The stipulated issue is:

Did a method change as defined in Section 17.3.10 of the contract occur from the original standards which justified a change in the standards on the elements involved on jobs 556-01, 556-03, 556-04, 556-09 and 556-14? If not what shall be the remedy?

Hearings were held in Jamestown, New York on January 9 and August 19, 1980 at which time representatives of the above named Company and Union appeared and were afforded full opportunity to offer evidence and argument and to examine and cross-examine witnesses. The Arbitrator's Oath was waived. Post-hearing memoranda were filed by the parties.

Section 17.3.10 of the contract reads:

A method change is defined as any change from the method used when the standard was established. A method change, such as in materials, equipment or procedures justifies the adjustment of the time standard consistent with such method changes, but only those elements of the job affected shall be subject to a change in standard.

I am persuaded that the evidence adduced by the Company showing a change from gauging concentricity on both sides to gauging concentricity on one side, the checking of lug depth on only one side rather than on both sides, the elimination
of one of two "sparkouts," the changes in the "pumping lever" affecting feeds, and other procedural adjustments constituted "method changes" within the meaning of the foregoing contract clause. The Union's case fails to rebut this evidence or this conclusion.

Therefore without judging the accuracy of the new time standards, the Company has met the condition precedent to making changes in the time standards by showing changes in methods as required by Section 17.3.10 of the contract. The Union's grievance is therefore denied.

The Undersigned, duly designated as the Arbitrator, and having duly heard the proofs and allegations of the above named parties makes the following AWARD:

Method changes as defined in Section 17.3.10 of the contract did occur from the original standards which justified a change in the standards on the elements involved on jobs 556-01, 556-03, 556-04, 556-09 and 556-14.

Eric J. Schmertz
Arbitrator

DATED: October 20, 1980
STATE OF New York ) ss.
COUNTY OF New York ) ss.

On this 20th day of October, 1980, 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:

Did a method change as defined in Section 17.3.10 of the contract occur from the original standards which justified a change in the standards on the elements involved on jobs 556-01, 556-03, 556-04, 556-09 and 556-14? If not what shall be the remedy?

Hearings were held in Jamestown, New York on January 9 and August 19, 1980 at which time representatives of the above named Company and Union appeared and were afforded full opportunity to offer evidence and argument and to examine and cross-examine witnesses. The Arbitrator's Oath was waived. Post-hearing memoranda were filed by the parties.

Section 17.3.10 of the contract reads:

A method change is defined as any change from the method used when the standard was established. A method change, such as in materials, equipment or procedures justifies the adjustment of the time standard consistent with such method changes, but only those elements of the job affected shall be subject to a change in standard.

I am persuaded that the evidence adduced by the Company showing a change from gauging concentricity on both sides to gauging concentricity on one side, the checking of lug depth on only one side rather than on both sides, the elimination
of one of two "sparkouts," the changes in the "pumping lever" affecting feeds, and other procedural adjustments constituted "method changes" within the meaning of the foregoing contract clause. The Union's case fails to rebut this evidence or this conclusion.

Therefore without judging the accuracy of the new time standards, the Company has met the condition precedent to making changes in the time standards by showing changes in methods as required by Section 17.3.10 of the contract. The Union's grievance is therefore denied.

The Undersigned, duly designated as the Arbitrator, and having duly heard the proofs and allegations of the above named parties makes the following AWARD:

Method changes as defined in Section 17.3.10 of the contract did occur from the original standards which justified a change in the standards on the elements involved on jobs 556-01, 556-03, 556-04, 556-09 and 556-14.

DATED: October 20, 1980

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

On this 20th day of October, 1980, 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:

What shall be the disposition of the Union's grievance regarding pay for death in the family heard at the third step on March 11, 1980?

The grievance was filed by the Union on behalf of Earle Mills, et al. The parties stipulated that disposition of the grievance in this arbitration shall apply to grievant Mills and other employees similarly situated. If the grievance is granted the Company and Union will decide which other employees are similarly situated. If they cannot agree that question shall be referred back to this Arbitrator for a further hearing and determination.

A hearing was held in Chicopee, Massachusetts on August 25, 1980 at which time Mr. Mills, hereinafter referred to as the "grievant", and representatives of the above named Company and Union appeared. All concerned were afforded full opportunity to offer evidence and argument and to examine and cross-examine witnesses. The Arbitrator's Oath was waived.

The relevant contract section is Section 19. In pertinent part it reads:
Section 19. The Company will continue its present practice of paying regular straight time earnings up to a maximum of three days during absence from duty of hourly employees when such absence is caused by a death in the employee's immediate family. An immediate family shall be limited to parents, husband, wife, children, brother, sister, parents-in-law, brothers-in-law, sisters-in-law, grandparents and grandchildren, sons-in-law and daughters-in-law, step-parents and step-children.

Inasmuch as the three days allowable is a discretionary maximum and not a mandatory amount of time, the employee's working schedule shall be examined for purposes of determining the actual number of working days for which payment shall be approved.

The grievant claims three days pay for his absence from regularly scheduled work days due to the death of his father-in-law. The Company granted him two days pay; he seeks one additional day through this grievance. It is undisputed that the father-in-law died on January 4th, 1980; that the grievant attended the wake on January 6th and the funeral on January 7th. What is in dispute is whether he shall receive a days pay for January 5th also. All three days were days on which the grievant was scheduled to work.

The Company asserts that under the contract the number of days off for a death in the immediate family is discretionary, and is "... up to a maximum of three ...." The Company contends that in administering Section 19 it has granted pay for attendance at the funeral, the wake, and for the day if the employee is personally involved in making funeral arrangements with the funeral home or director. (Also within the three days, travel
time may be included if the funeral is some distance away.) In the instant case the Company points out that the grievant attended the funeral; that there was a wake of only one day and that therefore under the Company's administrative policy the grievant's entitlement to time off with pay was limited to those two days. The Company does not consider the grievant's assistance to his mother-in-law on January 5 (when he provided her with transportation to and from her home and the funeral home) to constitute "making arrangements with the funeral director."

The Union contends that the Company has historically and as a matter of unvaried practice granted three days off with pay when an employee was otherwise scheduled to work on those days, in the case of a death in the immediate family covered by Section 19 of the contract. Uniformly, argues the Union, the Company has paid for the day on which the affected employee attends the funeral and for the two days immediately preceding the funeral if each of the three days, as in the instant case, was a day on which the employee was scheduled to work. It asserts that at no time did the Company place any conditions on what would be required on those two preceding days so long as in fact a covered member of the immediate family had died and the affected employee attended the funeral. The Union claims that at no time prior to the instant case were employees required to prove that they attended the wake or that they were actively engaged in making funeral arrangements in order to qualify for the two days preceding the funeral.

Two pertinent parts of Section 19 would appear to be in
conflict. One part gives the Company the discretionary authority to determine the number of days to be paid to an employee otherwise scheduled to work for time off due to death in his immediate family, with a maximum of three days allowable. Another part, the Company's discretionary authority notwithstanding, mandates the Company to "continue its present practice" regarding the payment of time off for absences due to death in the immediate family. Fundamental contract interpretation requires that seemingly inconsistent language be reconciled if possible rather than to interpret one part in a manner which would nullify another. Here, though the Company has the discretionary authority to determine its policy regarding payment for time off under the circumstances present in this case, it is my judgement that once that policy is unilaterally determined and implemented by practice, the Company is thereafter contractually obligated to continue applying that policy and practice. Based on the record before me, I conclude that the Company has consistently granted three days pay for time off from otherwise scheduled duty in the case of death in the immediate family under Section 19 of the contract. Internally the Company may have established and implemented that policy and practice based on and at a time when customarily two days of wake preceded the funeral. The Company explained that when this was the religious practice it assumed that affected employees were so involved for the three days and routinely granted three days off with pay. However the Company points out that the religious customs and requirements have changed and that at present only a single day of a wake is
held preceding the funeral. The latter situation applies here, the Company argues and therefore the grievant was entitled only to the two days (for the wake and the funeral).

It is clear to me that the Company's internal determination as to how many days off it would grant and what the eligibility conditions would be, were not previously communicated to the Union nor was notice thereof otherwise disseminated to the employees. So far as the Union and the employees were concerned, three days off, if otherwise scheduled to work, was automatic. Not having particularized to the Union and the employees the conditions under which the three days would be granted, I must conclude that the "present practice" was to grant the full three days unconditionally, so long as the deceased was within the class of persons enumerated in Section 19 and the affected employee attended the funeral. This is not to say that the Company did not have the discretionary right to grant fewer than three days, or to require that specific conditions be met in order to qualify for any or all of the three days, but rather that in administering Section 19 and as a matter of practice the Company placed no such conditions or limitations on eligibility by notice to the Union and the employees. Hence it is bound to the only practice which the Union and the employees knew and saw, namely the routine and automatic grant of three days off.

Also, this is not to say that the Company may not exercise its discretionary authority to promulgate explicit rules and conditions regarding absences due to death in the family. The Company's rights to do so prospectively or to bargain with the
Union on that question are reserved. Rather it is to say that up to and including the instant grievance, the Company had not changed its practice or promulgated such rules and regulations setting forth the conditions under which time off would be granted under Section 19.

The Undersigned, duly designated as the Arbitrator, and having duly heard the proofs and allegations of the above named parties makes the following AWARD:

The Union's grievance on behalf of Earle R. Mills, et al regarding pay for death in the family heard at the third step on March 11, 1980 is granted. Mills and other employees similarly situated shall be granted a third day of pay due to absence from scheduled work as a result of a death in the immediate family, as defined in Section 19 of the contract.

DATED: September 2, 1980
STATE OF New York )ss.: COUNTY OF New York 

On this second day of September, 1980 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                                    
Committee of Interns and Residents:          
    and                                       
Montefiore Hospital Medical Center:          
---------------------------------------------

OPINION AND AWARD
Case #1330 0883 79

The stipulated issue is:

Was the Hospital's action in not paying approximately 72 interns and residents a day's pay on January 17, 1979 when said employees did not complete scheduled tours of duties a violation of the contract? If so what shall be the remedy?

A hearing was held on July 14, 1980 at which time representatives of the above named Union and Hospital appeared and were afforded full opportunity to offer evidence and argument and to examine and cross-examine witnesses. Both sides filed post-hearing briefs.

I find no support in the contract, in the traditional exercise of managerial authority or in the law for the non-disciplinary action of the Hospital of not paying employees for time worked and duties performed.

When an employee absents himself from a portion of his shift or tour without authority, such as by arriving late or as in this case improperly leaving early, the traditional approach is to "dock" him for the time absent and/or to impose some disciplinary penalty. But he is paid for the time he worked and for the work performed within that time.
In my view a different procedure requires explicit contract authorization. A practice or policy of denying an employee pay for the entire tour or shift when he fails to complete his assigned hours and duties is not sufficient to validate the Hospital's action. Here, the "practice" relied on by the Hospital does not serve the purposes for which "past practice" is relevant. It does not clarify an ambiguous contract clause, nor has the Hospital shown that it constitutes a bilaterally accepted policy which legislates a new term or condition into the collective bargaining agreement. Rather, the "practice or policy" relates to no specific contract provision, but rather sets up a condition of employment unilaterally promulgated by the Hospital and not negotiated with the Union. The evidence of what the Union knew of this practice or policy is inconclusive. Under those circumstances I cannot find support for the practice or policy in the management rights clause nor can I conclude that it overturns the traditional rules in such matters.

I recognize that the grievants in this case are physicians and that their unauthorized absence from a part of a tour may be particularly disruptive to patient care and hospital administration. But this is a collective bargaining relationship and absent special provisions the traditional collective bargaining rules must apply. Indeed, though the Hospital asserts that its action in depriving the grievants of any pay for January 17th because they worked only a portion of the day was not disciplinary, I fail to see how the refusal to pay for the time worked is anything but a
Again, absent the negotiation of an applicable contract provision, the Hospital's remedy when, as here, it concludes that employees are engaged in an illegal strike or job action, is to take appropriate disciplinary action, clearly so identified.

I reject however the Union's claim that the grievants are entitled to a full day's pay for January 17th. They are entitled to pay only for the time worked. It is not for the grievants or the Union to decide whether all duties were performed within the shortened tour. Rather, the Hospital has the right to require and expect its employees to work the full tours as assigned. Hence I deny the Union's claim that because the grievants allegedly completed their duties before they left their tours early they should be paid for the full day, and I need not decide if in fact any of them completed all their duties in the self-shortened time.

