In the Matter of the Arbitration between
MDA-UAW Local 571
and
General Dynamics Corporation
Electric Boat Division

OPINION AND AWARD
Case #U-0001-84
MDA-1-84

The issue is the Union's grievance dated September 25, 1984 which reads in pertinent part:

The MDA grieves the Company for its failure to implement super seniority by work category during the current recall to work from strike.

A hearing was held in New London, Connecticut on February 8, 1985 at which time representatives of the above named Union and Company appeared and were afforded full opportunity to offer evidence and argument and to examine and cross-examine witnesses. The Arbitrator's Oath was waived. A stenographic record was taken and the parties filed post-hearing briefs.

The issue involves the super-seniority status of Union councillors, and is narrow. It is not whether the councillors should have been recalled from the strike based on super-seniority. Their general super-seniority status for that purpose is acknowledged by the Company. Rather, the question is whether their super-seniority upon recall should have been with seniority groups or within work categories.

The Strike Settlement Agreement does not deal specifically with the question. It does provide for the recall of the Union's six principal officers within two weeks. It also provides for the general recall of "striking employees" by seniority within seniority groups. But, with the undisputed and acknowledged fact that the councillors were entitled to some form of super-seniority, and because councillors (or stewards) are traditionally viewed differently from ordinary employees, I am not prepared to conclude
that the reference to "striking employees" in the Settlement Agreement was intended to cover the Union councillors. Put another way, with the specific reference to the Union's six principal officers, and the different reference to "striking employees," I am persuaded that a reference to and coverage of the councillors was omitted.

Indeed, based on the entire record, I conclude that there was no meeting of the minds of the parties on the groups or categories to which the councillors' super-seniority would apply in the recall. I believe that in good faith the Company thought that it applied to seniority groups because the Settlement Agreement referred to seniority groups in the recall of regular employees. On the other hand I believe that because the councillors had a status different from both rank and file employees and the Union's principal officers, the Union in good faith believed that their recall, based on super-seniority would obtain to work categories. Their belief in this regard is rooted in language found in the collective bargaining agreement which accords councillors super-seniority in work categories in case of layoffs.

The disagreement is compounded by the provision of the Strike Settlement Agreement that:

"All strike employees will be placed on layoff status as of the effective date of the agreement for purposes of receipt of unemployment compensation."

It is just as reasonable for the Union to have believed that all employees, councillors as well as rank and file, were placed on layoff status "for lack of work" within the meaning of the collective bargaining agreement, as it is reasonable, as the Company asserts, that the layoff status was for the single and limited
purpose of receiving unemployment insurance. After all, a layoff within the meaning of the contract also carries with it the entitlement to unemployment insurance, so that the distinction argued by the Company in this case is not a conclusive difference.

In my judgment, the disagreement must be resolved by the general applicability of the collective bargaining agreement, as incorporated by reference in the Strike Settlement Agreement. The second introductory paragraph of the Strike Settlement Agreement provides:

"The parties agree that the strike between the parties which commenced on June 9, 1983, is ended and settled upon the following terms and conditions contingent upon ratification of the terms of the proposed collective bargaining agreement." (emphasis added)

The reference to "upon ratification" in Section 6A of the Strike Settlement Agreement apparently applies to both the Settlement Agreement and the collective bargaining agreement.

I find therefore that the contract and the Strike Settlement Agreement are both applicable, and where, as here, the Strike Settlement Agreement is unclear or inconclusive regarding the issue at hand, the contract should be looked to for clarification and determinativeness.

Section 16 of the collective bargaining agreement provides in pertinent part:

"...councillors ... shall be the last employees in their work category to be laid off ... for lack of work."

I accept the Union's assertion that recalls follow the layoff procedure, inversely. Indeed, Section 14 of the contract says so. It reads:

"Laid-off employees shall be recalled to their
functional category, work category and seniority group in the reverse order of their layoff."

I am persuaded that that procedure, supported by evidence of past practice, applies to the councillors and means that councillors, accorded super-seniority in work categories for layoff purposes, are to be recalled from lay off based on their super-seniority in their work categories.

I find that that is what should have taken place here. A different arrangement regarding councillors should have been set forth specifically in the Strike Settlement Agreement, as was the case for the six principal Union officers. That that was not done, and with the overall application of the contract as incorporated into the Strike Settlement Agreement, the explicit contract language is preeminent.

Moreover, the relation of councillors to work categories is a matter of institutional Union representation in the work place. It represents the negotiated agreement of the parties on the number of councillors and the scope of their representational capacity. To change their presence among the work force (in layoffs or recalls) from work categories to seniority groups, is to unilaterally change their representational scope. Any such change should be clearly and explicitly agreed to by mutual understandings. I do not find any such explicit or jointly agreed to change here.

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 of September 25, 1984 is granted. The Company violated the contract by failing to recall the councillors based on their super-seniority in work categories.
The Company shall make the appropriate administrative adjustments, including appropriate adjustments in pay for the councillors adversely affected.

Eric J. Schmertz
Arbitrator

DATED: July 10, 1985
STATE OF New York )ss.: COUNTY OF New York )

I, Eric J. Schmertz do hereby affirm upon my Oath as Arbitrator that I am the individual described in and who executed this instrument, which is my AWARD.
In the Matter of the Arbitration between

OCAW LOCAL 8-397

and

GATX Terminals Corporation

OPINION AND AWARD

The stipulated issue is:

Did the Company violate the collective bargaining agreement by reducing the ship's crew manpower requirements on or about July 24, 1984? If so, what should the remedy be?

A hearing was held at the Company's offices on March 21, 1985 at which time representatives of the above named Union and Company appeared and were afforded full opportunity to offer evidence and argument and to examine and cross-examine witnesses. A stenographic record was taken; the Arbitrator's Oath was waived; and both sides filed post-hearing briefs.

On April 25, 1985, in accordance with arrangements made at the hearing and accompanied by representatives of the parties, the Arbitrator made a visitation to the Company's docking facilities and observed the docking of a ship and its cargo removal by the reduced crew complement that is the subject of this case.

Prior to July, 1984, the number of employees generally assigned by the Company to ship's crew handling ships and large barges was seven. In April and May of 1977, the Union filed grievances challenging the assignment of less than seven employees to a ship's crew. The Company denied the grievances on the basis it was management's right to determine "safe and efficient" crew levels.

On July 24, 1984, the Company issued a memorandum announcing changes in the then current ship's crew manning levels.
Among other changes, the new policy stated that henceforth five, rather than seven employees would be assigned to the tie-up of all gasoline-carrying vessels which used rope, rather than cable for securing the vessel to the facility's dock. The same reduction was instituted for chemical-carrying ships with seven or less hose connections. For both classes of vessels the crew assigned to disconnecting the ships was reduced to four. Chemical carrying ships with multi-hose connections (i.e. at least eight hoses) were to continue to be tied-up by seven-member crews. However these vessels would be disconnected and released by five, rather than seven employees. Special provision was made for two specific ships (Alaskan and Pioneer) because of their multiple-hose connections. Additionally, the number of employees assigned to barges using GATX hose was set at four. An employee was also assigned to barges using their own hoses, although no employee had previously been so assigned. Finally, the July, 1984 memorandum directed that vessel crewmembers were not to drop breast and spring lines off their ships. Instead, those lines were to be handed directly to ship's crew members, who would then secure them to the dockside bollards.

On August 9 and 10, 1984, the Union grieved the Company's action, claiming that the reduced crew sizes "constitute a grave safety and health hazard to our membership."

The dispute is a narrow one.

The Union does not dispute the Company's managerial right to determine manning levels. Rather, its complaint is that these particular reduced manning levels create a safety hazard for the employees and constitute an unsafe condition of employment violative of the contract. So the issue is one of "safety," not a general challenge to a managerial prerogative to fix crew size.
It is also undisputed that the issue involves ships as enumerated above using rope for tie-ups and release and not those using cable. As to the latter, there is no present change and hence no dispute, over the crew complement.

The contract does not specifically deal with the safety aspects of crew size for tie-up, release and cargo handling. It is immaterial whether the contract references to Safety and Health in Article 21 deal with the safety claims involved in this case. I am satisfied that if not express, there is a general implied condition of any collective agreement that work practices will be undertaken in as safe a manner as possible, and work assignments that are not normally or inherently unsafe or dangerous shall not be made unsafe by precarious procedures or inadequate manning. So, the Union’s grievance in this case is arbitrable, either under the language and spirit of Article 21 or under the aforesaid implied condition.

However, the Union bears the burden of proving the unsafe conditions especially in view of the undisputed right of management to unilaterally determine manning levels. I am not persuaded that the Union has met the burden in this case.

There is insufficient probative evidence presented by the Union of specific dangerous or unsafe conditions. Examples of accidents, near accidents, new and hazardous work duties, new and dangerous work procedures, or even testimony on a dangerous or unsafe increase in physical strain or new or increased exposure to bodily harm, have not been shown by the standards of proof required to meet the burden.

The Union’s case, albeit sincere and concerned, is largely speculative on the critical issue. At most the Union has shown that the members of the reduced size crews may have to work harder or with increased activity; that their physical duties and physical
demand may have been enlarged, especially (as I observed during my visitation) in the loading and unloading of cargo using the many and various sized hoses involved; that they are required to be familiar with and use new or different equipment, like the pelican hook, but the proofs of these circumstances fall short of evidentiary proof of dangerous or unsafe conditions. In short, there may be an impact on the employees that warrant attention in collective bargaining, but the impact has not been shown to be unsafe, hazardous or dangerous, within the meaning of the express or implied obligations of safety of the contract. A possible hazard, such as sparks from equipment dragged on the steel dock, has been dealt with by the Company, and if not eliminated, reduced below the point of realistic danger. Moreover, it was not clearly shown that that condition, even if still present can be significantly changed by an enlarged crew.

Frankly, the foregoing is based not only on my assessment of the record of the hearing, but also, importantly, on my observations of the docking of the ship and its cargo removal on April 25. Though the Union representatives felt that the activities that day were not representative of a typical situation, I cannot conclude that they were not, or that a different or more typical docking, release and cargo handling are or would be so different and so much more precarious with a reduced crew as to cause me to ignore what I saw.

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 reducing the ship's
crew manpower requirements on or about July 24, 1984.

DATED: June 25, 1985
STATE OF New York )ss.
COUNTY OF New York )

I, Eric J. Schmertz do hereby affirm upon my Oath as Arbitrator that I am the individual described in and who executed this instrument, which is my AWARD.
In accordance with the arbitration provisions of the collective bargaining agreement between the above named Union and Company, the Undersigned was designated as the Arbitrator to hear and decide a dispute involving the grievance of George Christian.

A hearing was held at the Company plant on April 19, 1985 at which time Mr. Christian, hereinafter referred to as the "grievant" and representatives of the 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. At the conclusion of the hearing, the Union presented an oral summation. Subsequently, the Company filed a post-hearing brief.

The Union makes three claims. It asserts that the Company violated Article XIV of the contract dated 1974-1977 when it terminated the grievant on May 8, 1979. As to this claim the Union seeks the reinstatement and retention of the grievant's seniority, retroactive to the date of his employment.

Second, the Union claims that the Company violated Article XXI of the 1974-1977 contract when it discontinued the grievant's insurance benefits on September 30, 1977. It seeks restoration and retention of those benefits retroactive to September 30, 1977.

Third, the Union contends that the Company violated Article IV Section 2 of the 1974 Master Pension Plan when it denied the grievant a disability retirement pension. It seeks an award of that pension to the grievant.
The following facts were stipulated by the parties:

1. The grievant last actively worked on May 8, 1975.

2. The grievant filed a Workers Compensation claim on February 21, 1978; the Company received notice of that claim on May 16, 1978; and the grievant was awarded disability benefits by the New Jersey Workers Compensation Board on February 17, 1981, retroactive to May 8, 1975.


4. The grievant is and continues to be totally disabled from work at the Company.

5. The grievant was covered by the Company for Blue Cross and Equitable benefits until September 30, 1977.

The Union's third claim on behalf of the grievant, for a disability retirement pension under the Master Pension Plan for Hourly Rated Employees, is denied. The clear language of the plan makes the grievant ineligible despite his stipulated disability.

Article IV Section 2 of the Plan provides in pertinent part:

"An employee...shall be deemed to be totally and permanently disabled if he has qualified for and is awarded a "Disability Insurance Benefit" under the Federal Social Security Act..."

It was conceded in this proceeding that the grievant was denied a "Disability Insurance Benefit" under the Federal Social Security Administration. Hence he does not meet the threshold contractual requirement as negotiated by the parties in their collective bargaining relationship. Under that circumstance, the Arbitrator lacks the authority to go behind the ruling of the Social Security Administration. The grievant's ineligibility for a disability retirement pension under the Pension Plan is therefore incontestable in this proceeding.

As the grievant was terminated on May 8, 1979, the controlling
collective bargaining agreement, in effect at that time, is the agreement dated September 1, 1977 to August 31, 1980.

Article XVI (Leaves of Absences) Section 1, accords employees sick and Workmen's Compensation leaves of absences "for a period not to exceed three months."

Clearly that provision must be read in conjunction with Article XIV when an employee who is on a sick leave of absence reaches the point of loss of his seniority.

Article XIV Sections 1(d) and (f) are applicable to the facts in this case. In sum they provide that after twelve months on sick leave (excluding work(ers) compensation) an employee with ten years or more seniority and who has not returned to work, shall be placed on layoff status, and shall retain his seniority while on layoff for thirty-six months.

At the end of that latter period of layoff, the employee loses seniority and may be terminated.

At the time the Company terminated the grievant in 1979, it complied with the foregoing contract provisions. The grievant's workers compensation claim had not been decided so his status was first on sick leave and thereafter on layoff, either officially or constructively. From the date he last worked, May 8, 1975 to the date of his termination or loss of seniority on May 8, 1979 the requisite contractual forty-eight months had elapsed. Inasmuch as the grievant received all the contract benefits due him on sick leave and/or on layoff during that period, I find no reason not to conclude that the first twelve months of that period was a period of sick leave under Section 1(d) and the remaining thirty-six months the period of layoff prescribed by Section 1(f).

Hence, under these facts, the Company's action on May 8, 1979 was consistent with the contract.
What remains unanswered is the question of whether this action is to be re-opened, re-assessed and possibly changed by the later fact of a worker's compensation award to the grievant in 1981, which was made retroactive to May 8, 1975. If the workers' compensation decision, with its retroactive effect to the year 1975 is to be contractually factored into the analysis it must be assumed, only as a matter of law (because of course, the Company could not know of the decision at the time) that the workers' compensation ruling was applicable when the grievant was terminated on May 8, 1979. Under that circumstance, the collective bargaining agreement of 1977-1980 is still controlling because the termination action took place during its term, but Section 1(d) of Article XIV would not apply because, by its express terms, work(er) compensation leaves are excluded. With Section 1(d) inapplicable, Section 1(f) is inapplicable as well because it is not triggered or activated by the procedures of Section 1(d).

There is no other provision of Article XIV expressly dealing with or referring to employees unable to work and on sick or disability leaves of absence due to a worker's compensation injury. Indeed, the exclusion of worker's compensation from Section 1(d) makes clear that the word "injury" in Section 1(c) refers to non-compensable or non-work related injuries.

The foregoing leaves the grievant's situation covered by Article XVI Leaves of Absence. I do not find that the contract provisions thereunder give the grievant any greater benefits than what the Company accorded him and I am unable to conclude that the grievant's termination was violative of the letter or intent of the applicable contract clauses.

As previously noted, Article XVI provides for a worker's compensation leave of not more than three months. The grievant's
"leave," whether for sickness, disability or constructively for worker's compensation, certainly exceeded that period. Even if the Company by its actions extended the grievant's leave, that extension is contractually limited to one year, under Section 7. The grievant's status, whether on leave or layoff, exceeded the additional year.

