36 requires that a Journeyman need be engaged as a substitute if there is no position available which he is capable of performing after all possible transfers have been made.

It is undisputed that the grievants were unable to fill the specific vacancies left dark by the absence of regular situation holders on August 19 and September 2, 1972.

*The Chairman went on to find that a transfer there could have been made and, therefore, sustained the claim for a shift's pay.
Despite this, the Company agrees, they were "competent" to perform some other job in the Composing Room. Each of the three, after all, was an experienced Journeyman familiar with the Press' operations. Grohmann had served as a substitute on 27 separate occasions in 1972 prior to August 19th. Green had done so 18 times, and Siebold 13 times.

In this case, the grievants' claim must rest upon a determination as to whether the Publisher could reasonably have made transfers so as to utilize the competency they possessed in some productive manner.

The Long Island Press Composing Room is a "non-departmental shop without classifications". As such, the Publisher is free to make unlimited transfers to accommodate its operational needs. It has this contractual right in exchange for its agreement to fill all extra positions and regular situations in priority order without regard to the actual classification of those next in line. That quid pro quo has for years also been applicable to the employment of substitutes, including Pensioners. The Publisher does not deny this. Nor does it dispute the Union's assertion that its refusal to effect transfers to accommodate the grievants flew in the face of a long-standing practice to the contrary. Indeed its action, was without precedent. Never before had it failed to hire a
In brief, I am not satisfied that the Publisher has met his burden of showing that transfers could not have been made to accommodate the grievants.

This conclusion, despite the Publisher's assertion to the contrary, does not serve to enforce a practice which is violative of the clear requirements of other contractual provisions. Rather, I believe that the Agreement read as a whole supports a holding that the parties intended to have substitutes engaged to fill vacancies created by the absence of regular situation holders. In doing so, the Publisher has the unlimited right to effect such transfers as it deems necessary. It has an obligation to exercise that right so long as transfers can in fact be made, and the substitute is competent to perform some productive work in the Composing Room. We find here that the grievants were competent to perform available work and that the assertion that transfers could not have been effected was not adequately established.

Eric J. Schmertz
Chairman
In the Matter of the Arbitration
between
New York City Taxi Drivers Union
Local 3036, AFL-CIO
and
Metropolitan Taxicab Board of Trade, Inc.
on behalf of Cadet Maintenance Corporation

The Undersigned as Impartial Chairman between the above
named parties and having duly heard the proofs and allegations
of said parties renders the following Award and Opinion:

The discharge of D. Boddie by Cadet Maintenance Corpor-
oration is upheld. I am satisfied that the grievant
was employed by this Employer on express condition
that he not be involved in a "chargeable accident." I
conclude that this condition of employment was ex-
pressly understood and accepted by the grievant and
responsible Union representatives on his behalf. I
do not find the imposition of this particular con-
dition to have been unreasonable. The grievant had
a prior record of an abnormally high number of
accidents during a prior period of employment with
this Employer, together with some other alleged
offenses which are not germaine to the instant case.

Hence to agree to re-employ the grievant on the con-
dition, among others, that he not again incur a
"chargeable accident" was neither illogical nor
arbitrary. That he was involved in just such an
accident only a few days after being re-employed, is
a manifest breach of that express condition of em-
ployment. I need not decide its affect had it
occurred at a much later time. And although that
particular condition of employment agreed to and/or
accepted by the grievant and the Union, represented a
type of "sword of Damacles," I am not prepared to
conclude that it was unfair or unenforceable.

Moreover based on the record before me, the particular
nature of the accident, and the Employer's affidavit
of December 18, 1972, I am persuaded that the accident
was a "chargeable accident" within the meaning of that
phrase and that the Employer incurred financial dam-
age as a result.
Accordingly there was just cause for the discharge of D. Boddie.

Eric J. Schmertz
Impartial Chairman

DATED: January 17, 1973
STATE OF New York )ss.
COUNTY OF New York)

On this 17th day of January, 1973, 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.
IMPARTIAL CHAIRMAN, NEW YORK CITY TAXICAB INDUSTRY

In the Matter of the Arbitration between
Local 3036, New York City Taxi Drivers Union, AFL-CIO and Metropolitan Taxicab Board of Trade, Inc. on behalf of Tone Operating

The Undersigned, as Impartial Chairman under the Collective Bargaining Agreement between the above named parties, and having heard the proofs and allegations of said parties, makes the following Award:

There was not just cause for the two week suspension of George D. Jamison. The suspension is reversed and he shall be made whole for the time lost. There is no probative evidence in the record showing that the last accident for which the Company holds Jamison responsible and which "triggered" his suspension, actually occurred. Though Jamison was suspended because of a prior accident record as well, I am satisfied that had the foregoing accident not been charged against him he would not have been suspended. Accordingly, in the absence of acceptable evidence that the last accident in fact took place, the two week suspension cannot stand.

Eric J. Schmertz
Impartial Chairman

DATED: April 1973
STATE OF New York )ss.
COUNTY OF New York

On this day of April, 1973, 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.
IMPARTIAL CHAIRMAN, NEW YORK CITY TAXICAB INDUSTRY

In the Matter of the Arbitration between

Local 3036, New York City Taxi Drivers Union, AFL-CIO

and

Metropolitan Taxicab Board of Trade, Inc. on behalf of Forest Garage

The Undersigned, as 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:

There was just cause for the discharge of Leslie Wallace. The evidence convincingly establishes that Mr. Wallace attempted a violent assault with a broken bottle on a fellow employee, and was stopped only by the last minute physical intervention of other persons in the area. Standing alone this is an offense for which dismissal is warranted. Therefore there is no need to deal with the other allegations against Wallace.

Eric J. Schmertz
Impartial Chairman

DATED: April 15, 1973
STATE OF New York )ss.:
COUNTY OF New York)

On this 15th day of April, 1973, 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.
In the Matter of the Arbitration between
New York City Taxi Drivers Union
Local 3036, AFL-CIO
and
Metropolitan Taxicab Board of Trade, Inc.
on behalf of Lauran Service Corp;
Jackson Maintenance Corp;
Marby Garage

The Undersigned as 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 grievances of the following named employees
against Lauran Service Corp., for call-in pay or
break-down pay were settled during the hearing
without prejudice and without creating a precedent
by payment of the following sums of money to said
employees:

Harry Hirschorn .................. $ 1.87
Louis Schaeffer .................. 10.00
Mel Klein ...................... 32.50
Zaven H. Dimerdjian ............ 10.00
William Mendez ................. 10.00
Louis Riback .... Break-down pay
pursuant to the contract if not
already paid.
Saul Nemeth ................... 10.00
Edward Padillo .................. Break-down pay
for January 15, 1973 pursuant
to the contract if the records
show he was dispatched on that
day
Dagoberto Germoso ............. 10.00

The grievance of Edward Wagner for call-
in pay is denied.

The grievances of Messrs. Levy and Levitas
for call-in pay are remanded to the parties
for further discussions at a garage level.
The "Shop Chairman grievance on behalf of entire garage" against Lauran Service Corp, relating to the condition of the wash room is remanded to the parties for further discussions. Both sides should recognize that the maintenance of an adequate, clean and sanitary wash room is basically a joint responsibility. The Employer is responsible to install and to maintain in good working order all requisite facilities, to provide necessary supplies and to arrange for cleanings at reasonable intervals. The employees have a responsibility to use the facilities in a clean, orderly and otherwise reasonable manner. It is recommended that the parties establish a joint labor-management committee at the garage level to implement this joint responsibility. At the hearing the Employer indicated that he would install a "bubbler" water fountain to replace the presently damaged and inoperative water cooler.

The grievance of Nerson Santamaria against Lauran Service Corp. is granted. His discharge for the period between November 17 and November 28, 1972 is reversed. The Employer has not met a threshold requirement of establishing the reason for the grievant's discharge. Accordingly the grievant shall be made whole for the period of time between his discharge and the date he was rehired and the notice of discharge shall be expunged from his record.

The grievances of certain previously listed employees against Jackson Maintenance for payment for tools lost in a fire is remanded to the parties for a further conference in accordance with Article XXVII Section 2 Step 2 of the contract. At that meeting the Employer shall provide the Union with specific details of the extent and nature of insurance coverage and reimbursement he received as a consequence of the fire. The rights of the parties, if any, in a subsequent arbitration or in any other forum are expressly reserved.

The grievance of Michael Mandel against Marby Garage is granted to the following extent. His discharge is reversed. I am persuaded he was discharged not for the accidents he incurred, but rather for a "flag up" allegation. The Employer has not made that allegation part of this arbitration.

I have previously stated that the propriety of a discharge depends on whether the reason for the discharge, at the time the discharge is effectuated, meets the test of just cause. An employer may gather evidence in support of that reason subsequent to discharge. But he may not, subsequent to the discharge, change the
reason or advance a new reason to sustain the action he took. In that latter event his right to discipline and/or discharge an employee for a later discovered offense is reserved for subsequent action.

However, the grievant's accident record in the instant case warrants some disciplinary penalty, short of the discharge which the Employer imposed for a different offense. Appropriate in my view, is a disciplinary suspension. Accordingly the grievant shall be restored to work, but without back pay. The period of time between his discharge and his re-employment shall be deemed a disciplinary suspension for at least three of the four accidents incurred.

Eric J. Schmertz  
Impartial Chairman

DATED: April 1973
STATE OF New York )ss.
COUNTY OF New York)

On this day of April, 1973, 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.
In the Matter of the Arbitration between
New York City Taxi Drivers Union
Local 3036, AFL-CIO

and

Metropolitan Taxicab Board of Trade, Inc.
on behalf of Columbia Operating.

The Undersigned as Impartial Chairman under the Collective Bargaining Agreement between the above named parties and having heard the proofs and allegations of said parties at hearings on April 23 and May 3, 1973 renders the following AWARD:

The grievance of Jacques Boucher is granted to the extent of two days pay, namely for Thursday and Friday, February 1 and 2, 1973. The grievant's testimony regarding his telephone calls to the garage and his efforts to speak with Mr. Leslie Suchman, pursuant to instructions to do so before he could return to work, seemed forthright, unequivocal and believable. It is contrasted with the testimony of the Company Dispatcher to whom the grievant spoke, who could not clearly remember his conversations with the grievant or what he may have told the grievant about Mr. Suchman's whereabouts.

Under the circumstances I conclude that the grievant tried to reach Mr. Suchman. He was unable to do so because the Dispatcher told him that Suchman was not in then in the garage or would not be in at all at that particular time, or because the Dispatcher otherwise failed to put him in touch with Suchman when he probably could have done so.

The grievant's claim is for 4 days pay, namely for Wednesday through Saturday, January 30 through February 3. He concedes he made no calls on Saturday, February 3 to comply with the instructions. So I deny his pay for that day. Also, it appears that under his regular work schedule, Wednesday would have been his day off. So I am not persuaded that in any circumstance he would have worked on Wednesday, January 30. Accordingly his claim for pay on that day is also denied. But his claims for pay for Thursday and Friday, February 1 and 2 are granted.

Eric J. Schmertz
Impartial Chairman
On this day of May, 1973, 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.
PERMANENT ARBITRATOR, FILM LABORATORY INDUSTRY

In the Matter of the Arbitration between

Local 702 IATSE

and

Movielab, Inc.

Opinion and Award

Case #73A 11

The stipulated issue is:

Was there just cause for the discharge of Louis Chiocco? If not, what shall be the remedy?

Hearings were duly held. All concerned were afforded full opportunity to offer evidence and argument and to examine and cross examine witnesses. The Arbitrator's oath and the time for rendition of the Award were waived.

I find Mr. Chiocco, hereinafter referred to as the "grievant," to have been negligent in two respects. First, considering his many years of service and experience as a Developer, he should have been able to make an adequate hand splice even while the machine was running. Second, I am persuaded that he should have known that a "flash test" was running through the Developing machine at that time and should have stopped the machine to make the splice. He should have known that the safer procedure would have been to stop the machine to insure making a satisfactory splice, in order not to endanger the original negative which followed. His failure on either or both counts resulted in irreparable damage to the original negative.