The Undersigned, duly designated as the Arbitrator, and having been duly sworn and having duly heard the proofs and allegations of the above named parties makes the following AWARD:

The Hospital's action in not paying approximately 72 interns and residents a day's pay on January 17, 1979 when said employees did not complete tours of duties violated the contract to the extent that the employees involved are entitled to be paid for the actual time they worked on that day. The Hospital shall compensate the grievants accordingly.

DATED: September 29, 1980
STATE OF New York )
COUNTY OF New York )ss.:

On this twenty-ninth day of September, 1980 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
The stipulated issue is:

Whether the Employer has violated the collective bargaining agreement between the parties by failing to properly classify and compensate employee Richard Valentine; if so what shall the remedy be?

A hearing was held on January 8, 1980 at which time Mr. Valentine and representatives of the above named Union and Company appeared. All concerned were afforded full opportunity to offer evidence and argument and to examine and cross-examine witnesses. The Arbitrator's Oath was waived.

The grievant occupied the job of Platform Operating Class I; was a type of leadman over a crew; and worked on the Company's offshore oil/docking platform. For performing leadman duties he was paid 15¢ an hour over the Class I Operator's rate.

In the summer of 1978 he developed an illness which made it hazardous if not impossible for him to work on the offshore platform. The Company transferred him to a shoreside job performing maintenance duties on a barge. It continued to pay him his higher Platform Operator rate. When the barge maintenance work ran out, the grievant returned to the offshore platform, but continued to experience serious difficulties due to his illness. After about two months the grievant learned of a shore-side
vacancy as an assistant gauger. He asked the Company for the job and was given it. On receipt of his first pay check he learned that he had been reduced in pay from the Class I Platform Operator rate to the top of the rate for assistant gauger, a loss of $1.40 an hour. Thereafter, up to the present, the grievant has continued to receive the assistant gauger's pay rate. The grievant claims that in discussion with Company representatives at the time he was given the assistant gauger job; and in subsequent talks, he was assured that within a few months time his pay cut would be restored. The Company denies any such agreement. That the higher pay rate has not been restored is the gravamen of the grievance.

The evidence and testimony regarding the alleged discussions between the grievant and Company officials regarding restoration of the pay cut, are sharply conflicting, inconclusive, and hence indeterminative. I find no contractual violation in what the Company did with and for the grievant. It is undisputed that while he was ill, he could not safely perform the Platform Operator's work, and that on the platform he could not obtain the type of food needed to treat his ailment. The move to maintenance work on the barge was not objected to inasmuch as the grievant continued to receive the higher rate of pay. The evidence clearly establishes that that work was of a temporary nature; indeed that is affirmed by the grievant's return, without objection to the platform when the maintenance work ended. The grant to the
grievant of the assistant gauger job was consistent with the job assignment and seniority provisions of the contract. And the pay rate which attached to that assignment, namely the top of the range for that job, was proper under the contract. I find nothing in the contract which would accord the grievant any right to his higher platform operator rate while classified, at his request, in the lower rated assistant gauger position.

The Union's claims notwithstanding I find none of the direct arrangements between the Company and the grievant to be any way inconsistent with the contract. Hence I reject the Union's claim that as the grievant's collective bargaining agent it was improperly bypassed in any of these transactions.

Accordingly, considering the foregoing, and having found inadequate proof of any extra-contractual agreement to pay the grievant at his Platform Operator's rate while working as an assistant gauger, or any agreement to restore all or part of his pay cut within a period of time, the Union's claim of improper pay and classification is rejected.

However, throughout the dealings between the grievant and the Company, I conclude there was, or the grievant had reasonable grounds to believe there was, an implicit understanding that if and when the grievant recovered from his illness, he would be restored to his job on the off-shore platform. The Company readily acknowledges that the grievant is an excellent worker and employee, and that his work on the platform was entirely satisfactory. His
illness was bona fide and beyond his fault and control. He left the platform out of necessity, and would not have done so but for his illness. I think it safe to say that but for his illness the Company would have expected and wanted him to continue working as a Platform Operator.

He is now well, or at least the record before me so indicates, and that is not disputed by the Company. Therefore the grievant shall be given the opportunity to return to the platform, as a Class I Platform Operator, and, based on his seniority, may do so now even if it means displacing a junior employee presently working in that capacity.

Accordingly the Undersigned, duly designated as the Arbitrator, and having duly heard the proofs and allegations of the above named parties makes the following AWARD:

The Company did not violate the collective bargaining agreement by its classification of and compensation to Richard Valentine.

However, Mr. Valentine shall now be afforded the opportunity to return to his original job of Platform Operator Class I.

DATED: January 28, 1980
STATE OF New York )ss.
COUNTY OF New York )

On this twenty eighth day of January, 1980 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 Amalgamated Local Union 355 and Northville Industries, Inc.

The stipulated issue is:

Whether the Employer has violated the collective bargaining agreement between the parties by failing to properly classify and compensate employee Richard Valentine; if so what shall the remedy be?

A hearing was held on January 8, 1980 at which time Mr. Valentine and representatives of the above named Union and Company appeared. All concerned were afforded full opportunity to offer evidence and argument and to examine and cross-examine witnesses. The Arbitrator's Oath was waived.

The grievant occupied the job of Platform Operating Class I; was a type of leadman over a crew; and worked on the Company's offshore oil/docking platform. For performing leadman duties he was paid 15¢ an hour over the Class I Operator's rate.

In the summer of 1978 he developed an illness which made it hazardous if not impossible for him to work on the offshore platform. The Company transferred him to a shoreside job performing maintenance duties on a barge. It continued to pay him his higher Platform Operator rate. When the barge maintenance work ran out, the grievant returned to the offshore platform, but continued to experience serious difficulties due to his illness. After about two months the grievant learned of a shore-side
vacancy as an assistant gauger. He asked the Company for the job and was given it. On receipt of his first pay check he learned that he had been reduced in pay from the Class I Platform Operator rate to the top of the rate for assistant gauger, a loss of $1.40 an hour. Thereafter, up to the present, the grievant has continued to receive the assistant gauger's pay rate. The grievant claims that in discussion with Company representatives at the time he was given the assistant gauger job; and in subsequent talks, he was assured that within a few months time his pay cut would be restored. The Company denies any such agreement. That the higher pay rate has not been restored is the gravamen of the grievance.

The evidence and testimony regarding the alleged discussions between the grievant and Company officials regarding restoration of the pay cut, are sharply conflicting, inconclusive, and hence indeterminative. I find no contractual violation in what the Company did with and for the grievant. It is undisputed that while he was ill, he could not safely perform the Platform Operator's work, and that on the platform he could not obtain the type of food needed to treat his ailment. The move to maintenance work on the barge was not objected to inasmuch as the grievant continued to receive the higher rate of pay. The evidence clearly establishes that that work was of a temporary nature; indeed that is affirmed by the grievant's return, without objection to the platform when the maintenance work ended. The grant to the
grievant of the assistant gauger job was consistent with the job assignment and seniority provisions of the contract. And the pay rate which attached to that assignment, namely the top of the range for that job, was proper under the contract. I find nothing in the contract which would accord the grievant any right to his higher platform operator rate while classified, at his request, in the lower rated assistant gauger position.

The Union's claims not withstanding I find none of the direct arrangements between the Company and the grievant to be any way inconsistent with the contract. Hence I reject the Union's claim that as the grievant's collective bargaining agent it was improperly bypassed in any of these transactions.

Accordingly, considering the foregoing, and having found inadequate proof of any extra-contractual agreement to pay the grievant at his Platform Operator's rate while working as an assistant gauger, or any agreement to restore all or part of his pay cut within a period of time, the Union's claim of improper pay and classification is rejected.

However, throughout the dealings between the grievant and the Company, I conclude there was, or the grievant had reasonable grounds to believe there was, an implicit understanding that if and when the grievant recovered from his illness, he would be restored to his job on the off-shore platform. The Company readily acknowledges that the grievant is an excellent worker and employee, and that his work on the platform was entirely satisfactory. His
illness was bona fide and beyond his fault and control. He left
the platform out of necessity, and would not have done so but
for his illness. I think it safe to say that but for his illness
the Company would have expected and wanted him to continue work-
ing as a Platform Operator.

He is now well, or at least the record before me so in-
dicates, and that is not disputed by the Company. Therefore
the grievant shall be given the opportunity to return to the
platform, as a Class I Platform Operator, and, based on his
seniority, may do so now even if it means displacing a junior
employee presently working in that capacity.

Accordingly the Undersigned, duly designated as the
Arbitrator, and having duly heard the proofs and allegations
of the above named parties makes the following AWARD:

The Company did not violate the collective
bargaining agreement by its classification
of and compensation to Richard Valentine.

However, Mr. Valentine shall now be afforded
the opportunity to return to his original
job of Platform Operator Class I.

DATED: January 28, 1980
STATE OF New York )ss.: Eric J. Schmertz
COUNTY OF New York ) Arbitrator

On this twenty eighth day of January, 1980 before me person-
ally came and appeared Eric J. Schmertz to me known and known to
me to be the individual described in and who executed the fore-
going instrument and he acknowledged to me that he executed the
same.
Voluntary Labor Arbitration Tribunal

In The Matter of The Arbitration between
System Council, IBEW and
Public Service Electric & Gas Co.

The Undersigned, duly designated as the Arbitrators, and having duly heard the proofs and allegations of the above named parties make the following AWARD

The five day suspensions of M. Smalley and R. Orzechowski are reduced to reprimands and one hour's loss of pay already assessed against each. They shall be made whole for the five days lost.

Eric J. Schmertz
Chairman

Charles D. Wolfe
Concurring

Malcolm C. Sawhill
Dissenting

DATED: February 4, 1980
STATE OF New York ss.: COUNTY OF New York )

On this fourth day of February, 1980 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: February 1980
STATE OF New York ) ss.:
COUNTY OF New York )

On this day of February, 1980 before me personally came and appeared Charles D. Wolfe 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: February 1980
STATE OF New York ) ss.:
COUNTY OF New York )

On this day of February, 1980 before me personally came and appeared Malcolm C. Sawhill 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
System Council, IBEW

and
Public Service Electric & Gas Co.

The stipulated issue is:

Were the five day disciplinary suspensions of M. Smalley and R. Orzechowski for proper cause under the terms of the agreement?

Also in dispute is the Union's claim that the two employees should not have been each docked one hour's pay.

A hearing was held at the American Arbitration Association on October 22, 1979 at which time Messrs. Smalley and Orzechowski, hereinafter referred to as the "grievants" 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. A stenographic record was taken. The Board of Arbitration consisting of the Undersigned as Chairman and Messrs. Malcolm C. Sawhill and Charles D. Wolfe, the Company and Union designees respectively, met in executive session on January 29, 1980.

What the grievants did was wrong, but I conclude their error was one of judgement rather than misconduct.

During working time and at the location where they were
performing their regular duties, they used Company equipment to assist two youths in installing a motor in an automobile. It is not clear how much time was consumed, but the Company docked each grievant one hour's pay, representing the "middle ground" of how much time the Company thought was used for that purpose.

I reject the Union's claim that the grievants acted merely as "good samaritans" or in the furtherance of good public relations, similar to assistance given to members of the public with cars caught in snow drifts or otherwise stranded, or in distress. The latter examples involve emergencies or circumstances that threaten the affected person's well being, where assistance by Company employees is commendable and expected. The instant case involves no such situation of distress or emergency.

On the other hand I reject the Company's assertion that what the grievants did was misuse of Company time, comparable to when employees are found in a bar during their regular working time. Clearly the latter example is a purposeful act of deception and misconduct. The instant case does not involve a wrongful act of that type and is therefore not analogous.

The grievants are long service employees, highly skilled and rated, and with unblemished prior records. Their assistance to the youths caused no reported delay in the full performance of their assignments and they received no pay or any other consideration for their assistance. They did not hide what they did, but rather installed the motor in broad public view, and
did so because they feared the two youths might hurt themselves working alone.

That they should not have taken Company time and used Company equipment for this purpose is manifest, but I am not convinced that their offense was misconduct in any traditional sense. Rather I am persuaded they lost sight of the conditions under which the public should be assisted, and in that sense used poor judgement.

