

IN THE MATTER OF THE ARBITRATION BETWEEN

HONEYWELL INTERNATIONAL, INC)	
)	
“EMPLOYER”)	FMCS NO. 06-0504
)	
And)	
)	
TEAMSTERS LOCAL 1145)	RICHARD R. ANDERSON
)	ARBITRATOR
“UNION”)	AUGUST 25, 2007
)	

APPEARANCES

EMPLOYER

Brian L. McDermott, Attorney
Steven F. Pockrass, Attorney
Betsy Lawrence, Attorney
Ed Merriam, Director of Labor Relations
Kevin Covert, Vice President and Deputy General Counsel for Labor Relations
Lora Daley, Former Labor Relations Manager
Linda Gilreath, Bargaining Unit Employee
Ed Magarian, Attorney-Investigator Dorsey & Whitney Law Firm

UNION

Martin J. Costello, Attorney
Katrina E. Joseph, Attorney
Brad Slawson Sr., President Teamsters Local 120 & Union Trustee
Ed Barnum, Business Agent Teamsters Local 120
Monty Clemmer, Grievant & Former Union Secretary-Treasurer
Richard Wrzos, Former Bargaining Unit Employee & Former Union President
Dave Hedberg, Bargaining Unit Employee & Former Union Vice President
Mike Maruska, Bargaining Unit Employee & Union Steward

JURISDICTION

The hearing in above matter was conducted before Arbitrator Richard R. Anderson on May 23, May 24, June 4 and June 5, 2007 in Minneapolis, Minnesota. Both parties were afforded a full and fair opportunity to present its case. Witness testimony was sworn and subject to cross-examination. Exhibits were introduced and received into the record. The hearing closed on June 5, 2007. Post-Hearing Briefs were timely received from the Employer on June 30, 2007, and from the Union on July 2, 2007.¹ The record was then closed and the matter was taken under advisement.²

This matter is submitted to the undersigned pursuant to the terms of the parties' collective bargaining agreement that was effective from February 1, 2002 through January 31, 2007.³ The language in Article XVI [GRIEVANCES] provides for the filing, processing and arbitration of a grievance. A new grievance procedure was adopted, effective for grievances that arose on or after August 8, 2005, the date the Union was placed in temporary trusteeship, replacing the original Article XV language.⁴ The grievance procedure followed in this matter is from the amended version of Article XV. Step 4 of this Article defines the jurisdiction of the Arbitrator and establishes the Arbitrator's sole decision-making authority.⁵

¹ The simultaneous mailing date was June 29, 2007.

² Further discussion of the record being closed on July 2, 2007 will follow in my Opinion.

³ Joint Exhibit No. 1. A new Agreement was ratified on January 22, 2007 effective February 1, 2007 through January 31, 2010.

⁴ The Letter of Agreement was executed by the Employer on March 27, 2006 and on April 11, 2006 by the Union. Joint Exhibit No. 2.

⁵ The parties stipulated to the jurisdiction and authority of the Arbitrator.

THE ISSUE

The parties stipulated that the issue was, "Whether the Employer had just cause to discharge the Grievant on September 7, 2005 and if not, what is an appropriate remedy?"

BACKGROUND

Honeywell International, Inc., hereinafter the Employer, is a diversified technology and manufacturing leader, serving customers worldwide with aerospace products and services; control technologies for buildings, homes and industry; automotive products; turbochargers; and specialty materials. The Employer operates two business units, Aerospace and Automation and Control Solutions ("ACS"), relevant to this proceeding. It has several facilities in the Minneapolis/St. Paul, Minnesota area, some of which are Aerospace facilities and some of which are ACS facilities. Teamsters Local 1145, hereinafter the Union, represents approximately 1,700 production and maintenance employees at these facilities, and has so represented them since the 1940's. The bargaining unit is set forth in Article I [RECOGNITION].

Monty Clemmer, hereinafter the Grievant, was discharged by letter dated September 7, 2005 from Labor Relations Manager Lora Daley stating, "*In accordance with the Honeywell Factory Policy 01 and the Honeywell Code of Conduct, the cause for your termination is that you committed the fourth degree offense and the code of conduct violation of giving false testimony during a company investigation*".⁶ On September 6, 2005, the Union filed a grievance on his behalf stating, "*Termination—violation of Art.*

⁶ Joint Exhibit No. 3

XIX, Section 7 Unjust discharge".⁷ A Step 2 meeting was held on May 25, 2006, which resulted in current Director Of Labor Relations Ed Merriam issuing a letter to Union Trustee Brad Slawson Sr., dated May 31, 2006.⁸ The letter stated:

I write to provide the Company's Step 2 response to the Union's grievance regarding the discharge of Mr. Monte Clemmer. In its grievance, the Union alleges that the Company discharged Mr. Clemmer without just cause.

At our step 2 meeting held 5/25/06, the Union noted that it does not believe that the Company's evidence proves that Mr. Clemmer indeed committed the act of providing false testimony during a company investigation. The Union further alleged that the punishment in this case was extraordinary for the infraction.

After hearing the grievant's defenses, it remains the position of the Company that Mr. Clemmer did knowingly provide false testimony during the investigation into the improprieties of the former arbitration process. Providing false testimony during an investigation has also subjected other employees to discharge. Finally, the Company remains of the position that Mr. Clemmer's discharge did comport with the contractual mandate of just cause. For the foregoing reasons, this grievance remains denied.

Thereafter, the Union filed for arbitration with the Federal Mediation & Conciliation Service (FMCS).⁹ By Memorandum dated January 2, 2007, the undersigned Arbitrator was notified by Union Counsel Martin J. Costello that I had been selected as the neutral Arbitrator in this matter.

The parties stipulated that there were no substantive or procedural issues with respect to the timely processing of the grievance pursuant to Article XV.

⁷ The grievance is dated before the termination letter because the Union had prior knowledge of the discharge. Joint Exhibit No. 3

⁸ Joint Exhibit No. 5

⁹ Exact date is unknown.

RELEVANT CONTRACT PROVISIONS

ARTICLE XII. LEAVES OF ABSENCE

Section 4. *An employee elected or appointed to a position with the Union which takes the employee from the employment of the Company shall upon written request by the Union, receive a leave of absence of the period of his or her service for the Union, but not to exceed one (1) year provided such leaves do not materially interfere with the operation of the employee's then department. Not more than eleven (11) employees shall be granted such leaves concurrently; provided the Company and the Union may mutually agree to grant additional such leaves. Such employees shall, upon written request, be reinstated in work generally similar to that in which the employee was engaged last prior to his or her leave of absence, and the employee's seniority shall accumulate throughout the period of such leave. A leave of absence may be extended for an additional period by mutual agreement of the parties.*

Employees returning from a leave of absence granted under this Section 4 shall be reinstated in the same manner as other employees returning from a leave of absence in excess of thirty (30) days.

Time spent on leave of absence granted to an employee under the provisions of this Section 4 shall be regarded as credited service for the purposes of retirement or other benefits under the provisions of the Honeywell Pension Plan; provided, however, if an employee was granted such a leave of absence that terminated prior to February 1, 1970, the time spent on such leave will be regarded as credited service only if the employee has remained in the continuous employment of the Company from the date such leave terminated up to February 1, 1970.

ARTICLE XV. GRIEVANCES (Effective for grievances after August 8, 2005)

Section 1. *A grievance is any controversy between Company and the Union (or between the Company and an employee covered by this Agreement) as to (1) interpretation of this Agreement, (2) a charge of violation of this Agreement, or (3) a charge of discrimination involving wages, hours or working conditions resulting in undue hardships.*

Section 2.

Step 3. *Grievances referred to Step 3 shall be discussed between the Business Agent of the Union and the Director of Labor Relations or their delegated authority. If settlement is not reached within five (5) working days after the grievance has been referred to this Step 3, the grievance may be referred in writing to arbitration (Step 4). The written request for arbitration shall be sent to the Director of Labor Relations and shall clearly state the issues involved*

together with the relief sought. If the grievance is not referred to arbitration (Step 4) within twenty (20) working days after the disposition by the Director of Labor Relations or his or her delegated authority has been delivered to the Union, the settlement set forth in the disposition shall be final and binding.

Step 4. Not less than ten (10) working days shall elapse from the date of written request for arbitration before a grievance, including discharge cases, shall be arbitrated; provided the parties may mutually agree to exceptions to this provision of Step 4.