However, considering the grievant's long period of em-
ployment and the fact that only recently has he experienced difficulty with his work resulting in two warnings prior to the instant incident, I conclude that the penalty of discharge is too severe. Rather I shall fashion what I consider to be a proper remedy as set forth below.

Accordingly the Undersigned as 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:

Louis Chiocco shall be restored to work without back pay, but with his seniority intact. He shall not return to an original negative Developer's job. Rather the Company shall place him on a different Developing job of its choosing, even if a reduction in pay is necessary. Following six months of satisfactory service in the job in which he is placed, Mr. Chiocco shall be permitted to exercise his seniority to return to an original negative Developer's job.

The Arbitrator's fee for three days of hearing and one day for study and preparation of the Award and Opinion shall be shared equally by the parties.

DATED: November 19, 1973
STATE OF New York ss.
COUNTY OF New York

On this 19th day of November, 1973, 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.
In the Matter of the Arbitration
between
Motion Picture Laboratory Film
Technicians, Local 702, IATSE
AFL-CIO and
Movielab, Inc.

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 Parties, Awards, as follows:

The Employer has violated the contract by requiring a single employee to run both the Total Vision Step Printer and the Hollywood Printer in the 8mm Department. The Employer shall no longer require a single operator to run both machines.

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

DATED: March 26, 1973
STATE OF New York )ss.: COUNTY OF New York)

On this 26 day of March, 1973, 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.
In the Matter of the Arbitration
between

Motion Picture Laboratory Film Technicians, Local 702, IATSE AFL-CIO
and
Movielab, Inc.

Opinion
Case No. 72A10

The stipulated issue is:

Whether the Employer has violated the contract by requiring a single employee to run two machines in the 8mm Department, i.e. one Hollywood Printer, and one Total Vision Step Printer? If so what shall be the remedy?

Hearings were held on November 21 and November 27, 1972. Thereafter the parties submitted briefs.

The Union's principal argument is that the Employer violated Sections 17(d) and (b) of the contract. I find the Union's case to be meritoreous.

The Total Vision Step Printer was placed in operation significantly earlier than the Hollywood Printer. Prior to the introduction of the Hollywood Printer, the operation of the Total Vision Step Printer was the sole and exclusive duty of the operator of that machine, and I find it to have been a "present method of (machine) operation" within the meaning of Section 17(b) of the contract.

Thereafter (perhaps two years later) the Employer introduced the Hollywood Printer, which I find to be a "new" machine within the meaning of Section 17(d) of the contract. The Employer concedes it did not notify the Union in writing when the Hollywood Printer was placed in production, as required by Section 17(d).
The application of Section 17(d), in the instant case with the introduction of the Hollywood Printer, expressly brings into play the provisions of Section 17(b). Obviously the Employer should not benefit by relying on his failure to give notice under 17(d) to avoid the express interrelationship of Sections 17(d) and 17(b).

When the operator of the Total Vision Step Printer was also assigned the additional job of operating the subsequently introduced Hollywood Printer, a change in "operations from a single to a dual operation of machines, so that one operator may operate two machines" took place. That language of Section 17(b) makes no distinction as to which types of machines, when operated by a single operator, constitute a "dual operation."

Therefore I am persuaded that the phrase "dual operation" is not limited to the operation of two of the same type machines. Instead I am satisfied it encompasses the assignment to a single operator, of the responsibility of running two machines whether those machines are the same or different types. Hence when the operator of the Total Vision Step Printer, also required to run the Hollywood Printer, a "dual operation of machines" by one operator was effectuated within the meaning of Section 17(b).

Section 17(b) allows for a change from a single to a dual operation of machines "provided such dual operation is presently or may hereafter be in existence in a laboratory operating under a collective agreement with the Union." Testimony offered by the Union that a dual operation of the Total Vision Step Printer and the Hollywood Printer neither existed in any laboratory cov-
erred by the contract when the contract was negotiated nor subsequen-
tly, was not disputed by the Employer. Accordingly the condition under which the Employer is allowed to unilaterally effectuate this type of dual operation of machines was not and has not been met.

Therefore the Employer is directed to discontinue the dual operation by a single operator of the Total Vision Step Printer and Hollywood Printer. The Operator shall no longer be required to run both machines.

Eric J. Schmertz
Permanent Arbitrator
AMERICAN ARBITRATION ASSOCIATION, ADMINISTRATOR

Voluntary Labor Arbitration Tribunal

In the Matter of the Arbitration between

Boston Police Patrolmen's Association and

City of Boston

The Undersigned Arbitrator, having been designated in accordance with the Arbitration Agreement entered into by the above-named Parties and dated January 3, 1968 and the Supplemental Agreement dated January 1, 1970 and having been duly sworn and having duly heard the proofs and allegations of the Parties, Awards, as follows:

The Association's grievance dated December 6, 1971 is denied.

Eric J. Schmertz
Arbitrator

DATED: September 26, 1973
STATE OF New York ss.: COUNTY OF New York

On this 26th day of September, 1973, 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.

Case No. 1139 0108 72

FRANK T. ZOTTO
Notary Public, State of New York
No. 41-9811480
Qualified in Queens County
Commission Expires March 30, 1974
In accordance with Article VI of the Collective Bargaining Agreement effective January 3, 1968 and the Supplemental Agreement effective January 1, 1970 between the City of Boston, hereinafter referred to as the "City," and Boston Police Patrolmen's Association, Inc., hereinafter referred to as the "Association," the Undersigned was selected as the Arbitrator to hear and decide the following stipulated issue:

What shall be the disposition of the grievance dated December 6, 1971?

A hearing was held at the offices of the American Arbitration Association in Boston, Massachusetts on June 7, 1972 at which time representatives of the Association and City appeared and were afforded full opportunity to offer evidence and argument and to examine and cross examine witnesses. The Association and the City filed post hearing briefs.

The grievance dated December 6, 1971 reads:

Violation of Article IX Section D. Avoiding overtime by shifting men from one platoon to another.

The facts are not in dispute. Two Patrolmen, Russell McCormack and John O'Hare were transferred from one platoon to another. McCormack was transferred from his regular assignment in Platoon A at District 8 to Platoon C for the period August 8 to August 21, 1970. O'Hare was transferred also from
Platoon A at District 8 to Platoon C for the period October 31 to November 14, 1971.

The Association contends that the transfers were made for the purpose of avoiding the payment of overtime, in violation of Article IX Section D of the contract which reads:

The scheduled tours of duty of individual employees or groups of employees will not be changed or altered for the purpose of avoiding the overtime provisions of this Article.

The City asserts that its action was consistent with and supported by a different provision of the contract, namely Article IX Section C, sub-paragraph (5) which reads in pertinent part:

Overtime service shall not include: .......
(5) A change in schedule of an employee who is shifted from one platoon to another or from one shift (tour) to another shift (tour) for a period of fourteen (14) or more consecutive calendar days ......

The City argues that the instant transfers, under the foregoing Section and undisputedly for 14 or more consecutive calendar days, are an express exception to the overtime provisions of the contract; that Paragraph D is inapplicable and that the Association's claim for overtime pay for the two grievants is therefore not warranted.

Relevant sections of Article IX must be read in conjunction with each other and not each standing alone.

Based on a full reading of Article IX I conclude that Paragraph D of Section 3 does not place a limitation or condition on sub-paragraph (5) of Section C. The language of Paragraph D is precise and significant. It proscribes a
change of scheduled tours for the purpose of avoiding the overtime provisions of this Article. Hence by its explicit terms it refers not to every provision of Article IX but only to those sections thereof which list the conditions of overtime.

The overtime provisions of Article IX are found in Section 2 in its entirety and in the introductory paragraph and in Paragraphs A and B of Section 3. However, Paragraph C of Section 3 of which sub-section (5) is a part, is explicitly excluded from the overtime provisions. Indeed its introductory sentence reads:

"Overtime services shall not include ...." (Emphasis added).

Consequently I am constrained to conclude that Paragraph D, which refers only to the "overtime provisions of this Article" was not intended to apply and does not relate to sub-paragraph (5). In short, Paragraph D places a condition on all of the overtime provisions of Article IX, but sub-paragraph (5) is not among those provisions.

Accordingly, so long as the City met the requirements of sub-paragraph (5), (and there is no dispute herein that the transfer was not from one platoon to another and not for 14 or more consecutive calendar days,) Paragraph D cannot be relied upon to contest the validity of that action.

I find nothing in the overtime provisions of Article IX which requires the City to cover vacation vacancies by scheduling overtime. The City may do it that way as apparently it has in the past. But absent a contract requirement that vaca-
tion vacancies be covered in that manner, I cannot find that the City's decision in the instant case to cover vacation vacancies by transferring employees from one platoon to another for 14 or more consecutive calendar days in accordance with an express contractual exception to overtime service, constituted an avoidance of the overtime provisions of Article IX within the meaning of Paragraph D. Accordingly the Association's grievance is denied.

Eric J. Schmertz
Arbitrator
The stipulated issue is:

Whether the Company failed to make proper vacation pay to Emil Pagliano? If so what shall be the remedy?

A hearing was held on July 17, 1973 at which time representatives of the above named Union and Company appeared and were afforded full opportunity to offer evidence and argument and to examine and cross-examine witnesses. The Arbitrator's Oath and the contract time limit for rendition of an Award were expressly waived.

The Union's grievance on behalf of Emil Pagliano, hereinafter referred to as the grievant, is meritorious. It is undisputed that when the grievant was hired he was promised three weeks vacation per year of service. It is similarly undisputed that that agreed upon vacation benefit was in no way conditioned on how long the grievant remained in the Company's employ, and there was no requirement that he even complete one year of service. Indeed the Company concedes that the agreement on a "3 week vacation" was "from the beginning of the grievant's employment."

Accordingly, that the grievant terminated his employment with the Company after slightly more than five months does not deprive him of a vacation entitlement based on the three week
week vacation per year formula. I find no basis upon which the Company has the right to reduce the grievant's vacation entitlement to a pro-rata of less than three weeks. Rather, the express agreement on a vacation benefit, more favorable than and prior to the negotiation of the vacation provisions in the contract between the Union and the Company, is preeminent, especially since the Union does not dispute, but instead affirms the grievant's right to the more favorable arrangement.

Accordingly the grievant is entitled to and shall be paid a pro-rata amount of vacation pay for the period of time he was employed based on the formula of three weeks per year.

Pursuant to the contract provision that the Arbitrator's fee and expenses be paid by the "losing party," the Company shall pay the Arbitrator's fee and expenses of $210 (representing one half day hearing and one half day for preparation of the Award and Opinion, and room rental).

Eric J. Schmertz
Arbitrator

DATED: August 1, 1973
STATE OF New York ) ss:..
COUNTY OF New York)

On this first day of August, 1973, 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.
A hearing was held in West Hartford, Connecticut on June 14, 1973, at which time representatives of the above named Union and Company appeared and were afforded full opportunity to offer evidence and argument.

My Award in Case #1230 0160 71 dated August 31, 1972, reads:

The Company correctly chose to apply the SUPPLEMENT TO APPENDIX J to Mr. Fortier upon his return to the Utility Man position in Department 37 on August 30, 1971. His proper rate of pay on that date shall be determined by application of the Altieri Award.

The question for clarification is whether Mr. Fortier should have received a rate of pay under paragraph 1 of the SUPPLEMENT TO APPENDIX J as an employee with three years recall rights or as an employee with one year recall rights. The Union asserts the former, the Company the latter. The difference is 19 cents an hour retroactive to August 30, 1971.

I find immaterial in this case the fact that the grievant was not actually on layoff out of the plant from the job of Utility Man, but rather had bumped or transferred in lieu of layoff, to another classification prior to August 30, 1971.
Under the unique circumstances of this case, the Company is estopped from relying on the latter fact. For, irrespective of that fact, the parties expressly stipulated in the original case before me that the Altieri Award (Case #1230 0159 71) would determine Fortier's rate of pay if I upheld the Company's contract position. As indicated I repeated that stipulation in my AWARD, after holding that the Supplement to Appendix J was applicable.