What is warranted under the circumstances is corrective discipline, rather than a disciplinary penalty. With that delineation I do not find cause for a five day disciplinary suspension. I do find cause for a reprimand and for the loss of the one hour's pay already assessed and am satisfied the "proper cause" provision of the contract is met by that corrective action.

Eric J. Schmertz
Chairman

February 4, 1980
Voluntary Labor Arbitration Tribunal

In the Matter of the Arbitration between

Newspaper Guild of New York Local 3, TNG, AFL-CIO

and

Reuters, Limited

The stipulated issue is:

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

Hearings were held at the offices of the American Arbitration Association in New York City on February 12, March 6, March 20, March 27, May 6, May 8, July 21, July 28 and July 30, 1980 at which time Mr. Sopack, hereinafter referred to as the "grievant" and representatives of the above named Union and Employer appeared. All concerned were afforded full opportunity to offer evidence and argument and to examine and cross-examine witnesses. Post-hearing briefs were submitted.

The Employer's charges against the grievant for which he was discharged are:

1) an attempted extortion of liquor from a manager, amidst strong evidence that he had successfully extorted liquor from a former manager;

2) continual threats against other employees, including a threat with a knife against a manager;

3) physical harassment of a fellow employee of such severity that the victim refused a transfer to a position that would have brought her in close proximity with the grievant.
The Employer contends that each offense standing alone, or in any combination, or cumulatively, constitute grounds for summary discharge.

Except for portions of charges 2 and 3 which in my view would require progressive discipline (warnings/suspension prior to discharge) I do not quarrel with the Employer's assessment of the severe nature of these charges. I agree that taken together the penalty of discharge would be proper and that offense #1 and other portions of 2 and 3 standing alone would be grounds for summary dismissal provided that in all cases the disciplinary penalty was properly imposed.

In the instant matter, though the case consumed nine days of hearing and an extensive record maintained by the Arbitrator as well as exhibits and briefs, the answer to the stipulated issue is compelled by one of the most well settled and universally accepted rules of industrial relations and arbitration law. That rule is that discipline must be imposed promptly following the misconduct or offense committed or following the point at which the employer learned or should have known that the misconduct or offense was committed. An employer's failure to act promptly is traditionally interpreted as condonation or acquiescence, and a waiver of the right to thereafter take disciplinary action for that offense. The well recognized legal principle of estoppel applies.

The Employer's case in this proceeding founders on that rule even assuming arguendo, that the grievant committed the offenses charged. For that reason I make no determination one way or the other on whether the grievant is guilty or innocent.
of any or all of the Employer's allegations against him.

It is undisputed that the grievant's discharge took place on September 25, 1979; that the aforementioned offenses on which the discharge was based occurred or were ongoing from ten months to one year earlier; and that during the interim period the grievant was not warned, suspended or in any way disciplined for those things which the Employer now claims he did.

It is clear and I am satisfied that these offenses, assuming they were committed by the grievant, were known when they occurred or soon thereafter to specific managerial/supervisory employees. Indeed in charges 1 and 2 managerial personnel were the claimed victims. Those managerial employees were authorized representatives of the Employer with the authority to impose discipline and with the duty to report any such severe misconduct to higher authority. That they failed to take disciplinary action or to report the situation to top management until months later (when it came to the attention of senior management almost inadvertently) does not mean that the Employer, through its authorized managerial agent, did not know or have constructive notice of what it now claims the grievant did, within the meaning of the previously cited, universally accepted rule for the imposition of discipline.

The Employer's explanation as to why those managerial employees failed to take prompt disciplinary action or neglected to report the circumstances to higher levels does not excuse the Employer from its responsibilities under the rule. Managers who have the authority to impose discipline and to maintain
proper conduct among the bargaining unit employees also have a corresponding duty to act decisively and courageously in carrying out those rights and responsibilities. It is no excuse to now explain that they were frightened of or intimidated by the grievant. Their timidity and abdication of their responsibilities under the circumstances as alleged nonetheless imputes as a matter of law, the consequences of waiver and estoppel to the Employer and to those higher level Employer representatives who finally took disciplinary action ten months to one year subsequent to the events charged.

As I have indicated the enunciated rule requiring prompt discipline following the commission of an offense is preeminent, and should be upheld even if it means that an employer is frustrated from dismissing an employee of unquestioned undesirability. Due process demands that result. As also stated I have not decided that the grievant is innocent of the charges anymore than I have concluded that he is culpable. However with my ruling in this matter, those offenses, even if committed, are no longer actionable for discipline. The employment relationship between the grievant and the Employer must start afresh so far as the grievant's disciplinary record is concerned. The grievant should recognize that though the record contains evidence in support of the charges against him, those charges have not been decided upon the merits and that his reinstatement is based upon a principle of due process which is more important to labor-management relations and to decision making in arbitration cases than is the employment status of a single employee. Therefore he should be mindful that any acts on his part of the type
referred to in the charges against him in this case, or other comparable acts of misconduct or violations of working rules including retaliation, would in the judgement of this arbitrator constitute grounds for disciplinary action including discharge.

The Undersigned, duly designated as the Arbitrator and having duly heard the proofs and allegations of the above named parties makes the following AWARD:

Without deciding whether John Sopack committed any or all of the offenses charged against him, but because the Employer failed to take disciplinary action promptly or within a reasonable time after it learned or should have known through its authorized managerial representatives of the incidents upon which the discharge was based, the discharge of John Sopack was not for just cause. Mr. Sopack shall be reinstated with full seniority and back pay less his earnings from gainful employment elsewhere during the period of his discharge.

Eric J. Schmertz
Arbitrator

DATED: October 17, 1980
STATE OF New York )
COUNTY OF New York )ss.:

On this seventeenth day of October, 1980 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 two stipulated unrelated issues are:

1. Whether or not in accordance with Article 10, Section 10-4 (B) (7) of the 1979-82 Agreement, the effective date of the furlough was October 22, 1979? If not what shall the remedy be?

2. Did the Company violate Article 11 Section 11-5 of the 1979-82 Agreement with respect to the grievance dated November 5, 1979? If so what shall be the remedy?

A hearing was held in East Norwich, Connecticut on May 7, 1980 at which time representatives of the above named Union and Company appeared. All concerned were afforded full opportunity to offer evidence and argument and to examine and cross-examine witnesses. The Arbitrator's Oath was duly administered. The Company filed a post-hearing brief. (The Union summarized its case at the conclusion of the oral hearing.)

Issue #1 (Grievance 79-5)

The question involved in this issue is whether a contractual furlough commences on the day immediately following the last day that the affected employee actively works, whether or not the next immediate day falls on or during a weekend or on a regular work day; or whether the furlough commences only on the affected
employee's next regular work day. The employees involved in the
instant dispute were given notice of their furlough on October 18,
1979 for the weeks of October 22 and 29. Their last day worked
was Friday, October 19, 1979. They all returned from furlough by

It is the Company's position that the furlough began on
Monday, October 22, the next work day which the employees would
have been actively employed but for the furlough, and continued
for not more than fifteen calendar days thereafter. On that
basis the Company asserts that Article 10 Section 10-4 (B) (7)
was not activated and that those employees had no right to exercise
displacement rights under that provision of the contract.

The Union contends that the furlough should have commenced
on the very next day following the last day worked, namely on
October 20, and that consequently more than fifteen calendar days
elapsed before November 5 when the employees returned to work.
It asserts therefore that the failure or refusal of the Company
to permit those employees to exercise their displacement rights
after the fifteenth calendar day violated the contract.

Obviously, if the Company is correct, the displacement right
provisions of the contract had not ripened for the affected
employees and the grievance must be denied. If the Union is
correct, the Company erred by extending the furlough beyond the
allowable period without permitting the exercise of displacement
rights and the grievance should be granted with an appropriate
remedy.

Article 10 Section 10-4 (B) (7) in pertinent part reads:
In any event, any employee or employees so furloughed will be able to exercise his or her displacement rights after fifteen (15) calendar days in accordance with Section 10-4.

A bare reading of the foregoing relevant contract language, particularly the reference to "fifteen (15 calendar days)" suggests, based on traditional contract interpretation, that the furlough begins on the day immediately following the last day actively worked regardless both of what day in the week that next day may be and whether it would have been a work day, inasmuch as any day in the week is a "calendar day."

But this otherwise normal interpretation is changed by the express definition of a "furlough" found in Article 10 Section 10-5 (A) of the contract. It reads:

(A) Furlough-
Temporary removal of an employee from scheduled work by Management for a pre-arranged, definite period of time - during which time the employee remains on the active payroll and retains benefits under the terms of the Labor Agreement.

Significantly the foregoing definition of a furlough is not just the "temporary removal of an employee . . . for a pre-arranged, definite period of time. . . .", but rather a temporary removal "from scheduled work by Management."

(emphasis added)

In the instant case, after the affected employees completed work on Friday, October 19, 1979, they would not again have been scheduled for work by the Company until the commencement of the next regular work week, on Monday, October 22. If their furlough began, as the Union contends, on Saturday, October 20, it would
have begun at a time when they would not have been scheduled to work, and would not then have been a "removal from scheduled work."

By contrast, the official commencement of their furlough on the following Monday was the first moment that their removal from active employment coincided with scheduled work they would have performed but for the furlough. I consider it proper and appropriate to read Sections 10-4 (B) (7) and 10-5 together. On that basis, I must conclude that the beginning of the furlough on October 22, 1979 was contractually proper. With that interpretation, it follows that the furlough consumed no more than fifteen calendar days. Consequently the displacement right provisions of the contract did not come into play.

Based on the record before me I find that the foregoing interpretation is consistent with a long standing and unrefuted past practice and in accord with testimony adduced by the Company, again essentially unrefuted, that the fifteen calendar day provision was agreed to by the Company (and reduced from a thirty day provision in the previous contract) so long as the Company could furlough employees two full and consecutive work weeks without triggering the displacement provision of the contract.

That the Company may apply differently other clauses of the contract (such as the layoff provisions) where the relevant contract language is the same, are inconsistencies which I have considered but which I do not find sufficiently significant to bring about the result which the Union seeks herein.

Accordingly Grievance #79-5 is denied.
Issue #2 (Grievance 79-4)

Article 11 Section 11-5 of the contract reads:

Any time a grievance is not answered within the specified time limit it shall be settled as noted in "Settlement Desired" on the grievance form. Saturdays, Sundays and Holidays shall not be counted in the time limit. The time limit in any step may be extended by mutual consent of the parties.

It is the Union's claim herein that the Company forfeited the Union's grievance dated November 5, 1979 (involving washup time) by failing to answer at the second Step of the grievance procedure within the prescribed time limit. Step 2 of the grievance procedure reads:

The following parties shall meet to discuss the grievance at a mutually convenient time within seventy-two (72) hours after submission of the grievance to this step: All of the parties who participated at the first step plus the Oak Lodge Vice President of the area involved; the Oak Lodge Recording Secretary; and the Production/Plant/Engineering Manager of the area and the Personnel Supervisor. If no satisfactory agreement is reached by discussion, the Union may state its position in writing and submit it to the Production/Plant/Engineering Manager who will answer in writing within three (3) days. The Union may request that the grievance be entered into Step 3 by submitting it in the written form to the Division Manager.

The Union's claim of forfeiture fails on at least two grounds. First, the Union asserts that the Company has forfeited (and therefore must grant) the grievance because it did not answer the grievance within three (3) days. However a reading of Step 2 clearly shows that the three day limit does not begin to run
until after the parties have met to discuss the grievance "at a mutually convenient time within seventy-two (72) hours after submission to this step." It is noted that forfeiture occurs if a grievance is "not answered within the specified time limit. . .", (emphasis added) not if the parties delay in meeting to discuss the grievance. Therefore in the instant case the Union's claim of forfeiture based upon a failure of the Company to answer the grievance within three days is premature, because the critical three day answering period had not begun to run.

Assuming arguendo that the Company received the grievance within the meaning and provision of Step 2 on the morning of November 12, 1979, the Company's offer on November 16 to hold a grievance meeting, while not in strict compliance with the seventy-two hour provision, was certainly in substantial compliance therewith, and in my judgement should not be deemed fatal, particularly in view of the provision of Section 11-5 which limits forfeitures to a failure to "answer." Of course if it is concluded that the Company did not receive the grievance until November 13, when it first came to the attention of Harold Cloud, the designated Company representative at the second Step, the Company's offer on November 16 to hold a grievance meeting was within the seventy-two hour time limit, if, as I do not think, that time limit required strict compliance.