Beyond that point, in my judgment, a rule of reason must apply to this case. It is well settled that an employer may terminate an employee who is chronically ill or disabled with no realistic prospect of returning to work, even if the employee's illness or disability is beyond his fault or control. After a reasonable time, when the chronic condition and inability to return to work are established, the termination is proper. In addition to the contract provision, I conclude that that is what is relevant to this case. The contract does not perpetuate indefinitely an employee's seniority while he is on worker's compensation leave. Therefore a point comes when the Company's right to terminate may be exercised. I conclude that a four year period from 1975 to 1979 is certainly sufficient for the grievant to have been carried as an employee on leave and/or on layoff. And that with the undisputed fact that as of May 8, 1979 he was (and still is) totally disabled, the Company was justified in terminating his seniority and his employment rights.

The grievant's insurance benefits were terminated on September 30, 1977. Under either of the aforesaid contract theories, the Company acted properly. Article XXIII, Insurance Benefits, provides for coverage in the case of occupational or non-occupational sick leave of absence "for the duration of the sick leave of absence up to a maximum of one year from the date such leave commences." The grievant's leave began on May 8, 1975.
Whether it expired one year later under the leave of absence pro-
visions of the contract (if a worker's compensation leave) or a
year after it began under the Loss of Seniority provision of the
contract (if it was a sick leave), the Company continued the
grievant's insurance beyond one year, in either or each instance.
It covered his insurance benefits until September 30, 1977 or in
other words for two years and four months after the beginning of
either type of leave of absence.

So, the Company's action ending the grievant's insurance
benefits (Blue Cross and Equitable) was not in violation of the
contract.

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 grievance of George Christian is denied. The Company did not violate the contract when it terminated him on May 8, 1979. It
did not violate the contract when it dis-
continued his insurance benefits on September 30, 1977 and did not violate the contract by denying him a disability retirement pension under the Master Pension Plan.

DATED: June 25, 1985
STATE OF New York )ss.:
COUNTY OF New York )

I, Eric J. Schmertz do hereby affirm upon my Oath as
Arbitrator that I am the individual described in and who
executed this instrument, which is my AWARD.
In the Matter of the Arbitration:
   between 
   Local 5, IUMSWA
   and
   General Dynamics Corporation

OPINION AND AWARD
Grievance No. 1-0120-83-10

The stipulated issue is:

Was the 30 day suspension of Neal White for just cause? If not, what shall be the remedy?

A hearing was held on October 26, 1984 at which time Mr. White, hereinafter referred to as the "grievant" and representatives of the above named Union and Company appeared. All concerned were afforded full opportunity to offer evidence and argument and to examine and cross-examine witnesses. The Arbitrator's Oath was waived; a stenographic record was taken; and the parties filed post-hearing briefs.

The basic charges against the grievant have been proved to my satisfaction. I am persuaded that in his zeal to show the OSHA inspectors what he thought were unsafe equipment and conditions, the grievant committed acts of misconduct warranting discipline. He left his work place without permission, attempted to join the inspection party though denied permission to do so by management, refused to return to his work location when instructed by supervision to do so, used profanity, insulting and threatening language and acted in a way that was physically threatening to a supervisor, and from anger and frustration cracked his fist into a metal panel and then wrongfully reported how the injury occurred when treated for it.
The only possible mitigation lies in the grievant's apparently sincere and understandable concern for what, he believed, to be a safety hazard and his intent to assure that the OSHA inspectors saw the basis of his OSHA complaint.

However, those circumstances explain his actions, but do not excuse them. The grievant was not invited to be part of the inspection team by the Company, the Union, or the OSHA representatives. There is no evidence that the inspection was or would have been compromised or inadequate without his presence. Neither the contract nor the safety rules, nor any other regulation in the record call for the presence of the complainant at an OSHA inspection.

In any event, as is well settled, he should have complied with the directions of supervision, and grieved if he thought he was being dealt with wrongfully. He had no right to try to take matters into his own hands no matter how important or compelling he though his presence at the inspection to be.

I am not prepared to hold that a penalty of less than a thirty day suspension would not have been enough. But it is not for the arbitrator to reduce the penalty unless the original suspension is excessive or unreasonable. I accept the Company's testimony that it considered the grievant's angry and uncontrolled emotional state in deciding on a suspension rather than the penalty of discharge for the grievant's insubordination. I cannot find that explanation to be arbitrary or unrelated to the facts involved. Hence, I do not find the thirty day suspension, though
severe, to be excessive or otherwise improper under the circumstances.

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 thirty day suspension of Neal White was for just cause.

Eric J. Schmertz
Arbitrator

DATED: February 11, 1985
STATE OF New York )
COUNTY OF New York ) ss.:

I, Eric J. Schmertz do hereby affirm upon my Oath as Arbitrator that I am the individual described in and who executed this instrument, which is my AWARD.
In the Matter of the Arbitration
between
IAM Local 1871
and
General Dynamics Corporation
Electric Boat Division

OPINION AND AWARD
Gr. M-242-84

The stipulated issue is:
Was the discipline of John Silva for just cause? If not what shall be the remedy?

The grievant's five-day disciplinary suspension is sustained on the grounds of "contributory negligence."

I find that he operated the locomotive crane in an unsafe manner, causing the crane to topple over. He did not use "wedges" as he should have. He lifted too heavy a weight and knew either that he was doing so or was dangerously approaching an excessive load, because he used a carpenter to stand by and signal him if the crane's wheels lifted off the railroad track. To anticipate that manifestly unsafe consequence (i.e. the crane's wheels lifting off the rails) was to tempt danger and to operate the equipment in a grossly precarious manner.

The Union argues that to tip over a crane is so serious and dangerous that it is a dischargeable offense; and that the grievant's suspension of only five days is an admission by the Company that he did nothing wrong, but that some minimal penalty should be imposed "for the record."

The Company concedes that it did not think it could sustain a discharge "because it was the first offense by an
employee of fifteen years."

I think differently than either the Union or the Company. I believe, based on the grievant's testimony and the absence of refutation testimony by the Company, that the grievant operated the crane as he normally did, albeit dangerously; that supervision knew of this manner of operation and did not take steps to stop it. In short, I conclude that the grievant's errors were tolerated by local supervision, and the accident resulted from this joint negligence.

I have no jurisdiction over supervision, but I find that under the circumstances, where the grievant and supervision must both bear blame, a five-day suspension imposed on the grievant was proper as a reasonable response to the grievant's part of the dual responsibility.

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 discipline of John Silva was for just cause.

DATED: February 14, 1985

STATE OF New York )
COUNTY OF New York )

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

Eric J. Schmertz
Arbitrator
In the Matter of the Arbitration:

between:

Metal Trades Council:
New London County, AFL-CIO:

and:

General Dynamics Corporation,:
Electric Boat Division:

AWARD
Grievance No. C-14-82

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

Grievance No. C-14-82 is granted. The parties are directed to negotiate the matter of damages and/or remedy. If they fail to agree within 60 days from the date of this Award, the matter shall be referred back to the Undersigned for arbitral determinations of damages and/or remedy. For the latter purpose the Undersigned retains jurisdiction.

Eric J. Schmertz
Arbitrator

DATED: November 30, 1985
STATE OF New York )ss.
COUNTY OF New York )

I, Eric J. Schmertz do hereby affirm upon my Oath as Arbitrator that I am the individual described in and who executed this instrument, which is my AWARD.
In the Matter of the Arbitration:

between

Metal Trades Council
New London County, AFL-CIO

and

General Dynamics Corporation,
Electric Boat Division

Grievance No. C-14-82

OPINION AND AWARD

In accordance with Article VI of the collective bargaining agreement effective June 30, 1972 to June 30, 1975 between the above-named parties and pursuant to the Memorandum of Decision issued by United States District Judge Robert C. Zampano in Civil Action No. N-74-62, the Undersigned was designated as the Arbitrator to hear and decide the following stipulated issue:

What shall be the disposition of Grievance C-14-82 dated May 6, 1982?

Hearings were held in Groton, Connecticut on March 16, May 21, May 23, October 9, October 22, and November 7, 1984, at which times representatives of the Metal Trades Council and General Dynamics Corporation, Electric Boat Division, (hereinafter also referred to as the Union and the Company, respectively) appeared and were afforded full opportunity to offer evidence and argument and to examine and cross-examine witnesses. The Arbitrator's Oath was waived. A stenographic record was taken. The parties filed post-hearing briefs, the Union filed a reply brief, and the Company filed a reply memorandum. Representatives of the parties accompanied the Arbitrator to the Green House, Rad-Con Training Facility on October 9, 1984 to observe the various types and uses of Con-Con bags.
BACKGROUND

The Union filed the following grievance dated May 6, 1982:

The United Brotherhood of Carpenters and Joiners of America, Local No. 1302, contends that Electric Boat Division of General Dynamics violated the 1972/1975 agreement by assigning Electric Boat employees that were not members of Carpenters Local No. 1302 to perform work normally performed by Dept. 252 Carpenters (installation of Con-Con bags on submarines from 1972 through the present).

It must be noted that this grievance is consistent with understandings reached by the parties involved by judgment and at hearings before the United States District Court, Civil No. N-74-62.

Therefore, we request that the installation of all Con-Con bags be returned to the jurisdiction of Carpenters Local #1302.

Furthermore, we request that Carpenters Local #1302 be remunerated for all hours worked by Electric Boat employees who were directed to install Con-Con bags that were not members of Carpenters Local #1302 from 1972 through the current agreement.

The Company responded to the grievance as follows:

The grievance is arbitrable, by virtue of a representation made before Judge Zampano, only to the extent that it charges the Company with a violation of Article V respecting the assignment of "con-con" bag work under the 1972-1975 Agreement. The grievance is outside the boundaries of the Company's representation made to Judge Zampano, and therefore inarbitrable, insofar as it alleges a violation of any provision of the 1972-1975 Agreement other than Article V. In accordance with the Company's representation made to Judge Zampano, the grievance is arbitrable only before an arbitrator mutually selected by the Company and the Metal Trades Council.

The references to the decision of United States District Judge Robert C. Zampano concern Civil Action No. N-74-62 which preceded the instant arbitration. The issue presented to Judge Zampano involved, "whether there was a breach of the collective bargaining agreement between the parties when the defendant
refused to implement a directive of the MTC assigning work with 'contamination-container' bags to Local 1302's members." Id. at 1. The Memorandum of Decision indicated "that in 1972 the Company had instructed employees of the STO Department (pipe-fitters, electricians, and machinists' union) to perform work on the so-called 'con-con' bags." Id. After the Carpenters Union had asserted a claim to the work, the MTC considered the dispute, notified the Company that a jurisdictional dispute existed, and informed the Company that the MTC had awarded the assignment to the Carpenters Union. The Company did not comply with the MTC decision so the MTC commenced an action in the United States District Court for the District of Connecticut. The parties litigated the meaning of Article V and whether the contractual grievance procedure had been exhausted. The court found that the exclusionary language of Section 9, Article VI, which precludes arbitration of jurisdictional disputes that are covered by Article V, "is not sufficiently clear and unambiguous to permit the dispute between the parties concerning Article V to escape arbitration." Id. at 6. The court explained the ambiguity as follows:

While it is true that the MTC has authority to resolve all jurisdictional disputes, the term 'jurisdictional disputes' is susceptible to different interpretations. At least two reasonable possibilities exist. In the context of this case, it may include, as the plaintiffs claim, a dispute involving worker placement, or, as the defendant argues, simply refer to the designation of the proper affiliated union.

Id. at 6-7. Accordingly, the court dismissed the action, without prejudice, until the parties had exhausted their contractual remedies.

PERTINENT CONTRACT PROVISIONS

The following provisions of the 1972-1975 collective bargaining agreement between the parties are relevant:
ARTICLE V

JURISDICTIONAL DISPUTES

The Employer and the Metal Trades Council, together with all the affiliated Local Unions of the Council, agree that in the event any jurisdictional disputes arise with respect to the jurisdiction of occupational titles as listed in Appendix A or any occupational titles added thereto by the Employer such dispute shall be referred to the Metal Trades Council of New London County for settlement in the following manner:

Upon notice by either the Employer or an affiliated Local Union involved in a jurisdictional dispute, the Metal Trades Council will appoint a committee whose responsibility will be to render an interim decision within seven (7) calendar days of receipt of said notice. Such decision shall remain in full force and effect until such time as amended or ratified by the International Union Presidents whose Local Unions are involved in such dispute.

It is further agreed that pending the adjustment of jurisdictional disputes there shall be no stoppage of work and the work in dispute shall continue to be performed as assigned by the Employer. The provisions of this Article shall be absolutely and equally binding upon the Employer, the Metal Trades Council, its affiliated Local Unions, and all employees in the bargaining unit.

ARTICLE VI

GRIEVANCE PROCEDURE

Section 1.

A. Should differences arise between the Employer and any of its employees or the Union with respect to the effect, interpretation, application or alleged violation of any of the provisions of this agreement, there shall be no suspension of work but an earnest effort shall be made to settle differences promptly in the manner hereinafter outlined.

Section 2. It is agreed that all grievances shall be dealt with as provided for in this Article:

D. Step 4. The arbitrator shall be without power to change, alter or amend the language of this Agreement. The fees and expenses of the arbitrator shall be shared equally by the parties and the decision of the arbitrator shall be final and binding on the parties.

E. It is agreed that no Local Union grievance shall be referred to arbitration without the approval of the Metal Trades Council in writing.

F. Should the Metal Trades Council give written permission to arbitrate a dispute to one Local of the Union, the Metal Trades Council will also be bound by the decision of the arbitrator.
Section 9. It is further agreed that jurisdictional disputes are not a subject for the grievance or arbitration procedure as defined in this Article but will be settled in accordance with the procedures as set forth in Article V Jurisdictional Disputes.

ARTICLE XL

UNION-EMPLOYER COOPERATION IN CRAFT JURISDICTION AND WORK PRACTICES

Current practices in regard to work assignments and operations that have been in effect under the 1968-1972 Agreement shall remain in effect. It is the intention of the parties to work cooperatively toward the mutually beneficial objective of enabling the Electric Boat Division to compete successfully in the technologically advancing shipbuilding industry. The parties agree to discuss changes in current practices which may be proposed by either party and which are reasonably designed to improve productivity without infringing on fundamental craft union principles.

MEMORANDUM OF UNDERSTANDING 11

It is mutually understood and agreed upon that as new employees are hired for the Shipyard Test Organization they will be granted representation within the Machinist Local 1871 International Association of Machinists and Aerospace Workers and Local 620, United Association of Journeymen and Apprentices of the Plumbing and Pupefitting Industry of the United States and Canada on an equal basis (1 for 1).

This Agreement applies to all new employees hired for the Shipyard Test Organization exclusive of those to be represented by the IBEW in accordance with the agreement in effect between the parties.

MEMORANDUM OF UNDERSTANDING 37

CON CON BAGS

1. The Employer agrees to pay an additional seventeen cents (17¢) per hour to employees while engaged in the erection, testing, repair and removal of Con Con bags (Contamination Containment bags).

2. Erection, testing, repair and removal of Con Con bags shall be performed only by employees who have been qualified for such work in the manner described below and whose qualification is currently in effect.

3. In order to be initially qualified, an employee must successfully complete a training course consisting of radiological control fundamentals and the contamination containment work package fundamentals. An employee must also be requalified in both sections of the above-mentioned training course on a periodic basis (presently, every two years).

4. An employee's qualification to perform erection, testing, repair and removal of Con Con bags shall automatically terminate if he has not performed such work at any time during...
any continuous period of six months.

5. An employee's qualification may be terminated if his installation performance technique results in excessive rework.

6. Employees selected for the above-mentioned training course must meet the following basic requirements.
   (a) First class rating with previously demonstrated outstanding performance.
   (b) Safety consciousness.
   (c) Ability to appropriately respond to direction from other trade employees.
   (d) Ability to correctly ascertain the nature of a problem.