It is agreed that the requesting party must request in writing from the Federal Mediation Conciliation Service (FMCS), a regional arbitration panel of no less than seven (7) names, within seven (7) working days from the date of its written notice requesting arbitration. Representatives of the Union and the Company will meet either in person or via teleconference to select an arbitrator. In the event the parties cannot agree on an arbitrator, the choice shall be made by the alternate strike method. The person whose name is not struck shall be named as arbitrator. The determination of who goes first shall be on a rotation basis. Each party shall have the right once on each arbitration case to request a new panel from the FMCS. After a case on which the arbitrator is empowered to rule hereunder has been referred to him, it may not be withdrawn by either party except by mutual consent.

An arbitrator for a particular hearing shall be notified by the parties of the mutually agreed upon time and place for the hearing. Each party may submit pre- and post-hearing briefs to the arbitrator, which state the position of the parties and furnish to the arbitrator any arguments in support thereof. If either party submits briefs or other written arguments to the arbitrator prior to, during, or following the hearing, the other party will be furnished with copies of such material simultaneously with its being furnished to the arbitrator.

The authority of the Arbitrator shall be limited solely to the determination of the questions as submitted in Step 3, provided that the Arbitrator shall refer back to the parties without decision any matter not a grievance under Section 1 of this Article or which is excluded from arbitration by the terms of Section 3 herein.

The Arbitrator shall have no power to add to, or subtract from, or modify, any of the terms of this Agreement, or any agreement made supplementary hereto.

The Company and the Union shall set the time and place of hearing. Hearing dates will be subject to the approval of the Arbitrator. The Arbitrator's decision shall be final and binding upon the Company, the Union and employees within the bargaining unit. The expense and fees of the Arbitrator shall be borne jointly by the Company and the Union.

ARTICLE XV. GRIEVANCES (Effective for grievances prior to August 8, 2005)

Section 1. *A grievance is any controversy between Company and the Union (or between the Company and an employee covered by this Agreement) as to (1) interpretation of this Agreement, (2) a charge of violation of this Agreement, or (3) a charge of discrimination involving wages, hours or working conditions resulting in undue hardships.*

Section 2.

Step 3. *Grievances referred to Step 3 shall be discussed between the Business Agent of the Union and the Director of Industrial Relations or their delegated authority. If settlement is not reached within five (5) working days after the grievance has been referred to this Step 3, the grievance may be referred in writing to arbitration (Step 4). The written request for arbitration shall be sent to the Arbitrator with a copy to the other party and shall clearly state the issues involved together with the relief sought. If the grievance is not referred to arbitration (Step 4) within twenty (20) working days after the disposition of the Director of Industrial Relations or his or her delegated authority has been delivered to the Union, the settlement set forth in the disposition shall be final and binding.*

Step 4. *Not less than ten (10) working days shall elapse from the date of written request for arbitration before a grievance, including discharge cases, shall be arbitrated; provided the parties may mutually agree to exceptions to this provision of Step 4.*

It is agreed that Arlen Christenson shall act as Arbitrator. The authority of the Arbitrator shall be limited solely to the determination of the questions as submitted in Step 3, provided that the Arbitrator shall refer back to the parties without decision any matter not a grievance under Section 1 of this Article or which is excluded from arbitration by the terms of Section 3 herein.

The Arbitrator shall have no power to add to, or subtract from, or modify, any of the terms of this Agreement, or any agreement made supplementary hereto.

The Company and the Union shall set the time and place of hearing. Hearing dates will be subject to the approval of the Arbitrator. Whenever possible, hearings will be held at least every 90 days. The Arbitrator's decision shall be final and binding upon the Company the Union and employees within the bargaining unit. The expense and fees of the Arbitrator shall be borne jointly by the Company and the Union.

ARTICLE XIX. LAYOFF. TRANSFER AND DISCHARGE

Section 1. The Company shall have the exclusive right, except as otherwise provided in this Agreement, to lay off and transfer employees for lack of work or other legitimate reason and to discharge employees for just cause.

Section 7. *The Company shall have the exclusive right to discipline, suspend, or discharge employees for just cause. In case of discharge reasonable notice shall be given to the departmental committee member prior to the discharge. The union agrees a protest of discharge will be barred unless presented in writing under Step 2 of Article XV, Section 2, within five (5) working days after discharge of an employee. The Company agrees to make its final decision within five (5) working days after the written protest is submitted to the Company.*

OTHER DOCUMENTS.

RELEVANT PORTIONS OF HONEYWELL CODE OF BUSINESS CONDUCT¹⁰

In order to facilitate implementation of this Code of Business Conduct, employees have a duty to cooperate fully with the Company's investigation process and to maintain the confidentiality of investigative information unless specifically authorized or required by law to disclose such information.

Integrity is a bedrock principle of all our behaviors. All employees must abide by and uphold the Code of Business Conduct and all laws. There will be no exceptions.

RELEVANT PORTIONS OF FACTORY POLICY¹¹

SUBJECT: OFFENSES AND PENALTIES FOR OFFENSES

POLICY:

The Company maintains a safe, healthy and productive work environment to promote the best possible working relations between employees, and between employees and the Company. All employees bear responsibility for their own conduct in the work environment.

PRACTICE:

The following offenses are defined and the following penalties and rules are established.

¹⁰ Employer Exhibit No. 8, p.29.

¹¹ Employer Exhibit No. 9.

FOURTH DEGREE OFFENSES are defined as those acts or omissions of an intolerable nature which violate the commonly accepted or established rules of conduct, such as:

Introduction or possession for use, or use of intoxicating liquors or habit-forming, drugs on Company premises.

Deliberate promotion of discord or unrest.

Willful damage to property of another employee.

Stealing property belonging to the Company or another employee.

Committing an act of violence.

Giving false testimony. [Emphasis added]

Intentionally falsifying reports or records.

Refusal to perform work as directed or other willful neglect of duty.

Willful disobedience of instructions or directions.

Unexcused absence of five days or more.

Willful damage to Company property to the extent over \$25.00.

Malicious disregard for the safety of other[s]. Indecent or immoral conduct on the premises.

Unauthorized access to inappropriate web sites on company equipment.

Conviction of a crime involving moral turpitude.

Conviction of a crime, the commission of which affects the employee's qualifications satisfactorily meet the requirements of the job.

90 lost hours as defined in Factory Policy A-2 is subject to immediate termination.

Penalties

<i>Offense</i>	<i>Demerits</i>	<i>Life of Demerit</i>
<i>First Degree</i>	<i>First Degree Demerit</i>	<i>3 months</i>
<i>Second Degree</i>	<i>Second Degree Demerit</i>	<i>6 months</i>
<i>Third Degree</i>	<i>Third Degree Demerit</i>	<i>9 months</i>
<i>Fourth Degree</i>	<i>Fourth Degree Demerit</i>	<i>12 months</i>

<i>First Degree Demerit – First Degree Demerit slip given to employee.</i>
<i>Second Degree Demerit – Second Degree Demerit slip given to employee.</i>
<i>Third Degree Demerit – Third Degree Demerit slip given to employee disciplinary layoff of not less than two nor more than ten working days</i>
<i>Fourth Degree Demerit – Discharge [Emphasis added]</i>

Cumulative Demerits

Demerits shall be cumulative when one demerit is given before the previous demerit expires. The cumulative demerits shall be combined in the following manner:

*Two first degree demerits shall equal one second degree demerit.
Three first degree demerits shall equal one third degree demerit.
Four first degree demerits shall equal one fourth degree demerit.
Two second degree demerits shall equal one fourth degree demerit.
One first degree demerit and one second degree demerit shall equal one third degree demerit.
One first degree demerit and one third degree demerit shall equal one fourth degree demerit.
One second degree demerit and one third degree demerit exceed a fourth degree demerit, but shall invoke the penalty prescribed for a fourth degree demerit. Fourth degree demerit but shall invoke the penalty prescribed for a fourth degree demerit. Two third degree demerits exceed a fourth degree demerit but shall invoke the penalty prescribed for a fourth degree demerit.*

When an employee returns from a disciplinary layoff which was imposed in connection with a fourth degree demerit and commits a first degree offense before the fourth degree demerit expires, the employee shall be subject to such disciplinary action as is determined by a committee consisting of the Factory Supervisor and the Labor Relations Manager.

A higher degree demerit resulting from a combination of demerits - shall be in full effect for its full period beginning with the date of issue.

When it is necessary for a Supervisor to issue a third degree demerit (disciplinary suspension) or fourth degree demerit (discharge), the Supervisor shall first obtain the approval of Labor Relations Manager or delegated authority.