Second, the Union's claim of forfeiture fails because the Union itself did not comply with the Step 2 requirements. It is axiomatic that a party seeking strict compliance must itself be in strict compliance to hold the other side to the specific contract
provisions. Step 2 requires that the Union "state its position in writing and submit it to the "Production/Plant/Engineering Manager. . ."

Here the Union gave the written grievance on November 12, not to that contractual identified Company representative, but rather to Dennis Gladu a Supervisor, and asked him to give it to Stan Karro, the General Foreman. Neither of these two Company officials are the Production/Plant/Engineering Manager referred to in Step 2.

The Union representative had placed the grievance in a sealed envelope, and gave that envelope to Gladu. Though Gladu states he recognized it as a grievance, (by the form which he could see through the punched holes in the transmittal envelope) he did not know the nature of the dispute and merely placed the unopened envelope on Karro's desk. Karro was on vacation on Monday, November 12 and did not find the envelope until November 13th. On that day he took the grievance to Cloud, the Plant Manager. The Union does not contest the Company's assertion that Cloud was and had regularly served as the Company's second Step representative, and was the "Plant Manager" who met the contractual status of "Production/Plant/Engineering Manager" under the Step 2 language.

I conclude therefore that the Union did not specifically comply with the requirements of Step 2 by failing to submit its grievance at that step to the required Company representative. Neither Gladu nor Karro can be deemed as Cloud's agents, and submission of the grievance to either or both is not submission to the Plant
Manager. Hence, the Union's claim of forfeiture on November 15 was not yet three days after the authorized Company representative had received the grievance, and was therefore premature. Accordingly, Union grievance 79-4 is denied.

The Undersigned, duly designated as the Arbitrator, and having been duly sworn and having duly heard the proofs and allegations of the above named parties makes the following AWARD:

**Grievance 79-5**

In accordance with Article 10 Section 10-4 (B) (7) of the 1979-82 Agreement, the effective date of the furlough was October 22, 1979.

**Grievance 79-4**

The Company did not violate Article 11 Section 11-5 of the 1979-82 Agreement with respect to the grievance dated November 5, 1979.

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DATED: July 28, 1980

Eric J. Schmertz
Arbitrator
In accordance with Section 30 of the collective bargaining agreement dated December 29, 1978 between the above-named Union and Company, the Undersigned was designated as the Arbitrator to hear and decide the following stipulated issue:

Did the Company have just cause for imposing the type of discipline it did on various employees for their actions on July 15, 1979? If not, what should be the remedy?

A hearing was held at the Company's offices in Kenilworth, New Jersey on March 17, 1980 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 Arbitrator's Oath was waived.

PERTINENT CONTRACT CLAUSES

The following clauses in the 1979-1981 Agreement are applicable to this case at the present time:

ATTENDANCE

Regular availability of employees is essential for effective business operations. Excessive absences for either illness or personal reasons can adversely affect individual and group productivity. In order to administer
attendance control in a fair and consistent manner, the Company maintains records of absences and absence occurrences on a calendar year basis. An employee is charged with an absence occurrence for any of the following forms of absence:

(3) Three latenesses. A lateness is defined as not being at the assigned work place ready to start work at the scheduled starting time.

Not all absences are counted as absence occurrences. For example:

(4) Fewer than three latenesses.

...In all instances in which an employee reaches the level of six absence occurrences during a calendar year, he may expect his supervisor to initiate a discussion to review the nature and causes of absences. The Employee will be notified his steward is available if he so requests. The primary purpose of such discussions is to improve attendance and to insure appropriate corrective action. If appropriate, the supervisor may issue a formal oral warning at the conclusion of the discussion concerning attendance. Following such an action, if attendance does not improve satisfactorily, an employee is subject to further disciplinary action ranging from formal written warnings up to and including discharge.

31. Discharge, Suspension or Disciplinary Action

...Where disciplinary warnings are made in writing, copies thereof will be sent to the Chief Steward and the Business Representative. Such written disciplinary warnings or reprimands will be expunged from the employee's personnel records after one (1) year. Before discharging or suspending any employee, the Shop Steward will be granted the opportunity for an interview before the employee is required to leave the premises.

Appendix C

3. The parties agreed that the fourth sentence
of paragraph 1, Section 31, page 31 of the contract, which provides: "Such written disciplinary warnings or reprimands will be expunged from the employee's personnel records after one year."-shall be interpreted to mean that he must go one year and have a record free from the same offense before the record is expunged.

BACKGROUND

The Company manufactures pharmaceutical products. The instant case arose on July 15, 1979 at which time the Company had ceased all production for the annual shutdown. The maintenance staff is specifically precluded from taking any vacation time during the shutdown period so that major maintenance work can be performed. The Company scheduled all of the maintenance employees to work on Sunday, July 15, 1979 and in accordance with the Agreement each employee was entitled to the double time rate of pay. The Agreement also provided for a 30 minute lunch break for each employee. The procedure in the Maintenance Department required that any time an employee leaves the building for lunch the employee must go to the maintenance supervisor's office in order to sign out on a timesheet entitled "OFF HOURS"; upon returning from lunch each employee is then required to sign in on the same timesheet.

The parties stipulated that the employee manual contains the same information that appears in Appendix A of the Agreement.

CONTENTIONS OF THE COMPANY

The Company contends that certain employees violated these rules and practices on July 15, 1979. First, at approximately 11:55 AM a substantial number of employees signed out and indicated
a sign out time of 12:00 noon. Some of the employees, however, signed out and indicated a sign out time of 12:15 PM, 12:20 PM, or 12:30 PM. Employees Singer and Pearse were the first employees to indicate a sign out time of 12:15 PM. Thereafter, five air conditioning mechanics, one electrician, and two clerks signed out and specified times of either 12:20 PM or 12:30 PM. The supervisor of the five air conditioning mechanics happened to be in a guardhouse at the plant exit and saw the five air conditioning mechanics leave the plant in a car at 12:01 PM. The Company asserts that the two clerks and electrician signed back in at 12:40 PM and that the five air conditioning mechanics signed back in at 12:50 PM. The Company maintains that a supervisor confronted the employees at this point and informed them that they had overstayed their 30 minute lunch break and that they had falsified the time-sheet. The Company also alleges that the employees admitted these facts at the time. On the basis of this conduct, the Company docked the employees for the excess time that they had taken for lunch and issued a warning letter to each employee.

At approximately 1:20 PM the remaining employees returned essentially in bulk and indicated a 1:30 PM sign in time on the register sheet. A maintenance supervisor told the employees that inasmuch as they had returned to the plant so late it was senseless to go back to work. The supervisor therefore sent the employees home for the remainder of the day and also announced
that further discipline would be imposed.

The supervisor noted that employees Singer and Pearse had not checked back in by that time. A foreman found these two employees in the parking lot. After the foreman motioned to these employees to come into the office, they did so.

In summary, the discipline imposed upon the employees who returned at 1:30 PM consisted of receiving a written warning, being sent home for the balance of the shift which was scheduled to end at 3:45 PM, and losing pay for the time after the scheduled lunch break. Employees Singer and Pearse received an additional 2 day suspension for overstaying the lunch period and falsifying the timesheet because they had previously received a suspension for similar conduct.

The Company presented two witnesses in support of its position. The first witness, Joseph Grossano, was the Utilities Supervisor on July 15, 1979. After testifying that July 15, 1979 fell within the period that the plant was shutdown for maintenance programs, the witness stated that he was in the maintenance supervisor's office just before noon on that day in anticipation of the lunch breaks. The initial group of employees came into the area in a large group. Grossano observed bantering between the employees and the foremen. Then the air conditioning group of employees came into the area and signed out. The witness testified to the entries on the timesheets which were received into evidence as Company Exhibit 1. In particular, Grossano indicated that employees Singer and Pearse had signed out with the first group. Grossano
stated that he remembered that a few seconds later—during a period he described as "dead" time—he saw employees Cooley, Seery and Duff sign out.

At 12:10 PM a foreman picked up the clipboard that contained the sign out sheets in order to make a routine check of them. The foreman noticed that the sign out times varied from 12:00 PM to 12:30 PM. The witness then talked with James Ruane, the air conditioning foreman, who related that he had seen the air conditioning employees leave the plant while he was in the guardhouse. The guardhouse clock showed that it was 12:01 PM. Grossano confirmed that the cafeteria is normally closed during the shutdown and is always closed on Sundays. He also testified that there had been a planned power outage in the plant so that preventive maintenance could be performed on certain switch gear.

Grossano was present when the air conditioning group of employees returned at 12:50 PM; Ruane was also present. The witness informed the employees that they were back late and that their sign out time had been wrong. He then told the employees that they would be docked for the excess time and more discipline would follow. One employee, Mr. Glen Brown, (who subsequently did not sign a grievance) responded that they had signed out late at 12:30 PM, had come back late, and had been wrong. There were no denials by the other employees. The witness did not see employees Cooley, Seery, and Duff sign in or know when they had come back. Grossano then sent the air conditioning employees back to their jobs.
At 1:00 PM the remaining employees had not returned to the plant. The witness went to Building 14 and found Tom Brennan, a Union Steward, and they went back to the office in Building 9 for the return of the remaining employees. The employees returned at 1:20 PM and were boisterous. Although not all faces were visible, the witness recognized the voice of Nick Manos who said that, "We don't want any lectures, we know we're late." The witness heard the following comments: "So we had a couple of beers. We didn't want to work today. We were forced to work today." Grossano explained that Sunday work is mandatory during the shutdown and that employees are required to work or be available for work for 7 days during the shutdown time.

The witness noted that some of the employees had signed in, two employees were not present, and some did not sign in. The witness held all of the employees in the maintenance office in order to address the entire group. A foreman found Singer and Pearse in the parking lot and brought them to the office. All of the employees were in the office by 1:25 PM. Grossano addressed the group and told them that they had overstayed lunch a lot and that this would affect the work timetable. He continued that the employees could not do much work during the balance of the day and that no more work would be accomplished that day. He therefore directed the employees to go home and said they would be subject to further discipline on Monday. The witness indicated that it was 1:30 PM by then and that the usual break would have
been at 2:00 PM. He reasoned that by the time the employees would have gone to the plant and would have picked up their tools it would have been time for the 2:00 PM break. As a result, Grossano concluded that there was not sufficient time remaining for the employees to return to work and complete their assigned tasks.

After discussing the situation with the maintenance foremen, he made the following recommendations to the personnel department for disciplinary action:

1) The five air conditioning mechanics plus employees Cooley, Seery, and Duff admitted they were wrong and were able to perform their work. Since they were late, the witness recommended that each employee should be docked for the amount of time that lunch had been overstayed and should be given a warning letter for falsification of the time sheet.

2) The other mechanics who returned at 1:20 PM should be docked for the amount of time that lunch had been overstayed, should be given a warning letter, and should receive a one-half day suspension that was considered to have been already served since the employees were sent home for the balance of the shift on July 15, 1979. The witness testified that this group of 12 employees warranted different treatment from the first group of 8 employees because the 12 employees had returned 40 minutes later than the 8 employees, had been noisy and defiant, and had created a situation in which there was no point for them to return to work that afternoon.
3) Singer and Pearse should receive an extra 2 day suspension—in addition to the discipline imposed upon the group of 12 employees—because they knew that falsifying the sign out sheet violated Company rules since each of them had received a suspension for similar action in February 1977.

The recommendations of the witness were implemented and are the subject of Grievances A 9540, 8544 and 8546, respectively.

On redirect examination, Grossano testified that 50 to 60 bargaining unit employees were scheduled to work on July 15, 1979. No other employees had problems. As to employees Singer and Pearse, the witness stressed that he personally saw them sign out seconds after the entry was made by the number 14 employee on the timesheet. The foreman brought over the timesheet at 12:10 PM, according to the witness' watch, but the final group of employees had already signed out and had indicated the time to be either 12:20 PM or 12:30 PM.

The Company called James Ruane, a Heating, Ventilation, and Air Conditioning Supervisor who had been the Air Conditioning Foreman on July 15, 1979. He testified that he had been in the guardhouse at the entrance to the plant at 12:00 noon. His responsibilities involved supervision of the air conditioning mechanics. He saw 5 of them in a car in the parking lot and saw them leave the lot and go past the guardhouse and leave the plant at 12:00 noon according to his own watch and at 12:01 PM according to the clock in the guardhouse. He subsequently went to the
maintenance office where he had a discussion with Grossano and some other foremen during which time he related his observations from the guardhouse.