In their briefs the parties have reflected in detail and well, their respective cases as found in the record. In setting forth the contentions of the parties, I have chosen to repeat sections from the briefs as written. Therefore the structure, organization and even redundancies or repetitions of said briefs will be found in the following contentions.

CONTENTIONS OF THE UNION

The Union set forth the following arguments in support of its position:

1. Union Structure

The Union emphasizes that the Metal Trades Council (MTC) of the Metal Trades Department, AFL-CIO, is the collective bargaining agent at the Company and consists of ten autonomous local unions. Included among these local unions are the Carpenters, Machinists, Pipefitters, and Electricians according to the Union. The Union cites specific requirements for union membership, benefits that accrue to members of particular unions, and the effect of and limitations on transfers between locals. The Union recognizes that the Company's determination of a new employee's initial assignment results in that employee's assignment to a particular union. Thereafter, a loan of an employee...
from one department to another department is permitted according to the Union. The Union points to a special hiring arrangement that exists for the STO Department because of the inclusion of Electricians, Pipefitters, and Machinists in the department. The Union asserts that no mechanism existed to resolve jurisdictional disputes before 1968.

2. Background of Article V

The Union contends that the local unions and Industrial Relations Department resolved jurisdictional disputes before 1968 as follows:

1. A 1963 dispute developed between the Carpenters and Boilermakers concerning wood veneer. The Union argues that it notified the Company that the work should be reassigned to the Carpenters; that the Company did so; and that the Company recognized the Union's right or practice to decide jurisdiction regarding work assignments.

2. A 1966 dispute arose between the Carpenters and Boilermakers concerning sound dampening. The Union maintains that the two unions and the Company failed to resolve the dispute voluntarily. Consequently, the Union states that the Boilermakers grieved, after having rejected the Company proposal that would have resulted in the work being assigned to the Carpenters. As a result, the Boilermakers proceeded to arbitration (which the Union characterizes as an "unfortunate situation") essentially against the Carpenters, despite the MTC's preference to avoid arbitration and the MTC's unwillingness to be bound by an arbitration award. The Union explains that the locals preferred to decide the dispute themselves without the intervention of a third party. Accordingly, the Union explains that the President of the Metal Trades Department of the AFL-CIO met with the union
officials and suggested that a joint board be created to decide such disputes. Thus the 1968 collective bargaining agreement contained Appendix A for the first time, which the Union attributes to a desire by the unions to "put the people in occupational titles that were represented by the proper unions that had jurisdiction of the occupational title." (Union Brief at 12.) The Union continues that the Company sought some flexibility in 1967 regarding certain situations, but the parties failed to reach an agreement.

Several arbitrations arose which the Union analyzes as follows:

1. An award dated October 31, 1967 by Arbitrator Shipman addressed the assignment of uncrating work. The Arbitrator considered the argument by the Company that it had retained the management prerogative to make such assignments. Arbitrator Shipman included the following conclusions in the Award:
   a) separate wage rates amount to contractual recognition that work content of each craft is unique;
   b) the Company is not to indiscriminately assign work across craft lines;
   c) jurisdictional lines are to be respected;
   d) work jurisdiction cannot be established unilaterally by unions; and
   e) claims to jurisdiction must be reasonable and consistent with industrial realities while mindful of existing jurisdictional lines.

2. An arbitration award dated February 20, 1968 by Arbitrator Leo Brown concerned sound dampening. The Award held that the Company could determine which craft could perform specific work
despite contractual recognition of certain trades and crafts. The Award also found contractual recognition of a distinction regarding skills. Management discretion to make work assignments, therefore, could be limited if the Company based the decision on an improper purpose such as discrimination or an attempt to avoid payment of a higher wage to the craft that normally performed the work. Arbitrator Brown observed that, "the right of exclusive work jurisdiction, if it exists, is to be found not in the agreement but in past practice." (Union Brief at 15.)

Against the backdrop of these arbitrations, the Union claims that the MTC sought to avoid the sound dampening situation where one union would challenge another union in arbitration over a Company work assignment.

Article V Negotiations

The Union relates that 1968 negotiations began in April. According to the Union, the Company attempted to resolve problems concerning a wildcat strike and jurisdiction. The Union first conveyed a proposal to deal with jurisdiction on May 14, 1968. The Union deems the key features of the proposal to be that:

1. the proposal specified the "locals of the Unions;"
2. the proposal encompassed jurisdiction of work assignments in occupational titles;
3. the proposal did not apply only to the Schedule of Occupational Titles (subsequently Appendix A);
4. the proposal indicated that disputes would be resolved by AFL-CIO Metal Trades Department policy;
5. the proposal allocated the MTC with the duty to prevent work stoppages concerning jurisdictional disputes;
6. the proposal anticipated an MTC seven person committee
and, if necessary, the International Unions to resolve jurisdictional disputes;
7. the proposal required all parties to be bound; and
8. MTC President Anthony L. DeGregory signed the proposal.

The Union maintains that the Company objected to the prominence of the local unions, rather than the MTC. The Union then submitted a second proposal dated May 21, 1968. The Union considers the most important parts of this proposal to be that:

1. the agreement is with the MTC and the affiliated local unions;
2. references to jurisdiction of work assignments are not limited by the Schedule of Titles;
3. the Employer or a local union may give notice of a dispute;
4. the MTC appoints a committee whose size is not specified;
5. decisions are required within seven days and are effective until amended or ratified by the International Unions;
6. there are to be no work stoppages but primary responsibility is not given to the MTC;
7. all parties are to be bound.

The Union insists that neither proposal suggests that the Union is only limited to determining which union a worker, who is assigned to perform certain work, must join. The Union considered this view to be supported by the concern D.C. Wilkens, Director of Industrial Relations and the chief Company spokesman, expressed over decisions that the Union would make under the procedure. The Union thinks Wilkens' concern refutes the Company's stance in the instant arbitration that Article V merely would require
an already employed worker to join a certain union for a period of time. In answering the Company response, the Union contends that it replied that the dealings among the local unions and the participation of the International Unions would guarantee fair determinations.

The Union differentiates between jurisdiction over work and transferring union membership. For example, the Union illustrates its understanding of the meaning of jurisdiction by referring to a decision from the National Board for Settlement of Jurisdictional Disputes, Building and Construction Industry (Union Exhibit 31) which assigned the disputed work—not the worker—to the Carpenters.

The Union asserts that the contents of the June 11, 1968 minutes from the 1968 negotiations, compiled by Charles A. Petchark, Chief of Labor Relations and previously Recording Secretary of the Metal Trades Council from 1967 to 1971, (Union Exhibit 52), do not support the Company's interpretation of Article V. Furthermore, in addressing the effect of a possible consolidation of job titles on Electronic Technicians and Mechanics, the Union reasons that an exchange involving Bill Kelly of the Electricians Union, Phil Stone of the Industrial Relations Department and Charles Jones, Superintendent of the Electronics Department, manifested an understanding that after the consolidation had occurred interchanges would be prohibited even in the event of a lay off. The Union considers this discussion to be consistent with its theory of the case, namely, that the parties did not negotiate a provision merely calling for an interchangeability of union membership.

The Union claims that the Company presented a proposal
to the Union on June 11, 1968 that provided for involvement by the Company in the resolution of jurisdictional disputes. The Union differs with the Company regarding whether the Company actually exchanged a proposal dated June 30, 1968. The Union asserts that the Company submitted the proposal to the Union despite the Company's denial and the legend "NOT APPROVED FOR USE" that appears on the document. (See Union Exhibit 32.) The Union urges that: 1) the Company prepared the document; 2) the contents of the document reflected the Company's position; and 3) the Company probably submitted the document to the Union. The Union views the following provisions of the proposal as being significant:

1. the MTC is the other party;
2. there are detailed procedures to resolve jurisdictional disputes;
3. disputes embrace only work assignments covered by occupational titles;
4. the local union provides notice of a dispute;
5. the MTC President advises the Company of a dispute and seeks a meeting of the Joint Jurisdictional Dispute Committee;
6. the Committee contains three representatives from the Union and three representatives from the Company;
7. deadlocks of the Committee are referred to the International Representatives who meet with representatives of the Company;
8. arbitration would be used to resolve disputes that could not be settled;
9. there would be no work stoppages over jurisdictional disputes and the assignment by the Company would continue
pending a resolution as described above.

The Union considers the origins of a fourth proposal dated July 6, 1968 to be unclear. The absence of the Company legend and the absence of DeGregory's signature are viewed by the Union as evidence of the uncertainty about which party authored the proposal. The Union recognizes that DeGregory testified that the Union had presented the proposal whereas Petchark testified that the Company had done so. As the parties ultimately adopted the proposal, the Union points to the absence of any indication that it is limited to only what local an employee would be required to join while performing work assigned by the Company. If the Company did propose the language contained in the proposal, the Union submits it did not reflect the Company's current interpretation of the provision. In either event, the Union identifies the following important aspects of the proposal:

1. the provision covers the MTC and the local unions;
2. the provision refers to the jurisdiction of occupational titles contained in Appendix A;
3. either the employer or a local union may provide notice of a dispute;
4. the MTC appoints a committee that is not described in terms of size or membership;
5. the MTC issues an interim decision;
6. the committee decision is made within seven calendar days and applies unless amended or ratified by the International Unions involved;
7. the work is performed according to the assignment of the employer until the Committee acts; and
8. all parties are bound.

The Union asserts that none of the four proposals indicates
that the Company intended to retain such broad authority regarding work assignments. In contrast, the Union insists that the complex jurisdictional relationships between and among the Unions constituted an important issue to the Union and that the Union would not alter longstanding practices or concepts because of practical constraints involving the local unions. Furthermore, the Union discredits Petchark's testimony because he did not disclose in that testimony what his understanding was before he left the MTC to join Management, and because his testimony—that management representatives Wilkens, Phil Stone (Manager of Labor Relations), and Charles Oles (Corporate Director of Labor Relations), had stated in the 1968 negotiations that Article V would enable the Union to decide which local union would represent employees who performed work that the Company had assigned—is not corroborated through any documents, minutes, or other witnesses.

The Union emphasizes that typed transcripts of the June 12, 1968 jurisdictional committee discussions indicate that Boilermakers International Representative Williams responded to an inquiry from Wilkens that the discussion involved work performed and not union representation. The Union concedes that the minutes are not conclusively supportive of either side's position. But the Union criticizes the Company's silence about what it now claims to have been its understanding about Article V. The Union also contests the Company's position by claiming a Company admission that the documents prepared by the Union during the 1968 negotiations omit any reference limiting MTC's rights under Article V to require employees to pay dues to a particular local union. Likewise, the Union argues that such an interpretation
by the Company first appears in written form almost two years after the parties adopted Article V and after several MTC decisions pursuant to Article V. Specifically, the Union refers to Company Exhibit 23 dated May 5, 1970 (which responded to MTC Jurisdictional Dispute Decision No. 7) as inconsistent with the Company's position in the instant arbitration. The Union considers the assignment of work within the STO occupational title from one trade to another to be different than assigning work that is normally performed by a Carpenter to an STO Machinist. Also, the response by the Company to the 1972 grievance in the instant matter, according to the Union, coincides with the Company's current reading of Article V. The Company's present position, the Union claims, first developed during the federal litigation.

Jurisdictional Disputes--Generally

The Union contends that the contamination-containment dispute arose four years after the negotiation of Article V and that the Company did not challenge the Union's Article V authority at first. Instead, the Union argues that the Company acknowledged that Memorandum of Understanding Y—which subsequently became Memorandum of Understanding No. 37 entitled "Con Con Bags"—would govern. This shift by the Company away from Article V is perceived by the Union as fatal to the Company's position and as recognition by the Company of the Union's exclusive control over jurisdiction pursuant to Article V.

The Union challenges the testimony of Petchark on the following grounds: the 1968 negotiations constituted his first negotiations; his testimony is uncorroborated because the Company's minutes of the 1968 negotiations allegedly no longer exist; he now is employed by management whereas he then served as Recording Secretary of the MTC; he could not recall certain procedures
that the parties followed during the negotiations; his testimony is inconsistent with respect to the typing of certain items; he could not recall discussing the meaning of Article V with DeGregory; and he did not recall certain specific disputes. The Union judges his testimony to be "colored by his switching sides in 1971 and his rapid rise to the top of management . . . . " (Union Brief at 31.)

Furthermore, the Union disagrees with the testimony of Petchark with respect to certain other events. The Union disputes his conclusion that the Company articulated its position that the Union had improperly interpreted Article V, because there is no documentation for over four years, no corroboration from other witnesses, and no indication that Petchark told DeGregory of the alleged error. In fact, the Union depicts Petchark as having exaggerated the number of union officials he claims to have told that the Union improperly interpreted Article V before he departed from the MTC in 1971 for a management position. The Union considers Petchark's role in investigating and resolving the first jurisdictional dispute in September 1968—in which Petchark allegedly notified DeGregory that the Boilermakers had historically performed certain work rather than the Painters (Union Exhibit 22)--to be consistent with the Union's version of the meaning of Article V.

The Union also asserts that the Company complied with other Article V determinations by the Union. As to the procedure that the Union followed pursuant to Article V, it points out that DeGregory and Petchark initially administered the provision. In some cases the Union submits that: (1) joint meetings were held to provide an opportunity for positions to be discussed; they met with the local unions involved in the dispute; and (3) they
held discussions with workers concerning the dispute. The Union maintains that the Article V Committee was expanded in size and that the Company failed to complain about the workings of the Committee until after the court litigation began in 1974.

In rejecting Petchark's testimony, the Union relies on the testimony of DeGregory. DeGregory testified that the Company did not profess its right to assign work, subject to the Union's subsequent right to decide which local union would represent the worker affected. More particularly, the Union relies on DeGregory's testimony that the Company could assign work within an occupational title but not out of craft. Furthermore, the Union contends that the Company complied with the early Article V awards as evidenced by the lack of Company objection or response regarding Union determinations in approximately 40 matters. As the Company complied with those MTC decisions, the Union explains such decisions had not become well known because the grievance procedure was avoided.

In the opinion of the Union, an example of the Union determining a work assignment involved the travel crane. In response to a request by the Company in 1976 to decide which local union would represent the job, the Union asserts that it decided the Teamsters would do so. The Union stresses that this decision mandated a reassignment of the disputed work. Unlike the travel crane situation, the Union contends that Union Exhibit 11-31, Company Exhibit 19, and Company Exhibit 20 did not involve jurisdictional disputes because of the absence of more than one union competing for the work. The Union concedes that the Company opposed the Union's decision in 1970 regarding certain grinding work which the Machinists and Boilermakers has sought. Nevertheless, the Union dismisses the Company's conduct as irrelevant,
by pointing out that the Company's position—that "it is a management right to assign employees within an occupational title to a work assignment as lead trade" and that an "assignment could change responsibilities 'at the discretion of management from time to time as has always been the practice'" (Company brief at 36, emphasis omitted) -- dealt with intra-occupational work assignments, and not with the facts of the instant dispute. Similarly, the Union rejects Petchark's testimony that the record in connection with a July 2, 1969 grievance filed by the Union (Company Exhibit 18) constituted the Company's first written communication of its current reading of Article V. The Union denies that this grievance involved a jurisdictional dispute. In the alternature it argues that, even if it did, the Company's silence for one year--during which the parties adjusted a number of jurisdictional disputes pursuant to the Union's understanding of Article V--undermines the Company's attempt to prove its current position. The Union considers significant the Company's admission that no MTC documents suggest the Company's interpretation of Article V. In addition, the Union analyzes as weak the testimony of Petchark that on June 29, 1970 the Company began delineating the scope of Article V to be narrow (i.e. merely a way for the Union to arrange for representation of an employee by a local union after the Company had assigned the work) because the Company failed to convey such an interpretation to the Union in writing. Although the Company may have discussed the contents of Company Exhibit 27 verbally with the Union, the Union considers this conversation, if in fact it occurred, to be of no probative value due to the Company's unusual failure to confirm the conversation with the Union in writing. The Union also challenges the Company's position because the Company opposed a jurisdictional
claim by several unions concerning a laundry monitor, by insisting that Article V did not apply but without mentioning that Article V could be used to arrange union membership. Aside from the litigation that led to the instant arbitration, the Union maintains that not until November 16, 1977 did the Company first convey in writing its interpretation of Article V.