RELEVANT FACTS

The following are facts that this Arbitrator deems relevant to the determination of the issue. The Grievant was initially hired on September 25, 1978 and worked as a carpenter throughout his tenure. Prior to his termination on September 7, 2005, the Grievant received one disciplinary action, that being a verbal warning on September 8, 1986 for an unexcused absence for refusing to work overtime on Saturday, September 6, 1986 after he had been scheduled to work six hours on that date. The Grievant testified that he had just changed plants and volunteered for overtime for the following Saturday. Later that day he remembered that he was in his cousin's wedding. He then

informed management the next day that he could not work because of the wedding. According to the Grievant, he was issued a first-degree demerit that was immediately "torn up". He added, the Employer representative then thanked him for not filing a grievance. The Grievant stated that he was unaware that he had this verbal warning in his file until it was discovered while he was reviewing his personnel file in preparation for the hearing.¹²

The Grievant transferred a number of times during his tenure to different plants at which time a transfer report was issued evaluating his employment at his previous plant. All of the approximately sixteen evaluations that the Grievant received indicated that his job performance was average to excellent, with a vast majority being in the good to excellent range.¹³

The Grievant was very active in the Union and held a number of Union positions. He was a Committee Person in almost every shop in which he worked. Within a few years of his hire, he was elected Steward for the building trades positions within his shop. Thereafter, in the late 1990's, he was elected Area Chief Steward for all of the Avionics plants. While in this position, he was compensated by the Employer even though he did not perform any carpenter duties unless it involved voluntary weekend overtime. His normal workday was devoted exclusively to Union business.

In 2004, the Grievant headed up a slate of seven candidates named the Unity Slate to replace the incumbent officers. The Slate prevailed and the Grievant was elected

¹² Grievant's personnel file. Union Exhibit No. 26.

¹³ Id.

Secretary-Treasurer, the Union's highest ranking position.¹⁴ Richard Wrzos was elected President and Dave Hedberg Vice-President. Also elected were Recording Secretary Mike Gough and Trustees Vicki Hansen, Al Veldey and Ron Wright. The top three Officers, Grievant, Wrzos and Hedberg, upon being elected, also assumed full-time Union Business Agent positions. Since they were now full-time employees of the Union, they had to apply for a leave of absence (LOA) from the Employer pursuant to the Agreement.

Article XII Section 4 states, "*An employee elected or appointed to a position with the Union which takes the employee from the employment of the Company shall upon written request by the Union, receive a leave of absence of the period of his or her service for the Union, but not to exceed one (1) year ...*". This one-year leave of absence, "*may be extended for an additional period by mutual agreement of the parties*". Once the individual ceases to become a Business Agent, he/she can, "*...upon written request, be reinstated in work generally similar to that in which the employee was engaged last prior to his or her leave of absence, and the employee's seniority shall accumulate throughout the period of such leave*".

The Grievant applied for a LOA on May 1, 2004, which Human Resources approved on May 5, 2004, effective from May 1, 2004 through April 30, 2005.¹⁵ Consequently, on May 1, 2004, the Grievant along with Wrzos and Hedberg, assumed their full-time Union positions. As such, each received a paid Union salary plus other traditional benefits such as health, welfare and vacation. The Employer no longer had them on its

¹⁴ Union Exhibit No. 7A.

¹⁵ Union Exhibit No. 7C.

payroll nor did they receive any benefits with the exception that they continued to accumulate seniority and retirement credit during their LOA period. They could not exercise their seniority for bidding on new plant positions, and were also not allowed to make individual contributions to their 401K plan, things that they could do as an employee of the Employer.

The Grievant testified that while Secretary-Treasurer, he was not subject to any control by the Employer including supervision, work rules or Code of Conduct. He further testified that while at a Step 3 meeting attended by Labor Relation Managers Lora Daley and Terry Clapp, there was a heated discussion, which happened quite often, wherein Daley "jumped up and screamed at me". During the process, the Grievant stated that Daley threatened him. According to the Grievant, after she calmed down, Clapp told the Grievant, "Monty you don't have to worry about a thing. You are in a position that they can't do anything about it". To which the Grievant said he replied, "I know that. I'm not an employee".

The Grievant further testified that as the chief Union representative he was in many adversarial situations with the Employer. If he had to worry about work rules or codes of conduct, he would not be able to perform his duty to represent employees in the bargaining unit. He further stated that in contract negotiations or grievance processing, he was not always able to be completely truthful with the Employer; and many times it was necessary, in the posture of bargaining, to withhold information or engage in bluffing. The Grievant added that in his role of representing members during an investigation, he would have to withhold confidential information in order to fairly represent his members. Finally, the Grievant stated that his role in posturing,

withholding information and bluffing was identical conduct that Employer representatives engaged in during their representation of the Employer interests.

As a Union officer, the Grievant was subject to the rules and regulations of the Union and the International Brotherhood of Teamsters' (IBT) Constitution.¹⁶ The IBT Constitution is the governing document of the IBT and its affiliate joint councils and local unions, including the Union. The Constitution includes an internal disciplinary process that covers local members and union officials charged with various forms of misconduct while performing their duties. Grounds for such charges against members or officers are stated in Article XIX, Section 7(b) (1-14); these grounds are not exclusive. Article XIX, Section 10(a) provides for specific decisions and penalties, upon trial of local union members and officers. Decisions and penalties imposed upon members and officers including elected business agents of local unions, joint councils or other subordinate bodies found guilty of charges may consist of reprimands, fines, suspensions, expulsions, revocations, denial to hold any office permanently or for a fixed period, or commands to do or perform, or refrain from doing or performing, specified acts. The Teamsters are also subject to the jurisdiction of the federal government-imposed Independent Review Board (IRB), as established by Supreme Court consent decree.¹⁷

Prior to becoming the Secretary-Treasurer, the Grievant attended a number of arbitrations before Arbitrator Bellman. When the Grievant assumed his position, the grievance procedure in the Agreement contained a four-step process culminating in arbitration with a single arbitrator named in the Agreement to hear all cases.

¹⁶ Union Exhibit No. 1A.

¹⁷ United States v. International Brotherhood of Teamsters et. al., 88 Civ. 4486 (S.D.N.Y. 1989) Union Exhibit No. 5A.

This procedure is outlined in the RELEVANT CONTRACT PROVISIONS section of this Decision. During Step 1, the Union committee orally presents the grievance to the supervisor involved. If the matter cannot be solved, the grievance is reduced to writing and moved to Step 2.

In Step 2, the grievance is discussed between a representative from Human Resources, which was the Labor Relations Manager and the Union committee with the grievant present.¹⁸ If the matter could not be resolved, it is moved to Step 3.

During Step 3, Human Resource representatives Daley and Labor Relations Manager George Glasser would meet with one the Union's Business Agents during the Grievant's administration to discuss the grievance. Information would be exchanged that would allow the parties to prepare for arbitration if a settlement could not be reached. Neither the grievant nor any other rank and file Union members would be present at this Step. If the grievance was not settled, it proceeded to Step 4-arbitration.

Unbeknownst to the Grievant or any of the newly elected officers, Employer representatives, Union officials and Arbitrator Howard Bellman were meeting between Step 3 and the actual arbitration proceeding. This was a process outside of the language of the grievance procedure of the Agreement. These meetings began shortly after Bellman became the arbitrator in 2002. The meetings became known as Step 3½ pre-meetings. After Step 3, the parties and the arbitrator would meet approximately one to three weeks before a quarterly arbitration to discuss cases prior to the actual arbitration proceeding. The pre-meetings were kept secret from a grievant, the Union

¹⁸ Lora Daley was the Labor Relations Manager during the period the Grievant was the Secretary-Treasurer and Business Agent for the Union,

membership, and other management officials, and never included other witnesses who might appear or testify at the arbitration hearing. The purpose of the pre-meetings was to give the arbitrator an opportunity to learn the facts of a grievance. This streamlined the formal arbitration proceeding by disclosing what evidence each party would present at the upcoming arbitration.

The evidence disclosed that the parties' arbitration process involved numerous arbitrations, as many as ten a day during the three-day quarterly arbitration schedule, with stipulated facts involving complicated issues. Very little time, approximately one half hour, was devoted to each arbitration case. Thus, it appears from the testimony the parties felt it vital to have the pre-meetings in order to get all of the factual evidence before the arbitrator.

The pre-meetings, however, would go beyond mere clarification of facts or issues or exchange of information relevant to the pending arbitrations. The Employer provided evidence that the merits of and opinions on cases were shared openly in the pre-meetings. The Union Business Agent and Employer representatives would sometimes agree on an arbitration award during these meetings. This would usually occur when one of the parties acknowledged the weakness of their case or if the Employer agreed with the Union that there were mitigating personal circumstances, usually medical, as a cause for an employee's misconduct. In this case a grievant would be given a second chance and reinstated without back pay. Thereafter, the arbitrator would frequently issue an award that reflected these pre-arbitration agreements.