**CONTENTIONS OF THE UNION**

The Union asserts that the Company may discipline for lateness in accordance with the "lateness occurrence" provisions of the contract but contends that the Company violated the Agreement when it imposed the types of disciplinary actions that are the subject of Grievances 8546, 8544 and A9540. It argues that an electrical failure in the plant caused the plant clocks to be out of order. The employees used their watches to determine the correct time to enter on the timesheets. As to the employees who signed out at 12:15 PM, the Union claims that only one employee had a watch and it said 12:15. The Union insists that the dispute arose as a result of the clocks being broken and that the employees would not falsify the timesheet. The Union notes that the cafeteria in the plant was closed so that the employees had to go out to eat at eating places that are located 1 to 1½ miles away from the plant and that open at noon. Since the employees went en masse to the same 2 or 3 places, the service was not prompt which resulted in the employees coming back late. The Union maintains that the Company knew of these circumstances which were due to conditions beyond the control of the employees and that the discipline should have only been to dock each employee the excess
time taken and to charge each employee with 1/3 of an occurrence. With respect to the two employees who received an extra 2 day suspension because of an incident in February 1977, the Union claims that the Agreement bars the Company from relying upon that incident because past discipline is to be expunged after an employee's record is clean for 1 year. The Union stresses that the employees agreed with the suspension for the 1977 incident and that they paid their punishment then. The Union also denies that it was 12:01 PM when the employees left the plant.

The Union presented several witnesses in support of its position. The first witness, Robert Rowe, testified on behalf of the employees who had filed Grievance A 9540 after they had received warning letters for falsifying the Company records and had been docked for the excess time taken for lunch. The witness indicated that the cafeteria had been closed on July 15, 1979. Rowe stated that the clocks in the maintenance office were not working. Rowe and four other employees signed out together at 12:20 PM and the other employees covered by Grievance A 9540 also signed out at 12:20 PM except one employee who signed out at 12:30 PM. The employees went in a car to Juniors which is located 1 mile down Morris Avenue. The witness explained that he had no watch because his job included cleaning a water tower and his watch was not waterproof so he had taken it off. He washed up before leaving and put down 12:20 PM on the timesheet. Rowe stated that there were no clocks working in the office so he signed out
5 minutes later than the employee above him on the timesheet who had indicated a sign out time of 12:15 PM. The witness acknowledged that he had returned late after lunch but that this was the first time he had ever been late so he should only be charged with 1/3 of an occurrence.

The Union then called Edward Fitzsimmons to testify concerning the 12 employees who returned at 1:30 PM and who, as a result of this conduct, had received warnings and a 1/2 day suspension. The witness stated that upon returning from lunch Ralph Ainsworth yelled to him to get into the office. In the office Grossano said that they had come back too late and that they should go home and would get further notice of discipline. The witness indicated that the employees had gone to Nichols, a restaurant, for lunch. Although the restaurant should have opened at noon, Fitzsimmons related that the employees arrived at the restaurant at 12:10 PM and stood outside for another 10 minutes before being allowed to enter. The 12 employees ordered their food simultaneously, ate, and went directly back to the plant.

The next Union witness was Donald Singer who had been Chief Steward and currently serves on the Union Executive Board. He stated that he ate lunch at Nichols Restaurant with Paul Pearse. The two employees went to the sign out desk together and signed out at 12:15 PM according to the time on his watch. He saw no one in the office at the time. At the restaurant the service was very slow. Upon returning to the plant, the witness did not sign in because Ainsworth had said, "Don't bother signing in, you're
going home." Singer estimated that he had returned at 1:20 PM but he had not checked the time on his watch. Singer received a warning notice, a 1/2 day suspension, and an extra 2 day suspension. He believed he was late and therefore thinks he should have received 1/3 of an occurrence and been docked for the excess time taken for lunch.

The Union then called Paul Pearse as a witness. He testified that he went to lunch with Donald Singer on July 15, 1979. The witness did not have a watch but signed out immediately after Singer who had looked at his watch and had written 12:15 PM as the sign out time. Thus Pearse recorded 12:15 PM as the sign out time also. Pearse affirmed the testimony of Singer.

The Union's last witness was the Chief Steward, August D. Morreale. He testified that he is familiar with the Agreement and that there is not supposed to be any discipline for lateness until an employee has three latenesses which then become 1 occurrence.

DISCUSSION

The instant case involves three grievances that affect a total of 20 employees who received various forms of discipline for certain conduct surrounding the lunch break on Sunday, July 15, 1979. All three grievances overlap to some extent, however, there are sufficient distinctions among the grievances to warrant a separate analysis of each situation.

Grievance A 9540

The first grievance covers the 8 employees who are charged
with falsifying the timesheet but who returned only a few minutes late from lunch and were therefore permitted to return to work. The Union has not grieved the fact that these employees were docked for the excess time taken for lunch. The Union does seek, however, to have the warning letters removed from each employee's file and, instead, to have each employee charged with 1/3 of an occurrence for returning back from lunch late.

After having read the disciplinary warnings that were given to each employee within this category--Company Exhibit 2a through 2h--it is clear to me that the warning letters are exclusively directed toward the alleged falsifications of the timesheet. Thus the question is whether the Company had just cause to conclude that the employees had falsified the timesheets.

The Company presented testimony that the timesheets were checked by a foreman and then removed at 12:10 PM. The Company also presented testimony that Foreman Ruane had seen the air conditioning mechanics--who were the last employees covered by this grievance to have signed out--leave the Company's property either at 12:00 noon according to Mr. Ruane's personal watch or at 12:01 PM according to the clock in the guardhouse where Ruane had been located. In my opinion the Union's case failed to refute this testimony.

Although I am mindful of the fact that there was a planned power outage that affected the clocks in various buildings at the plant and therefore may have created some confusion for the employees
over what was the exact time, I am unable to conclude that this circumstance excused the employees from ascertaining the correct time. For example, Grossano testified on cross-examination that he was sitting at a foreman's desk within ten feet of the sign out sheet talking to some of the foremen. Certainly the employees had ample opportunity to ask what time it was from any of these people. Rowe testified on cross-examination that Grossano was not in the area at the time but that some foremen were. The reason Rowe offered for not asking the foremen for the proper time was that he did not want to disturb their conversation. Instead, Rowe suggested adding five minutes to the time indicated by the last person to have signed out. Even if Grossano or the foremen did not have a watch or know what the correct time was, this would have demonstrated a reasonable attempt on the part of the employees to indicate the correct time. That they did not make that effort leads me to believe that they had another intention in mind. A timesheet should be accurate on all occasions. I believe that the employees knew or should have known that the Company had a legitimate business reason for having an accurate timesheet on Sunday, July 15, 1979 particularly because that day was an overtime day on which the employees received pay at double time. The failure of each employee to make a reasonable effort or any effort at all to ascertain the correct time subjects those employees to the natural consequences—namely, that they knowingly noted inaccurate or false times, and I conclude that they did so.

The Union contends that the warning each employee received
from the Company is violative of the Agreement because a lateness is considered to be only a 1/3 absence occurrence pursuant to Appendix A of the Agreement. A reading of the warning letters reflects that the only conduct that is referred to in them is the falsification of the timesheet. In light of this fact, the warning letters do not fall within the provisions or restrictions concerning employee lateness. To the extent that the employees covered by Grievance A 9540 exceeded their allotted time for lunch, it is undisputed that the Company acted properly in docking them for the excess time taken for lunch.

**Grievance 8544**

The second grievance covers the 10 employees who are charged with overextending their 30 minute lunch period to 1 hour and 20 minutes. Each employee was sent home for the balance of the shift on July 15, 1979 and also received a 1/2 day suspension that was assessed in the subsequent warning notice and deemed to have been served on July 15, 1979. The Union seeks to have the suspensions rescinded, to have the warning letters removed from each employee's file, to have each employee charged with 1/3 of an occurrence for returning from lunch late, and to have each employee docked for the excess time taken for lunch.

From reading the warning letters that were given to each employee in this category--Company Exhibit 3a through 3L--it is clear to me that the Attendance Control Program, as embodied in Appendix "A" of the Agreement and referred to in the Supplemental Agreement contained in Appendix C of the Agreement, furnishes the
contractual basis for resolving the issues raised in Grievance 8544. The Attendance Control Program specifies in great detail the understanding that the parties reached "in order to administer attendance control in a fair and consistent manner. . . ." The Agreement defines a lateness as "not being at the assigned work place ready to start work at the scheduled starting time." It is undisputed that the employees were not at the assigned work place ready to start work at the scheduled starting time for the afternoon portion of the shift on July 15, 1979. Specifically, the employees who are covered by this grievance signed out for lunch at 12:00 noon and were entitled to a 30 minute lunch break; they were therefore due back from lunch at 12:30 PM. When they failed to appear at that time, they became late for work.

With respect to the Agreement's provisions for disciplining employees who are late, the Attendance Control Program specifies that "a supervisor may hold a discussion with an employee at any time that there are questions or concerns about the frequency or number of occurrences." (Emphasis added.) There is also a provision for "disciplinary action ranging from formal written warnings up to and including discharge" after a supervisor has initiated a discussion with an employee concerning the nature and causes of absences. This second provision, however, follows a clause that states, "(i)n all instances in which an employee reaches six absence occurrences during a calendar year." I think it clear by the express language contained in the Agreement that before any disciplinary action can be taken by the Company in terms of employee
absence there must at the very least be an absent occurrence. The Attendance Control Program then provides for progressive discipline including a discussion between the employee and the employee's supervisor, a formal oral warning, formal written warnings, and ultimately more severe discipline up to and including discharge.

This sophisticated approach to dealing with problems concerning attendance indicates that the parties were careful in determining how best to treat employee lateness. Since the parties specifically provided that fewer than three latenesses do not count as an absence occurrence, the Arbitrator must adhere to this provision. The Agreement therefore requires that the July 15, 1979 lateness be treated as no more than a "1/3 absence occurrence."

The Company has asserted, and the testimony reflects, that management representatives concluded that it was senseless to permit the employees to return to work for the balance of the shift on July 15, 1979 because the lost work time rendered the employees incapable of completing their assigned tasks in the allotted time. In fashioning what it considered to be proper discipline for the lateness of the employees, the Company, inter alia, imposed a 1/2 day suspension that was deemed to have been fulfilled by the employees not having worked for the balance of the shift on July 15, 1979. Consequently, there are in actuality two reasons why the employees did not work during the afternoon: (1) the initial decision that the employees could not complete their work; and (2) the retroactive imposition of a 1/2 day suspension for returning late from lunch. It is clear in my opinion that the 1/2 day disciplinary suspension does not comport with the approach set forth in the Agreement because a suspension is not
the initial remedy that is prescribed by the progressive discipline structure for a 1/3 absence occurrence.

Whether, alternatively, the Company acted properly with respect to sending the employees home because it would have been senseless to permit them to return to work requires analysis. As I see it, there may be a point in time during the course of a shift at which the Company would be justified in not permitting the employees to have resumed work. For example, the hypothetical situation raised by Counsel for the Company in which an employee has reported "late" at one minute prior to quitting time could well be such a circumstance. But that is not the instant dispute. Although in the present case the employees substantially exceeded their lunch break, a forty minute difference distinguishes the employees covered by grievance A 9540 who were permitted to return to work at approximately 12:50 PM and the employees covered by grievance 8544 who would have resumed work at approximately 1:30 PM had they been permitted to do so. The question therefore is whether the forty minutes justified permitting the first group to return to work while denying that opportunity to the second group.

The testimony concerning the employees' work assignments as illustrated by Rowe who had been cleaning a cooling tower, by Singer who had been working in Building 5a, and by Pearse who had been changing steam traps by himself in Building 2 refutes the contention by the Company that it would have been senseless for the employees to have resumed work. There was no proof that the tasks
of the various employees were other than ongoing in nature. So that the balance of the shift could have been utilized in performing this work which would ultimately have had to be completed in any event.

Grossano testified that when the employees returned from lunch they were noisy, boisterious, and defiant. He implied in his testimony (which was reenforced by Mr. Fitzsimmons on cross-examination) that some of the employees covered by grievance 8544 may have consumed alcoholic beverages during lunch. This testimony is disregarded in disposing of the propriety of the Company's action in not permitting the employees to resume work because the Company failed to allege that any employee was insubordinate or intoxicated or that those were reasons for deciding not to let them resume work. Indeed I think these factors may have been the real reason why those employees were sent home, but as they are not relied upon here, I find that the Company failed to prove that it was senseless for the employees to resume work.