The Union highlights the 1967 Shipman Award as evidence that the Union considered the Company's attempt to encroach upon the Union's work jurisdiction as unacceptable. Therefore, the Union repudiates the suggestion by the Company that the Union would have or did, in essence, relinquish its concern over this critical area by agreeing to Article V as interpreted by the Company. In citing the Shipman Award, the Union underscores that in that case the arbitrator found that "work jurisdiction cannot be unilaterally established by unions" (Union Brief at 40, citing Company Exhibit 38 at 9-12). In that regard, the Union points out that it did not unilaterally assign contamination containment bag work to the Carpenters. Instead, the Union claims the Company acknowledges jurisdiction when it, not the Union, as a matter of practice assigned the work to the Carpenters on a volunteer basis before 1971 and on a mandatory training basis thereafter.

The Union differs with the Company over the Company's view that either 1) the Union retreated from the pre-Article V safeguards to union work jurisdiction recognized by Arbitrator Shipman; or 2) that the Company retained an inherent management right over work assignments. To bolster its positions, the Union distinguishes the disputes encompassed by Company Exhibits 52, 53, and 54 as not involving Article V jurisdictional disputes because in each instance the grievance did not involve more than
The Union challenges the testimony of Petchark that the Company did not comply with Article V determinations by the MTC. For instance, the Union cites Union Exhibit 57, which involved a jurisdictional dispute between the Machinists and the Boilermakers, as evidence that Petchark knew in fact that the Company had complied with decisions by the MTC pursuant to Article V. In particular, the Union quotes page 3 of Union Exhibit 57, written by Petchark in July 1970, when he was MTC Recording Secretary, which provides, "the parties mutually agree that the Company is complying with the intent of jurisdictional dispute number 12/3 as awarded by the MTC, in accordance with Article V." (Union Brief at 41, quoting Union Exhibit 57 at 3.) In addition, the Union considers Petchark's involvement with this matter as evidence inconsistent with his testimony that he had limited contact with jurisdictional disputes.

The Con-Con Bags Jurisdictional Dispute

The Union asserts that the merits of the MTC Article V Committee decision is not subject to a de novo review in arbitration. Article V is viewed by the Union as including sufficient safeguards against arbitrary or capricious decisions by the Union because the Company may provide information to the Article V Committee and the decisions of the Committee may be reviewed by the International Unions. In addition, the Union claims that the Committee merely adhered to traditional craft practices by not permitting, in this case, the STO Department and the Company to avoid paying the Carpenters the 17¢ premium required by the collective bargaining agreement.

The Union contends that the issues to be resolved in arbitration are:
1. Whether two or more locals claimed the work;
2. Whether the dispute was submitted to the MTC;
3. Whether the MTC complied with Article V in deciding the dispute;
4. Whether the Company violated the MTC decision; and
5. What are the damages sustained by the Union and what shall be the remedy.

More particularly, the Union emphasizes that it would be improper for the merits of the MTC decision to be considered in arbitration because, Article V, as negotiated by the parties, forbids such a review.

The Union relates that the instant case arose in 1972 when employees, other than Carpenters, installed con-con bags shortly after the parties had negotiated a 17¢ premium for the Carpenters. The Union notes that the Company responded that the STO employees --Electricians, Machinists, and Pipefitters--had not complained and that the Company deemed it more convenient to assign the work to the STO employees. The Union relies on a conversation between Roger Dawley, Business Representative of the Carpenters Local 1302 and John Reed, Chief Steward of the Machinists, during which Reed indicated that the Machinists possessed the requisite qualifications to perform the work and that the Machinists therefore had a right to perform the work. As a consequence, a letter dated November 3, 1972 from Dawley to DeGregory (see Company Exhibit 11-31) invoked Article V according to the Union. The Carpenters did not file a grievance because the Union views Article VI, Section 9 of the 1968 contract to preclude access to the grievance machinery for jurisdictional disputes. The Union indicates that DeGregory notified the Company of the problem and Joseph W. Messier, Recording Secretary of the Metal Trades Council,
and he investigated the dispute for the MTC. After reiterating that the Machinists had claimed the work and that the Pipefitters would do so if they could, the Union indicates that the MTC informed the Company on November 10, 1972 that, "CON-CON bag work had historically been performed by Carpenters and, therefore, requested cooperation in seeing that it continued to be assigned to Local 1302 . . . . " (Union Brief at 47, emphasis in original.)

The Union argues that the Company then denied violating the contamination containment memorandum of understanding on the basis that the installation of Herculite bags did not constitute such a breach. Furthermore, the Union concludes that the Company thereby recognized that STO employees should not be installing con-con bags or Type IV bags. In addition, the Union disavows any claim by the Carpenters to the installation of Herculite bags which the Union distinguishes from con-con bags. The Union comments that DeGregory notified the Company on November 22, 1972 about the Company's lack of control over the Union's decision pursuant to Article V. The Union continues that the Company responded on November 27, 1972 by denying that an Article V issue existed with the MTC and by declaring that con-con bags would be handled according to the memorandum of understanding. The Union observes that the Company failed to suggest in 1972 that the Union had erred in interpreting Article V or that the Union merely could require the STO employees who installed con-con bags to join the Carpenters Union.

The Merits of the Jurisdictional Dispute
Award to the Carpenters

The Union asserts that it had advised the Company of the Article V dispute. The Union contends that the Machinists claimed the work and that the MTC Committee considered the significance
of the 17¢ premium. With respect to the negotiation procedure used during collective bargaining, the Union indicates that each local union negotiates as a separate subcommittee—although DeGregory would serve on the subcommittee as a representative of the MTC—regarding issues that only involve that local union. The Union acknowledges that DeGregory did not consider the 1966 Zack arbitration award and distinguishes that award as having involved a one day assignment in 1965 when Carpenters volunteered for con-con bag training. Furthermore, the Union points out that the Company failed to propose to DeGregory or the Union that the Zack Award be considered. In reaching its decision, the Union emphasizes that it relied upon the past practice of the Carpenters having performed the disputed work. Thus the Union relies on the practice of Carpenters erecting Type IV con-con bags with zippers before 1972. The Union renounces any claim to installing Glad type or Herculite bags. The Union notes that the Article V Committee examined the different types of bags in November 1972.

Contamination Containment
Bag Exhibits

The Union cites the Company answer to the MTC con-con bag decision in an effort to define the dispute with greater precision:

There has been no violation of Memo of Understanding Y - CON-CON bags. Department 397, STO, has the responsibility of securing certain components with Herculite bags which in no way should be construed to be an infringement on our joint agreement as set forth in Memo of Understanding Y.

The Union concurs with this statement but maintains that the Company's conduct did not conform to the representations contained in its answer. The Union denies that the Carpenters are seeking jurisdiction over the installation of Herculite bags,
which the Union describes as "a yellow 4-mil polyurethane bag 18" to 20" square, similar to what you would have in a kitchen, similar to a 'Glad' bag. It has no sleeves in it." (Union Brief at 51.) Consequently, the Union reasons that the instant matter could end if the Company disclaimed the right to direct STO employees to install any thing other than the yellow Herculte bags. According to the Union, the yellow Herculte 4-mil bag is not synonymous with a con-con bag or secondary containment. The Union asserts that the term "secondary containment" first appeared in a Company manual in May 1973 and next in a memorandum in July 1973. The Union maintains that the following bags are examples of Carpenters' work:

1) Secondary containment-modified muff bag (installed or constructed by Carpenters before 1973 and not called "secondary containments" before 1973);

2) split tapers sleeve containments (installed by Carpenters before 1973 and not called "secondary containments" before 1973);

3) type IV con-con bags (Union Exhibit 13 and Union Exhibit 16 which existed before 1972 and which Carpenters installed before and after 1972);

4) Union Exhibit 17 and Union Exhibit 18 (installed by Carpenters before and after 1972); and

5) Company Exhibits 7, 8, 9, and 10 (regularly installed by Carpenters and which are either Type IV bags or modifications of Type IV bags).

The Union indicates that STO employees installed certain bags, as reflected in Company Exhibit 8, before 1972. In contrast, the Union recounts that STO employees installed all of these bags after 1972. Accordingly, Company Exhibits 7, 9, and 10 are the bags that are in dispute as far as the Union is concerned. (Union Reply Brief at 32).
The critical difference between various bags, according to the Union, is the accessibility. On the basis of this factor, in essence, the Union compares various bags:

1) Company Exhibit 7 is not a modified Type IV bag;

2) Union Exhibit 18 Figure 7 resembles Company Exhibit 10 more than it resembles Company Exhibit 7; and

3) Company Exhibit 7 is called a glove bag.

The Union notes that Peter A. Cawley, Chief of Radiological Control, considered Company Exhibit 7 to be similar to Union Exhibit 18 Figure 7. From 1966 to 1972 the Union alleges that only Carpenters installed the bags represented in Company Exhibits 7, 9, and 10. In addition, the Union submits that Carpenters installed Company Exhibit 7 bags after 1972. In contrast, the Union confirms that STO employees installed Company Exhibit 8 bags—glad bags or Herculite bags—before 1972. The Union comments that Company Exhibit 8 bags are no longer used. The Union points out that Company Exhibit 9, however, is a modified Type IV bag which did not exist before 1972 and which is similar to Company Exhibit 7 and Company Exhibit 10 while different from Company Exhibit 8. Furthermore, the Union claims that Company Exhibit 9 and Company Exhibit 10 represent modifications to Type IV bags as reflected in Union Exhibit 16 and that the STO employees have installed these bags since 1972. With respect to Union Exhibit 18, the Union considers Type IV bags to be similar to Company Exhibit 10 and contends that neither bag existed before 1972.

Con-Con Bag History

The Union relates that before 1965 the Carpenters received special training to install and to remove nuclear contamination
bags on a volunteer basis. This situation changed according to the Union when the Company created a special budget for such work and assigned such work to the Carpenters on an exclusive basis. (Union Brief at 55, citing Union Exhibit 3.) The Union comments that the Zack Award addressed this situation and found that such exclusive jurisdiction did not exist for the Carpenters. Nevertheless, the Union analyzes the record as revealing that only Carpenters performed the work involving nu-con bags or con-con bags from the date of the Zack Award until 1972—albeit after training on a volunteer basis. In the opinion of the Union, a change developed in 1971 when the Company explored the possibility of Carpenters performing such work on a mandatory basis. Thereafter, the Union asserts that the parties used the language of the exploratory memorandum—Union Exhibit 4 dated March 5, 1971—as the basis for Memorandum of Understanding 37 which incorporated training requirements and the 17¢ premium. The Union recounts that the Carpenters observed non-carpenters performing con-con bag work in October 1972 and this occurrence led to the instant grievance. For example, the Union contends that STO employees installed Type IV bags (Union Exhibit 18) since November 1972. In addition, the Union emphasizes that no other trade received the 17¢ premium. Even when an STO employee installed a con-con bag, the Union attests that the Carpenters still tested the bag, issued the bag, and maintained surveillance of the bag.

The Union relies upon the testimony of Raymond A. Winklebeck, (a Radiological Control Monitor), Dawley, and Cawley—that STO employees installed bags other than Herculite bags after October 1972—to refute the claim by the Company that STO employees have performed "the same 'contamination device' work from the mid
1960's to the present." (Union Brief at 57-58.)

The Union underscores that the Carpenters desired to have total control over the Con-Con bags because of problems that might otherwise arise involving faulty work. On the other hand, the Union submits that the Company focused solely on the "convenience of using Type IV bags in place of the 4-mil bag because of the easy access into the bag with a zipper." (Union Brief at 59, emphasis in original.)

The Union views the Company's denial of grievance MTC-538-4, filed on behalf of the DeCon Technicians, as evidence that the parties intended the 17¢ premium, provided for in Memorandum of Understanding 37, to be only for Carpenters.

17¢ Premium—1972 Contract

The Union asserts that Memorandum of Understanding 37, contained in the 1972 contract, arose from a Company Memorandum dated March 5, 1971. The Union traces the bargaining history for this provision as follows:

1) Petchark met with representatives of the Carpenters on February 4, 1971;

2) the parties discussed voluntary training and mandatory training;

3) the parties discussed the exposure of employees to radiation;

4) Petchark noted that testing should not be done by STO employees;

5) the parties discussed the level of skill that is needed to install the bags;

6) the Carpenters sought total control over the bags; and

7) Company representative Norman Hilbert, (Chief of Radiological Control) recognized the interest of other locals in the work and admitted that "this would be a violation of the current agreement." (Union Brief at 63, citing transcript 5-63.)
Although Memorandum of Understanding 37 did not refer to the Carpenters, the Union submits that only the Carpenters performed con-con bag work at the time and that the entire MTC voted to seek premium pay for the Carpenters during the contract negotiations. The absence of representatives from other locals during the negotiation of Memorandum of Understanding 37 is viewed by the Union as further evidence of the fact that the parties intended this provision to only cover Carpenters. The Union reveals that the parties followed the same procedure during negotiations involving Linesmen and Model Joiners because only the Carpenters had an interest in resolving these matters. The Union deems this procedure to be consistent with its understanding that the parties already had resolved the exclusivity issues in February 1971. The Union regards the negotiations for the 17¢ premium for Carpenters as a significant factor in the determination by the MTC Article V Committee concerning con-con bag work. The Union observes that its interpretation is supported by the Company’s refusal to pay non carpenters—DeCon technicians and STO employees—the 17¢ premium.

Consistent Preservation of Craft Jurisdiction at General Dynamics

The Union insists that it sought control over jurisdiction during the 1968 negotiations. This position by the Union is reflected in the following statement by a union official to Wilkens: "What the hell do you care who does the work as long as it gets done." (Union Brief at 65, quoting transcript at 2-70). The Union emphasizes that the Company never disclosed during the 1968 negotiations that it considered Article V to permit the Company to assign the work, leaving it to the Union to decide which local union would represent the employees. After reviewing certain evidence about the Company’s control within an
occupational title and the Shipman arbitration award, the Union reasons that the unsuccessful attempt by the Company to secure more favorable language in 1967 concerning work assignments constitutes evidence that the Company knew it lacked such authority. Similarly, the Union relies on the Brown Award as evidence that the Company lacked complete discretion because of craft jurisdiction considerations. The Union also refers to the Santer Award as evidence of the Union's concern to preserve craft union principles. To clarify the relationship of Article XL, the Union notes that Article XL is applicable when no other local union is disputing the work assignment. As further evidence of the Union's concern about Article XL, the Union asserts that the first sixteen weeks of the strike that occurred in connection with the 1975 negotiations addressed Article XL issues. The parties ultimately resolved the dispute and adopted Memorandum 40 according to the Union. In doing so, the Union contends that the Company denied an interest in obtaining "interchangeability" whereby each of two crafts routinely perform work across craft lines. The Union insists that it consistently monitored this issue as reflected by its previous concern during the 1968 negotiations over interchangeability and trade union integrity. Memorandum No. 1 in the 1972-1975 agreement is cited by the Union as evidence of special negotiated concessions to enable management to obtain flexibility in radiation areas. Furthermore, the Union points to the 1982-1985 collective bargaining agreement concerning "Union-Employer Cooperation in Craft Jurisdiction and Work Practices" as well as Memorandum of Understanding 11 to highlight the ongoing commitment to craft jurisdiction.

The Union submits that it recognized the need of management for flexibility by agreeing to Article 29 which provided a
framework for discussions about work practices. It is the opinion of the Union that the Company could have invoked Article 29 if it needed revisions of the work practices involving con-con bags.