The Altieri case dealt with an employee (William Iverson) who was on layoff with an undisputed three year right of recall under paragraph 1 of the Supplement to Appendix J. In my view the effect of the stipulation that the Altieri Award would be dispositive of Fortier's rate of pay if the Supplement applied, perforce, was that Fortier and Iverson were similarly situated - namely in layoff status - for purposes of determining Fortier's rights under the Supplement. Indeed the Company's arguments in the original case before me are consistent therewith. By asserting, as the Company did therein, that Fortier should be deemed on layoff, the Company was saying, as I see it, not merely (as it now contends) that he should be so treated for purposes of determining whether Appendix J or the Supplement to Appendix J applied, but also that the facts in both cases, i.e. grievances in layoff with three year recall rights, were similar insofar as how payment should be made under the Supplement.

For that reason I must accept the Union's contention that the Company is now foreclosed from attempting to show that Fortier actually occupied a different status from Iverson and did not enjoy the same three year recall rights as an employee.
on layoff. I find that I must hold the Company to its original stipulation and to the scope of that stipulation. In other words for reasons which are not germane (and not in the record), the parties agreed to treat Fortier as if he was on layoff like Iverson. No other acceptable interpretation can be placed on a stipulation that deems the Altieri Award as dispositive of the rate of pay to be accorded Fortier. That stipulation makes sense only if Fortier and Iverson are looked upon as factually similarly situated. And I conclude that is what the parties agreed to and intended in this case, irrespective of any actual conditions to the contrary. Otherwise the pay of one employee (Fortier) would be determined by an Award adjudicating the rights of another employee (Iverson) under different facts. And that is simply illogical. Hence the following Award is applicable only to the unique circumstances of this particular case and cannot be deemed precedential to any other case under the Supplement.

The Undersigned Arbitrator having been duly designated in accordance with the contract between the parties dated October 5, 1970, and having had his authority reinstated by the parties for clarification of his prior Award, and having duly heard the proofs and allegations of the parties, makes the following CLARIFICATION OF AWARD:

Oscar J. Fortier shall be paid as Utility Man under the Supplement to Appendix J, paragraph 1, as an employee who was recalled from layoff with three years recall rights. He is entitled to and shall be paid an additional 19 cents an hour retroactive to August 30, 1971.

Eric J. Schmertz
Arbitrator
DATED: August 8, 1973
STATE OF New York  )ss:.
COUNTY OF New York )

On this eighth day of August, 1973, 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.
AMERICAN ARBITRATION ASSOCIATION, ADMINISTRATOR

Voluntary Labor Arbitration Tribunal

In the Matter of the Arbitration between

Petroleum Heat and Power Workers Association and

Petroleum Heat and Power Co., Inc.

AWARD and OPINION

In accordance with Section 27 of the Collective Bargaining Agreement dated November 1, 1972 between Petroleum Heat and Power Co., Inc., hereinafter referred to as the "Company," and Petroleum Heat and Power Workers Association, hereinafter referred to as the "Union," the Undersigned was selected as the Arbitrator to hear and decide certain disputes between said Company and Union.

A hearing was held on August 28, 1973 at which time representatives of the Union and Company appeared and were afforded full opportunity to present evidence and argument and to examine and cross examine witnesses. Having considered the proofs and allegations of the parties, the Undersigned Arbitrator renders the following AWARD and OPINION:

The grievances of Messrs Fiore, Deringer, Waterbury, Giordano, Conroy and Giudice as set forth in the Union's letter of March 2, 1973 to the American Arbitration Association, and the grievances of William Johnson and Fenton Kearney as set forth in Mr. Sheehan's letter of April 13, 1973 to the American Arbitration Association, are denied.

It is a fundamental principle of contract law that contract clauses are to be reconciled, not found in conflict with each other. The Union re-
lies on Section 9 and contends that because that Section was negotiated later, it supercedes Section 5. However, under that interpretation Section 5 would be nullified and meaningless. I cannot conclude that the parties left Section 5 in the contract for no purpose whatsoever.

In my view the better and proper interpretation is that Section 9 was negotiated and added to the contract to supplement Section 5, and that both sections were intended to be implemented together. Specifically, to be eligible for Saturday or Sunday work employees must qualify first under Section 5. The apportionment of Saturday and/or Sunday work within that eligible group is then controlled by Section 9. In other words, to be eligible for Saturday and/or Sunday work an employee must first work "the five preceding days" or "the six preceding days" respectively. Employees who meet that threshold requirement shall receive Saturday or Sunday assignments distributed equally among them based on their particular occupational classification. The grievants do not meet the threshold requirement.

That the practice for some time may have been different is immaterial here. It is well settled that a practice that is contrary to contract provisions may, on notice by one side to the other, be terminated. Thereafter compliance with the contract language shall obtain. Here the Company gave proper notice to the Union that it would henceforth follow the contract terms, thereby effectively terminating any contrary practice. Because I do not find the contract terms ambiguous the prior practice cannot be deemed either interpretative of the contract or preeminent.

The suspension of employee Cullen from February 10 to February 14, 1973 is reversed. He shall be made whole for the time lost.

The Company has not persuaded me that Cullen's productivity record, though certainly not good, is so significantly worse than other employees similarly situated as to warrant the discipline imposed. Cullen's testimony in his own defense was impressive. I accept as honest and plausible his explanation that because he has been assigned "specials" and "clean-up work" in differing and unfamiliar work areas, his rate of efficiency is somewhat less than others who have fixed routes. He impressed me as an employee who is trying to do his job properly but who has been hampered by a variety of different
types of assignments in different geographical areas and by equipment breakdowns. I conclude he is entitled to the benefit of doubt for the period of time from the commencement of his employment to the date of the instant arbitration hearing. However, prospectively he should now be sufficiently familiar with his duties and routes, no matter how varied, to be able to improve his rate of efficiency and productivity. And I think he should be responsible to do so irrespective of the fact that the Company has not promulgated formal productivity standards. In my judgment if he now fails to do so he would be subject to discipline.

The Company contention that the contract bars the Union from submitting multiple grievances to a single arbitration proceeding is denied.

I share the view of the vast majority of Arbitrators that explicit language is required to restrict each arbitration case to a single grievance. Such explicit, conditional language cannot be inferred from the singular or plural of the word "grievance(s)" in the grievance or arbitration provisions of the contract. Rather, because this issue is one that is clearly foreseeable when contract, and grievance and arbitration clauses are negotiated, any such limitation can and should be specifically and unequivocally included in the contract language. The grievance and arbitration clauses in the instant contract do not meet that test.

Of course this may not be construed as a license to the Union to accumulate large numbers of grievances for extended periods of time before submitting them collectively to a single arbitration proceeding. Such would be unreasonable and an abuse of the arbitration machinery. But in the instant case the submission by the Union of the issues herein to this arbitration was a reasonable application of the foregoing well accepted rule.

Eric J. Schmertz
Arbitrator
DATED: February 1974
STATE OF New York )
COUNTY OF New York)

On this day of February, 1974 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.

Case No. 1330 0281 73
FEDERAL MEDIATION & CONCILIATION SERVICE, ADMINISTRATOR

In the Matter of the Arbitration between

Local 919 Retail Clerks Association
AFL-CIO

and

Topps of Massachusetts, Inc.

RULING
Case #72 A/9153

The Undersigned Arbitrator, having been duly designated in accordance with the Arbitration Agreement between the above named parties and having duly heard the proofs and allegations of the parties at a hearing on October 23, 1972 makes the following RULING:

The grievances of Sophie Reed, Mary Pauline Joseph, Irene Augeri and Frances Nordgren are remanded to the parties for processing in accordance with the grievance procedure of the contract. This is without prejudice to the rights and positions of the parties on the merits of those grievances, and without prejudice to the right of the Union to return them to arbitration after the grievance procedure has been exhausted if they are not resolved in the grievance procedure. The time limits of the grievance procedure commenced as of October 24, 1972.

The foregoing in no way constitutes a determination of the arbitrability of any other grievance.

The Undersigned retains jurisdiction for the purpose of determining whether the foregoing has been followed and to hear and determine the grievances on the merits if they are not settled in the grievance procedure.

October 24, 1972

Eric J. Schmertz
Arbitrator
In the Matter of the Arbitration
between
District Lodge No. 15 International
Association of Machinists and
Aerospace Workers, AFL-CIO
and
Washex Machinery Corporation

The Undersigned was selected as the Arbitrator to hear and decide the following stipulated issue:

In the case of involuntary layoffs which take place between now and December 28, 1973, are the affected employees entitled to any sick leave benefits and if so what?

A hearing was held at the offices of the American Arbitration Association on October 16, 1973 at which time representatives of the above named Union and Company appeared and were afforded full opportunity to offer evidence and argument and to examine and cross examine witnesses. The Arbitrator's oath was expressly waived.

The parties disagree on the application and interpretation of Article XXVIII (SICK LEAVE) of the contract. With specific reference to the stipulated issue the Union contends that upon layoff the affected employees with more than twelve months service are entitled not only to the unused portion of 6 sick leave days but to an additional 6 days as well.

The Company contends that the maximum that each affected employee is entitled to is either 6 or 4 days sick leave (the former for employees with twelve or more months service; the latter for those with less than twelve months service.) The Company argues that employees accrue and earn sick leave ben-
used sick leave may not be carried from one period to the next period."
In my view, to accept the Union's argument would carry sick leave accumulated and earned between December 28, 1971 and December 28, 1972 into the subsequent year, and Paragraph (b) precludes that. Instead, as Paragraph (b) goes on to provide, on the first payroll period following December 28, the unused sick leave from the preceding year ending on that date is to be paid for in cash. That express contract provision, together with my review again of the employment history of any hypothetical employee, under which I am unable to find any point at which he accumulates an additional 6 sick leave days prospectively, is not overturned by the Union's reliance on the language "preceding contract year" as used in Article XXVIII.

As I see it the phrase "preceding contract year" refers not to the sick leave days which the employee utilizes in a subsequent contract year, but rather to the period of employment which he must serve in order to become eligible, first for 4 days sick leave during his first twelve months of employment (one day for each four months of service) and thereafter to 6 sick leave days per contract year after he has worked twelve or more months. In short I do not find that Article XXVIII contemplated a greater sick leave benefit at any time, than 6 days for employees with twelve or more months service.

The best that can be said for the Union's argument is that Article XXVIII is ambiguous and might be supportive of the Union's theory if the phrase "preceding contract year" is construed differently. But in cases of ambiguity we look to past
practice for clarification. Here it is undisputed that the unvaried past practice has been consistent with the Company's argument herein.

Accordingly the Undersigned, having duly heard the proofs and allegations of the above named parties, makes the following Award:

In the case of the involuntary layoffs which take place between now and December 28, 1973, the affected employees with twelve or more months service are entitled to pay for the unused portion of up to 6 sick leave days. Affected employees with less than twelve months service are entitled to pay for the unused portion of up to 4 sick leave days. The precise amount to which the affected employees are entitled depends upon the date of the layoff. If the layoffs take place on December 28, 1973 the affected employees in the above two categories are entitled to pay for the unused portion of 6 and 4 sick leave days respectively. If the layoffs take place before December 28, 1973, the affected employees in the above two categories are entitled to a pro rata amount thereof.

Eric J. Schmertz
Arbitrator

DATED: November 1973
STATE OF New York )
COUNTY OF New York)

On this day of November, 1973, 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.
In the Matter of the Arbitration ' 
between 
Local Union No. 803, International ' Interim 
Brotherhood of Teamsters 
and 
Yonkers Racing Association 

The issue is:

Whether Yonkers Racing Corporation, (hereinafter referred to as the "Company"), reduced its complement of Plainclothes Agents from 13 to 5 in August, 1972 in violation of its Collective Bargaining Agreement with Local Union No. 803, International Brotherhood of Teamsters, (hereinafter referred to as the "Union")?

Hearings were held on February 13 and 19, 1973 at which time representatives of the Union and Company appeared and were afforded full opportunity to offer evidence and argument and to examine and cross-examine witnesses.