In summation, the Company acted improperly in suspending the employees by sending them home at 1:30 PM. The employees are entitled to be made whole for their lost earnings from that point in time until the scheduled end of the shift at 3:45 PM. The written warning notice should be rescinded and removed from each employee's file unless an individual employee has sufficient absences to place him within a more advanced stage of the progressive discipline structure contained in the Agreement that authorizes a written warning. Each employee should be charged with 1/3 of an occurrence. The Company acted properly by docking the employees
for the excess time they had taken for lunch because the employees were not entitled to be paid for time not worked. To the extent that the employees covered by grievance 8544 overextended their lunch longer than the employees covered by grievance A 9540, they were properly docked for the longer period of time.

**Grievance 8546**

The third grievance covers 2 employees who are charged with falsifying the timesheet and overextending their 30 minute lunch period to 1 hour and 20 minutes. Each employee was sent home for the balance of the shift on July 15, 1979 which the Company subsequently deemed to be a 1/2 day suspension; each employee thereafter received an additional 2 day suspension.

The conduct of the employees covered by grievance 8546 overlaps the actions discussed with respect to the employees covered by grievance A 9540 and grievance 8544. To the extent that the two employees falsified the timesheets, and I find that they did, the Company acted properly for the reasons I set forth in the discussion concerning grievance A 9540. To the extent that the two employees were sent home for the balance of the shift on July 15, 1979, I am of the view that the Company acted improperly for the reasons I set forth in the discussion concerning grievance 8544. The warning letters were improper as to the references concerning lateness but were proper as to the references concerning falsification of the timesheet. The objectionable portions therefore must be deleted. The employees are to be charged with 1/3 of an occurrence.
The employees covered by grievance 8546 also received an additional two day suspension. The Company contends that it imposed this extra discipline because the two employees had previously received a suspension for similar conduct in February 1977. The Union argues that the Agreement bars the Company from relying upon the previous incident in February 1977 because past discipline is to be expunged after an employee's record is clear for one year.

The applicable contractual language is contained in Section 31 of the Agreement. The key sentence provides: "Such written disciplinary warnings or reprimands will be expunged from the employee's personnel records after one (1) year." The plain language refers to "warnings or reprimands" and does not mention suspensions. Had the parties intended to require that a past suspension be expunged from an employee's personnel record after an employee's record is clear for one year, they could have so specified. In fact, in the sentence that follows the one just quoted, the Agreement includes the language, "(b)efore discharging or suspending any employee." Thus it is beyond dispute that the parties knew how to specify in precise language the various aspects of discipline that they intended to regulate. I therefore find that the Company had no obligation to expunge the February 1977 suspension from the employees' personnel records. I also consider the Company's imposition of a two day suspension under the circumstances of this case to have been consistent with the progressive discipline structure contained in the Agreement.

In conclusion, the Company acted improperly in suspending
the employees by sending them home at 1:30 PM. The employees are entitled to be made whole for their lost earnings from that point until the scheduled end of the shift at 3:45 PM. Each employee shall be charged with 1/3 of an occurrence for returning late from lunch. The Company acted properly in suspending the employees for two days and in docking them for the excess time taken for lunch. The disciplinary letters shall be conformed to reflect these changes.

The Undersigned, duly designated as the Arbitrator and having duly heard the proofs and allegations of the above-named parties, makes the following AWARD:

For the reasons and under the circumstances set forth in the foregoing Opinion:

Grievance A 9540 is denied.

Grievance 8544 is decided as follows:
(1) the 1/2 day suspensions shall be rescinded and the employees shall be made whole for their lost earnings between 1:30 PM and 3:45 PM on July 15, 1979;
(2) the warning letters shall be rescinded and removed from each employee's personnel file; and
(3) each employee shall be charged with 1/3 of an occurrence.

Grievance 8546 is decided as follows:
(1) the 1/2 day suspension shall be rescinded and the employees shall be made whole for their lost earnings between 1:30 PM and 3:45 PM on July 15, 1979;
(2) deleted from the disciplinary letters shall be the reference to the excess time taken for lunch on July 15, 1979 and
(3) each employee shall be charged with 1/3 of an occurrence.

The Company's docking of the pay of all grievants for the amount of time they were late or extended their lunch period, is sustained.

Eric J. Schmertz
Arbitrator
DATED: May 22, 1980
STATE OF NEW YORK )ss.:
COUNTY OF NEW YORK)

On this 22nd day of May, 1980 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 144, Hotel, Hospital, Nursing Home & Allied Health Services Union (Union) AWARD

and

Sea Crest Health Care Center (Employer)

An agreement dated November 22, 1977 between the Union and Employer provided in paragraph "3" for certain wage increases effective July 1, 1977, September 1, 1977 and March 1, 1978 and further provided that "the Agreement shall reopen on March 31, 1978 for discussion on further wage increases. In the event the parties are unable to agree, the question shall be submitted before Eric Schmertz, Esq." When an impasse in such negotiations developed the matter was referred to Mr. Schmertz as Arbitrator. The undersigned is designed to hear and determine the matter and the following stipulated issues:

(a) "What payment, if any, shall employer make forthwith toward its delinquencies to all funds?"

(b) "How shall any remaining delinquencies to said funds be treated and/or liquidated?"

Both parties appeared before me with the Employer represented by Mr. Ernest Dicker and the Union represented by Peter Ottley.

After due consideration and a review of the Agreement and documents submitted by the parties, the Award is as follows:

1. The dates on which the wage increases shall be implemented and the amount of such increases per week are:
Schedule A

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*The minimum rates shall be*

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The minimum rates for RN supervisors shall be $5 higher than the RN's.

The current increase will be paid fifteen (15) days after receipt of this award by the parties. Retroactive increases will be paid thirty (30) days after receipt of this award by the parties.

2. **Duration.** Paragraph I shall read "This agreement shall continue in full force and effect until March 31, 1981. On or before April 1, 1981 the parties shall commence negotiations for a successor collective bargaining agreement."

3. All other terms of the current Agreement between the parties shall remain in full force and effect unless modified by provisions of this Award.

The parties further agree that with the changes contained in this award, the November 22, 1977 Agreement between the parties, shall be extended through March 31, 1981. If the parties fail to reach settlement of a subsequent agreement before the expiration of that Agreement, the parties shall submit all outstanding issues to binding arbitration before Eric Schmertz. However, in the event the said Arbitrator awards any increases, said increases and effective dates of said increases shall not be above and beyond those increases contained in the Master Agreement.
The expiration date of the successor agreement shall be extended for the identical length of term as the relationship of this agreement to the Master Agreement between Local 144 and the Greater New York Health Care Facilities Association.

In the event the undersigned is unable to serve, it is agreed that Burton Turkus, Esq. shall be the successor Arbitrator to determine all outstanding issues between the parties.

4. It is further agreed that with regard to Sea Crest's indebtedness to the various Funds, and the current confession of judgment, the home shall pay $105,000 within ten (10) days upon receipt of this award, and it is acknowledged that Sea Crest has paid $20,000 on January 14, 1980. The balance of said debt shall be placed in an amortized schedule of $12,500 per month commencing July 1, 1980 through March 1, 1981 with a final balloon payment due March 31, 1981. On or before March 31, 1981 the Employer may petition the Arbitrator for a forgiveness.

In addition: The home shall execute a new confession of judgment covering all balances due. Sea Crest shall make all current payments in accordance with the terms of Paragraph 4.

Dated:
New York, New York

______________________________________________________
Eric J. Schmertz, Esq., Arbitrator

STATE OF NEW YORK
COUNTY OF NEW YORK

On this day of , 1980 before me personally came 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.

______________________________________________________
NOTARY PUBLIC
Exhibit "A"

What payment, if any, shall employer make forthwith towards its delinquency to all funds?

How shall any remaining delinquencies to said funds be treated and/or liquidated?
In the Matter of the Arbitration

between

Local 144, Hotel, Hospital, Nursing Home
& Allied Health Services Union (Union)

and

Sea Crest Health Care Center (Employer)

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Both parties appeared before me with the Employer represented by Mr. Bart Lawson of the Greater New York Health Care Facilities Association, and Ernest Dicker, and the Union represented by Peter Ottley.

After due consideration and a review of the Agreement and documents submitted by the parties the Award is as follows:

1. The dates on which the wage increases shall be implemented and the amount of such increases per week are:

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The current increase will be paid fifteen (15) days after receipt of this award by the parties. Retroactive increases will be paid thirty (30) days after receipt of this award by the parties.

2. Duration. Paragraph 1 shall read "This agreement shall continue in full force and effect until March 31, 1981. On or before April 1, 1981 the parties shall commence negotiations for a successor collective bargaining agreement."

3. All other terms of the current Agreement between the parties shall remain in full force and effect unless modified by provisions of this Award.

   The parties further agree that with the changes contained in this award the November 22, 1977 Agreement between the parties shall be extended through March 31, 1981. If the parties fail to reach settlement of a subsequent agreement before the expiration of that Agreement, the parties shall submit all outstanding issues to binding arbitration before Eric Schmertz. However, in the event the said Arbitrator awards any increases, said increases and effective dates of said increases shall not be above and beyond those increases contained in the Master Agreement.

   The expiration date of the successor agreement shall be extended for the identical length of term as the relationship of this agreement to the Master Agreement between Local 144 and the Greater New York Health Care Facilities Association.
It is agreed that Burton Turkus, Esq. shall be the Arbitrator to determine all outstanding issues between the parties.

4. It is further agreed that with regard to Sea Crest's indebtedness to the various Funds, and the current confession of judgment, the home shall pay $105,000 within ten (10) days upon receipt of this award, and it is acknowledged that Sea Crest has paid $20,000 on January 14, 1980. The balance of said debt shall be placed in an amortized schedule with a final balloon payment due March 31, 1981.

In addition: The home shall execute a new confession of judgment covering all balances due. Sea Crest shall make all current payments in accordance with the terms of the agreement.

Before March 31, 1981 the Employer may petition the Arbitrator for a forgiveness of this instrument.

On this 1 day of State of
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.

Arbitrator
May 16, 1980

Eric J. Schmertz, Esq.
122 East 42nd Street
New York, New York

Dear Mr. Schmertz:

I enclose herein as per our conversation of this morning the Award in the matter of the arbitration between Local 144 and Sea Crest Health Care Facility. I am also enclosing for your information a photostat of the original of the initialed memorandum.

Very truly yours,

Howard B. Presant

HBP:cgw
Enclosure
By-Hand
cc: Judith Vladeck, Esq.
    Ernest Dicker
In the Matter of the Dispute Between:

SHALOM NURSING HOME, NATIONAL COUNCIL OF YOUNG ISRAEL,

Employer,

-and-

LOCAL 144, S.E.I.U., AFL-CIO

Union.

RECOMMENDATIONS OF MEDIATION PANEL

On June 26, 1980, the Shalom Nursing Home and the National Council of Young Israel (hereinafter the "Employer") and Local 144, S.E.I.U., AFL-CIO (the "Union"), desiring to enter into mediation and conciliation to resolve a dispute between them concerning the rights of the Union's members to reinstatement after a prolonged strike, agreed to meet and confer with a mediation panel, mutually designated by them, for the purpose of seeking a resolution of the dispute.

The parties agreed that the following members would constitute the Mediation Panel:

Morris Aarons
Abraham D. Beame
Louis J. Lefkowitz
Bayard Rustin
Eric J. Schmertz

The Panel designated Mr. Schmertz to serve as its chairman.

Discussions were held with both parties on June 26, 1980. Present for the Employer were: Rabbi Sturm, Roger Gilson, Esq. and Howard Wolfe. Present for the Union were Peter Ottley,
Irwin Bluestein, Esq. and Paul Moore, Esq. Also present as observers were Louis Levine and Harry Avrutin, and Stephanie Hill, Esq. who served as secretary to the Panel.

In separate discussions with the Panel, the parties presented their statements of position and suggestions for resolving the dispute between them.

The Panel then entered into executive session and subsequently informed both parties that the Panel would accept the designation and appointment as mediators, and suggested to both sides that they authorize the Panel to make nonbinding recommendations for resolution of the dispute, which would be given serious consideration for acceptance by the parties.