Also unbeknownst to the Grievant or any of the newly elected officers, top Employer labor relations officials and the arbitrator would meet after the final day's arbitration to

discuss the cases that had been presented during the course of the arbitration proceedings. This process had been ongoing for decades prior to Bellman being appointed arbitrator in 2002.

These were known as Step 4½ post-meetings, which was also a process outside of the language in the grievance procedure of the Agreement. The stated purpose of the post-meetings was to review cases, clarify the facts and restate the parties' position in order to assist the arbitrator in issuing his opinion. The Employer provided evidence that indicated that the arbitrator would discuss each case and indicate which way he was going to rule. Evidence also indicated that the parties sometimes reached an agreement, which the arbitrator then incorporated as his own opinion in the subsequent award. These post-meetings were kept secret from the grievant, rank and file members, and other Union and Employer officials. The Step 4½ post-meetings ceased prior to the election of the Grievant and were never resumed during his tenure as Union officer.

In addition after the post-meetings, arbitration awards were sent secretly to top labor relations and Union officials at their homes prior to issuance. The purpose of this was to avoid the premature release of the awards. In some instances the opinion and remedy were rewritten by the parties and relayed back to the arbitrator who then issued his decision incorporating the changes as his own work product.

During the early summer of 2005, the Employer learned of possible collusive practices between the Employer and the Union that undermined the

grievance/arbitration process contained in the Agreement.¹⁹ The Employer initiated an investigation into the alleged collusive practices and retained the Dorsey & Whitney law firm as outside council to investigate those allegations. Attorney Ed Magarian was the chief investigator and was assisted by other Dorsey & Whitney attorneys. During the course of the investigation approximately 24 individuals were interviewed either in person, by telephone or both. The interviewees included Labor Relations and Union officials as well as then current Arbitrator Bellman and former Arbitrator Arlen Christenson, who was the arbitrator from 1982 until 2002

The interviewees were not sworn in or otherwise put under oath. The interviews were not recorded. There was no transcript of the interview nor was their interview memorandum ever shown to the interviewee. According to the Investigative Report, the purpose of the interview was that the interviewer questioned individuals on behalf of, "... *client Honeywell as part of an internal investigation of Honeywell's labor relations practices. The nature of the material covered, the questions asked, and this summary reflect attorney work product and refer to privileged and confidential information. The following is not a verbatim transcript of the interview, but reflects the topics covered. This memorandum includes attorney mental processes and observations*".

At the outset of the interview, Magarian or his associate would instruct the individual being interviewed of the basis for the interview along with his/her rights.²⁰ Not all the interviewees received the same pre-instructions or rights. The following are

¹⁹ Daley had complained to corporate labor relations officials in late May or early June 2005, which generated the investigation.

²⁰ Employer Exhibit No. 1 and Union Exhibit No. 11.

instructions/rights universally issued to all the interviewees with the exception of Arbitrator Christenson:²¹

- (1) Dorsey & Whitney was retained to investigate certain allegations by Honeywell in order to discover certain facts and report back to the Company;*
- (2) Dorsey & Whitney represents the Company only, and does not represent the interviewee;*
- (3) Dorsey & Whitney can provide legal advice only to Honeywell, and not to the interviewee;*
- (4) if there is a question the interviewee does not want to answer for any reason, the interviewee can inform the interviewers;*
- (5) it is important that the interviewee be honest in his answers or tell the interviewers that he is unable to respond to a specific question;*

Arbitrator Bellman was given the following additional instructions/rights:

- (6) the investigation is a confidential internal investigation and the Company has asked Bellman to cooperate in that regard, and;*
- (7) if Bellman felt that responding to a question that was posed would require him to disclose the investigation to outside parties, he should alert the interviewers first before he responds to the question.*

The Grievant and Ayala, who was the Secretary-Treasurer for three years prior to the Grievant, were given this item (6) instruction.²²

- (6) the interviewee should feel comfortable asking questions of the interviewers that do not involve requests for legal advice.*

Labor Relations Director Michael Sweet, and Labor Relations Managers George Glasser and Lora Daley were also given a new instruction/ right for item (6):

- (6) the Company has indicated that this interview and all information related to the interview are to be kept completely confidential, and that failure to do so could impede the investigation, subjecting the interviewee to possible disciplinary action by the Company.*

Sweet and Glasser were also given this additional instruction/right.

²¹ Christenson was given the first three instructions/rights and a slight variation of the fourth.

²² Item No. (7) given to Bellman was not discussed in their interview memorandum:

(7) the Company has an anti-retaliation policy; any retaliation against Honeywell employees who are suspected to have provided information to Dorsey & Whitney during the course of the investigation may result in disciplinary action.

On August 15, 2005, Magarian issued his Investigative Report. The initial Report furnished to the Union contained numerous redactions off Magarian's summary findings.²³ Thereafter, the Union received an unredacted copy of Magarian's Report pursuant to a Union subpoena.²⁴ The Report identified the issues being investigated and the results of the investigation, including credibility resolutions. With respect to the Step 3½ pre-meetings Magarian's Report stated:

Pre-arbitration meetings which include the arbitrator, select LR representatives, and select union officers. It appears that these pre-arbitration meetings began in late 2002 or 2003, according to Sweet and Glasser, who said the meetings started shortly after Bellman became the new arbitrator. Bellman said they started in about 2004~ Whenever these pre-meetings began, they were intentionally kept secret from the grievant and from Company management. The primary rationale given by LR representatives for keeping these meetings secret was because disclosure of the meetings might lead to the perception that the pre-meetings were improper. Michael Sweet noted that union business agents wanted to keep the pre-meetings secret from union members because they were "probably worried about the appearance of collusion between the arbitrator and the Company." Sweet also said that the pre-meetings were not disclosed to Honeywell management because, "as a practical matter, if the supervisors know about the pre-meetings then the employees will know". As with Step 41/2, the reason given as to why people might reach the conclusion that the meetings were improper was that they might think deals were being cut before the arbitration without input from the grievant or management. The evidence on this point is contradictory; we have been told that such deals are secretly cut by Glasser and Sweet, but this fact is denied by the arbitrator. At a minimum, it does not appear as though any such deals were cut as frequently in pre-arbitration meetings when compared to the post-arbitration meetings. The primary non-union Honeywell participants in the pre-meeting process with leadership responsibility included Michael Sweet and George Glasser... The current business agents for the union deny any sort of collusive activity in connection with the pre-arbitration meetings. At a minimum, we do not find Clemmer's denials to be credible in light of the admissions made by Glasser and Sweet, and the Clemmer's outright denials of any involvement

²³ Employer Exhibit No. 1.

²⁴ Union Exhibit No. 11.

in the modifications made to the June 22, 2005 award notwithstanding the credible consistent statements of several individuals and documentary evidence to the contrary.

Although 24 individuals were interviewed, the Report only contained investigator memorandums outlining what transpired during the interviews of Labor Relations Manager Lora Daley, Labor Relations Manager George Glasser and Director of Labor Relations Michael Sweet, Arbitrators Bellman and Christensen, Union President Wrzos, Vice-President Hedberg, former Secretary-Treasurer Genero Ayala and the Grievant. As with Magarian's summary of the interviews, many investigative facts were initially redacted in the memorandums generated from the investigative interviews.

Magarian interviewed the Grievant on August 11, 2005 at the Teamsters Hall. The Grievant was instructed by the IBT to present himself for the interview. Also in attendance were Secretary-Treasurer of Minnesota Teamsters Joint Council 32 Daniel L. Fortier,²⁵ IBT representative Bill Moore, IBT Legal Department Investigator Thomas J. Schatz, Employer in-house Council Susie Byers, and Dorsey & Whitney Attorney-Investigator Surya Saxena. Prior to his interview, Magarian gave the Grievant instructions and informed him of his rights.²⁶ According to the Grievant, he assumed it was an IBT investigation rather than the Employers' since he was directed to appear for the interview by officials of the IBT. The interview occurred at the Teamsters Hall. Also, during the course of the interview, IBT officials were handing out and explaining documents to him.

²⁵ Fortier was the appointed temporary trustee.

²⁶ The rights contained on pages 18 and 19 of this Decision.

During the interview process, the Grievant interview reflects that he was never informed that his testimony was subject to the Employer's Code of Conduct or its Factory Policies or that he could be disciplined for what transpired during the course of the interview. He testified to this at the hearing and added that he was never allowed to review the interview memorandum to determine its factual accuracy.