Two other issues, namely claims for uniform allowances and payment for pistol permits were settled by and between the parties during the hearings and withdrawn from arbitration.

I am persuaded that there are compelling reasons -- both contractual and in the interest of good labor relations -- for the rendition first of an interim Ruling and Opinion, reserving jurisdiction for rendition of a final Award and Opinion at a shortly later date if necessary.

The Company justifies its reduction of the complement of
Plainclothes Agents on the language of Section 6 and 11 of the Collective Bargaining Agreement. Those Sections appear to give the Company the unrestricted right to reduce the work force based on business needs. If this is so it would be dispositive of the issue in dispute.

However, there is the question of whether Sections 6 and 11 are limited by Section 17; whether that latter Section insures a work force of Plainclothes Agents of not less than 13 either as a "benefit" based on "practice" and/or by implicit continuation of a pre-existing "status quo agreement". I choose not to answer these questions at this time because I believe there is a more serious problem which I am constrained to point out and to which I firmly believe the parties ought to address themselves in further direct negotiations. It concerns the element of mutual trust.

Specifically there is the real question of whether there was a "meeting of the minds" over the purpose of Section 6 especially, and how, if at all, it would be implemented during the term of this, the first Collective Bargaining Agreement between the parties. The language of Section 6 is clear and unequivocal. Yet there is evidence in the record on which one might find that the Union had reasonable grounds to believe that Section 6 would not be applied or implemented as it was by the Company in the instant case.
I make no determination whether the Company in fact assured the Union that the complement of Plainclothes Agents, restored to work as a result of a strike just prior to the contract negotiations, would be retained at work throughout the term of the Collective Agreement. Nor, assuming the Union believed it had such a guarantee, do I determine whether the Company is so bound. Rather I limit my findings at this time to the fact that I am persuaded that the Union, dealing with new owners of the Track, and negotiating the first Collective Bargaining Agreement may have had legitimate reasons to believe that Section 6 was included in the Agreement only because it was a standard provision applicable to other unions at the Track, but that with regard to the Plainclothes Agents would not be subsequently implemented to effectuate their layoff during the term of the Collective Agreement.

Frankly my point is that under the latter foregoing circumstances the present reliance on Section 6 by the Company as a defense to its layoff of 8 of the 13 Plainclothes Agents within approximately two weeks after the contract was executed, even if preeminent as a matter of bare contract law, may be unfair, inconsistent with what the Union may have reasonably believed to have been understood and hence potentially and seriously disruptive of sound labor relations right at the outset of a new relationship between the parties.

In short, if there is a reasonable basis to conclude that the Union honestly thought that Section 6 would not be so implemented, even though the Company honestly thought otherwise,
the integrity of the bargaining process and the preservation of mutual trust hangs in the balance if not jointly resolved. An immediate Award adjudicating the bare legal right of the parties under the contract as written, would not achieve that resolution. It seems to me that that crucial disagreement, now revealed, should be the subject of further discussions between the parties in an effort to reach an accord.

Accordingly it is my interim Ruling that the parties enter into direct negotiations for the next two weeks for the purpose of resolving one way or other or by compromise, the central question referred to herein. The rights of the parties with regard to this particular arbitration and their contentions and proofs already set forth therein are expressly reserved. In the event that the matter is not resolved in the course of direct negotiations during the next two weeks, I shall thereafter issue a final Award and Opinion based on the record before me within ten days after either or both sides ask me to do so.

Eric J. Schmertz
Arbitrator

DATED: April 3, 1973
COUNTY OF New York)ss:
STATE OF New York

On this 3rd day of April, 1973, 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.

Case #1330 0974 72
Boston Edison Company is a public utility supplying electricity in the Greater Boston area. Local Union No. 369, Utility Workers Union of America has represented the production and maintenance unit of 2000 employees since 1950.

The applicable Collective Bargaining Agreement contains the following provision (Section 5 of Article X):

"5. It is understood and agreed that, if present operating conditions change or if technological improvements change existing equipment or introduce new equipment to such an extent as to justify the Company changing the present Monday through Friday schedules, the Company shall submit the changes to the Union for approval. If the proposed changes do not meet with the Union's approval, the issue shall be settled under the Grievance Procedure in Article XXIII and by Arbitration under Article XXXIII."

By letter dated August 7, 1970 the Company proposed certain changes in schedules in the Cable Division. These changes involve a total of 36 employees, 18 of whom would be employees presently in the Cable Division; the other 18 would be either bidders from other departments or newly-hired employees.

The changes in schedules would provide basically for shift and weekend coverage where there is now no scheduled coverage and overtime has to be relied upon for the work during such hours.
The Company submitted documentary evidence and testimony in support of its need of the changed schedule. Among the factors relied on were (1) the change in recent years from a single winter peak operation to a two-peak (winter and summer) operation, with the result that there is only a short period of a few months in the spring and fall when Monday-through-Friday day-time cable repair work on the underground system can be planned, whereas formerly there was a period as long as nine months for such work; (2) the growth of the system and cable division work-load; (3) the increase in the traffic problem making cable work in the streets more difficult to do in the daytime on weekdays; (4) an increase in customers' unwillingness to permit lines to be out of service for maintenance except at late night and early morning hours; (5) the employee's increasing unwillingness to be available for planned overtime as shown by the increase in "ask-offs" (expression of a desire of the employee not to work overtime.) and difficulties in obtaining employees for call-outs; (6) an increased amount of overtime work; and (7) the increasing unavailability of employees for daytime work because they are on paid rest periods due to extended overtime assignments the previous night.

The data submitted show, for example, that the number of DSS and Transmission Lines that failed in service and had to be repaired in overtime increased 33% in a single year (1969-1970) whereas the number repaired during straight-time, daytime hours remained practically the same.

The changed conditions under which the Company now must
operate justifies the proposed schedule changes in the Cable Division. The clear need of the Company is to have employees available on a scheduled basis during off-hours, namely for nights and weekends. This need is met by the proposed schedules.

The record contains uncontradicted evidence of substantial and significant changes in operating conditions and such evidence justifies the schedules in the Cable Division as proposed by the Company in its letter to the Union of August 7, 1970 under Article X, Section 5 of the contract.

If there be future changes within the meaning of Article X Section 5 of the contract, the procedural requirements of that contract section shall be followed. It states:

"5. It is understood and agreed that, if present operating conditions change or if technological improvements change existing equipment or introduce new equipment to such an extent as to justify the Company changing the present Monday through Friday schedules, the Company shall submit the changes to the Union for approval. If the proposed changes do not meet with the Union's approval, the issue shall be settled under the Grievance Procedure in Article XXIII and by Arbitration under Article XXXIII."

Eric J. Schmertz
Chairman

DATED: October 27, 1973
STATE OF New York (ss.):
COUNTY OF New York)

On this day of October, 1973 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.
AWARD OF ARBITRATOR(S)

The undersigned Arbitrator(s), having been designated in accordance with the Arbitration Agreement entered into by the above-named Parties, and dated April 25, 1969 and having been duly sworn and having duly heard the proofs and allegations of the Parties, Award as follows:

The changes of work schedule as proposed by the Company in its letter to the Union of August 7, 1970 are justified under Article X, Section 5 of the contract.

Eric J. Schmertz
Chairman

John S. Madden
concurring

Robert D. Manning
dissenting

DATED: May 24, 1973
STATE OF New York
COUNTY OF New York

On this 24th day of May, 1973
SS.
IMPARTIAL CHAIRMAN, NEW YORK CITY TAXICAB INDUSTRY

In the Matter of the Arbitration between

Trustees, New York City Taxicab Industry Local 3036, AFL-CIO Benefit Fund

and

AWARD

Butler Maintenance Corporation

The Undersigned, as Impartial Chairman under the contract between the above named parties, and having duly considered the evidence presented at the duly noticed hearing of October 2, 1973, makes the following AWARD:

As of June 30, 1973, Butler Maintenance Corporation is delinquent in payment to and owes the New York City Taxicab Industry, Local 3036, AFL-CIO Benefit Fund, the sum of THIRTY TWO THOUSAND EIGHTY TWO DOLLARS AND SIXTEEN CENTS ($32,082.16).

Accordingly said Employer is directed to pay said amount to the Fund forthwith.

Eric J. Schmertz
Impartial Chairman

DATED: October 19, 1973
STATE OF New York )ss:
COUNTY OF New York)

On this 19 day of October, 1973, 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.

Journal Entry

Dated: October 20, 1973
Qualified in New York County
Commission Expires March 30, 1975
In the Matter of the Arbitration between

International Brotherhood of Electrical Workers, Local 2230

and

Associated Universities, Inc.
Brookhaven National Laboratory

The Undersigned Arbitrator, having been designated in accordance with the Arbitration Agreement entered into by the above-named Parties, and dated July 1, 1972 to August 1, 1974 and having duly heard the proofs and allegations of the Parties, Awards as follows:

The Employer did not violate the Collective Bargaining Agreement by assigning the "disputed work" to non-bargaining unit biology personnel.

Eric J. Schmertz
Arbitrator

DATED: October 1973
STATE OF New York )ss.;
COUNTY OF New York)

On this day of October, 1973, 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.

Case No. 73K12942
In the Matter of the Arbitration between

International Brotherhood of Electrical Workers, Local 2230

and

Associated Universities, Inc.
Brookhaven National Laboratory

In accordance with Article XII of the Collective Bargaining Agreement dated July 1, 1972 to August 1, 1974 between Associated Universities, Inc., Brookhaven National Laboratory, hereinafter referred to as the "Employer," and International Brotherhood of Electrical Workers, Local 2230, hereinafter referred to as the "Union," the Undersigned was selected as the Arbitrator to hear and decide the following stipulated issue:

Is the assignment of the disputed work by the Employer to non-bargaining unit biology personnel a violation of the Collective Bargaining Agreement. If so what shall be the remedy?

A hearing was held on September 18, 1973 at Hofstra University, Hempstead, New York, at which time representatives of the Union and Employer, hereinafter referred to as the "parties," appeared and were afforded full opportunity to offer evidence and argument and to examine and cross examine witnesses. The parties waived the Arbitrator's oath.

Pertinent to resolution of the issue is Exhibit "B" subdivision III B Paragraph 3 of the contract which reads in relevant part:

Installation, operation, maintenance and repair of scientific equipment shall continue to be performed by non-bargaining unit personnel .........
I am persuaded that the "disputed work," assigned to the Biology Department, one of the scientific departments of the Employer, involves a scientific research project undertaken by the Employer in cooperation with the Town of Brookhaven to determine whether and how sewage can be distributed over and returned to the land and the water tables without chemical treatment.

I am satisfied that the project, together with its pumps, ponds, wells, testing and other equipment and work duties of which the "disputed work" is composed, was scientific in nature. Hence its assignment to non-bargaining unit personnel was consistent with Paragraph 3.

That in the preliminary stages sewage delivered by the Town of Brookhaven was combined with the plant's sewage and processed in the regular sewage system by bargaining unit personnel does not mean that the bargaining unit has the contractual right to follow that work from those preliminary stages to and through its utilization exclusively for the scientific sewage project (referred to as the "Upland Recharge Project"). Indeed Paragraph 6 of the sub-division IIIB of Exhibit "B" explicitly allows the Employer to assign to bargaining unit personnel "duties and functions customarily performed by non-bargaining personnel."

As I see it, in the preliminary stages the processing and even treatment of the sewage was either properly bargaining unit work because at that point it was co-mingled with the regular plant sewage and processed through the regular sewage
system or in the alternative, because of its ultimate destination and later use it could be deemed non-bargaining unit work, assigned for that preliminary period to bargaining unit employees. Either way I am constrained to conclude that the Union and the bargaining unit personnel have no claim upon it when it was diverted to or used solely as part of the Upland Recharge Project. And I find that the fence was reasonably placed at the point between regular processing and scientific utilization.