Additional Contentions

1. The Union maintains that the Arbitrator must not consider the merits of the work assignment because of the design of Article V and that any dissatisfaction the Company may have with Article V is a matter for collective bargaining rather than arbitration.

2. To sustain the Company's position, the Union claims that the clause "jurisdictional disputes" in Article V would have to be interpreted to mean "designation of union representation rather than control over work assignments . . . ." (Union Reply Brief at 3.)

3. The Union views the Charm Award which dealt with seniority as irrelevant to Article V and work assignments.

4. The Union emphasizes that the parties omitted the language "work assignments" from Article V because Appendix A provided greater specificity by defining the various occupational titles.

5. The Union deems the prompt filing of jurisdictional disputes by the Union within one month after ratification of the 1968 agreement, and the failure of the Company to contest in writing the Union's understanding of this provision, to be evidence that the current position of the Company differs from the understanding of the Company in 1968.

6. The Union notes that grievance settlements that arose from the realignments of union membership in 1968 do not involve Article V which is excluded from the scope of the grievance procedure.
7. The Union specifies that grievances are filed by referring to a number of Articles to satisfy time limits in the contract and that the recitation of a number of Articles does not reflect confusion by the Union. Instead, the Union argues that the better way to determine whether there is confusion is to study which Articles the Union pursues in connection with the grievances.

8. The Union regards the use of the "Type IV" label as a way to identify any model containment.

9. The Union dismisses the arguments of the Company as untimely because the Company had the opportunity to raise them in 1972 before the MTC decision but chose not to do so.

Based on all of these factors, the Union contends the grievance should be sustained; that the parties be directed to confer about damages; and that the arbitrator resume the proceedings if the parties are unable to resolve the issue of damages.

CONTENTIONS OF THE EMPLOYER

The Employer set forth the following arguments in support of its position:

PROCEDURAL BACKGROUND

It is the position of the Company that the grievance is arbitrable to the extent that the Company made certain representations to Judge Zampano in connection with Civil Action N-74-62 (Joint Exhibit 5). In this regard, the Company maintains that the grievance is arbitrable "only to the extent that it charged the Company with a violation of Article V and only insofar as it alleged a violation of the 1972-1975 Agreement." (Company Brief at 1.)

In connection with the federal litigation, the Company argued that Article V did not vest the MTC with power regarding
work assignments. Instead, the Company viewed Article V as a
mechanism for the MTC to determine which local union would re-
represent employees to whom the Company had assigned partial work.
The Company also urged Judge Zampano to rule that an arbitrator
rather than the Court should interpret the meaning of Article V.

INTRODUCTORY ARGUMENT

The Company stresses the critical importance of this case
and the concomitant need for the Union position to be rejected
by the Arbitrator. The Company characterizes the Union theory
of the case as leading to "unfettered and unreviewable control
over work assignments" by the Union. (Company Brief at 3.)
Furthermore, the Company objects to the possibility that frivo-
rous claims by one or more locals concerning a work assignment
could oust the Company from control over such a work assignment.
Thus the Company interprets the impact of the Union argument as
providing the Union with the ability to shift work from one
occupational title to another, and to dictate rates of pay,
assignment of overtime, and premium trade status. Similarly,
the Company asserts that the Union would be able to eliminate
special contractual provisions concerning work assignments in
radiation areas and incidental work assignments. The record in
the instant case typifies to the Company the excesses that the
Union could engage in if the Union prevails.

I. The Meaning of Article V

A. The Award by Arbitrator Sumner Charm

The Company contends that the 1967 arbitration award rend-
ered by Sumner Charm is relevant. Specifically, the Company re-
lies upon Charm's interpretation of Article VII of the 1965-1968
collective bargaining agreement requiring seniority for layoff
purposes to be calculated on time within each occupational sub-
division—rather than by departmental seniority—as the stimulus for the ultimate inclusion of Article V in the 1968-1972 collective bargaining agreement. By sustaining the Company's interpretation of how seniority should be calculated, the Company considers the Charm Award to have prompted the Union to pursue efforts to overcome the decision. The Company credits the Charm Award as having exposed several deficiencies of the 1965-1968 agreement, namely: (1) the omission of a list correlating occupational titles for jurisdictional purposes and the corresponding local unions; (2) the failure to specify which local the Agreement required an employee to join; (3) the practice of having employees in different occupational subdivisions performing the same work; (4) the problem of an employee changing from one occupational subdivision to another without changing local union representation; and (5) the possibility of an employee being laid off after an extended length of service in a department while an employee with a limited length of service in a different occupational subdivision continued to work.

B. The International Union Advisory Committee

The Company claims that the MTC formed an Advisory Committee of International Representatives of its constituent locals to deal with the seniority issue by pursuing an alignment process whereby: (1) specific locals would establish jurisdiction over certain occupational subdivisions; (2) appropriate adjustments in local representation would be made; and (3) a clarification and stabilization of union representation of employees would offset the most unacceptable aspects of the Charm Award.

In reviewing the Committee's activities, the Company relies upon the testimony of Petchark that the Company permitted
the Committee to function and agreed to respect the Committee's determinations "provided that there was no change in the work performed by the people." (Company Brief at 6 citing transcript at 4/127.) The Company underscores the testimony of Petchark that the Company did not oppose the adjustment in the union affiliation of approximately 600 employees because no change in work assignments had occurred.

C. The 1968 Contract Negotiations

1. Article V

The Company contends that the 1968 contract negotiations incorporated the activities of the Advisory Committee. According to the Company, the Union sought contractual language to continue the activities of the Advisory Committee, namely, to provide a means to place employees under the appropriate union representation. The Company maintains that Article V became the key provision of the contract concerning this subject.

The bargaining history set forth by the Company is as follows: the Union submitted two proposals that contained language "with respect to the jurisdiction of any work assignment in occupational titles." (Company Brief at 7.) The Company presented one counter-proposal that deleted the "work assignment" phrase from the two Union proposals. The Company highlights the significance of this deletion as evidence that the Company had rejected the Union attempt to secure power over work assignments. (See Company Reply Brief at 1.) Similarly, the Company points to the testimony that the Company negotiators told the Union negotiators that Article V "could be used only 'to determine which Union would represent employees who had been assigned to perform work by the Company.'" (Company Brief at 9, emphasis in original.) The Company insists that the parties agreed to
the language contained in the Company proposal and that the Com-
pany's interpretation of Article V, as articulated during the
negotiations, constituted the understanding of the parties. The
Company disputes the Union's reliance on a document dated June
30, 1968--that includes a heading, "Company Proposal--Not Approved
for Use," (Union Exhibit 32)--because the Company did not submit
such a proposal during the 1968 negotiations.

2. Appendix A, Article III, and Article XXII, Section 6B

It is the position of the Company that Appendix A reflects
the results of the work of the Advisory Committee insofar as it
lists occupational titles (formerly referred to as occupational
subdivisions) correlated with the local unions for jurisdictional
purposes. Thus the Company considers Article V to be the vehicle
for subsequent revisions to Appendix A. The Company identifies
Article III as the procedure to be followed to effectuate trans-
fers of employees between occupational titles and the resulting
shift in membership from one local to another. In this way, the
Company claims that employees would shift their union affiliation
to the local that represented the occupational title to which
they were transferred. As a part of this arrangement, the Com-
pany notes that such employees would be permitted to join the
local only upon tendering the current month's dues; no duty to
pay an initiation fee existed.

The Company further explains that Article XXII, section B
(1)(a) addressed the issue of seniority concerning such transfers
by providing for date-of-hire seniority in the occupational title
to which an employee was transferred after such an employee had
completed six months of service in the new occupational title.
For the initial six months, however, the Company asserts that
the employee retained seniority rights in the original occupatio-
nal title.
3. Memorandum 17 and Memorandum 18

The Company maintains that disputes arose on the Advisory Committee concerning jurisdiction over the occupational titles expeditor, receiving inspector, and blueprint clerk. Accordingly, the Company indicates that the parties negotiated Memorandum 17 and Memorandum 18 as a way to resolve these disputes without delaying the execution of Article V. The Company points out that the parties executed Article V, Memorandum 17 and Memorandum 18 on July 12, 1968 and that this common execution date underscores the connection among these provisions. Furthermore, the Company relies on the substantive terms of Memorandum 17 and Memorandum 18 as being consistent with the Company's interpretation of Article V. Specifically, the Company reads Memorandum 17 as follows:

"It is understood and agreed that the existing application of work performed by any employee classification Expeditor shall not be affected in any manner whatsoever as a result of action by the President of the Metal Trades Council or its committee which resolves the question of Union representation."

(Company Brief at 11.)

D. Statement of Company Position During Term of 1968 Agreement

The Company insists that it articulated its interpretation of Article V when it agreed to the role of the Advisory Committee before the 1968 negotiations and during the negotiations that led to the inclusion of Article V in the 1968 collective bargaining agreement. In this regard, the Company disputes the claim by the Union that the Company did not assert this position—that Article V permits the Union a role concerning union representation and omits any control over work assignments—until the federal court litigation in 1974 or 1975. The testimony of Petchark is cited by the Company as evidence that the Company
consistently adhered to this position during the 1968 negotiations and during the term of the 1968-1972 agreement. To bolster its assertion, the Company maintains that the Union acquiesced to the Company's approach by settling certain grievances. Petchark named Phillip Stone, Manager of Labor Relations Norman Harper, and Labor Relations Representative John Souza as Company officials who told him of the Company's understanding of Article V and that Petchark related that information to other MTC representatives. The Company therefore stresses that the Union knew the Company had viewed the Union interpretation of Article V to be wrong. Furthermore, the Company highlights the testimony of Petchark that he knew and had told other Union representatives that the Union was trying to obtain during the term of the contract a right that it had not secured during the negotiation of the contract.

The Company identifies certain grievance settlements as support for its understanding of Article V:

1. The parties settled a grievance dated November 24, 1969 (concerning a misassignment of work of operating a bridge crane by a machinist and an electrical bridge crane operator rather than a boilermaker) whereby the employees who the Company had assigned to perform the work continued to do so but were required to join the Boilermakers Union. (Company Exhibit 17.)

2. The parties settled a grievance dated July 2, 1969 (MTC-68) (concerning a misassignment of work to a mechanical inspector rather than to a machinist) whereby the parties agreed to the Union's request that the employee involved be required to join the Machinists Union. (Company Exhibit 18.)

3. The parties settled a grievance dated September
30, 1969 (concerning a misassignment of work of welding to a welder rather than to a machinist) whereby the employee who the Company had assigned to perform the work continued to do so but was required to join the Machinists Union. (Company Exhibit 20.)

The Company considers these cases to be evidence that in each instance the employee joined a different union in accordance with the Company's interpretation of the collective bargaining agreement. Consequently, in each instance, the Company attests that it did not change the work assignment as the Union's interpretation of the collective bargaining agreement would have required.

E. Company Conduct During the 1970's and 1980's

The Company stresses that its conduct before and during the 1968 contract negotiations, throughout the 1968-1972 contract period, and throughout the 1970's and 1980's consistently supported its position that Article V did not vest any power with the MTC concerning work assignments:

1. With respect to case No. MTC-JD-7 (concerning a purported jurisdictional dispute over grinding work that involved the Boilermakers and the Machinists), the Company rejected the attempt by the MTC to assign such work but instead merely demonstrated its willingness to discuss the problem with the Union.

2. With respect to certain pending work assignment disputes, the Company expressed its position in a letter from Manager of Labor Relations Harper to MTC President DeGregory, dated May 5, 1970 (Company Exhibit 23), in which the Company expressed its position that:

   It is a management right to assign employees
within an occupational title to a work assignment as lead trade. An assignment may change responsibilities at the discretion of management from time to time as has always been the practice.

3. With respect to work assignment disputes concerning the installation and fabrication of temporary staging (Company Exhibit 24) and the installation of aluminum plates for sound dampening (Company Exhibit 25), the Company relies upon the testimony of Petchark that Harper reiterated the Company position that the Company retained the "right to assign work and that Article V was merely a means of the Union to have individuals be represented by specific locals." (Company Brief at 17 citing Transcript at 5/21). According to the Company, this testimony is buttressed by a file memorandum that referenced this discussion. (Company Exhibit 27.)

4. With respect to an alleged work assignment dispute concerning the operation of the laundry monitor machine (see Company Exhibit 28 and Company Exhibit 29), the Company rejected the attempt by the MTC to require the Company to assign the work to employees in the occupational title decontamination technician represented by six locals because the Company considered Article V to be inapplicable.

5. With respect to Grievance MTC-647A-7, filed on September 23, 1977, (concerning a claimed jurisdictional dispute involving radiological control training classes), the Company answered the grievance on the basis that the Company retained exclusive control over the assignment of work.

6. With respect to Grievance MTC-697A-7, filed on June 23, 1977, (concerning the operation of milling machines), the Company answered the grievance on the basis that the Company retained exclusive control over the assignment of work.
7. With respect to a claimed Article V dispute concerning the rigging of transfer cars, Thomas A. Sotir, Director of Industrial Relations, responded to the Union, in a letter dated August 10, 1978, in which he recited the Company's position that, "the assignment of work to employees ... is exclusively the right of the management ... " He continued that the authority of the Union under Article V "is limited solely to a determination that employees assigned to certain jobs by management must maintain membership in a particular Local Union." (Company Brief at 19, citing Company Exhibit 33.)

8. With respect to a claimed work assignment involving Pipefitters (concerning service requests and the use of CRT scopes or tab runs), the Company repeated its position that "the assignment of work to employees ... is exclusively the right of the management ... " The Company set forth its view that the MTC Article V Committee "is limited solely to a determination that employees assigned to certain jobs by management must maintain membership in a particular Local Union." In addition, the Company indicated that Article XL and Memorandum of Understanding 11 covered work jurisdiction disputes between employees belongs to different Local Unions. (See Company Brief at 20, citing Company Exhibit 35.)

Thus it is the position of the Company that there is not one instance throughout all of the years that the Company reassigned work from one employee to another or from one union to another as a result of a resolution of a jurisdictional dispute by the MTC. In addition, the Company emphasizes that it consistently placed the Union on notice that the MTC had no role regarding work assignments other than the Article V involvement regarding local union representation of employees.
F. The MTC Article V Procedure

The Company contends that the procedure used by the MTC in connection with Article V of the collective bargaining agreement lacks fundamental procedural fairness. In particular, the Company argues that the Union failed to conduct hearings, engaged in only limited if any investigations, and did not adhere to appropriate formalities. According to the Company, decisions pertaining to Article V constituted personal decisions of MTC President DeGregory. Based upon this evidence, the Company claims that the Union did not honestly believe that it possessed such an important role to determine work assignments. Specifically, the Company insists that control over work assignments is such an important management right that: 1) the Company would never have negotiated a provision that transferred such authority to the Union; and 2) the Company certainly would not have permitted the MTC to interfere in such critical determinations pursuant to contract language that led to such procedural deficiencies. The Company cites purported determinations of the following Article V disputes concerning: 1) the handling of transducers by members of the Boilermakers Union rather than by members of the Electricians Union and; 2) the cleaning of trucks, machines, cranes, and tanks by members of the Laborers Union rather than by members of the Painters Union. The Company asserts that the resolution by MTC President DeGregory of these disputes--merely on the basis of assertions by certain local union officials that past practice dictated a particular outcome--verifies the procedural deficiencies of the process used by MTC. The Company notes that the process used by the Union regarding Article V improved only after the parties began litigating the meaning of Article V in federal court.
II. The Meaning of Article XL and Memorandum No. 11

The Company considers Article XL, as supplemented by Memorandum of Understanding 40, to provide a set of restrictions and remedies that limits the Company's power concerning work assignments and prevents misassignments between occupational titles. In this regard, the Company admits that the collective bargaining agreement significantly regulates the Company in this area and maintains the historical craft jurisdiction of the local unions. The Company reads Article XL, first contained in the 1972-1975 Agreement, as preventing misassignments of work involving employees in different occupational titles or in different local unions. Memorandum of Understanding 40, first contained in the 1975-1979 Agreement, is viewed by the Company as refining Article XL: 1) by creating a permanent arbitrator—with special expertise—to hear all work assignment cases; 2) by reiterating the importance of maintaining fundamental craft jurisdiction; 3) by the Company's commitment not to seek interchangeability regarding work assignments; and 4) by recognizing the Company's responsibility to improve efficiency. The Company indicates that additional revisions to the Memorandum appear in the 1982-1985 Agreement in renumbered Memorandum of Understanding 11. Thus the Company specifies that a bifurcated arbitration procedure is used whereby: 1) an initial decision is made to determine whether a violation occurred and, if so, to issue a cease and desist order; and 2) monetary damages are available during the second stage only if the Company violates a cease and desist order. On the basis of these detailed provisions, the Company contends that the Union's interpretation of Article V would greatly undermine and significantly negate these other provisions. Consequently, the Company considers the Union view
regarding Article V to be inconsistent with the detailed provisions of these other provisions.