At the June 26 meeting, the Union accepted the Panel's suggestion. The Employer requested that its reply be deferred to July 17 in order for it to present the Panel's procedural suggestion to its Board of Directors.

On July 17, 1980 the Employer agreed to the foregoing procedure, and, pursuant to the Panel's June 26 statement that it would issue its Recommendation forthwith on July 17th if both sides agreed to that procedure, the Panel sets forth below and herewith issues its Recommendations.

Basis of the Dispute

The Union was certified as the collective bargaining representative for a unit of approximately 140 non-professional, non-technical employees in July 1979.
On October 18, 1979, during a period when the parties were engaged in collective bargaining over the terms of their first collective agreement, the Union commenced a strike against the Employer. The strike is still in progress, although approximately 44 of the 140 striking employees have returned to work.

Collective bargaining has continued between the parties, and, with the aid of a mediator appointed by the Federal Mediation and Conciliation Service, the parties have reached agreement on most of the major issues separating them.

However, with respect to the issue of the reinstatement of striking employees, the parties have been unable to reach agreement. It is this issue which the parties have asked the Panel to consider.

The Panel understands that there are approximately 96 employees who went on strike in October 1979 and who have not returned to their jobs. Of this number, the Union believes that approximately 85 have not obtained permanent employment elsewhere and desire reinstatement to their original employment with Shalom Nursing Home; however, there is some question as to the exactness of these figures. Further, of these 85 employees, 13 have been charged with picket-line misconduct.

The Panel also understands that the Employer has replaced all of the striking employees, and currently has no vacant job positions. Moreover, the Employer anticipates that attrition will account for approximately only 3 job vacancies in the unit per month.
Recommendations of the Panel

Having given due consideration to the positions and suggestions of both parties, the Panel makes the following recommendations:

1. The Union shall immediately determine with specificity the number of employees actively seeking reinstatement with the Employer. The Panel recommends that the Union obtain written verification from each employee who seeks reinstatement.

2. The Employer shall reinstate all employees who have indicated in writing their desire to return to their employment with Shalom Nursing Home. Such reinstatement shall be made under the following conditions:
   
   (a) The Employer will not be required to reinstate the 13 employees charged with picket-line misconduct until such time as an impartial arbitrator has adjudicated their right to such reinstatement.

   (b) No later than two weeks following the rendition of these recommendations of the Mediators, the Employer shall reinstate 25 employees who have verified their wish to return to work.

   (c) The remaining number of employees who have verified their wish to be reinstated shall be reinstated by the Employer at a rate of one-third of such remaining number every 30 days, so that all employees shall be returned to their employment no
later than three months and two weeks following the date of these recommendations.

(d) Reinstatement shall be effected on the basis of seniority (i.e., those with greater seniority shall be reinstated first.)

3. Upon the joint request of the parties, the Panel will assist the parties in the implementation of these recommendations. If requested, the Panel will also assist in counselling those present workers who will be displaced by the reinstatement of the strikers.

Dated: New York, New York
July 17, 1980

Respectfully submitted,

Eric J. Schmertz
Morris Aarons
Abraham D. Beame
Louis J. Lefkowitz
Bayard Rustin
July 2, 1980

Mr. Eric J. Schmertz
122 East 42 Street
Room 1515
New York, New York 10168

Dear Mr. Schmertz:

Enclosed please find the Report and Recommendations of the Mediation Panel which I have drafted for your review.

Although I have drafted the Panel's recommendations as stated during executive session (at pages 3-5 of the enclosed Report), I wish to call to your attention a problematical issue raised by the recommendations. In paragraph 2(b) (page 4), the recommendation of immediate reinstatement of 25 employees is made. While the Panel did not raise the issue, General Lefkowitz and I believe it might be appropriate to afford the Employer a two-week period in which to reinstate these 25 employees in order to provide sufficient notice to replacements that their employment will be terminated. Moreover, if such a two-week notice period is extended to the Employer in paragraph 2(b), then the three-month period for reinstatement of the balance of striking employees, as provided in paragraph 2(c), should similarly be extended by two weeks.

When you have completed your review of the draft and remit your revisions to me, I will make the necessary changes and distribute the Report and Recommendations to the other members of the Panel.

Sincerely yours,

Stephanie Hill

Enclosure
In the Matter of the Dispute Between:

SHALOM NURSING HOME, NATIONAL COUNCIL OF YOUNG ISRAEL,

Employer,

-and-

LOCAL 144, S.E.I.U., AFL-CIO

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The parties agreed that the following members would serve on the Mediation Panel:

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Eric J. Schmertz

The Panel designated Eric J. Schmertz to serve as its chairman.

Discussions were held with both parties on June 26, 1980. Present for the Employer were: Rabbi Sturm, Roger Gilson, Esq. and Howard Wolfe. Present for the Union were:
In separate discussions with the Panel, the parties presented their statements of position and suggestions for resolving the dispute between them.

The Panel then entered into executive session and subsequently informed both parties that, upon the mutual agreement of the parties, the Panel would accept its designation and appointment as mediators, evaluate the parties' written submissions, and issue nonbinding reports and recommendations which were to be given serious consideration by the parties. Both parties agreed to this procedure, and agreed to give serious consideration to the recommendations of the Panel. On July 17, 1980, based upon this agreement by the parties, the Panel hereby issues its Report and Recommendations.

Basis of the Dispute

The Union was certified as the collective bargaining representative for a unit of approximately 140 non-professional, non-technical employees in July 1979.

On October 18, 1979, during a period when the parties were engaged in collective bargaining over the terms of their first collective agreement, the Union commenced a strike against the Employer. The strike is still in progress, although approximately 44 of the 140 striking employees have returned to work.
Collective bargaining has continued between the parties, and, with the aid of a mediator appointed by the Federal Mediation and Conciliation Service, the parties have reached agreement on most of the major issues separating them.

However, with respect to the issue of the reinstatement of striking employees, the parties have been unable to reach agreement. It is this issue which the parties have asked the Panel to consider.

The Panel understands that there are approximately 96 employees who went on strike in October 1979 and who have not returned to their jobs. Of this number, the Union believes that approximately 85 have not obtained permanent employment elsewhere and desire reinstatement to their original employment with Shalom Nursing Home; however, there is some question as to the accuracy of these figures. Further, of these 85 employees, 13 have been charged with picket-line misconduct.

The Panel also understands that the Employer has replaced all of the striking employees, and currently has no vacant job positions. Moreover, the Employer anticipates that attrition will account for approximately only 3 job vacancies in the unit per month.

Recommendations of the Panel

Having given due consideration to the positions and suggestions of both parties, the Panel makes the following recommendations:

1. The Union shall make an immediate effort to determine with specificity the number of employees actively seeking reinstatement with the Employer. The Panel recommends that the Union obtain written
verification from each employee who seeks reinstatement.

2. The Employer shall reinstate all employees who have indicated in writing their desire to return to their employment with Shalom Nursing Home. Such reinstatement shall be made under the following conditions:

(a) The employer will not be required to reinstate the 13 employees charged with picket-line misconduct until such time as an impartial arbitrator has adjudicated their right to such reinstatement.

(b) Upon rendition of this Report of the Mediators, the Employer shall reinstate 25 employees who have verified their wish to return to work.

(c) Upon determination of the remaining number of employees seeking reinstatement with the Employer, the Employer shall reinstate all such employees at a rate of one-third of such remaining number every 30 days, so that all employees shall be returned to their employment no later than 3 months and 2 weeks from the date of this Report.

(d) Reinstatement shall be effected on the basis of seniority. (i.e. those with greater seniority shall be reinstated first)

3. Upon the joint request of the parties, the Panel will assist the parties in the implementation of the above recommendations. If requested, the Panel will also assist the Employer in counselling
Dated: New York, New York
July 17, 1980

Respectfully submitted,

__________________________
Eric J. Schmertz

__________________________
Morris Aarons

__________________________
Abraham D. Beame

__________________________
Louis J. Lefkowitz

__________________________
Bayard Rustin
The stipulated issue is:

1. Are the grievances arbitrable?
2. If so, did the Hospital violate Section 5.10 of the Agreement as charged by the Union in the written grievance, when the Hospital failed to provide the grievants with one hour of pay for time not worked on Wednesday, February 21, 1979.
3. If so what shall be the remedy if any, and to whom does the Award apply?

A hearing was held on November 28, 1979 in Baltimore, Maryland at which time representatives of the above named Union and Hospital appeared and were afforded full opportunity to offer evidence and argument and to examine and cross-examine witnesses. The Arbitrator's Oath was waived. The parties filed post-hearing briefs.

Initially the Union grieved on behalf of Virginia Clark and Mary Marcus. At or up to the Third Step of the grievance procedure the Union amended and expanded the grievance to include other unnamed employees allegedly similarly situated to Clark and Marcus.

On February 21, 1979 a Phase 2 Snow Emergency Plan was in effect in Baltimore. Grievants Marcus and Clark were scheduled to begin work at 7 AM. They did not live within walking distance
of the Hospital. They arrived late and punched in respectively at 11:17 AM and 11:16 AM. They both punched out at 3:42 PM and were paid only for the actual time they worked that day.

On behalf of Clark and Marcus and other unnamed employees the grievance seeks one hour's pay for the first hour of their regular shift not worked that day. The grievance relies on Section 5.10 of the contract which reads:

Section 5.10 - Snow Emergencies: On any day that the Baltimore City Transit and Traffic Division declares that a Phase 2 Snow Emergency Plan is in effect, employees who do not live within walking distance of the Hospital shall be allowed a one (1) hour grace period before they shall be considered as being late for work.

In addition to disputing the Union's interpretation of the foregoing contract provision, the Hospital raises a threshold question of arbitrability. It claims that all aspects of the grievance, on behalf of Marcus and Clark, and also as to any other unnamed grievants are not arbitrable because the steps and conditions of the grievance procedure of the contract (Article 15) were not followed or met.

On the matter of arbitrability I conclude that the Hospital is correct with regard to the unknown grievants who were added to the original grievance at or up to Step 3.

As the parties well know, and as expressed by other arbitrators serving under this contract, the arbitrator is bound by the language of the Agreement. Here the parties negotiated
mandatory conditions regarding the filing and processing of grievances. In significant part Article 15 provides that:

...a grievance under this Agreement....
must be....processed in accordance with
the following steps, time limits and
conditions. (Underscoring supplied).

Though the Union was within its rights in amending the written grievance up to and including Step 3, it failed to comply with other parts of the contract paragraph dealing with any such amendment or modification. Article 15 Step 1 (b) paragraph 3rd, must be read in conjunction with the first paragraph of (b), particularly the provision thereof which requires that the grievance form be signed "by the Grievant and his Delegate...." Paragraph 3rd, which allows the Union to amend or modify the written grievance authorizes the Union to file the grievance on behalf of a Grievant(s).... "in accordance with this procedure" .... "if a Grievant is unwilling to file a grievance and such failure will prejudice the rights of other employees." To my mind this means that the Union may amend or modify a written grievance, as in the instant case, by including additional grievants and that the additional grievants are excused from signing the grievance on one condition, namely if such grievant(s) "is unwilling to file a grievance and such failure will prejudice the rights of other employees." In the instant case the Union has offered no evidence to show that the additional and unnamed grievants were unwilling to file grievances on their own behalf and the failure to do so
prejudiced other employees. Hence the Union and those unnamed grievants are not excused from the mandatory contractual requirement that those grievants sign the grievance.

Moreover, the mandatory requirement that the grievance be signed (except in those cases where a grievant is unwilling to file a grievance and such failure will prejudice the rights of other employees) is obviously intended to insure that the Hospital is aware of which employees are making claims so that those claims can be properly particularized, investigated and dealt with in the grievance procedure and if necessary, in arbitration. Under the instant circumstance, where the additional grievants added by the Union remain unnamed, where those grievants have not signed the grievance, where there has been no showing that they were unwilling to file the grievance and that their failure to do so would prejudice the rights of other employees, and where the Hospital remains uninformed as to which employees may be involved and the particulars of their claims, I must conclude that in the respects indicated, the Union and those grievants have not complied with specified, mandatory requirements of the grievance procedure. Therefore, the grievance as it may apply to those unnamed grievants, is not arbitrable.

However, with respect to grievants Marcus and Clark, I conclude that the requirements of the grievance procedure have been more than substantially met and that there has been adequate procedural compliance to satisfy the mandatory requirements of
the Agreement.