The Union asserts that the job descriptions, which include the type of duties which the non-bargaining unit employees perform as part of the Upland Recharge Project, mean that that work belongs to the bargaining unit. I cannot agree. The job descriptions are indeed part of the contract. But clearly the job descriptions apply to those jobs and those duties that are in the bargaining unit. The job titles and the descriptions are bargaining unit positions. But those jobs and those descriptions, applicable only to the work which belongs to the bargaining unit, cannot increase the scope of the unit by extending to work which by contract has been expressly reserved for non-bargaining unit personnel.

Moreover a reading of Paragraph 2 of sub-division IIIB Exhibit "B", which delineates bargaining unit work of the plant Engineering Department (the Department which the Union contends should have been assigned the "disputed work") does not include the kind of experimental, scientific, research work of which the Upland Recharge Project is comprised. And
I am not prepared to accept the Union's contention that the operation of the pumps and related equipment, the filling and emptying of the ponds, the processing of the sewage through pipes to the fields and forest, the use of a grid and the taking and testing of specimens, all of which are done by the non-bargaining unit biology personnel, does not involve the use of scientific equipment and processes in connection with what I have found to be a scientific project.

Though no doubt bargaining unit personnel, properly instructed, could perform that work, I do not find that the Employer is contractually obligated to assign it to the bargaining unit.

A reading of Paragraphs 2, 3 and 6 of the sub-division IIIB, Exhibit B permits of only one logical conclusion. And that is that the "disputed work" falls within or is substantially of the nature meant by the contractual exclusion from the bargaining unit as set forth in Paragraph 3.

Eric J. Schmertz
Arbitrator
In the Matter of the Arbitration between
International Association of Machinists and Aerospace Workers, AFL-CIO
and
British Overseas Airways Corporation

Award
Case No. 33-72

The Undersigned Arbitrator, having been designated in accordance with the Arbitration Agreement entered into by the above-named parties, and dated July 2, 1970 and having duly heard the proofs and allegations of the parties, Awards, as follows:

The Company's transfer in 1972 to non-bargaining unit employees in Canada, of work which until then and since 1965 was performed by bargaining unit Operations Officers at Kennedy Airport was not violative of the Collective Bargaining Agreement. The Union's grievance No. 33-72 is therefore denied.

DATED: June 9, 1973
STATE OF New York
COUNTY OF New York

On this 9th day of June, 1973 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.
In the Matter of the Arbitration
between
International Association of Machinists
and Aerospace Workers, AFL-CIO
and
British Overseas Airways Corporation

In accordance with Article XIV of the Collective Bargaining Agreement effective June 2, 1970 between British Overseas Airways Corporation, hereinafter referred to as the "Company," and International Association of Machinists and Aerospace Workers, AFL-CIO, hereinafter referred to as the "Union," the Undersigned was selected as the Referee of a five-man Board of Adjustment to hear and decide, together with the Union and Company members of said Board, the dispute involved in Case No. 33-72.

Hearings were held at the Company offices at John F. Kennedy Airport on February 21 and March 14, 1973. Representatives of the Union and Company, hereinafter referred to collectively as the "parties," appeared and were afforded full opportunity to offer evidence and argument and to examine and cross examine witnesses. Messrs. Frank Clark and Andrew Coulter served as the Union members of the Board and Messrs. Gordon S. Drain and Donald E. Morton served as the Company members of said Board.

The parties filed post hearing briefs and the Board met in executive session on May 9, 1973. The parties also expressly waived the Arbitrator's oath and the time limit for rendi-
tion of the Award as set forth in Paragraph (1) of Article XIV of the contract.

The Union complains that some time in 1972, during the term of the present Collective Agreement, the Company transferred to non-bargaining unit personnel in Canada, certain work which bargaining unit Operations Officers at Kennedy Airport had been performing as a regular part of their duties.\(^1\) The Union seeks a ruling by this Board that the Company had no right to effectuate the transfer of that work and that its removal from the bargaining unit and its assignment to non-bargaining unit Company personnel in Canada was violative of the Collective Bargaining Agreement.

The material facts are not in dispute. Prior to the transfer date in 1972, bargaining unit Operations Officers at Kennedy Airport performed certain duties in connection with the operation of Company flights into and out of Canada. It is immaterial whether this work was, as the Union contends, "Flight Watch and Flight Planning" or as the Company calls it "operation control service," because the parties are in agreement on the substantive nature of that work as it existed in 1972, and on the fact that prior to its transfer to Canadian personnel, it had been performed at least from 1965 by bargaining unit Operations Officers at Kennedy Airport.

The narrow issue then is whether the Company violated the contract when, in 1972, it removed certain undisputed work from bargaining unit Operations Officers and assigned it to non-bargaining unit personnel in Canada.

\(^{1.}\) Providing aircraft, upon request, with certain information, such as weather, airport and runway conditions etc., and initiating such information when warranted, during thirty minutes before landing and for thirty minutes after takeoff.
So viewed, the dispute is one of contract interpretation. Both parties rely on the same contract provisions, namely Article II Sections (a) and (b) (first paragraph) Those Sections read:

(a) The Company hereby recognizes the Union as the sole and exclusive bargaining agent for all classes and grades of Maintenance Supervisors, Passenger Officers, Cargo Officers, Station Operations Officers, Operations Officers, Operations as-Coordinators, Baggage Trading Officer and Purchasing Stores Supervisor employed by the Company within the continental limits of the United States including Alaska and Hawaii and its possessions.

(b) All work performed by the Company, including the work of all classes and grades of Maintenance Supervisors, Passenger Officers, Cargo Officers, Station Operations Officers, Operations Assistants, Operations Clerks, Catering Supervisors, Ramp Coordinators, Baggage Trading Officer and Purchasing Stores Supervisor as described in the classification and work requirements in Article IV of this Agreement is recognized as coming within the jurisdiction of the International Association of Machinists as covered by this Agreement.

The Union contends that inasmuch as the work in question was undisputedly part of the job duties of the Operations Officer it constitutes "work performed by the Company....within the jurisdiction of the International Association of Machinists as covered by this Agreement," within the meaning of Paragraph (b). The Union argues that Paragraphs (a) and (b), read together, accord it exclusive jurisdiction over the classification Operations Officer, expressly vesting the Union with jurisdiction over the work performed by bargaining unit employees in that classification. The Union reasons therefore, that it was improperly divested of its jurisdiction over the work the Operations Officers performed between 1965 and 1972 when in the
latter year the Company transferred that work to Canadian personnel not covered by this contract.

The Company interprets the same contract provisions differently. It contends that the Union's jurisdiction over the job classifications enumerated including Operations Officers, is limited to those "employed by the Company within the Continental limits of the United States including Alaska and Hawaii and its possessions." It argues that the jurisdiction of the Union over the work performed by employees so classified is conditioned upon that work being performed within the United States, its possessions and Alaska and Hawaii. In support of this interpretation the Company points out that the Union's jurisdiction under Paragraph (b) is confined to the work of the enumerated job classification "as covered by this Agreement" (underscoring added). This means, the Company argues, that because the Union's bargaining jurisdiction is limited to employees within the United States, its possessions, Alaska and Hawaii, only when the Company decides that certain work within the classifications listed is performed within those geographical bounds does the Union have a claim on it. But as here, when the Company decides to locate the work outside of the United States, its possessions, Alaska and Hawaii - instead in Canada - neither the Union nor this Contract can reach it.

In short the Union contends that the performance of work within the Operations Officers classification must be performed by bargaining unit employees so classified during the life of the Collective Agreement; and the Company asserts that only if it decides that the Operations Officer work is to be performed
within the United States, its possessions, Alaska and Hawaii, must the work be assigned to the bargaining unit.

It is undisputed that this is the first such case between the parties, and that Article II Sections (a) and (b) have not been previously interpreted in connection with this type of dispute. Moreover, the record before me contains little of the "legislative history" of those contract sections and there is no probative evidence of what the parties intended in their Collective Bargaining negotiations leading to agreement on the contract language. Nor is there evidence of a "practice" from which the Arbitrator can infer what the parties intended.

Hence the Arbitrator has no choice but to resort to the contract language itself and other relevant contract provisions between the parties, to reach a determination.

Section (a) is a standard recognition clause. I am satisfied consistent with the view of a majority of arbitrators with which I concur, that that clause does not bar an employer from having work performed by employees under the contract transferred elsewhere, for example to a sub-contractor. Or in other words, for legitimate business needs, operational requirements or other bonafide reasons a standard recognition clause does not bar an employer from giving to a sub-contractor, work which has been or can be performed by the bargaining unit. Indeed the parties to this contract recognized that fact. They specifically negotiated limitations on the Company's right to sub-contract, in the 4th and 5th paragraphs of Article II.

Though the instant dispute is not one of sub-contracting
(because the work was transferred not to an independent sub-contractor, but to Company employees located in Canada) it cannot be seriously disputed that if Section (a) does not constitute a prohibition on the Company's right to sub-contract, it similarly cannot be construed as a restriction on the Company's right to assign work within the Operations Officers classification to its own non-bargaining unit personnel at a geographical location beyond the scope of this Collective Agreement.

Therefore the question narrows as to whether Section (b) should be construed as limiting the Company's right to make the latter transfer.

As appreciative as I may be of the Union's legitimate interest in protecting its jurisdiction and preventing the erosion of both the size and coverage of the bargaining unit which it represents, I must conclude that Section (b) cannot be so construed.

Considering that the Company is an airline with operations world wide, I think it was well within the knowledge and contemplation of the parties that the operational methods, techniques, and business needs of the Company could change within relatively short periods of time, thereby warranting changes in the way the Company's work was to be performed. In this industry particularly, it was foreseeable that due to technological changes, new procedures for efficient and safe operation of aircraft, governmental regulations, and other relevant factors, the Company would be impelled to change not only the nature of its
work, but also the locations at which that work was to be done. Indeed the very work involved in this case has conceded substantially over the years, and prior to 1965 was performed at locations other than Kennedy Airport.

So realistically, these types of changes, both procedurally and as to location, were well within the contemplation of the parties when the contract was negotiated. Yet a specific reference and limitation was negotiated with regard to "contracting out," but no similar specific provision was negotiated in Section (b) with regard to the transfer of work performed by Operations Officers (among others) to non-bargaining unit employees of the Company. It seems to me that since this latter circumstance was or should have been anticipated as much as the matter of sub-contracting, it should have been dealt with with the same specificity, if the contract was intended to place a restriction on the Company's right to unilaterally transfer work to a geographical location and to employees not covered by the contract. That they did not leads to the logical conclusion that Section (b) was not intended or should not be construed as a restriction on the Company's right to do so.

Moreover, and perhaps most significantly, it is apparent that the Union knew how to contractually maintain jurisdiction over bargaining unit work no matter where the Company chose to have it performed, and negotiated such a protection in connection with the work specified in the third paragraph of Article II (Second paragraph of Section (b)).

Basically the Union's argument in the instant case is that
the work of Operations Officers wherever performed belongs to the bargaining unit. But contractually that type of coverage and protection of bargaining unit jurisdiction extends only to the work delineated in the third paragraph of Article II. That clause, after enumerating a whole variety of types of work states:

"...performed in or about Company shops, Maintenance Bases, Overhaul Bases, Line Service Stations, or wherever performed, is recognized as coming within the jurisdiction of the International Association of Machinists, and is covered by this Agreement." (emphasis added).

But the foregoing does not apply to work performed by the classifications enumerated in the first paragraph of Section (b) including the work of Operations Officers.

I must conclude therefore that the Company's right to remove work from the bargaining unit and assign it to geographical locations outside of the United States, its possessions, Alaska and Hawaii, and beyond the Union's jurisdiction, was expressly restricted as to work enumerated in the third paragraph of Article II, but not as to the work in dispute in the instant case.