On August 12, 2004, Attorney-Investigator Saxena issued the following interview memorandum involving the Grievant,²⁷

PRE-ARBITRATION MEETINGS

Clemmer explained that he had no knowledge of either pre-arbitration or post-arbitration meetings before he was elected to Union office. After he took office, he did become aware of the pre-arbitration meetings. This occurred after the first round of arbitrations he was involved in but before the second round began.

Clemmer said he learned of pre-meetings from Sweet during a conversation in which Sweet suggested the possibility of adding a mediation component to the dispute resolution process. When Clemmer asked who the mediator would be, Sweet suggested Bellman. Clemmer and Sweet proceeded to call Bellman regarding this subject, and Bellman explained the process of mediation to Clemmer. Bellman also sent the Union an instructional video on mediation. Clemmer was convinced that instituting a mediation process would save money and lead to more amicable solutions to disputes, so he agreed to institute the new process.

Apparently during this same meeting with Sweet, Sweet then suggested that both arbitration and mediation would be more effective if Labor Relations ("LR") personnel and Union officers met with the Arbitrator in advance of the proceedings to discuss particular cases. Clemmer discussed this possibility with Wrzos and Hedberg, and then agreed to try these pre-meetings.

Clemmer confirmed that at a typical pre-meeting, the three Union officials (Secretary-Treasurer, president, and vice-president) and LR representatives Sweet, Glasser, and Daley would be present. Sometimes, one of these LR representatives would not be present, and sometimes Terry Clap would be present.

Clemmer also confirmed that grievants are not aware of the pre-meetings and are not invited to pre-meetings. Clemmer did not know whether any Company managers or supervisors know about the pre-meetings. When asked why grievants were not told about the pre-meeting process, Clemmer

²⁷ Employer Exhibit No. 1 and Union Exhibit No. 11

responded that the grievants were never told when Union officials were working on their case until the arbitration began or until the Union had negotiated a potential Step 3 settlement. Thus, Clemmer suggested that it was not unusual for The Union to work extensively on a grievant's case without the grievant's knowledge or involvement.

Clemmer explained that pre-meetings would never occur on the same day as the arbitration itself and would typically occur one to two weeks in advance. He said that the pre-meetings would typically occur at a conference room at the Four Points Sheraton hotel. He stated that the arbitrations themselves were held at different locations, but were sometimes also held at the Four Points.

At the pre-meetings, if briefs had been prepared, the Company and the Union would read their briefs out loud. Clemmer said that the pre-meetings were used solely to allow the Company and Union to attempt to reach an agreement on the facts of a particular case. However, often the parties did not agree on the facts. He explained that the pre-meetings were beneficial in "streamlining the case" before arbitration and eliminating some disagreements.

Clemmer confirmed that at the arbitration itself, the parties would go through a similar process of reading their briefs out loud. He confirmed the grievant would have an opportunity to speak, as would anyone else present at the arbitration who had connection with the matter. Clemmer denied that the Union ever expressed to the Arbitrator that the Company should win any case. He also denied that he ever told the Arbitrator that there was no merit in the Union's case. He further denied that the Union and the Company ever reached an agreement or understanding to reinstate employees in "mercy cases," nor did he hear the company ever make such a representation to the arbitrator. He said that the Union might describe a case as a "mercy case" during the arbitration, but would never use that logic to suggest a ruling outside the proceedings.

The Grievant testified extensively about his involvement in Step 3½ pre-meetings. He was never aware of, nor involved in any Step 4½ post-meetings as they ceased when Bellman became the arbitrator in 2002. He was also not aware of pre-meetings prior to his assuming his Union's leadership position. The Grievant stated that after the parties had gone through an initial arbitration proceeding, he was approached by Director of Labor Relations Michael Sweet to come to his office wherein he learned about the pre-meetings. According to the Grievant, they talked about how the previous arbitrations had been a fiasco and suggested that the problems they encountered could be solved by having a meeting after Step 3 and prior to arbitration, which Sweet termed

Step 3½. When the Grievant asked Sweet whether the pre-meetings were okay, Sweet, who is an attorney, responded that they were perfectly legal and had been ongoing since the Sipkins' arbitration era.²⁸ Sweet added that the pre-meetings were an extension of the contractual Step 3 grievance meeting, and this is the way the “company wanted it”.

Sweet then telephoned Arbitrator Bellman and initiated a conversation over the speakerphone in which the Grievant participated. Bellman then explained the pre-meeting process, which he termed "mediation". During this conversation the Grievant stated that he could not give his agreement to the process. He explained that he was new to the position and would first have to go back to the Union hall to talk with Wrzos and Hedberg.

When he met with Wrzos and Hedberg they all were concerned about the legality of the meetings so they decided to contact the Union's attorney even though Sweet and Bellman were attorneys who had said that the meetings were legal.²⁹ According to the Grievant, their attorney informed them something to the effect that it was legal so long as they "*did not make any decisions or turn around and fire someone*".

After discussing the matter with Wrzos and Hedberg, he informed Sweet that the Union would go along with it. According to the Grievant, the Union agreed to do this because the Step 3½ process involved the parties getting together before arbitration, exchanging briefs and discussing the merits of each side's case, something that could not be accomplished in the one-half hour allocated to each case during the busy

²⁸ Arbitrator Bill Sipkins was the predecessor arbitrator to Christenson.

²⁹ This attorney was a member of the law firm that was retained by the Union prior to trusteeship and was not the Union's current counsel or a colleague within his firm.

arbitration schedule. This was especially true where an arbitration involved a transfer agreement.³⁰ The Grievant explained that the parties had over six hundred transfer agreements with anywhere from four to one hundred pages; and there was simply not enough time during the arbitration to discuss these agreements.

The Grievant further testified that during the pre-meetings neither the grievant nor any other rank and file Union member was ever present. During the pre-meetings, the parties exchanged briefs and each side discussed their brief. The pre-meetings also allowed the parties to reach an agreement on the facts of a particular case. However, if they could not reach such an agreement, the meetings were beneficial in streamlining a case so that it could be presented properly during the brief period allowed for each arbitration case. He further stated that he was not aware of any situation where the Employer "dumbed down" their case so the Union would win nor was there ever a deal where the Union would win a certain percentage of the arbitration cases, allegedly 40%.³¹

The Grievant further testified that he viewed the pre-meetings as a part of the mediation process that Arbitrator Bellman discussed with him during their initial contacts. Bellman even furnished a mediation tape to the Union Business Agents, which they viewed during Union Executive Board meetings in May 2004.³² The Grievant stated that neither he nor the Union ever compromised their position at the pre-meetings. He acknowledged that on many occasions he told Arbitrator Bellman to

³⁰ A transfer agreement covers employees of a particular job or department and outlines employee movements, their overtime and their work throughout the plant.

³¹ Evidence furnished by the Union disclosed that during the Grievant's administration, the Union prevailed in 24% of the arbitration cases and 45% lost, with 31% resulting in a split decision. Union Exhibit no. 16B.

³² Union Exhibit No. 6A, B and C.

rule in the Union's favor, adding that it was his responsibility as a Union official to advance the Union's position every chance he had. The Employer representatives also asked the Arbitrator to rule in its favor.

He also testified that he never made an agreement to settle any grievance during these pre-meetings unless the Employer made an offer, which would then be taken back to the grievant for approval, as it was in Step 3. Also, rank and file Union members including the grievant were not invited nor apprised of these pre-meetings or what happened during them unless the matter was settled, similar to what occurs in Step 3 meetings. The Grievant added that he believed this was proper since the Union viewed the pre-meetings as an extension of Step 3.

Union officials Wrzos and Hedberg were also interviewed on August 11, 2004 at the Teamsters Hall with the same individuals present when the Grievant was interviewed.³³ According to the interview memorandum issued by Attorney-Investigator Saxena, both admitted they attended Step 3½ pre-meetings while Business Agents.³⁴ Both said the purpose of the pre-meetings was to clarify the facts for the arbitrator in order to make the arbitration more effective, and that the pre-meetings were kept secret from the grievant. They both denied cutting any deals with the Employer representatives on the outcome of cases. Hedberg denied that the Union ever expressed that their case did not have merit and the Employer should prevail.

Wrzos and Hedberg both testified that they were never aware of any pre or post-arbitration meetings prior to their assuming Union office. After assuming office, they

³³ Employer Exhibit No. 1 and Union Exhibit No. 11.