A. The Implementation of Article XL

The Company asserts that Article XL and Memorandum of Understanding 11 are active parts of the collective bargaining agreement that have led to a great deal of litigation, large monetary settlements, and constant use in administering work assignments. The Company notes that prior to the inclusion of Article XL in the 1972-1975 agreement, several arbitration awards restricted the Company's power over work assignments. In particular, the Company calls attention to the Shipman Award (Company Exhibit 38) as requiring the Company to respect craft competence and to the Brown Award (Company Exhibit 39) as recognizing that work assignments could not be made to a craft that lacked the necessary capability even though the collective bargaining agreement did not explicitly provide for exclusive jurisdiction for particular crafts.

After the negotiation of Article XL, the Company relies on several arbitration awards as evidence of the meaning of Article XL. Initially, the Company admits that the Santer Award (Company Exhibit 40) and the Rubin Award (Company Exhibit 41) upheld the Union's interpretation that Article XL served to freeze the work assignments that existed from 1968 to 1972 rather than the Company's view that Article XL merely maintained the general methodology that developed from 1968 to 1972. Thereafter, the Company indicates that the Stutz Award (Company Exhibit 3) authorized greater flexibility for the Company regarding work assignments. Nevertheless, the Company recognizes that the Altieri Awards (Union Exhibit 21 and Company Exhibit 42) adopted the approach developed in the Santer Award and the Rubin Award.
More recently, the Company indicates that Arbitrator Mittenthal—
who the parties designated in 1975 to serve as the permanent
arbitrator for Article XL work assignment disputes—followed the
approach developed by Arbitrators Santer and Rubin as modified
by certain contractual revisions in 1975 and 1982. The Company
also emphasizes that the parties negotiated two significant
Article XL settlements in January 1977 (Company Exhibit 48) and
October 1981 (Company Exhibit 49). Accordingly, the Company
insists that Article XL and Memorandum II provide the exclusive
contractual framework for resolving work assignment disputes.

B. The Union's Interpretation of Article V

The Company attacks the Union's assertion that Article V
covers work assignment disputes concerning two or more local
unions whereas Article XL applies to work assignment disputes
concerning only one local union. In this regard, the Company
stresses that such an interpretation would enable the Union to
convert all work assignment disputes into Article V cases by
having a second union assert a claim to the disputed work. In
addition, the Company argues that the Union interpretation of
Article V lacks consistency and would negate Article XL.

The Company considers the record of grievances that the
Union has filed as support for the Company’s view that the Union's
position with respect to the instant grievance lacks merit. Thus,
the Company asserts that the Union randomly cited Article XL,
Appendix A; Article XL and Appendix A; and Article XL and Article
V in processing grievances. Notwithstanding these actions, the
Company emphasizes that Union witnesses Roger Dawley and Raymond
Sylvia testified that one grievance cannot simultaneously con-
stitute an Article XL and an Article V dispute. Furthermore,
the Company contends that the Union referred to three grievances
during the instant arbitration in which the Union claimed that
the Company failed to respect an Article V determination. The Company considers these grievances to reflect the inconsistency and confusion of the Union because two of the grievances alleged an Article XL violation. (Compare Union Exhibit 35 and Union Exhibit 36 with Union Exhibit 37.) Similarly, the contamination containment grievance is another example of the Union's improper merging of Article V and Article XL, according to the Company. The Company attaches significance to the testimony of MTC President DeGregory that the parties intended Appendix A in the 1968 contract to go along with Article V by providing for proper union representation of occupational titles. In contrast to that testimony, the Company points out that MTC Recording Secretary Messier considered Memorandum 37, which provides for premium pay for contamination containment bag work, as mandating that such work be assigned to Carpenters. The Company also claims that Messier provided inconsistent testimony when he attempted to differentiate Article XL disputes from Article V disputes. The Company underscores Messier's testimony that "a clear line" does not exist between Article V and Article XL and deems that testimony as revealing the Union's confusion about these provisions. (Company Brief at 31-32.)

In addition, the Company describes the Union's interpretation of Article V to be extraordinary and to conflict with Article XL and Memorandum 11. By not considering factors other than past practice (such as historical craft jurisdiction as reflected in International Union constitutions), the Company maintains that the Union, in attempting to dispose of work assignment disputes, fails to process such cases properly. In so doing, the Company position is that the Union's revolutionary approach nullifies the meaning of Article XL and Memorandum 11.
III. The Union's Processing of the Contamination Containment Dispute

A. The Zack Award

The Company described the events before the Zack Award as follows: the Company began using glove bags or "nu-con bags" in the early 1960's to curtail exposure to nuclear contaminates. Health physics monitors (members of the Clerks Union) first installed the bags; subsequently lead trades also performed such work with the technical assistance of the health physics monitors; and carpenters began installing the bags in 1965 because of their low exposure to radiation. The Company claims that the Carpenters Union did not possess exclusive rights to install glove bags. In support of this view, the Company points to the Zack Award as sustaining the propriety of a supervisor assigning such work to a machinist and a cleaner rather than to a carpenter. The Company concludes that the Zack Award established that the Carpenters Union failed in attempting to prove exclusivity with respect to bag work.

B. The 1972 Negotiations

The Company analyzes the 1972 negotiations as providing premium pay to Carpenters without a grant of exclusivity. The composition of the Union bargaining committee that negotiated this provision is not determinative because the Company asserts that the ultimate contractual provision omitted an express grant of exclusivity to the Carpenters Union.

C. The Work of the Carpenters and the Shipyard Test Organization Technicians

The Company contends that STO technicians have installed simpler secondary containment devices since the 1960's. It is the position of the Company that Carpenters installed complex glove bags. The Company considers characterizing the instant
dispute as involving the installation of Type IV bags to be misleading because the "Type IV" label has changed over the years: during the 1960's a complex glove bag was called a Type IV bag whereas a simple plastic wrap with two openings for a pipe--which is not a glove bag--is now called a Type IV bag. Accordingly, the Company insists that the size, shape and number of apertures of the devices are critical.

D. The Instant Jurisdictional Dispute

The Company challenges the Union with respect to the instant grievance by claiming that the grievance is an attempt to gain exclusive work for the Carpenters that the Carpenters failed to secure in the past. With respect to the procedure followed by the Union under Article V, the Company maintains that the original grievance did not refer to a second competing union; that the Union did not engage in an appropriate investigation; and that the Union failed to conduct formal hearings. The Company concludes that an Article V jurisdictional dispute does not exist because Carpenters continue to perform the work that they had been installing and that such work does not encompass the work performed by the STO technicians. The Company recognizes, however, the possibility that the assignment of contamination containment work might constitute an Article XL violation.

(Company Reply Brief at 3.)

In its Reply Brief, the Company addressed one additional point, namely, that the Company denies it had complied with post-1968 jurisdictional dispute decisions by the Union except with respect to one case involving the operation of new equipment.
As I see it, the questions for resolution are:

1. The meaning of Article V of the collective bargaining agreement;
2. The meaning of Article XL of the collective bargaining agreement;
3. Whether the instant dispute is governed by Article V or Article XL;
4. The probative relevance of the bargaining history of the governing contract provisions;
5. The probative relevance of past practices.

In addition to its substance, the parties negotiated the title of Article V as JURISDICTIONAL DISPUTES. That phrase is mentioned throughout that Article. For purposes of notation, Article V is repeated below, with that phrase underscored wherever it appears.

ARTICLE V
JURISDICTIONAL DISPUTES

The Employer and the Metal Trades Council, together with all the affiliated Local Unions of the Council, agree that in the event any jurisdictional disputes arise with respect to the jurisdiction of occupational titles as listed in Appendix A or any occupational title added thereto by the Employer such dispute shall be referred to the Metal Trades Council of New London County for settlement in the following manner:

Upon notice by either the Employer or an affiliated Local Union involved in a jurisdictional dispute, the Metal Trades Council will appoint a committee whose responsibility will be to render an interim decision within seven (7) calendar days of receipt of said notice. Such decision shall remain in full force and effect until such time as amended or ratified by the International Union Presidents whose Local Unions are involved in such dispute.

It is further agreed that pending the adjustment of jurisdictional disputes there shall be no stoppage of work and the work in dispute shall continue to be performed as assigned by the Employer. The provisions of this Article shall be absolutely and equally binding upon the Employer, the Metal Trades Council, its affiliated Local Unions, and all employees in the bargaining unit.
A jurisdictional dispute is a labor law term of art. It is not a term that is unique to the instant parties; it is a part of the lexicon of labor law.

A reading of Article V, together with its title and frequent reference to jurisdictional disputes and the method for resolution thereof persuade me that the parties negotiated Article V as their method for the voluntary adjustment of jurisdictional disputes within the meaning of Section 10(k) of the National Labor Relations Act.

The record is clear that the parties experienced difficulties during the period that preceded the negotiation of Article V. The issue of jurisdiction generated a wildcat strike in June, 1968 and was an issue in an economic strike which began in July, 1968. (Compare the testimony of Petchark at transcript 2-20 with the testimony of DeGregory at transcript 2-54, 2-55 and 2-64.) Furthermore, the 1968 negotiations arose after the Charm arbitration award (Company Exhibit 2) which heightened the importance of the jurisdiction issue.

With those facts and that conclusion it logically follows that Article V, if applicable to this dispute, should be interpreted with regard to work assignments and union representation for that purpose. Indeed there is no special language or provision in Article V which would call for a different approach.

The purpose of a dispute settlement alternative to the machinery of the NLRB is quite clear. A commentator observed in 1964—during the time frame that preceded the negotiation of Article V—that:

While it may be difficult to predict the criteria to be used and relied on by the Board in a 10(k) case, realistically the end result is a foregone conclusion—the employer's assignment will be affirmed. This has been the result in all but five of the fifty-five cases in which awards have been made by the Board since CBS.

This conclusion is confirmed by a more recent article that examined the jurisdictional dispute decisions of the Board during the 1960's--the period that provided the setting for the negotiation of Article V. The author indicated that:

While the Board's opinion awarding the work will be cast in terms of work area practices, skills, efficiency and the like, as a practical matter we can be reasonably sure that the Board will issue its award to the union preferred by the employer . . . . From 1961 through the end of 1970 the Board made 349 section 10 (k) awards and confirmed the employer's preference in 95.1 percent of the cases; 96.5 percent of the awards involving the construction industry confirmed the employer's preference.

D. Leslie, The Role of the NLRB and the Courts in Resolving Union Jurisdictional Disputes, 75 COLUM. L. REV. 1470, 1472 (1975) (footnote omitted); see also L. J. Cohen, The NLRB and Section 10 (k): A Study of the Reluctant Dragon, 14 LAB. L.J. 905, 910-12 (1963). Thus it is understandable that the MTC would have sought Article V so that the Union would have an opportunity to influence craft jurisdiction and to avoid the section 10 (k) presumption in favor of the employer's work assignment.

This is even more understandable in terms of the Union's mindset after the Charm Award.

Also the fact is and was that the use of the NLRB as a mechanism for resolving jurisdictional disputes is unsatisfactory due to the delay involved. For example, Professor Dunlop noted that, "a fair sized dam can be built faster than a typical order of the N.L.R.B." J.T. Dunlop, Jurisdictional Disputes, PROCEEDINGS OF N.Y.U. SECOND ANNUAL CONFERENCE ON LABOR 477, 500 (1949). This problem is especially acute when the time pressure and integration of the work of different crafts are association with the construction of nuclear submarines.

The instant dispute is essentially a disagreement over "work jurisdiction" and "union representation." The Company
claims it may assign any employee to the work, according the
unions the right to require said employee to join the proper
union. The Union on the other hand, claims that the initial
work assignment by the Company must be to employees already
represented by the union with that work jurisdiction.

Years ago, the NLRB distinguished representation proceed-
ings from jurisdictional awards:

> a Board certification in a representation
> proceeding is not a jurisdictional award;
> it is merely a determination that a major-
> ity of the employees in an appropriate unit
> have selected a particular labor organiza-
> tion as their representative for purposes
> of collective bargaining . . . . However,
> unlike a jurisdictional award, this deter-
> mination by the Board does not freeze the
> duties or work tasks of the unit found
> appropriate.

Plumbing Contractors Association, 95 N.L.R.B. 1081 (1951)
(emphasis added); see generally G. Farmer & N. Thompson Powers,
The Role of the National Labor Relations Board in Resolving

The phrase "jurisdictional dispute" is a frequently used
and heavily litigated concept in labor law. The Taft-Hartley
Act amended the National Labor Relations Act in 1947 by adding
Section 8(b)(4)(D) provides:

(b) It shall be an unfair labor practice
for a labor organization or its agents--

(4)(i) to engage in, or to induce or en-
courage any individual employed by any
person engaged in commerce or in an in-
dustry affecting commerce to engage in, a
strike or a refusal in the course of his
employment to use, manufacture, process,
transport, or otherwise handle or work on
any goods, articles, materials, or com-
modities or to perform any services; or
(ii) to threaten, coerce, or restrain any
person engaged in commerce or in an in-
dustry affecting commerce, where in either
case an object thereof is--

(D) forcing or requiring any employer to
assign particular work to employees in a
particular labor organization or in a
particular trade, craft, or class rather
than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work:

The Taft-Hartley amendments also added Section 10(k) to the National Labor Relations Act to provide a mechanism for the Board to resolve the merits of jurisdictional disputes. Section 10(k) provides:

Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4)(D) of section 8(b), the Board is empowered and directed to hear and determine the dispute out of which such unfair labor practice shall have arisen, unless, within ten days after notice that such charge has been filed, the parties to such dispute submit to the Board satisfactory evidence that they have adjusted, or agreed upon methods for the voluntary adjustment of, the dispute. Upon compliance by the parties to the dispute with the decision of the Board or upon such voluntary adjustment of the dispute, such charge shall be dismissed.

The United States Supreme Court considered these provisions in the landmark case of NLRB v. Broadcast Engineers Local 1212 (Columbia Broadcasting System), 364 U.S. 573 (1961). The Court reasoned that:

Section 10(k) ... quite plainly emphasizes belief of Congress that it is more important to industrial peace that jurisdictional disputes be settled permanently than it is that unfair labor practice sanctions for jurisdictional strikes be imposed upon unions. Accordingly, § 10(k) offers strong inducements to quarreling unions to settle their differences by directing dismissal of unfair labor practice charges upon voluntary adjustment of jurisdictional disputes.