Lest the Company use this decision too broadly as a precedent, certain facts unique to the instant circumstances should be pointed out. First, the transfer of the work performed by the Operations Officers from Kennedy Airport to non-bargaining unit personnel in Canada did not cause a layoff and apparently was not done at a time when qualified Operations Officers were on layoff status. Therefore this decision cannot necessarily be construed as according the Company the right to effectuate such a transfer if a layoff results or if qualified Operations Officers are on layoff status.
Second, in the instant case I am satisfied that there was a legitimate operational basis for the Company's decision to re-assign the work to a different location. The record indicates an historical operational change in what earlier had been referred to as Flight Watch and Flight Planning, and what at least in the latter 1960s and early 1970s assumed the title of "Operational Control Service." I am satisfied that the Company's decision was based on changed technology, a desire to make its operations more efficient and safe, and for other bonafide business needs. Therefore this decision cannot be construed as according the Company the right to effectuate similar transfers of work under conditions where those reasons are not present.

In short, in no way should this decision be construed by the Company as an unlimited license to remove bargaining unit work from the jurisdiction of this Collective Bargaining Agreement.

Also it should be clearly understood that I make no determination one way or the other as to whether the Company met any statutory duty under the Railway Labor Act or other applicable statutes, to negotiate with the Union either the transfer of the work or its impact on bargaining unit employees. That issue is not before me. My authority is limited to determine whether the Company's action was proper or improper under the Collective Bargaining Agreement. Whether the Company had other obligations, statutory or otherwise, not referred to in the Collective Agreement, are matters which must be determined in other forums, and the rights of the parties in that regard are expressly reserved.
In connection with the immediate foregoing statement I feel compelled to say that irrespective of the Company's bare right under the contract, and regardless of any statutory duty to negotiate with the Union, I think it both unwise and imprudent as a matter of labor relations for the Company to have effectuated this particular transfer of work from the bargaining unit to non-bargaining unit employees in Canada without first engaging in good faith discussions with the Union. Had the Company done so, some of the difficulties engendered by its action herein may well have been avoided. It seems to me that in the future, such discussions, which do not prejudice the contractual or legal rights of the parties, would make a good deal of sense in the furtherance of a sound and responsible relationship.

Eric J. Schmertz
Referee
IMPARTIAL CHAIRMAN, UNIFORMED FIREFIGHTERS ASSOCIATION - AND -
CITY OF NEW YORK (FIRE DEPARTMENT)

In the Matter of the Arbitration
between
Uniformed Firefighters Association
and
City of New York (Fire Department)

AWARD
Case A315-73
Case A305-73
Case A304-73

The Undersigned as Impartial Chairman 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 Union's grievance in Case A315-73 was granted by the City.

The Union's grievance in Case A305-73 is denied.

Article III Section 3 of the contract provides for overtime compensation "for the actual period of overtime worked." I cannot find that that portion of an overtime tour which a firefighter is unable to complete because he has sustained a line of duty injury, constitutes "overtime work" within the meaning of Article III Section.

Accordingly the Union's claim for overtime pay for a full tour when a firefighter does not complete that tour because of a line of duty injury sustained some time during the tour, must be denied.

In view of the express language of Article III Section 3, limiting cash compensation for overtime to the "actual period of overtime worked" (emphasis added) the Union's claim herein is appropriately a matter for negotiation, not arbitration under this contract.

The Union's grievance in Case A304-73 is denied.

I do not find that the City violated Article XII Section 5 in denying compensatory time off to firefighters off duty at the time when time off was given civilian employees for the observance of the deaths of President Truman and Johnson.
The Union seeks compensatory time off for all firefighters who were off duty at the time that civilian employees who were on duty were granted the time off. I conclude that to grant the grievance would accord the firefighters a greater benefit than was accorded other City personnel. It would extend the benefit of time off to firefighters who were then off duty, whereas only those civilian employees who were on duty were given four hours off from 1 P.M. to 5 P.M. on December 28, 1972 (for President Truman) and January 25, 1973 (for President Johnson.) It is undisputed that civilian employees off duty at the time, albeit few in number, did not get additional time off. Also it is stipulated that firefighters who were on duty during those hours on those days were granted or will be granted the appropriate time off as required by Article XII Section 5.

The first two words of Article XII Section 5, "Excused time" indicates the intent of that Section. As I see it it means that employees may be excused from work for these observances, and if so, firefighters are entitled to be excused from work as well or given compensatory time off later in lieu thereof. But the threshold eligibility requirement is that the firefighters, like other City personnel be at work in order to be excused. It would be a strained and illogical interpretation for "excused time" to apply to an employee who is then off duty. I cannot accept that interpretation.

Accordingly I do not find that the firefighters who were off duty were similarly situated with civilians who were at work, and consequently I cannot find that they were not granted an equal benefit within the meaning of Article XII Section 5 when the latter employees were given time off.

I recognize that the percentage of firefighters who received time off was considerably less than the percentage of the City's civilian work force who received time off; but as I see it, this was a consequence not of a discriminatory act by the City, but of the firefighters work schedule (the two-platoon system). That work schedule is also a part of the contract and it has been zealously protected by the Union as a highly beneficial and necessary condition of employment.
Dated: September 26, 1973
State of New York ) ss.
County of New York )

On this 26th day of September, 1973 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.
The stipulated issue is:

Was the movement of William Brown from the first chair in the Horn Section to the second chair in the Horn Section proper? If not, what shall be the remedy?

A hearing was held on October 11, 1973 at which time Mr. Brown, hereinafter referred to as the "grievant," and representatives of the above named Union and Employer appeared and were afforded full opportunity to offer evidence and argument and to examine and cross examine witnesses.

It is evident that at the end of the first season under the contract, and for performances during the subsequent season, the grievant was demoted from the first chair to the second chair in the Horn Section for artistic reasons.

I conclude that this action by the Employer was neither contemplated by nor permitted under the Collective Bargaining Agreement. Article THIRTEENTH of the contract sets forth the courses of action open to the Employer in the event that a member of the orchestra fails to meet the requisite artistic standards. I interpret Article THIRTEENTH, especially paragraphs a and b thereof to mean that orchestra members shall be re-engaged each year in the same position they held the
year previously unless for artistic reasons the Employer desires to "dismiss or not re-engage any permanent member of the orchestra ...." In other words the contract contemplates only two possibilities where a member of the orchestra fails to meet artistic standards, namely dismissal or non-re-engagement. It does not provide for demotion from a higher or more responsible position to one of lower status.

It is well settled that the right to dismiss includes therein by implication the right to suspend or reprimand; but not the right to demote. If demotion is to be either a remedy available to the Employer or a penalty to be imposed on an employee, the contract should provide for it explicitly. Especially where, as here, the possibility of demotion for alleged failure to meet artistic standards, was certainly well within the contemplation of the parties when the contract was negotiated. That they did not provide for demotion, but rather accorded the Employer simply the right to dismiss or not re-engage a member of the orchestra at the conclusion of any of the specified years covered by the contract, means that the parties did not intend to authorize a demotion where an orchestra member's artistic qualifications or performance was in question.

In the instant case during the first season under the contract the grievant held a first chair position. Under Article FOURTH, Section d 6(e) of the contract he was entitled to be re-engaged in that position except as provided under Article THIRTEENTH. And Article THIRTEENTH negates any such
re-employment only by "dismissal or non-re-engagement."

In short I find no basis in the contract to expand the Employer's right to dismiss or not re-engage for artistic reasons, to include the right to demote.

Accordingly the Undersigned, duly designated as the Arbitrator in the above entitled matter and having duly been sworn and having duly heard the proofs and allegations of the above parties, makes the following AWARD:

The movement of William Brown from the first chair in the Horn Section to the second chair in the Horn Section was not proper. He shall be reinstated to the first chair Horn position and made whole for any loss of wages.

Eric J. Schmertz
Arbitrator

DATED: November 23, 1973
STATE OF New York )ss.
COUNTY OF New York)

On this 23rd day of November, 1973, 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.

Case No. 1330 0613 73
In the Matter of the Arbitration between UNIFORMED FIRE OFFICERS ASSOCIATION and CITY OF NEW YORK (FIRE DEPARTMENT)

The Undersigned, as Impartial Chairman under the Collective Bargaining Agreement between the above named parties and having duly heard the proofs and allegations of said parties at a hearing on May 29, 1973, renders the following AWARD:

The Union's grievance in case A-303-73 is denied. I am not persuaded that the requirement that Lt. Marvin S. Kestin, after taken to the hospital following a line of duty injury, await the arrival of and examination by a Departmental Medical Officer subsequent to the end of his regular tour (for an additional 1-3/4 hours) on December 24, 1972, constituted "perform(ance) (of) work in excess of 'working hours'" within the meaning of Article III Section 3 of the collective bargaining agreement.

As I see it the issue is not whether Lt. Kestin is entitled to overtime compensation under any law or regulation, but whether he is entitled to overtime pay under the collective bargaining agreement.

The contractual phrase "to perform work in excess of 'working hours'" as set forth in Article III Section 3 is best interpreted by the practice of the parties thereunder and their intent when the clause was negotiated. The practice has been uniformly contrary to the Union's position in this case. Based on my knowledge of the "legislative history" of Article III Section 3 I cannot conclude it was intended to cover the instant circumstance.
The Union's brief, though both thorough and legally stimulating, bases its arguments principally on statutory provisions and cases not determinative of the instant contract issue under this employment relationship, and hence does not serve to overturn the aforementioned practice and negotiated intent. What the Union seeks under the contract is appropriately a matter for future collective bargaining not arbitration.

However I do not decide, because it is not within my jurisdiction, whether Lt. Kestin is entitled to overtime pay for the period in question under any applicable law, other than the collective bargaining agreement, in any other forum. The rights of the Union and Lt. Kestin, if any, in that regard, are expressly reserved.

Dated: July 11, 1973
State of New York vs.
County of New York

On this eleventh day of July, 1973, 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.
The Undersigned, as Impartial Chairman under the Collective Bargaining Agreement between the above named parties, and having duly heard the proofs and allegations of said parties at hearings on March 19, May 24, and June 27, 1973 renders the following AWARD:

The Union's grievances in cases A248-73 and A255-73 are denied.

I am not persuaded that the subject matter of those grievances constitute a "policy or regulation of the Fire Department" within the meaning of Article XXII Section 1 of the contract. Rather I am satisfied that the particular actions of the Department were within the Department's managerial authority and not restricted by provisions of the contract. This is not to say that the retention of a fire watch detail at Bellevue Hospital or the maintenance, without change, of the searchlight, foam and mask units would not be more beneficial to the firefighters than under the new arrangements promulgated by the Department. But rather that I find no breaches of the provisions of the contract, nor do I find policy or regulation either applicable or breached. More specifically and by example any prior practice of maintaining a fire watch detail to expeditiously care for injured fireman is not confined to Bellevue Hospital alone. The record discloses that as a matter of practice the Department has unilaterally over the years assigned, and eliminated fire watch details at a number of hospitals. Consequently I view as too narrow the Union's assertion that the prior continuous and unbroken assignment of a fire watch detail at Bellevue Hospital constitutes a practice to which the Department is bound.
Absent an express contract restriction, and I find none in the current agreement, the methods and manner by which the Department utilizes the search-light and foam units remains a prerogative of the Department under its managerial authority. To prohibit the Department from making the changes involved herein would impose operational restrictions on the Department which are not to be found in the contract.

My "ambulance" case is not in point. There I ordered restoration of that "benefit" primarily because the ambulance was originally paid for by the contributions of Union members, and that specific and unique monetary consideration barred the Department from unilaterally terminating the availability and use of that ambulance.

Finally, based on my knowledge of its "legislative history" I must reject the Union's assertion that Article XXVII Section 6 is applicable to the secondary piece of equipment of the mask units.

I make no judgement on the Union's general assertion that all or some of these changes constitute a safety hazard to the firefighters. That assertion, if meritorious involves the "practical impact" of managerial decisions of the Department and is a matter within the jurisdiction of the Board of Collective Bargaining. The Union's rights to proceed or complain in accordance with the "practical impact" decision of the Board of Collective Bargaining are reserved.