³⁴ During his hearing testimony, Wrzos said he believed he attended three Step 3½ pre-meetings.

were never involved in any post-meetings; nor did they have any input or knowledge of any Employer or Union involvement in drafting awards. In their testimony Wroz and Hedberg corroborated the Grievant's testimony regarding how they got involved and their role in the pre-meetings. They also corroborated the information contained in their respective interview memorandums wherein they denied any collusive practices with any Employer representative to predetermine the outcome of any arbitration. Wroz again denied during his testimony that there were any arbitrations that were ever predetermined or that he cut any deals or that he collaborated with Sweet or Glasser to reach an understanding regarding the outcome of any arbitration.³⁵

Wroz and Hedberg testified that when they became Business Agents they applied for and were granted a LOA. During the time that they were Business Agents, like Clemmer, they were paid by and received benefits from the Union. They were not subject to Employer supervision and control nor did they receive any pay or benefits from the Employer. They could not contribute individually to the Employer's 401k Plan.³⁶ They also could not exercise any seniority while employed as a Business Agents. They did, however, accumulate seniority for retirement purposes. They received compensation and benefits from the Union and were subject to the Union and IBT Constitution and by-laws.

The Business Agents were relieved of their Union duties on September 2, 2005.

Wroz stated that when this happened, he put in for a LOA (two months) in order to get

³⁵ Wroz was asked specifically about certain cases he processed during his direct testimony-B-54, B-58 and B-72. Union Exhibit No. 19. Hedberg was specifically asked about four arbitrations that he processed during his direct testimony-B-56, B-57, B-60, B-72 and B-75.

³⁶ Hedberg stated that he specifically tried to contribute and was told by a benefits administrator that he could not contribute because he was no longer an employee.

his retirement papers compiled. He subsequently received the LOA and then retired. Hedberg stated that when he was relieved of his Union duties he called his Group Leader Jerry (last name unknown) and informed him that he was coming back to work. According to Hedberg, Jerry said "great", and that he would get his tools ready. Thereafter, Hedberg returned to work as an electrician. When he returned, he was again on the Employer's payroll with all of its benefits. He also received seniority credit for the time he was on LOA.

Former Labor Relations Manager Daley testified via telephone during the hearing. Attorney-Investigators Ed Magarian and Thomas Jancik initially interviewed her on June 15, 2005. Attorney-Investigators Jancik and Kim Fuhrman subsequently re-interviewed her on June 22, 2005. The interviews were held at the offices of Dorsey & Whitney. The results of her interview are contained in the interview memorandum compiled by Jancik on June 22, 2005.³⁷ During her hearing testimony, she acknowledged that the information contained in the interview memorandum was factually accurate, other than the spelling of some names and her educational background. During the three years that she was Labor Relations Manager, 2003-2006, she was involved in Step 3½ pre-meetings as an Employer representative along with former Labor Relations Manager George Glasser and their boss, Director of Labor Relations Michael Sweet.

According to Daley, the purpose of the pre-meetings was for the parties (**unnamed individuals**) to meet in advance with the arbitrator in order to formulate a decision and instruct the arbitrator how to decide. She was told by Glasser and Sweet that the meetings were necessary because Arbitrator Bellman was not sufficiently educated

³⁷ Employer Exhibit No. 1 and Union Exhibit No. 11.

about the Employer's business issues to allow him to proceed to arbitration without the benefit of a pre-meeting. Daley also stated that during the pre-meetings briefs were exchanged and the arbitrator would ask technical questions directed at both parties. Frequently, Glasser would respond to these questions directed at the Union Business Agent **(unnamed)**, without objection from the Union.

She also stated that she attended pre-meetings where the parties **(unnamed individuals)** overtly discussed who would win or lose by indicating the strengths or weaknesses of their case.³⁸ She also stated that she believed that both Sweet and Glasser wrote arbitration awards, mainly because both the style and language of the awards of Bellman and his predecessor Christenson are similar. She testified, however, that she had never heard the Grievant tell Bellman how to write an award.

Her interview memorandum also indicates that Hedberg was involved in pre-meetings.³⁹ She specifically mentioned his involvement in the DeGroot arbitration (B-64) wherein the issue was the discharge of DeGroot for time and attendance issues. The award issued in December 2004, wherein Arbitrator Bellman inter alia reinstated her without back pay. According to Daley, Hedberg vigorously defended DeGroot despite known credibility problems associated with her medical records. Daley believed that DeGroot prevailed in the award because Hedberg made it clear to Bellman that he wanted to win the arbitration. Later, she confronted Glasser about the award wherein Glasser told her that he would write the award to eliminate any precedential impact.

³⁸ She did not specifically name the Grievant.

³⁹ Neither her interview memorandum nor testimony at the hearing indicated any involvement of Wroz.

Daley was never questioned during the course of her hearing testimony about this incident or any other specific involvement of Hedberg or Wrzos in pre-meetings.

On July 1, 2005, Magarian, Jancik and Attorney Doug Christensen interviewed Labor Relations Manager Glasser, who reports directly to Director of Labor Relations Sweet, at the Employer's Coon Rapids, Minnesota facility.⁴⁰ Magarian and Fuhrman also interviewed him at the offices of Dorsey & Whitney on August 10, 2005. In addition, the Union interviewed Glasser at the offices of Dorsey & Whitney on August 18, 2005 in the presence of IBT officials Schatz and Moore, Magarian, Fuhrman and Employer in-house Counsel Susie Byers. There was also a follow-up interview conducted by Magarian and Fuhrman without Union and Employer officials being present. The results of his interviews are contained in the interview memorandums compiled by Jancik on July 5, 2005. and Fuhrman on August 10 and 23, 2005⁴¹ It should be noted that Glasser was issued a subpoena by the Employer after the second day of the hearing to appear on subsequent hearing dates to testify. He subsequently failed to present himself.

His statement contained in the interview memorandums disclosed that he was heavily involved in Step 3½ pre-meetings that were initiated after Bellman became the arbitrator. The purpose of the pre-meetings was to give Bellman an opportunity to learn the facts of a grievance in order to streamline the formal arbitration proceeding. Glasser added that Union Business Agents **(unnamed)** and Employer representatives **(unnamed)** sometimes would agree upon arbitration awards at these pre-meetings.

⁴⁰ It is not known whom Christensen represented.

⁴¹ Employer Exhibit No. 1 and Union Exhibit No. 11.

This usually occurred when one of the parties **(unnamed)** acknowledged the weakness of their case. Also, at times during a discharge case when it became known that there were extenuating circumstances such as medical reasons that had an effect on an employee's work, the Union **(unnamed individuals)** and the Employer **(unnamed individuals)** would agree to reinstate the employee without back pay. This was known as a mercy case. When this happened the arbitrator would frequently issue his award reflecting this pre-arbitration agreement.

Finally, Glasser's interview memorandum reflects that these pre-meetings were also kept secret because they were "likely to be viewed as inappropriate". By being kept secret "clients do not think that cases are being given away" and the secretive nature of the pre-meetings "maintains the integrity of the process" and "helps maintain labor peace".

Magarian and Jancik interviewed Sweet at the Employer's facility located in Coon Rapids, Minnesota on July 1. The results of his interview are contained in the interview memorandum compiled by Jancik on July 5, 2005.⁴² Magarian and Fuhrman also interviewed Sweet at the offices of Dorsey & Whitney on July 19, 2005 with follow-up telephone interviews by Fuhrman and/or Magarian on July 20 and 22 and August 1, 2005. Fuhrman issued the results of these interviews in a interview memorandum dated August 4, 2005. Sweet was also subpoenaed by the Employer after the second day of the hearing and failed to present himself during subsequent hearing days.

His testimony contained in the memorandum disclosed that he was also heavily involved in Step 3½ pre-meetings that were initiated after Bellman became the

⁴² Employer Exhibit No. 1 and Union Exhibit No. 11.

arbitrator. Meetings were held “offline”, as they were not authorized by the applicable collective bargaining agreement and are also were kept secret from a grievant and the Union rank and file.

According to Sweet, the purpose of the pre-meetings is for the Union Business Agents **(unnamed)** and Employer representatives **(unnamed)** to explain scheduled grievances to the arbitrator. The arbitrator then provides guidance to the Company **(unnamed individuals)** and the Union **(unnamed individuals)** by telling them to focus on certain issues, or to develop certain facts during the arbitration. Sweet acknowledged that occasionally the Union Business Agent **(unnamed)** and the Employer representatives **(unnamed)** described their respective strengths and weaknesses in their positions to the arbitrator.