Id. at 576-77. The Court articulated its understanding of the "jurisdictional dispute" concept by indicating that it refers to "a dispute between two or more groups of employees over which is entitled to do certain work for an employer." Id. at 579 (emphasis added). In addition to this language, which involves the work assignment decision and not merely the question con-
cerning representation, the Court discerned that:

This language also indicates a congressional purpose to have the Board do something more than merely look at prior board orders and certifications or a collective bargaining contract to determine whether one or the other union has a clearly defined statutory or contractual right to have the employees it represents perform certain work tasks. For, in the vast majority of cases, such a narrow determination would leave the broader problem of work assignments in the hands of the employer, exactly where it was before the enactment of § 10(k)—with the same old basic jurisdictional dispute likely continuing to vex him, and the rival unions, short of striking, would still be free to adopt other forms of pressure upon the employer. The § 10(k) hearing would therefore accomplish little but a restoration of the pre-existing situation, a situation already found intolerable by Congress and by all parties concerned. If this newly granted Board power to hear and determine jurisdictional disputes had meant no more than that, Congress certainly would have achieved very little to solve the knotty problem of wasteful work stoppages due to such disputes.

Id. at 579-80 (footnotes omitted). Thus the statutory mechanism for resolving jurisdictional disputes involved a shift of the authority to assign work away from the employer. Congress deemed this transfer to be necessary to avoid the troublesome problem of work stoppages that arose from jurisdictional disputes. Congress concluded that avoiding such work stoppages outweighed management's interest in retaining exclusive control over work assignments.

The meaning of a jurisdictional dispute is evident when the limitations of a section 10(k) proceeding are considered from a representation perspective:

representational. . . claims are normally handled by ascertaining the desire of particular employees to be represented by one or more rival unions. The section 10(k) hearing which would come into place if such . . . claims were considered jurisdictional disputes is neither designed for, nor
capable of, accommodating the wishes of employees concerning their own representation status.\footnote{This reasoning is especially applicable to the non-suitability of Article V to resolve questions concerning representation.}


Thus, jurisdictional disputes involve issues pertaining to the assignment of work, and differ from representational disputes. One commentator observed:

Jurisdictional disputes can be distinguished from representational disputes because in the former, two or more unions seek the right to do specific work for their members, not to change the union affiliation of the other claimants of the work. The membership and representation rights of the unions are not affected; the conflict is over the right to do certain work and not to represent certain employees.


In addition, a definitive treatise on labor law echoes this distinction in the context of a particular Board case:

It is sometimes difficult to draw a distinction between work assignment disputes and controversies over which of two unions should represent the particular employees who are performing the work. The distinction between Section 9 representational disputes is not always sharply defined. The Board acknowledged the difficulty in the Detroit News case but concluded from the facts that a work assignment dispute existed since the union claimed the right to the dispute work itself, rather than any right to represent employees performing it.

Similarly, another commentator indicated:

Literally construed, the language of section 8(b)(4)(D) covers every dispute over the representation of employees. In practice, however, there has arisen a firm distinction between representational and jurisdictional matters. There is general agreement now that a representation case is raised when two unions seek to represent the same employees but neither union demands that the employees be replaced if it prevails. A jurisdictional dispute, on the other hand, is presented when each union seeks to place its own members in the performance of certain work.


Various commentators have echoed this reasoning. One author observed:

All jurisdictional strikes and threats are not covered by section 8(b)(4)(D), but only those where an object is to force an assignment of work to one group of employees rather than to another.


Consider the following quotation and its factual relevance to the instant dispute. Consider also its applicability to the instant circumstances where more than one union - indeed ten - represent the employees:

Despite charters and constitutional expressions of jurisdiction, and although there is little difficulty with the core of a union's jurisdiction, the outer boundaries of a union are unclear. In addition, though no craft can be completely substituted for another, often, on the fringe of a craft's expertise, the skills of one union can be substituted for the skills of another.

It is impossible to describe work tasks in exhaustive detail. Furthermore, modifications in material, tools and techniques render existing definitions of jurisdiction obsolete and inadequate.

The observation of Professor John T. Dunlop, a leading labor relations authority and former Secretary of Labor is pertinent. In *Jurisdictional Disputes*, 1949 Proceedings of the N.Y.U. Conference on Labor 477-504, he identified three types of disputes: factionalism within a single labor organization; a rivalry between and among unions; and work assignment disputes in which "the contending organizations are not seeking new members; they are demanding the work in dispute for existing members." *Id.* at 479 (emphasis added). After recognizing the difficulty in distinguishing a rivalry and a work assignment dispute, Professor Dunlop observed:

> To seek to settle jurisdictional disputes in terms of representation is tantamount to providing either that the employer shall receive the sanction of law for any assignment he makes or that possession of the work carries with it the right to the work. There could be no more fertile ways to stimulate jurisdictional disputes.

> . . . [J]urisdiction is a different problem from representation.

*Id.* at 480-81.

In its simplest terms, a jurisdictional dispute requires that two or more employee groups must actively seek the disputed work. See, e.g., *Local 107, Highway Truckdrivers Safeway Stores, Inc.*, 134 N.L.R.B. 1320 (1961); see also J.B. Atleson, *The NLRB and Jurisdictional Disputes: the Aftermath of CBS*, 53 GEO. L.J. 93, 101-09 (1964); *THE DEVELOPING LABOR LAW* 1254 (C. Morris ed. 2d ed. 1983).

My conclusion that Article V deals with the type of jurisdictional disputes that would fall within section 10(k) of the
Act, notwithstanding, the critical question is whether the instant dispute is of that nature or instead a "work assignment" dispute exclusively under and within the meaning of Article XL of the contract under which the Union did not grieve.

I have reviewed all the arbitration awards submitted by the parties in the record bearing on the history, interpretation and application of Article XL. A recitation of the pertinent holdings and reasons of those decisions is material as follows.

Predating the negotiation of Article XL are the awards of arbitrators Zack, Charm, Shipman and Brown.

Arbitrator Arnold Zack rendered an award, dated June 21, 1966 (Joint Exhibit 6), which found that "the Company's assignment of Carpenters to do NuCon bagging in the period from early 1965 until the time of the grievance" did not constitute "a recognition of their exclusive jurisdiction over this work." Id. at 4-5. In discussing the concept of exclusive jurisdiction, the Arbitrator observed that:

"There is no question that certain tasks have come to be viewed as within the sphere of performance of specific skilled trades to the exclusion of other skilled trades. This is particularly true where the tasks to be performed or the materials upon which the work is to be done have traditionally been associated with the particular trade. It has even come to be true in recent years that such traditional jurisdiction may be expanded to include the performance of new tasks which may come to be associated with the traditional means or materials of operation.

But this does not necessarily mean that whenever a task is assigned to a certain skilled group that that task automatically and perpetually comes within the exclusive jurisdiction of that craft."
Arbitrator Sumner D. Charm rendered an award, dated April 27, 1967, concerning the application of seniority for layoff purposes pursuant to the 1965 collective bargaining agreement. (Company Exhibit 2). The dispute narrowed to whether an employee's length of service within one department would be "applied on a department-wide basis, or only within an occupational subdivision within the department." (Company Exhibit 2 at 3). The Arbitrator denied the grievance by sustaining the Company's interpretation that "accumulated seniority does not apply (in layoffs) beyond his own occupational subdivision."

Arbitrator Shipman rendered an arbitration award in 1967 concerning a claim by the Carpenters that a Machinist improperly performed uncrating work that Carpenters normally had performed. (Company Exhibit 38). The Company rejected the grievance because an emergency had existed on a Saturday, which was not a normal work day, and the disputed work lasted for five or ten minutes and was incidental to the primary work being performed at the time. It is noteworthy that Arbitrator Shipman perceived in 1967 that: "It is evident that this dispute is symptomatic of a basic underlying work jurisdiction problem, a problem accentuated of late by a growing number of complaints and grievances on this question." Id. at 7. Arbitrator Shipman analyzed the dispute as follows:

Thus, the Arbitrator must conclude that the Agreement, considered in the light of the practice thereunder in which the Machine Shop and the Company's admitted policy to reserve uncrating work in the Machine Shop, where practicable, to Carpenters establishes that all Machine Shop uncrating work falls within the work jurisdiction of the Carpenters.

Id. at 10 (footnote omitted). The Arbitrator also declared that: "It is obvious that work jurisdiction cannot be established unilaterally by unions." Id. at 19. Although the Arbitrator found
this conclusion to be "obvious," there is no discussion to explain the basis for that conclusion. After concluding, in essence, that a "reasonable" standard should be used to balance the Company's operational needs with the Union's concern for preserving craft integrity, Arbitrator Shipman found that no contractual violation had occurred under the particular circumstances.

Arbitrator Leo C. Brown rendered an arbitration award, dated February 20, 1968, concerning a dispute about the assignment of sound dampening work to the Carpenters instead of to the Sheetmetal Workers (represented by the Boilermakers). (Company Exhibit 39). After finding that the collective bargaining agreement did not provide for exclusive jurisdiction either explicitly or implicitly, the Arbitrator commented upon the effect of the existence of different trades and crafts as follows:

Recognition of particular trades and crafts implies a recognition of different skills; it does not, however, imply any limitation upon the Company's right to judge that a particular craft is capable of performing a specific type of work and of assigning that work to that craft. . .

The Company's recognition of the existence of different crafts implies a recognition of a distinction in skills. This recognition implies a limitation with respect to work assignments only when the assignment is so wholly improper that it falls outside of the reasonable capabilities of the craft to which the assignment is made; that is, when an assignment is made not on the basis of sound business judgment or normal utilization of skills, but for some improper purpose. Examples would be assignments made in order to discriminate against and to undermine a particular craft or to escape some burdensome contractual commitment such as the payment of a lower wage to the craft used than the higher wage that would have to be paid to the craft that normally would have been used.
Id. at 19. The Arbitrator ultimately found, in essence, that joint jurisdiction had existed for the disputed work and, therefore, sustained the decision of the Company to assign the work to the Carpenters.

Article XL was then agreed to as part of the 1972-1975 contract (subsequently modified by Memorandum of Understanding 40 in the 1975-1979 contract and renumbered as Memorandum of Understanding 11 in the 1979-1982 contract and retained as Memorandum of Understanding 11 in the 1982-1985 contract.)

Thereafter, Arbitrator Mark Santer rendered an award, dated August 22, 1974, in which he found that the Company had violated Article XL and Appendix A of the collective bargaining agreement by assigning certain wire checking and documentation work to STO Test-Electrical organization personnel rather than to Inspector-Electrical Nuclear Quality Control from November 30, 1973 to May 1974. (Company Exhibit 40.) The gravamen of the case concerned the meaning of the first sentence of Article XL and the first sentence of Appendix A. They read:

**Article XL**
Current practices in regard to work assignments and operations that have been in effect under the 1968-1972 agreement shall remain in effect.

**Appendix A—Occupational Titles**
Work performed under occupational titles listed in Appendix A is recognized and established as within the jurisdiction of the craft under which they are listed.

(Company Exhibit 40 at 4).

Santer interpreted this language in the context of the pending grievance:

If a (current) work assignment practice was in effect during the 1968-1972 Agreement it is to remain. It is not a statement referring to a particular work practice of inspection. It is a general type of inspection. It is a general type of statement. . . . [T]he language is much broader. It is general---almost universal. The conclusion is that the practice was for Inspectors to do the work given the Testers during this experiment.
The specific statement—albeit in general form—mandates that the job elements that inspectors formerly performed that were to continue to be done by bargaining unit personnel belong to inspectors. To come to any other conclusion would mean the parties would have to delineate all the elements of every single job assignment for each classification. To prevent mind-boggling and a loose-leaf booklet weighing several pounds, the expression ‘current practices...shall remain in effect’ was written. Otherwise, that language is without purpose.

Id. at 8-9. He, therefore, sustained the grievance.

Arbitrator Milton Rubin rendered an arbitration award in October 1974 which found that the Company had violated Appendix A and Article XL of the collective bargaining agreement by assigning to Machinists certain work that the Pipefitter trade had regularly performed. (Company Exhibit 41.) Arbitrator Rubin expressly adopted the reasoning of the Santer Opinion and Award dated August 22, 1974. As a result, Arbitrator Rubin concluded that, "the grieved work has been regularly assigned to pipefitters classified in the trades for that work in Appendix A." Id. at 11.

Arbitrator Robert L. Stutz rendered an award, dated June 21, 1977, that considered a claim by the Union that the Company had violated Appendix A and Article XL of the 1972-1975 collective bargaining agreement by misassigning certain wiring work. (Company Exhibit 3.) The Company reassigned the work from the Electronics Mechanics classification to the Outside Electricians classification. IBEW Local 261 represented both classifications. The employees possessed the same skills, received the same wages, and performed the same type of work. The Arbitrator reviewed the Shipman Award, the Brown Award, the Santer Award, and the Rubin Award. In analyzing the meaning of Appendix A and Article XL, Arbitrator Stutz observed:
When all of the evidence in this record relating to the practice of work assignments during the 1968-72 period is viewed from this distant, objective perspective, it is revealed that the Company did retain and exercise some flexibility in making work assignments. That flexibility was not unlimited; it was utilized in pursuit of efficient operation of the shipyard and the effective use of personnel. It was constrained by an awareness of an historical respect for craft lines and occupational jurisdictions. It appears to have been exercised, whether consciously or unconsciously, in accordance with the guidelines laid down in the Shipman and Brown decisions.

Company Exhibit 3 at 12. The Arbitrator focused on the language contained in the first sentence of Article XL and found that:

> This language seems clearly to have been designed to preserve the general overall practices in regard to work assignments and operations, not to bind the Company to specific work assignments and methods of operation that existed during the 1968-72 Agreement.

Company Exhibit 3 at 13. Following this assessment, Arbitrator Stutz commented on the Santer and Rubin awards:

> It is not necessary for this arbitrator to make any finding with respect to the conclusions reached by Santer and Rubin. Those conclusions were reached on an entirely different record and may very well be the ones that any competent arbitrator would have reached on that record.

Company Exhibit 3 at 14.

Arbitrator Stutz then sustained the Company's decision by denying the grievance because the outside Electricians possessed the necessary skill and that the Company did not have an improper purpose.

Arbitrator Richard Mittenthal rendered an award, dated September 18, 1978, concerning the interpretation and application of Memorandum of Understanding 40 of the November 26, 1975 collective bargaining agreement. Mittenthal reviewed the Shipman Award, the Brown Award, the bargaining history of Article XL, the Santer Award, the Rubin Award, the bargaining
history of Memorandum of Understanding 40, and the Stutz Award.

In analyzing the grievance before him, Mittenthal perceived his role as follows:

It seems clear that my function here is to interpret and apply the Memorandum. The parties have not reargued Article XL. They wrote the Memorandum in the belief that the meaning of XL had evidently been settled by the Santer-Rubin awards. I feel I should approach the Memorandum from the same vantage point. I recognize, however, that the Stutz award takes a different view of XL.

Company Exhibit 43 at 10. He characterized the competing interests of the parties by stating that the "struggle was between Management's need for flexibility and the Union's commitment to stability." (Id., emphasis in original). He also recognized that the Memorandum of Understanding:

indicates that the parties reach a compromise on the work assignment question. The Company did not obtain the kind of unfettered flexibility it originally appears to have sought; the Union did not obtain the kind of rigid stability it originally attempted to guarantee. Both parties were forced to accept something less than they desired.

Id. at 11 (emphasis in original). Arbitrator Mittenthal thus interpreted Memorandum of Understanding 40 as having added a proviso to Article XL whereby:

the "restrictions" imposed by work assignment practices under XL can sometimes be avoided by Management exercising its newly established 'assignment' right under the Memorandum. What this means is that an employee who experiences "unreasonable delay" in completing his work can be given an "assignment" to some other work ordinarily done by another occupation "in order to reduce [his] idle time.

Id. at 11 (bracketed phrase in original). Furthermore, Mittenthal stressed that the Company had promised, "to honor 'fundamental craft jurisdictions' or, conversely not to insist on 'interchangeability.'"