The Union's grievance in Case A289-73 is granted to the following extent:

I find that by agreement of the parties, the provisions of Article XXVI were or should have been effective as of February 12, 1972. I also find the Department's requirement that firefighters "sign in and sign out" to be a reasonable condition in the implementation of that Article. However the latter requirement was not promulgated by the Department until October 18, 1972, and hence cannot be retroactively imposed on firefighters who otherwise met the eligibility requirements of Article XXVI between February 12 and October 18, 1972. Accordingly for the period February 12 to October 18, 1972 the Department shall pay compensation for travel time covered by said contract provision to all firefighters who met the eligibility requirements other than the requirement
to "sign in and sign out". From October 18, 1972 the latter requirement, namely to "sign in and sign out" shall also be a condition of eligibility for benefits under Article XXVI.

DATED: July 5, 1973
STATE OF New York ) ss.
COUNTY OF New York)

On this 5th day of July, 1973 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.
In the Matter of the Arbitration between
Uniformed Firefighters Association and
City of New York - (Fire Department)

...........................................................

The Undersigned, as Impartial Chairman under the Collective Bargaining Agreement between the above named parties, and having duly heard the proofs and allegations of said parties at hearings on March 19, May 24, and June 27, 1973 renders the following AWARD:

The Union's grievances in cases A248-73 and A255-73 are denied.

I am not persuaded that the subject matter of those grievances constitute a "policy or regulation of the Fire Department" within the meaning of Article XXII Section 1 of the contract. Rather I am satisfied that the particular actions of the Department were within the Department's managerial authority and not restricted by provisions of the contract. This is not to say that the retention of a fire watch detail at Bellevue Hospital or the maintenance, without change, of the searchlight, foam and mask units would not be more beneficial to the firefighters than under the new arrangements promulgated by the Department. But rather that I find no breaches of the provisions of the contract, nor do I find policy or regulation either applicable or breached. More specifically and by example any prior practice of maintaining a fire watch detail to expeditiously care for injured firemen is not confined to Bellevue Hospital alone. The record discloses that as a matter of practice the Department has unilaterally over the years assigned, and eliminated fire watch details at a number of hospitals. Consequently I view as too narrow the Union's assertion that the prior continuous and unbroken assignment of a fire watch detail at Bellevue Hospital constitutes a practice to which the Department is bound.
Absent an express contract restriction, and I find none in the current agreement, the methods and manner by which the Department utilizes the searchlight and foam units remains a prerogative of the Department under its managerial authority. To prohibit the Department from making the changes involved herein would impose operational restrictions on the Department which are not to be found in the contract.

My "ambulance" case is not in point. There I ordered restoration of that "benefit" primarily because the ambulance was originally paid for by the contributions of Union members, and that that specific and unique monetary consideration barred the Department from unilaterally terminating the availability and use of that ambulance.

Finally, based on my knowledge of its "legislative history" I must reject the Union's assertion that Article XXVII Section 6 is applicable to the secondary piece of equipment of the mask units.

I make no judgement on the Union's general assertion that all or some of these changes constitute a safety hazard to the firefighters. That assertion, if meritorious involves the "practical impact" of managerial decisions of the Department and is a matter within the jurisdiction of the Board of Collective Bargaining. The Union's rights to proceed or complain in accordance with the "practical impact" decision of the Board of Collective Bargaining are reserved.

The Union's grievance in Case A289-73 is granted to the following extent:

I find that by agreement of the parties, the provisions of Article XXVI were or should have been effective as of February 12, 1972. I also find the Department's requirement that firefighters "sign in and sign out" to be a reasonable condition in the implementation of that Article. However, the latter requirement was not promulgated by the Department until October 18, 1972, and hence cannot be retroactively imposed on firefighters who otherwise met the eligibility requirements of Article XXVI between February 12 and October 18, 1972. Accordingly for the period February 12 to October 18, 1972 the Department shall pay compensation for travel time covered by said contract provision to all firefighters who met the eligibility requirements other than the requirement
to "sign in and sign out". From October 18, 1972 the latter requirement, namely to "sign in and sign out" shall also be a condition of eligibility for benefits under Article XXVI.

Eric J. Schmertz
Impartial Chairman

DATED: July 5, 1973
STATE OF New York ) ss:.
COUNTY OF New York)

On this 5th day of July, 1973 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.

MAURICE L. SCHICKHARD
DEPUTY SHERIFF, STATE OF NEW YORK
No. 39468275
Deputize In Nassau County
Term Expires March 30, 1974
IMPARTIAL CHAIRMAN, UNIFORMED FIREFIGHTERS ASSOCIATION - and THE CITY OF NEW YORK (FIRE DEPARTMENT)

In the Matter of the Arbitration between

Uniformed Firefighters Association and

The City of New York (Fire Department)

The Undersigned as 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 Union's grievance in Case No. A272-72 claiming a violation of Article XXVII of the contract is denied. I find that the City's action on election night November 7, 1973 was limited to a short period of time, no more than six hours, and was consistent with a long standing practice which has been followed for the last 23 years.

The Union's grievance in Case No. A273-72 claiming a violation of Article VI Section 1 of the contract is denied. I find that the grievants were properly paid in accordance with the terms of the contract for the particular period involved.

Eric J. Schmertz
Impartial Chairman

DATED: May 29, 1973
STATE OF New York (ss.:
COUNTY OF NEW York)

On this 29th day of May, 1973 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.
IMPARTIAL CHAIRMAN, UNIFORMED FIREFIGHTERS ASSOCIATION
- and - CITY OF NEW YORK (FIRE DEPARTMENT)

In the Matter of the Arbitration between

Uniformed Firefighters Association
Local 94, AFL-CIO
and
City of New York (Fire Department)

AWARD
Case #A-251-72
Case #A-253-72

The Undersigned as Impartial Chairman 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:

Case #A-251-72

This is the third complaint by the Union at the arbitration level that the City has failed to make timely payment of overtime and/or out-of-title earnings. My prior Awards are a matter of record.

It is undisputed that the City has not specifically complied with points 4 and 5 of the payment schedule promulgated in my Award in Case #A-200-72 of August 8, 1972. Certain payments due on September 29 and October 13, 1972 were not made on those dates and/or had not been made as of the date of the instant hearing on October 18, 1972.

I am satisfied that the City has been making an effort to make overtime and out-of-title payments on a more current basis. Payments have been made more speedily than prior to my most recent Award, and the time schedules set forth in points 1, 2 and 3 of that Award were met. The City has stated that it will clear up all delinquent payments by no later than October 27, 1972, and will meet the prescribed schedule on and after that date.

Accordingly I shall give the City until October 27, 1972 to make all payments past due and due on that date without imposing a penalty. However, if said payments are not made by October 27, 1972, or if the City fails to meet the balance of payment schedule set forth in that Award, all late payments will be due and owing with interest running from the date due.
Case #A-253-72

The Union's grievance is satisfied by the issuance and implementation of PA/ID #16-72 as amended at the hearing of the instant case. Payment for work performed thereunder shall be made in accordance with point 7 of the pay schedule set forth in the Award in Case #A-200-72.

............

In both the foregoing cases the City withdrew its procedural challenge to arbitrability without prejudice to its right to require that grievances filed by the Union be processed through the contractual grievance procedure before being submitted to arbitration.

Eric J. Schmertz
Impartial Chairman

DATED: October 25, 1972
STATE OF New York )
COUNTY OF New York)

On this 25th day of October, 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.
This proceeding involves a complaint by the UFA, hereinafter referred to as the "Union," that the City of New York, hereinafter referred to as the "City," has unreasonably delayed payments to firefighters for overtime and out-of-title work.

A hearing was held on March 31, 1972 at which time representatives of the Union and City appeared and were afforded full opportunity to offer evidence and argument and to examine and cross examine witnesses. The parties expressly waived the Arbitrator's oath. Both sides filed post hearing briefs.

There is no dispute between the Union and the City that certain overtime and out-of-title payments for services performed are due certain firefighters, nor is there a dispute over the amount of time that has elapsed since earned.

As of the date of the hearing, March 31, 1972, the last payment for overtime and out-of-title work was for a period up to and including September 27, 1971. In other words as much as six months had passed since the last payment.

On June 8, 1970 I rendered an Award between the same parties in which I held that delays in paying money that was due
for somewhat lesser periods of time was unreasonable, and in-
consistent with the contract requirements that such payments
be made within a reasonable time.

Subsequent to the hearing in the instant case, and in my
capacity as Impartial Chairman between the parties, I discuss-
ed the seriousness of this matter with representatives of the
City for the purpose of bringing about more expeditious pay-
ment; to clear up the arrears as speedily as possible; and
prospectively to arrange that overtime and out-of-title pay-
ments be made on a current and reasonable basis. In response
the City has advised me that it intends to meet the following
Schedule:

1. Payment for overtime and acting out-of-title work
earned for the period up to and including February
15, 1972 will be made no later than August 4, 1972.

2. Payment for overtime and acting out-of-title work
performed between February 16, 1972 and March 31,
1972 will be made no later than August 18, 1972.

3. Payment for overtime and acting out-of-title work
performed between April 1, 1972 and May 15, 1972
will be made no later than September 15, 1972.

4. Payment for overtime and acting out-of-title work
performed between May 16, 1972 and June 30, 1972
will be made no later than September 29, 1972.

5. Payment for overtime and acting out-of-title work
performed between July 1, 1972 and August 15, 1972
will be made no later than October 13, 1972.

6. Payment for overtime and acting out-of-title work
performed between August 16, 1972 and September 30,
1972 will be made no later than October 27, 1972.

7. Thereafter, payment for overtime and acting out-of-
title work will be made regularly within 60 days
after the Ordered Overtime Duty Reimbursement
Application or the Report of Out-of-Title work are
filed.
I think the foregoing to be an acceptable Schedule, and I consider it reasonable that when current, the City regularly pay firefighters for overtime and out-of-title services no later than 60 days after the Application for Reimbursement or Report of said work has been filed, as indicated in #7 above.

Accordingly as Impartial Chairman between the above named parties I make the foregoing Schedule my AWARD. I shall retain jurisdiction over this case for implementation of that Schedule. In the event that the City does not meet the Schedule the Union may so notify me for my consideration and for whatever action I deem appropriate.

Eric J. Schmertz
Impartial Chairman

DATED: August 1972
STATE of New York ss:
COUNTY of New York

On this day of August, 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.
The stipulated issue is:

Is the Fire Department violating Article III and Article XI of the contract when upon returning from vacation a fireman is assigned to any group different from the group he was in when he started his vacation?

A hearing was held at the Office of Collective Bargaining on March 27, 1972 at which time representatives of the above named parties appeared and were afforded full opportunity to offer evidence and argument and to examine and cross examine witnesses.

The Articles referred to in the stipulated issue are the Work Schedule and Vacation and Leave provisions of the Collective Bargaining Agreement.

It is undisputed that the regular working time of a fireman for which he is paid his regular rate of pay totals 2088 hours a year; not to exceed 144 within each 25 day work cycle; and the resultant work week of 40.32 hours is adjusted to an average of 40 hours by one annual 15 hour tour off (the adjusted tour.)

Vacations are included within the foregoing periods of time.
From time to time, upon returning from vacation, when a fireman is assigned to a group different from the group he was in when he commenced his vacation, he works more hours than the total regular hours referred to above.

It is undisputed that the Department has the right to assign a fireman to a group different from the one he was in at the time his vacation commenced. But if the result is to increase his working hours in excess of the maximum regular periods referred to above, those additional hours must be considered as overtime. And in that event the affected fireman is entitled to overtime pay for those additional hours in accordance with the overtime provisions of the contract.

Accordingly the Undersigned as Impartial Chairman 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:

When, upon returning from vacation, because of an assignment to a group other than the one in which he worked when his vacation began, a fireman works more than the total number of regular working hours (including vacation time), those additional hours (i.e. in excess of 144 in a 25 day cycle or in excess of 2088 per year) shall be paid for at the overtime rate in accordance with the overtime provisions of the contract. The Department's present practice of not compensating a fireman for these additional hours at the overtime rate is violative of the contract.

Eric J. Schmertz
Impartial Chairman
DATED: May 1972
STATE OF New York) ss.:
COUNTY OF New York)

On this 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.