Sweet also indicated that the Union Business Agent **(unnamed)** would sometimes tell the arbitrators that their case is weak and that they do not want to proceed but are being forced to because a grievant has refused to settle. On the other hand, Sweet stated that the Employer does not generally make similar statements because they are more willing to settle grievances prior to the arbitration if the Employer's position is not strong; however, Glasser has done so. Late in the report Sweet admitted "*that during pre-meetings, the arbitrator, union **(unnamed individuals)**, and the Company **(unnamed individuals)**, discuss whether certain cases are “weak”. Sweet then admitted that, during the pre-meetings, the participants **(unnamed individuals)** sometimes discuss how certain grievances are going to be decided at the upcoming arbitrations. When these agreements are reached, Bellman issues a decision consistent with the parties’ prearranged agreement”.*

Magarian and Jancik interviewed Arbitrator Bellman in Madison, Wisconsin on July 8, 2005. Bellman's interview memorandum compiled by Jancik on July 9, 2005 indicates that he initiated the Step 3½ pre-meetings shortly after becoming the sole arbitrator in 2002...⁴³ The stated purpose of the pre-meetings was not to provide an opportunity for settlement or fix the results of an arbitration proceeding in advance. Rather, the purpose was to give the parties an opportunity to discuss the pending cases, point out the weaknesses or strengths of their cases; however, they never instructed him to rule against their interests. Bellman described the parties' arbitration process as one involving numerous arbitrations, as many as ten a day during the three-day quarterly arbitration schedule, with stipulated facts involving complicated issues. The pre-meetings were used to provide additional information to him so that he could formulate arbitration awards that were fair and appropriate. In addition, he used this opportunity to mediate and sometimes a pre-arbitration settlement would occur. If the matter did proceed to arbitration, Bellman would have to ignore the concessions made by either party.

Bellman's interview memorandum also discloses that settlements were typically reached between the parties where a party (**unnamed individuals**) with a weak case would agree to an unfavorable resolution or in a close case where one of the parties (**unnamed individuals**) agreed to concede their case. However, the parties (**unnamed individuals**) rarely agreed to an unfavorable resolution if they had a strong case.

The Employer alleged during the hearing that the Grievant was involved in compromising seven arbitrations during the pre-meetings and gave false testimony

⁴³ Bellman did not appear at the hearing.

during the hearing with respect to the alleged compromised arbitrations.⁴⁴ The Grievant's response was that he never compromised or traded off any of the alleged compromised arbitrations.

Finally, Union member Linda Gilreath disclosed that Schatz specifically named the Grievant as one of the "Union officials" who was involved in the Step 3½ pre-meetings during the course of an IBT investigation of the Union officers' involvement in collusive arbitration practices with the Employer and arbitrator.

During the course of the investigation Magarian and his associates uncovered evidence that the arbitrator was sending draft awards to the parties that were then changed and sent back to the arbitrator, who issued the award as his own. Magarian's summary of this activity is as follows;

Input, editing, and possible drafting of arbitration awards by representatives from LR, and to some extent by union representatives. The arbitrator sent his awards to George Glasser's home and to the union head. The stated purpose was so that no one in the mailroom would open the award and distribute it prematurely. Notwithstanding this stated purpose, such a distribution is unusual. Glasser and the union used the opportunity created by this unusual distribution to review the awards and in some cases get back to the arbitrator with changes. Glasser claims that the changes were limited to instances where the arbitrator got the facts wrong or where he and the union were looking to limit the precedential effect of the award. Any such changes were made without the knowledge of the grievant, union members or Honeywell management. Notwithstanding Glasser's claimed scope of the changes, it is clear that the changes made to Bellman's awards by Glasser and union officials were broader than what Glasser originally described. For example, just last month, Bellman distributed an arbitration award dated June 22, 2005, to Glasser and the union. This June 22 award was kept secret from the grievant and Company management. It contained a ruling, but then stated that the company and the union should confer about the remedy to be ordered. Monty Clemmer, a union officer, and George Glasser secretly met (along with Lora Daley), and drafted a remedy which was communicated to the arbitrator, who then placed their language into an amended award, which he dated June 30, 2005. This "amended" award was not marked "amended". It included the

⁴⁴ B-52, B-55, B-62, B-71, B-76, B-79 and B-80. Union Exhibit no. 11.

remedy drafted by Clemmer and Glasser, but it reads as though the remedy was drafted by the arbitrator. There is simply no indication in the award that the remedy was the product of negotiations between Glasser and Clemmer. Neither consulted their internal clients, and in fact Clemmer suggested to Daley that the June 22, 2005, award be shredded. The primary non-union Honeywell participant in this process was Glasser. Sweet admitted being aware that Glasser had "drafted" opinions for Arbitrator Bellman, but could not recall which ones or how many. We conclude that material changes were made to Arbitrator Bellman's awards after the arbitration had concluded based on secret meetings between Glasser and Clemmer, and those material changes were made by Bellman as if it was his order, without any hint that the change was the result of negotiations (secret or otherwise). As noted above, we do not find Clemmer's outright denials of any involvement in the modification to the June 22 award to be credible

The Grievant was questioned about his involvement in this process by Magarian.

His response contained in his interview memorandum is as follows:

POST ARBITRATION CIRCULATION OF DRAFT AWARDS

Ed asked Clemmer why he had recently asked for a copy of all arbitration awards issued in 2005. Clemmer responded that he asked for the awards because "these guys wanted to see them," meaning either the Teamsters officials (Messrs. Schatz, Moore, and/or Fortier).

Clemmer verified that Arbitrator Bellman routinely sent Clemmer and Glasser arbitration awards before they were issued, and that the awards were sent to Glasser's and Clemmer's homes, not their offices. Clemmer denied that either he or Glasser had ever suggested any language to be incorporated into draft arbitration awards before they were issued.

He explained that he did not routinely follow-up with Bellman regarding awards. However, Clemmer explained that sometimes, for a particular case, he would follow-up with Bellman to verify the basis for Bellman's decision. For example, Clemmer described a case in which he asked Bellman at the arbitration to disregard certain evidence provided by Glasser in his brief for the Company. Clemmer followed-up with Bellman after receiving the award to determine whether Bellman had relied on that evidence in rendering his decision. -

Clemmer believes that awards are sent to Glasser and him at their homes to allow them to directly notify anyone who is going to be terminated or otherwise affected by the ruling before the information becomes public.

Clemmer denied having any other conversations or involvement with Bellman or Glasser of any kind after the completion of arbitration proceedings.

CIRCUMSTANCES SURROUNDING SPECIFIC ARBITRATION AWARDS AND GRIEVANCES

Ed showed Clemmer three draft arbitration awards Clemmer purportedly received on June 22, 2005. The awards were numbered B-78, B-79, and B-80 respectively. Clemmer expressed that he had no knowledge regarding award number B-78 because Hedberg handled that case. Clemmer confirmed that he handled the cases underlying awards B-79 and B-80. Clemmer confirmed that he had received all three of the awards at his home before they were issued. Clemmer expressed some difficulty recalling the substance of these awards.

Clemmer denied that he had any conversations with either Daley or Glasser regarding the draft of award B-79 he received on June 22. Ed asked Clemmer to read language on page 2 of award B-79 regarding the remedy prescribed in the case. Clemmer read the language but denied discussing the language with anyone from LR or the arbitrator. He also denied re-circulating this draft of the award or any other draft language to be inserted in the award to anyone.

Ed then showed Clemmer the final version of award B-79 that was issued on June 30. Clemmer verified that on page two of this version of the award the remedy was different than before. Clemmer denied that he had any involvement in changing this language or drafting language to replace the wording of the June 22 award. He also denied that he reached any agreement with LR to change the language.

Clemmer denied that he provided drafts of any of these awards to Lora Daley and also denied that he told Daley to shred the drafts. He explained that his only conversation with Lora Daley was regarding a time and attendance issue. At this point, Clemmer explained that he had actually never seen the June 22 draft of award B-79, and that he had merely been confused because Ed told him that the June 22 award was the copy he had received. Clemmer then denied that he had spoken with Sweet about the awards after he had received them.

The Grievant testified that, contrary to the information he gave to Magarian that is contained in his interview memorandum, he was involved in the changing of a draft decision. He testified he did not disclose his involvement during the interview process because at some point during the interview he realized that it was an Employer and not a Teamsters investigation. He then panicked and decided not to disclose any information to the investigator because the investigator was "*getting into Teamster business and it was not any of Honeywell's business*".