The Hospital asserts that grievants Marcus and Clark failed to sign the grievance form; that the grievance was submitted at Step 2 rather than Step 1; that there was no Step 1 meeting with the grievants' Supervisor; and that because these conditions which must be followed and met, were not followed and met the grievance is fatally defective and barred from arbitration.

Though the Union delegate filled out the grievance at the Step 2 location on the form, she submitted it to the grievants' Supervisor. What that means is that though the grievance was in part ministerially inaccurate on its face because the delegate signed it at the Step 2 location, its submission was procedurally correct when it was given to the supervisor designated by the Step 1 procedure. As long as the grievance reached the managerial employee responsible for Step 1, I am satisfied that it was properly filed and that the Hospital had adequate notice at the Step 1 level, irrespective of where on the grievance forms the Union delegate placed her name. That there was no Step 1 meeting between the supervisor, the grievants and the delegate was as much the fault of the Hospital as it was the Union and grievants Marcus and Clark. Step 1 (b) provides that after the grievance is presented to the supervisor:

The Supervisor shall discuss it with the Grievant and his Delegate at a mutually convenient time.

I interpret that to mean that the supervisor had as much
responsibility to schedule a Step 1 meeting as did the Union and the grievants. Supervisor Garilich did not schedule such a meeting, nor did she refer the grievances back to the Union for different processing. Instead she filled out the "Disposition" box next to Step 1 by signing her name, by placing the date of March 22, 1979 (two days after the grievances were submitted to her by Union delegate Huff), and significantly by writing "grievance denied." I construe that to mean that Supervisor Garilich treated the grievances as having been filed with her in accordance with the Step 1 requirements, and that she dealt with the grievances on their merits without having a meeting. Under that circumstance I do not think it was unreasonable for the Union to assume that a Step 1 meeting between the supervisor, the grievant and the Union delegate had been waived by the Hospital or was no longer necessary, and that the grievance could be moved to the next Step.

That grievants Marcus and Clark did not sign the grievance form at the place provided in the Step 1 box is not a fatal defect. Obviously the principal purpose for the signature at that location is to show that an employee has initiated and/or joined in the complaint in compliance with the contractual requirement that the grievance be signed by both the grievant and his delegate. However, both grievants Marcus and Clark placed their signatures on their respective grievance forms, not in the Step 1 box but at the top of the form next to the words GRIEVANT: Name. That their
signatures were placed there adequately establishes that they initiated and joined in the grievance, and those signatures together with the signature of the Union delegate Mary Huff (located as previously indicated in the Step 2 box) adequately complied with the Step 1 requirement that the grievance be signed by both the grievant and his delegate.

For these reasons the grievances as they relate to employees Marcus and Clark are arbitrable.

On the merits however the grievances are denied. Section 5.10 of the contract is manifestly ambiguous. In my view it is logically susceptible to at least three reasonable but different interpretations. One as asserted by the Union, is that the one hour grace period means that an employee late for work during a Phase 2 Snow Emergency and who does not live within walking distance of the Hospital will be paid for the first hour he is late regardless of when he arrives. Or in other words he will receive pay for the actual time worked plus one hour. Another interpretation, as advanced by the Hospital, is that because Section 5.10 is found within the contract Article (Article 5) dealing with "hours of work", it applies only to an employee's attendance record and has no bearing on or application to that employee's pay for the day involved. Under this interpretation, as the Hospital argues, the one hour grace period means that for purposes of attendance and/or potential discipline for tardiness, an employee will not be considered late if he arrives within one
hour of the start of his shift during a Phase 2 Snow Emergency, provided he does not live within walking distance. But that he will receive no pay for time not worked, including the first hour. A third interpretation is that an employee will be paid for the first hour of his shift only if he arrives at work within one hour following the scheduled start of that shift, provided again that a Phase 2 Snow Emergency is in effect and the employee does not live within walking distance.

It is well settled that where a disputed contract clause is ambiguous, its meaning may be gleaned from past practice and from relevant negotiation history. Here, where the burden is on the Union to prove its grievance under Section 5.10 of the contract, what past practice there has been and what evidence there is about what took place during relevant contract negotiations, are not supportive of the Union's claim, and hence neither the Union nor the grievants have met the requisite burden. The Hospital introduced evidence showing that the single prior grievance dealing with a similar factual circumstance was denied by the Hospital in the grievance procedure and was not appealed to arbitration by the Union. And that subsequent thereto, at contract negotiations the Union sought contract language expressly providing for pay for the grace period under Section 5.10 of the contract; that the Hospital refused to grant it and the Union withdrew that demand from the negotiations. Under those circumstances if that prior grievance and that cited history of
negotiations are not enough to clarify Section 5.10 in support of the Hospital's position in this case, the Section remains unclear and ambiguous. There is no practice or negotiation history cited which would clarify it consistent with the Union's claim. This conclusion is not overturned by the Union's reliance on how other hospitals under contracts with this Union administer similar, but not identical contract language. Those other contracts involve different hospitals and were negotiated separately. They are not before me and hence are neither precedential to nor determinative of the instant grievance between the Union and this Hospital.

For the foregoing reasons, the Undersigned, duly designated as the Arbitrator, and having duly heard the proofs and allegations of the above named parties makes the following AWARD:

1. The grievances of Virginia Clark and Mary Marcus are arbitrable.

2. The grievances of other unnamed employees claimed to be similarly situated are not arbitrable.

3. The Hospital did not violate Section 5.10 of the Agreement, as charged by the Union in the written grievance, when the Hospital failed to provide grievants Clark and Marcus with one hour of pay for time not worked on Wednesday, February 21, 1979.

DATED: March 12, 1980
STATE OF New York   ss.:  
COUNTY OF New York)

On this twelfth day of March, 1980 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
The Bureau of District Office Operations, Social Security Administration - New York Region
and
New York-New Jersey Council of District Office Locals
American Federation of Government Employees, AFL-CIO

The stipulated issue is:

Did management violate Article XXIII, Section 2, by denying administrative leave to Michael Calderon on June 22, 1979 and June 26, 1979? If so, what is the appropriate remedy?

A hearing was held on October 15, 1980 at which time Mr. Calderon, hereinafter referred to as the "grievant" and representatives of the above named Employer and Union appeared. All concerned were afforded full opportunity to offer evidence and argument and to examine and cross-examine witnesses. The Arbitrator's Oath was waived. The parties filed post-hearing briefs.

During the gasoline shortage crisis in the spring and summer of 1979, when the grievant used his automobile to travel to and from work, he was late for work four hours on June 22nd and two hours on June 26th, 1979 because he was delayed in gas lines. He sought but was denied administrative leave for the six hours involved. Instead that time was charged to or against his annual leave.

Article XXIII Section 2 reads:
During a snow emergency, gasoline shortage, or interruption in transportation facilities, services, or road travel, the affected employees will be granted reasonable administrative leave to cover the situation in accordance with applicable rules and regulations.

There is no dispute about the gasoline shortage crisis at the time, nor does the Employer question the grievant's delays due to time spent on gasoline lines on the two days in question. The Employer denied the grievant's request for administrative leave because it determined his tardiness to be "unjustified." It is the Employer's contention that the grievant should have obtained gasoline for his car on weekends or during non-working hours, or that during the gasoline crisis he should have used available public transportation to come to work. The Employer points out that under the aforesaid contract clause, administrative leave for "gasoline shortage" will be granted "in accordance with applicable rules and regulations." It is the Employer's contention that the applicable rules and regulations which accord management the right to determine whether an absence or tardiness is justified, permits the Employer to require an employee to use public transportation or to obtain gasoline for his car at times which would not interfere with his working hours during gasoline shortage crises. That the grievant did not do so, the Employer argues, was not consistent with the agency rules and regulations, and hence his tardiness was not justified for the purpose of receiving administrative leave.

I do not read the aforesaid contract provisions that way. It is undisputed that that contract provision was negotiated subse-
quent to the rules and regulations relied on by the Employer. The promulgated rules and regulations are general. In various forms they say the same thing, namely that absences and tardiness may be excused "for reasons justifiable to the supervisor."

Prior to the events involved in this case and before the enactment of the foregoing contract clause, the Employer promulgated no rule or regulation which specifically dealt with absences or tardiness due to gasoline shortages, nor did it issue any procedures as to how a gasoline shortage would be dealt with if it affected attendance.

A fundamental contract principle is that the specific takes precedence over the general. I consider the foregoing contract clause to be a specific reference to disruptions in normal attendance due to a gasoline shortage. That it was negotiated subsequent to the general rules and regulations regarding excused absences and tardiness means, to my mind, that the reference therein to "applicable rules and regulations" applies to specific rules and regulations which the Employer could and presumably would promulgate subsequently, to let the employees know the circumstances under which administrative leave would be granted when there was a gasoline shortage. Indeed, any other interpretation would render Article XXIII Section 2 meaningless. For if the reference to "applicable rules and regulations" meant that the Employer could deny administrative leave for tardiness due to the gasoline shortage if the affected employee could have taken public transportation or should have obtained gasoline
during off hours, Article XXIII Section 2 would be of no benefit to employees in the metropolitan New York area. Here there is public transportation to virtually every point, and the requirement that gasoline be sought during off hours would mean that a gasoline shortage could never be a basis for lateness to work. In short the conditions which the Employer imposed on the grievant in this case would have the effect of nullifying any rights to administrative leave under the foregoing contract clause and would mean that the contract clause was negotiated for no reason at all, at least for employees in the New York area. I do not believe that the Union demanded and accepted a contract clause that could be so restricted or nullified.

In my view, Article XXIII Section 2 specifies certain situations, including a gasoline shortage, which would presumptively create a justifiable absence or tardiness, subject to agency rules and regulations enacted and promulgated to deal with those specific situations. Subsequent to the negotiations of the foregoing contract section the Employer did not enact or issue any rule or regulation specifically dealing with absences or tardiness due to a gasoline shortage. The Employer issued various memoranda to its executive and supervisory personnel about how absences and latenesses due to a gasoline shortage should be handled. But those communications were internal to the Employer, never communicated to the Union or the employees, and hence did not rise to the level of an "applicable rule or regulation."

Neither the Union or the employee were put on notice that during
a gasoline shortage they would be required to take public trans-
portation or, if they used their cars, obtain gasoline at times
that would not interfere with their regular working hours. This
is not to say that any such rule or regulation, if properly
promulgated would be proper under the foregoing contract clause.
That is a question which may have to be determined at another time
in a different proceeding. Rather it is to say that in the
absence of an explicit rule or regulation dealing with the specif-
cally negotiated conditions of Article XXIII Section 2, the
Employer may not unilaterally impose restrictions which were not
part of its rules and regulations when that contract section was
negotiated, especially when that section enumerated justifiable
reasons for an absence or tardiness for which administrative
leave would obtain. Indeed, the evidence of the history of the
negotiations of the critical contract clause persuades me that
it was bilaterally agreed to, following a similar but earlier
gasoline shortage, to cover precisely the situation involved in
the instant case.

For the foregoing reasons the Undersigned, duly designated
as the Arbitrator and having duly heard the proofs and allegations
of the above named parties makes the following AWARD:

Management violated Article XXIII
Section 2 of the contract by deny-
ing administrative leave to Michael
Calderon on June 22 and June 26, 1979.
He shall be granted administrative leave for the time he was late on those days, and that time shall not be charged to or against his annual leave.

Eric J. Schmertz
Arbitrator

DATED: November 21, 1980
STATE OF New York )ss.:
COUNTY OF New York )ss.:

On this 21st day of November, 1980, 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:

Did management violate Article XXIII, Section 2, by denying administrative leave to Michael Calderon on June 22, 1979 and June 26, 1979? If so, what is the appropriate remedy?

A hearing was held on October 15, 1980 at which time Mr. Calderon, hereinafter referred to as the "grievant" and representatives of the above named Employer and Union appeared. All concerned were afforded full opportunity to offer evidence and argument and to examine and cross-examine witnesses. The Arbitrator's Oath was waived. The parties filed post-hearing briefs.

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DATED: November 21, 1980
STATE OF New York ) ss:
COUNTY OF New York )

On this 21st day of November, 1980, 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.

DOROTHY DREISEN
NOTARY PUBLIC, State of New York
No. 60-6099400
Qualified in Westchester County
Commission Expires March 30, 1983