Case No. A-201-72
A hearing was held on December 22, 1972 at which time representatives of the above named parties appeared and were afforded full opportunity to offer evidence and argument and to examine and cross examine witnesses.

The issue is the Union's grievance dated December 4, 1972. The Union complains that the Department's plan to change the number of vacation groups or periods from ten to eight commencing January 1, 1973 is violative of Article XII Section 1 of the Collective Bargaining Agreement and violative of the policy of the Department.

The Union's grievance is meritorious.

Article XII Section 1 of the contract incorporates into the Collective Bargaining Agreement the Regulations for the Uniformed Force covering the Annual Leave Allowance Program for the Fire Department. By consequence said Regulation became part of the negotiated Collective Agreement. I find that its relevant substantive provisions, as they existed when the contract was negotiated, are per force fixed for the term of the contract unless the parties mutually agree otherwise.

The current applicable Regulation is Chapter 17 (Leaves
of absence) and specifically Section 17.7.5 which in pertinent part reads:

Maintenance of the ten year progressive vacation system for members below rank of lieutenant shall be in accordance with the following procedure:

(c) Master schedules for the ten year period, indicating lettered groups and related vacation leave numbers, shall be promulgated and used as a control for maintenance of such system.

(d) Vacation periods each year shall be apportioned in ten vacation leave numbers, and schedules for such leaves promulgated annually and issued to all units. (Underlining supplied.)

Accordingly I find that the ten group or ten period vacation structure was jointly incorporated into the current Collective Bargaining Agreement by express reference in Article XII Section 1 thereof. And as part of that contract I must conclude that the parties agreed to a vacation and leave program which included not simply a vacation allowance in terms of quantity, but also a program which encompassed the then existing ten group structure.

I also find, pursuant to the foregoing, that the Department is foreclosed from unilaterally changing Regulation 17.7.5 for the balance of the present Collective Bargaining Agreement. It is well settled that a jointly negotiated condition of employment may not be unilaterally changed by one of the parties during the life of the applicable contract covering that condition.

The Department contends that it unilaterally established and promulgated the ten group structure many years ago, and
that it never relinquished its right to make changes in that program, even during the term of a Collective Agreement, so long as the quantity of a fireman's vacation remained untouched. The evidence does not support this contention.

In addition to the foregoing analysis and interpretation of Article XII Section 1 of the current contract, there is substantial evidence showing that the ten group structure was worked out, indeed "negotiated," by and between the Department and the Union prior to January 1, 1959 when that program commenced. The evidence indicates that a Union representative devised the ten group structure (to replace the then existing nine group structure) in order to accommodate the vacation entitlement within the nine hour and fifteen hour tour system. And that to do so the Union was willing to accept a reduction in the vacation entitlement from 216 hours (then enjoyed by other City employees) to 210 for firemen. The evidence discloses that the ten group "chart," as devised by Union representative McQueeney, was adopted by the Department some time prior to January 1, 1959 and was promulgated as the Annual Leave Allowance Program for the Fire Department effective January 1, 1959. Though at that time the Union was not yet officially certified as the bargaining agent for the members, de facto "negotiations" took place on many subjects covering conditions of employment including, as indicated, the vacation leave program. Consequently I must conclude, contrary to the Department's position, that the vacation program, including the ten group structure, was arrived at by mutual agreement.
Hence from its inception and as affirmed by later contract language, it was and is a negotiated condition of employment.

The ten group structure continued from January 1, 1959 to the present. It continued through the contract negotiations and the terms of the 1966 and 1968 Collective Bargaining Agreements. The pertinent parts of Articles XI Section 1 of those prior contracts are the same as the pertinent part of Article XII Section 1 of the current Agreement.

It is undisputed that at no time during those negotiations or those contract periods, nor during the negotiation of the current (1971) contract did the Department seek to change the ten group structure. Nor did the Department give any indication to the Union that it planned any such change or that it reserved the right to do so.

Accordingly, with a history dating back to January 1, 1959, and without any changes thereafter during three successive contract negotiations, the Union had reasonable grounds to believe, and to rely thereon, that the ten group structure was part of the contract and was not subject to unilateral change by the Department. Hence, what demands were made and what negotiations took place on the subject of vacation leaves in the three negotiations which lead to the only written contracts entered into by the parties, were impliedly if not expressly within the framework of the ten group structure which neither side sought to change.

It may be, as the Department contends, that an eight group plan is more beneficial to the firemen than the long standing
ten group structure. But that possibility is immaterial to the issue before me. For if, by operation of the contract the Department does not have the unilateral right to change the Program, it may not make a change irrespective of the merits of why it wishes to do so.

Accordingly the Undersigned as 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 Union's grievance dated December 4, 1972 is granted. The Department may not unilaterally change the existing ten group vacation program for the balance of the current Collective Bargaining Agreement. Therefore the Department shall not install its eight group schedule effective January 1, 1973.

Eric J. Schmertz
Impartial Chairman

DATED: December 26, 1972
STATE OF New York )ss.:  
COUNTY OF New York)

On this 26th day of December, 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.
In the Matter of the Arbitration between
Uniformed Firefighters Association, Local 94 IAFF, AFL-CIO and
The City of New York (Fire Department)

The Undersigned as Impartial Chairman under the Collective Bargaining Agreement between the above named parties, and having duly heard the proofs and allegations of said parties, renders the following Award and Opinion:

Case No. A249-72

The Union's grievance claiming violation of Article XII of the contract is denied because said contract provision is self-remedial. Its own terms provide for a remedy in the event that a fireman cannot take his personal leave day(s) by the end of the "succeeding fiscal year" due, among other reasons, to the "needs of the Fire Department". He is to "be compensated for the same in cash ..."

Accordingly so long as the Department pays a fireman for the personal leave day(s) which he is unable to take for any of the reasons set forth
in Article XII Section 2 of the contract, the failure or inability of the Department to allow a fireman to take an accrued personal leave day(s) off is not violative of the Collective Bargaining Agreement.

**Case No. A250-72**

The Union withdrew this grievance from arbitration without prejudice.

**Case No. A252-72**

This grievance concerns the Maintenance of Personal Firefighting Equipment and requires the application and interpretation of the following language written in the Fact Finding Recommendations and subsequently agreed to by the parties:

"The present practice (one half hour) shall continue and shall also apply from the time of 'final tap-in'."

The narrow issue is whether "final tap-in" includes return from a "false alarm" run.

The phrase "tap-in" has a particular meaning in the Fire Department. It means that a Company has returned to quarters from a run in response to an alarm. No distinction is made among the types of alarms to which the Company has responded. Specifically it has not excluded a return from a run which turned out to be a false alarm.
Accordingly the use of the phrase "tap-in" in its traditional and occupational sense by the Fact-Finders, without any special limitation, perforce includes false alarms as well as returns from structural fires, and emergencies (such as a building collapse).

Accordingly the Department shall apply and implement the agreed upon language consistent with the foregoing interpretation. To that extent the Union's grievance is granted.

Case No. A254-72

An Award on the Union's grievance relating to Article XXVII Section 6 of the contract will be rendered within the next few days.

Case No. A260-72

It is undisputed that the Union cannot claim a violation of the "five-man manning" provisions of the contract if a Company runs with less than five men when the vacancy in that particular Company is because the delegate of that Company is on vacation or at a delegate or Union meeting. But those are not the facts in the instant dispute. Rather the Department has been following a procedure of "floating" the vacancy created by the absence of the delegate.
For example, where a vacancy is created in Ladder Company A due to the absence of the delegate, the Department has transferred a fireman from Engine Company B to cover that vacancy. Engine Company B then runs with less than the requisite manning.

Because this procedure was not part of the discussions of the parties when the exceptions to the five-man manning requirements were negotiated, I conclude that it is not an agreed upon circumstance within those exceptions. I am satisfied that the Union agreed to waive its right to complain about less than five-man manning only where a particular Company did not meet the minimum manning requirements because the delegate of that Company was unavailable for the reasons mentioned. I find no evidence that the Union agreed to or even was advised that this exception to the five-man manning requirement, namely when a delegate is on vacation or at a delegate or Union meeting, would be implemented to exclude from the contractual five-man manning requirements a Company whose own delegate is not absent.
While I appreciate the operational reasons advanced by the Department, the Department's manner of implementing this particular exception to the "five-man manning" requirement is simply inconsistent with how that exception was mutually understood and agreed to by the parties.

Accordingly the Department shall cease its policy and procedure of "floating" a vacancy created by the delegate's absence. That particular exception to the five-man manning provisions of the contract shall apply to the particular Company whose delegate is absent due to vacation or his attendance at a delegate or Union meeting. The Union's grievance is granted to that extent.

Eric J. Schmertz
Impartial Chairman

DATED: December 4, 1972
STATE OF New York ) ss:
COUNTY OF New York)

On this fourth day of December, 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.

FRANK T. ZOTTO
Notary Public, State of New York
No. 41-9011680
Commission Expires March 30, 1974
IMPARTIAL CHAIRMAN, UNIFORMED FIREFIGHTERS ASSOCIATION
AND THE CITY OF NEW YORK (FIRE DEPARTMENT)

In the Matter of the Arbitration
between
Uniformed Firefighters Association
and
City of New York (Fire Department)

Award
A-261-72
A-262-72
A-263-72
A-264-72
A-265-72

Having duly heard the proofs and allegations of the
parties, the following shall be the disposition of the indicated grievances and cases:

Case A-261-72

By no later than November 20, 1972, the City shall promulgate a procedure which may be responsive to the Union's claimed violation of Articles XXVIII and XXIX of the Collective Bargaining Agreement. If that procedure is not dispositive of the grievance, the dispute may be referred back to the Undersigned for determination.

Case A-262-72

The Union's grievance claiming a violation of Article XII Section 7 of the Collective Bargaining Agreement is granted as follows:

By no later than November 20, 1972 the Department shall issue appropriate instructions to its officials directing compliance with said provisions of the contract.

Case A-263-72

The Union's grievance claiming a violation of Article XII Section 8 of the Collective Bargaining Agreement is granted as follows:

By no later than November 20, 1972 the Department shall issue appropriate instructions to its officials directing compliance with said provisions of the contract.
Case A-264-72

The Union's grievance claiming a violation of Article VI Section 5 of the Collective Bargaining Agreement is granted as follows:

The City will pay the $15.00 in question with the next payment of the uniform allowance in December, 1972.

Case A 265-72

The Union's grievance claiming a violation of Article XXI of the Collective Bargaining Agreement is granted as follows:

By no later than November 20, 1972 the Department shall issue appropriate instructions to its officials directing compliance with said provisions of the contract.

Eric J. Schmertz
Impartial Chairman

DATED: November 13, 1972
STATE OF New York ) ss.:
COUNTY OF New York)

On this 13th day of November, 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.
In the matter of the Arbitration
between
Uniformed Firefighters Association
and
City of New York (Fire Department)

The Undersigned as Impartial Chairman under the Collective Bargaining Agreement between the above named parties issues the following ORDER:

Subsequent to the negotiation of the Collective Bargaining Agreement, the parties agreed on a method of allocating the night shift differential different from the contract. They have not agreed upon the mathematical "factor" needed for implementation of the new method. The Union has submitted to the City what the Union considers to be an appropriate "factor." The matter was raised at a hearing on October 25, 1972. The City had not by then completed preparation of its "factor" for the Union's consideration. The City stated that it would do so by November 8, 1972, and the Arbitrator accorded the City the time it requested.

At the hearing on November 8, 1972 the City did not present its "factor" and has not done so to-date. The City advises it needs a few additional days to do so.

The City shall present its "factor" to the Union, with a copy to the Undersigned, by no later than the close of business on Wednesday, November 15, 1972. Forthwith thereafter representatives of the parties shall meet in an effort to resolve any differences which may exist in the respective factors. If for any reason a resolution is not achieved by the close of business on Monday, November 20, 1972, the matter may be referred to the Undersigned for determination.

Eric J. Schmertz
Impartial Chairman
DATED: November 13, 1972

STATE OF New York )ss.:  
COUNTY OF New York)

On this 13th day of November, 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.