Id. With respect to the meaning of the term, "fundamental craft jurisdiction," Mittenthal stated:
The parties have not defined the phrase "fundamental craft jurisdiction." It seems to me that they must have been referring to the central skills which account for the existence of the craft, the core duties which impart to the craft its essential integrity. One could read the phrase "fundamental craft jurisdiction" broadly to encompass all duties customarily performed by a craft. That would include not only central skills but lesser tasks as well. . . . That could hardly have been what the parties intended. Id. at 12 (emphasis in original).

Arbitrator Mittenthal subsequently rendered a number of awards arising pursuant to Article XL:

1. Company Exhibit 44 is an award dated August 11, 1980 denying a grievance under the 1975 agreement concerning certain inspection work that the Company had assigned to Pipefitters rather than to Piping Inspectors. Plumbers and Pipefitters Local 620 represented the Pipefitters and the Piping Inspectors. The Arbitrator found that:

   The Pipefitter, however, does not inspect anyone else's work. He examines only his own material, his own work product. He makes that examination not as an Inspector but rather as an employee who is expected to do his job correctly. . . . This kind of "inspection," it seems to me, is an integral part of the typical craft occupation. Id. at 8.

With respect to the limited transfer of certain clerical duties to the Pipefitters, the Arbitrator concluded that, "the clerical functions involved in this reassignment. . . . cannot be considered part of the 'central skills' or 'core duties' of the Inspector craft." (Id. at 10).

2. Company Exhibit 45 involved a consent award dated April 28, 1982 pursuant to the 1982-1985 agreement that involved occupational titles represented by the same union. The Award directed that the Company cease and desist from the practice that the union grieved but expressly preserved the substantive arguments of each party.
3. Company Exhibit 46 involved an award dated June 16, 1983 that concerned a grievance by Laborers Local 364 that challenged the Company's assignment of certain clean-up work to the Pipefitters. The Arbitrator determined the practices that had existed during the critical benchmark period from 1968 to 1972. In so doing he confined his analysis to Article XL. It is significant that the determination that the Pipefitters had performed certain clean-up work (albeit not all of the clean-up work that the Laborers grieved) meant that the Arbitrator did not view such work under Article XL as involving the exclusive work of the Laborers. Instead, the customary practice of the Pipefitters performing limited clean-up work suggests that such work constituted lesser tasks of the Pipefitters. In contrast, the Arbitrator's finding that the Pipefitters performed certain clean-up work that they had not customarily performed during the 1968-1972 interval required an award sustaining that portion of the grievance of the Laborers. In essence, such work by the Pipefitters did not even constitute a contractually recognizable lesser task under Article XL because the Pipefitters had not performed it from 1968 to 1972. The Arbitrator expressly found Memorandum of Understanding 11 (previously Memorandum of Understanding 40) to be inapplicable because the Company failed to assert it.

4. Company Exhibit 47 involved a claim by the Painters that the Pipefitters had improperly performed certain paint removal work. The Award, dated August 31, 1983, found that "paint removal was not assigned exclusively to Painters between 1968 and 1972. Hence, there is no work assigned practice in this case which is protected by Article XL." (Id. at 4.) Although the Arbitrator did not find that the Company had assigned
Pipefitters to perform such work from 1968 to 1972, the Arbitrator did find that it had assigned Grinders, who were members of the Boilermakers, to do so. The Arbitrator also found that the Pipefitters had performed such work on their own initiative from 1968 to 1972. The Arbitrator viewed such work as a contractually protected lesser task of the Pipefitters. In addition, the Arbitrator found it to be unnecessary to consider Memorandum 11, formerly Memorandum 40.

Arbitrator James V. Altieri rendered an award, dated February 1, 1980, concerning the propriety of an alleged misassignment of work to a different occupational title. (Union Exhibit 21.) The Arbitrator commented, "the instant arbitration is the fourth in line calling for the expression of an opinion on the proper interpretation and application of Article XL, as it was found in the 1972-75 agreement." (Union Exhibit 21 at 16-17.) Arbitrator Altieri reviewed at length and in substantial detail the background of the relevant provisions of the collective bargaining agreements and delineated the conflict between the Santer and Rubin Awards as compared to the Stutz Award. In addition, Altieri referred to proceedings before Arbitrator Mittenthal, the permanent umpire pursuant to Memorandum of Understanding 40, in which Mittenthal addressed the Memorandum and Article XL of the collective bargaining agreement and had proceeded "on the assumption that the Santer-Rubin award was correct." (Union Exhibit 21 at 18.) Arbitrator Altieri then discussed the existence of conflicting arbitration awards:

I am aware the parties have decided to make this case the 'lead' or 'pilot' case for the grievances which still remain unsettled under the 1972-75 agreement. But the problem with the approach of permitting recourse
to other arbitrators when one is unhappy with the results achieved to that point, remains the same. What I believe should be the controlling norm is that when the self-same issues first arises between the same parties and with respect to the same contract, that decision, unless it is clearly erroneous, should be final and binding not only with respect to the specific incident that precipitated the grievance, but all like incidents in grievances that may be filed thereafter raising the same issue. (d. at 19).

Accordingly, Altieri followed the Santer approach by sustaining the grievance on the basis that the:

Company violated Article XL when it assigned the inspection work that had been performed exclusively by structural quality control inspectors during the period 1968-72 to chippers, who are in a separate and different occupational title.

Union Exhibit 21 at 32. See also Company Exhibit 42 at 4 (Arbitrator Altieri discussing his prior Award).

In the subsequent award, dated December 1, 1980 (Company Exhibit 42), Arbitrator Altieri again reviewed Article XL and Appendix A of the 1972-1975 collective bargaining agreement. He indicated that:

the long history of controversy over this contractual provision was not destined to come to an early end. The Company was willing to abide by the agreement making Case #B-328-4 the pilot or lead case and therefore accepted the ruling therein that the manner in which an assignment had been made during the 1968-1972 period would dictate the Company's obligations in the 1972-1975 period.

Company Exhibit 42 at 4-5. The parties, however, failed to agree on an appropriate remedy for such violations. Arbitrator Altieri found that this prior award "is binding not only as to the merits of the grievance, but as to the appropriate remedy . . . ." (Company Exhibit 42 at 6-7.) He left his prior remedy undisturbed.
It appears that the instant grievance #C-14-82 and this arbitration case before me is the first case requiring consideration of both Article V and Article XL. That inter-provisional question did not come up in any of the foregoing cited arbitration cases because they were sounded as alleged Article XL violations or predated the negotiation of Article XL. The matter is further complicated by the fact that the instant arbitration case appears to be the first in which an Article V violation is alleged. The latter is explained, of course by the presence in the contract of Article VI Section 9 which states:

It is further agreed that jurisdictional disputes are not a subject for the grievance and arbitration procedures as defined in this Article but will be settled in accordance with the procedures as set forth in Article V Jurisdictional Disputes.

Indeed this case is before me because of the Court's ruling referring the dispute to arbitration.

The answer to whether the instant dispute is covered by Article V or Article XL cannot be found within the Article XL arbitration decisions. Those decisions, based on Article XL claims and confined to Article XL make no mention of nor have any enlightening bearing on the applicability of Article V. I have recited the relevant parts of those discussions in some detail for the purpose of making that limited parameter clear.

A well settled concept of contract law is that different contract sections should be reconciled and harmonized, and that neither should oust or nullify the other. Article V and Article XL are independent and integral parts of the same contract. I am certain the parties negotiated both for separate purposes and each has a separate effectiveness.

I have carefully considered the testimony regarding the negotiations of those Articles and the practices thereunder.
I find no persuasive evidence that either was intended to pre-empt the other. More importantly, the testimony on the bargaining history or practice do not reveal whether the instant type of dispute is covered by or should be grieved under Article V or Article XL. The considered evidence on these points in the record is simply inconclusive. Documents and witnesses were not available and memories were not sufficiently precise to meet the standard of proof required.

By example, compare the following testimony of Petchark and DeGregory. Regarding the intent of the parties regarding Article V Petchark said:

Q: Now, during the discussions on Article V in 1968, do you claim that any member of the Company told anybody of the Union that what they had in mind was that Article V should be used to determine which Union would represent the people who were doing work assigned by the Company?

A: Yes.

Q: Who made that statement, sir?


Transcript at 2-21 through 2-23.

DeGregory testified:

Q: Did you ever hear anyone from the Company in 1968 state those interpretations that either Mr. Petchark or Mr. Kelleher have stated in these proceedings?

A: No.

Q: Now, did anyone give that interpretation of Article V during the 1968 negotiations?

A: Absolutely not.

Q: Did Mr. Petchark ever state that as his

1. None of these testified
interpretation of the 1968 negotiations?

A: No, he didn't.

Q: Did he ever tell you after you concluded the contract at the end of '68 that that was his interpretation?

A: No.

Q: Did he ever tell you in 1968 or 1970 or until the time he left the Metal Trades Council and went with the Company that that was his understanding of the interpretation?

A: No, he didn't.

Transcript at 2-92 through 2-93.

The inconclusiveness represented by this testimony runs through the entire record. There is nothing before me which would persuade me to accord greater credit to either testimony or to the other offsetting evidence.

Therefore, neither the record nor the contract provides the answer as to which contract Article applies to the dispute at hand. As both sections are entitled to recognition and effectiveness, it would mean that either or both Articles are applicable or may be utilized if the facts and substance of the dispute fit within their meaning. Do the facts and substance of the grievance meet the provisions and coverage of these Articles? I answer in the affirmative.

I have held that the title and language of Article V are traditional. I have found that Article V is and was intended to be the voluntary adjustment procedure contemplated by Section 10(k) of the Act. References to the cases and quotations cited and underscored earlier, show that Article V, as would be the case under 10(k), covers claims for work jurisdiction and for assignment by the employer of the disputed work to employees represented by a particular union. The Company's theory of Article V, namely that it was negotiated to give the unions membership authority over whomever the Company assigned to do
particular work in that union's jurisdiction is unorthodox, different from the interpretation of "jurisdictional dispute" by the NLRB and the United States Supreme Court, at variance from the textual writings and observations of authorities in the field, and most importantly unsupported by any special contract language. I again call attention to the line of Board and court cases cited earlier in which the term "jurisdictional dispute" was consistently defined as:

"a dispute between two or more groups of employees, over which is entitled to do certain work for an employer;" (emphasis added)

where "two or more unions seek the right to do specific work for their members;" (emphasis added)

"the conflict over the right to do certain work and not to represent certain employees;" (emphasis added)

"where each union seeks to place its own members in the performance of certain work" (emphasis added)

The Union's claim in the instant case and the facts of the dispute square with the foregoing definitions. It is equally apparent that the Company's theory of the case, and the positions it advances are different from these well settled definitions. Having failed to prove any unusual interpretation by bargaining history or practice, I cannot insert any such special arrangement into the collective bargaining relationship or into the ordinary contract language. Nor can I find evidence that active claims by the Machinists Union and the Carpenters Union were pretextual or frivolous. Hence I find that the dispute at hand falls within the terms of Article V.

By the same token, and again based on a record before me that fails to make any significant delineations between the two, I find that the dispute also falls within the terms of Article XL. A review of the Article XL arbitration decisions discloses facts and disagreements similar to the facts and disagreement of the instant grievance. I find nothing in the record which would have
foreclosed the Union from initiating a grievance under Article XL when the Company assigned the "con-con" bag work to employees, who at the time of the assignment, were not represented by the Carpenters Union. The contract and the record before me certainly set up different procedures for Article V and Article XL claims and disputes, but neither the contract nor this record has provided me with any probative information on which was intended to prevail in this case or why. In short, depending on how sounded and cast, the instant dispute is both a jurisdictional dispute under Article V and a work assignment dispute under Article XL.

The parties are responsible for having negotiated both Articles. The parties are responsible for failing to make any essential distinctions between them in the instant case. And it is therefore for the parties in direct negotiations and not in arbitration, to make distinctions for subsequent matters.

In short, the Union has proved that the facts and substance of the instant dispute are as much covered by Article V as the Company has proved that they may fall within Article XL.

That being so, I cannot find that the Union did not have the contractual right to claim the work and the employee assignment under Article V when the Company did not accord the work and make the assignment that way.

The considerable number of exhibits on previous work assignments decided by the MTC; the Company's agreement, acquiescence or opposition to those decisions, and unilateral actions by the Company in making work assignments are also conflicting and indeterminative. Also, because those situations involve the merits of the assignment, they are immaterial in view of my finding that Article V is applicable.
With my holding that this is an Article V matter, the Article V Committee decision of the MTC is incontestable under the grievance or arbitration provisions of the contract.

Eric J. Schmertz
Arbitrator

DATED: November 30, 1985
In the Matter of the Arbitration:

between:

Industrial Union of Marine and
Shipbuilding Workers Union,
Local 5:

and:

General Dynamics Corporation
Quincy Shipbuilding Division:

AWARD

Case No. 2349A

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

Grievance 2349A dated November 6, 1984 pro-
testing the discharge of Mario Berdet is
arbitrable.

The evidence does not clearly and convinc-
ingly establish that the probationary per-
iod of Mr. Berdet was extended by the "mu-
tual agreement" required by Section 4(a) of
Article VIII of the contract. The critical
oral testimony on the point was offsetting
and inconclusive, and falls short of the re-
quisite proof.

This is not to say that the Company repre-
sentative did not believe that an agreement
had been reached with his Union counterpart,
but rather that the latter's belief and testi-
mony that no such agreement was finalized, are
equally plausible and believable.

Though the contract does not require that mu-
tually agreed to extensions of the probation-
ary period be in writing, I am surprised that
in a circumstance of this importance, where
employee rights are significantly different
during and after the probationary period, and
where the unilateral and unchallengeable right
of the Company to terminate during the proba-
tionary period are involved, the instant situation
was not confirmed or recorded by some form of
written mutual agreement or jointly signed memo-
randum.

That it was not, together with the inconclusive-
ness of the testimony of those involved in the
relevant discussions, cast evidentiary doubt on
the existence of an enforceable mutual agreement.

Therefore, the Company has not shown that Mr.
Berdet was still a probationary employee when
he was terminated. Absent that showing,
Mr. Berdet is accorded the contract rights of an employee with seniority. Hence the propriety of his discharge is subject to the grievance and arbitration provisions of the contract.

Eric J. Schmertz
Arbitrator

DATED: September 9, 1985
STATE OF New York )
COUNTY OF New York )ss.:

I, Eric J. Schmertz do hereby affirm upon my Oath as Arbitrator that I am the individual described in and who executed this instrument, which is my AWARD.
In the Matter of the Arbitration
between
Industrial Union of Marine and Shipbuilding Workers Union,
Local 5
and
General Dynamics Corporation
Quincy Shipbuilding Division

The stipulated issue is:

Was the termination of Panfilo Paolilli for Just cause? If not what shall be the remedy?

A hearing was held in Braintree, Massachusetts on June 4, 1984 at which time Mr. Paolilli, hereinafter referred to as the grievant, and representatives of the above named Union and Company appeared. All concerned were afforded full opportunity to offer evidence and argument and to examine and cross-examine witnesses. The Arbitrator's Oath was waived. A stenographic record was taken. The Union summarized its case verbally; the Company filed a post-hearing brief.

I deem the Company's version of what happened, and its evidence in support thereof, to be accurate. Accordingly, I conclude that without provocation the grievant was insubordinate, abusive, disrespectful and physically threatening to his supervisor.

I am not persuaded that the grievant's difficulty with the English language created a misunderstanding about what he was instructed to do by his supervisor or was a basis for the grievant's conduct.

The testimony of a Union witness in the grievant's defense was not sufficiently probative. That witness did not see the full transaction between the grievant and the supervisor, and I found his testimony about what he did see and hear to be equivocal and imprecise.
The grievant's misconduct is universally recognized as grounds for dismissal.

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 termination of Panfilo Paolilli was for just cause.

Eric J. Schmertz
Arbitrator

DATED: September 9, 1985
STATE OF New York ) ss.: COUNTY OF New York )

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