The Grievant further testified that, contrary to what is contained in his interview memorandum, he did have knowledge of an award that was modified and sent back to the Arbitrator. This was a grievance involving OA Techs (B-79) wherein the remedy was changed. According to the Grievant, Glasser called and told him that Bellman had called him stating that he was not happy with the way the award was worded and was sending him a draft of the award. Glasser informed him that Bellman wanted his help in critiquing the award. According to the Grievant, he replied that it was news to him and he asked who won. Glasser replied that it was sustained for the Union. Glasser then read the award over the phone wherein the Grievant asked him what he wanted to do. Glasser replied that he had done this a number of times and it is not new to the "business" or the Union Hall. Glasser was asking for his help because he did not like the way the remedy was worded. [The award required the parties to meet to resolve the remedy.]

According to the Grievant, he then drove to Glasser's office where Glasser showed him the award. Glasser attempted to contact Bellman a number of times without success. Glasser then wanted Daley involved because it was her "department". When he could not reach Daley by phone, the Grievant volunteered to take the draft award over to Daley since he was going to be in that general area anyway. When he got to Daley's office, he gave her the award and told her to call Glasser. Daley called Glasser with him present. Glasser was evidently explaining what he wanted to be changed in the award because he could hear Daley saying "ok" repeatedly and "yes George, that's ok with me". He also stated that he did ask Daley to shred the award on directions from Glasser who did not want this draft award "sitting around".

The Grievant further testified that he had never previously received draft awards and this was the only draft award he ever saw. He believes that Bellman e-mailed the draft award to Glasser. He received the revised award at his home a week or two later. Finally, he testified that the revised award was changed the way Glasser wanted it.

Former Human Resource Manager Daley was interviewed, pursuant to her telephone request, at the Dorsey & Whitney offices on June 22, 2005. According to Daley, that morning the Grievant had come to her office with three arbitration awards in his hand. (B-78, B-79 & B-80).⁴⁵ They then got on the telephone with Glasser at which time Glasser and the Grievant discussed replacement language in the remedy portion of the award B-79. She took notes from the discussion, went back into her office and wrote out by hand the final language of the remedy, which was read to Glasser over the phone.⁴⁶ Daley also stated that the Grievant asked her to shred the draft awards; however, she convinced him that she would personally destroy them. She later contacted Magarian and arranged a meeting for later that day. At the meeting, she showed Magarian the award (B-79) together with the changes that Glasser and the Grievant had agreed to.

The initial language in the last page of the award dated June 22, 2005 stated:

"...of the change or a consequence of the change? The Arbitrator concludes that this is a case of reassignment of work between classifications being mischaracterized as a discretionary process and methods change.

The Union in its request for relief, asks that the jobs in issue be returned to the OA Tech classification. The Arbitrator is withholding specifying the remedy and deferring to negotiations by the Company and the Union. If the discussions do not resolve the parties' dispute within a reasonable period, the Arbitrator will, if

⁴⁵ Employer Exhibit Nos. 1, 13, & 14. Union Exhibit No. 11.

⁴⁶ The handwritten notes are a part of the aforementioned Exhibits.

requested, specify the remedy.

AWARD

On the basis of the foregoing, and the record as a whole, it is the decision of the Arbitrator that the grieved work reassignment was improper under the parties' agreements, and that the parties should attempt to specify a mutually acceptable remedy.

Dated at Madison, Wisconsin, this 22nd day of June, 2005".

The final language in the last page of the award dated June 23, 2005 is reflective of the changes that Daley made. This language change stated:(**Changes Emphasized**)

*"... of the change or a consequence of the change? The Arbitrator concludes that in this case the reassignment of **ARW** work between classifications was mischaracterized as a discretionary process and methods change. **If in the future the Company can establish that there has been a legitimate process and methods change, a reassignment of ARW work may be appropriate.***

AWARD

The Company is ordered to reinstate the appropriate number of OA Techs to their former positions involving the performance of ARW work, and to make them whole for any loss of pay.

*Dated at Madison, Wisconsin, this **30th** day of June, 2005"*

In his interview memorandum, Glasser reported that after the arbitration, the arbitrator sent draft awards to his residence and the residence of a Union official (**unnamed**). Individuals (**unnamed**) working in the Employer's Labor Relations Department would sometimes help the arbitrator (naming Bellman specifically) to "wordsmith" certain awards. He and the Union official (**unnamed**) sometimes asked the arbitrator to redraft certain awards in order that they would have "less precedential impact" or to "correct certain factual misstatements". Glasser would then convey the revisions by telephone to the arbitrator who would then reissue the awards to him and to

the Union official involved. Glasser added that the purpose of sending the awards to the home of the parties was to ensure that the awards were not released prematurely.

Glasser's interview memorandum from his July 1, 2005 interview stated:

"Glasser said that Bellman recently distributed an award which required Company representatives and union representatives to meet to agree upon a specific remedy. Instead, Glasser met with Monty Klemmer ("Klemmer") (sic) to formulate a revised award. After an agreement was reached, Glasser contacted Bellman and told him to amend the award to implement the revised remedy. At the time of the interview, Glasser expected that the revised award would be issued that day, and indicated that it had already been e-mailed to him. Glasser said that the original award was intended to be final (a copy is attached); however, it was never distributed to the Company supervisor or the grieving employee. Instead, the award was changed pursuant to an agreement between Glasser and Klemmer and then the revised award was distributed as the final version."

Arbitrator Bellman's interview memorandum also indicated that he sent draft awards to Labor Relations Manager Glasser and to Union officials **(unnamed)** in order to prevent the pre-mature release of the award. Glasser and the Union officials **(unnamed)** also suggested that awards sometimes be revised after his draft distribution to include additional information, or to make changes in the language of the awards. Bellman added that he was solely responsible for drafting the initial awards and neither Glasser nor Sweet drafted any decisions on his behalf.

Bellman never specifically identified arbitration B-79.⁴⁷ However, his interview memorandum indicates that he circulated an award that required the parties to meet and agree on a specific remedy. He talked with Glasser and the Grievant. They fashioned the award that was then sent back to Bellman who reissued the revised award.

⁴⁷ It is not known whether he was asked about this award or awards in general.

At one point during the investigative process the Employer felt that the investigative findings were so compelling and significant that it contacted the U. S. Department of Labor and the IBT.⁴⁸ The IBT then commenced its own investigation of the alleged arbitration collusion.

The Grievant testified that he first became aware that the IBT was investigating the arbitration practices of the Union in late June or early July 2005 when IBT officials came to the Union hall and took away all of the Business Agents' keys and credit cards. After negotiating with these IBT officials, the keys and credit cards were returned. They also informed them that they could still operate the hall, but that they were under investigation. Thereafter, the IBT placed the Union in emergency trusteeship effective August 8, 2005, and suspended the Grievant, Wrzos and Hedberg from office on September 2, 2005.

On October 24, 2005 the IBT conducted a formal hearing on whether the trusteeship should be continued. A court reporter was present and a transcript was prepared. IBT investigator Schatz presented a report at the hearing. Following a review of the transcript, a three member panel made its recommendation to President Hoffa. Thereafter, the Union's trusteeship was extended in January 2006, and it is still in trusteeship as of the date of the hearing. On January 18, 2006, IBT President James P. Hoffa issued the following letter which was placed on Union bulletin boards and at the Union office.⁴⁹

⁴⁸ The interviews of Union officers had not yet taken place.

⁴⁹ Employer Exhibit No. 19.

"TO: *The Members of Local Union 1145*

Pursuant to the authority vested in the office of the General President by Article VI, Section 5 of the International Constitution, a temporary emergency trusteeship was imposed over the affairs of Local 1145 effective August 8, 2005. Brother Brad Slawson was appointed Temporary Trustee. Thereafter, a hearing was conducted before a Panel consisting of Brothers Daniel Bartholomew (Chairman) and Doug Norris and Sister Betty Rose Fischer. The Hearing Panel gave the Trustee an opportunity to present evidence in support of the trusteeship, and the former officers of Local 1145 were given the opportunity to present evidence and argument in opposition to the trusteeship. The members of the Local Union were also invited to express their views on whether the trusteeship should be continued. I have received the findings and recommendations of the Panel, as well as a transcript and exhibits from the hearing. Based on this material, I have decided to continue the trusteeship in order to ensure that Local 1145 is run in accordance with applicable law and for the benefit of the membership.

The trusteeship has been imposed because the Local 1145 officers allowed the grievance mechanism to be compromised. Officials from the Union and the Company were engaging in off-the-record discussions with the arbitrator, Howard Bellman, concerning individual grievances. In addition, the Company and the Union decided the outcome of grievances without the grievant's or the membership's knowledge or participation. The Union and the Company passed their decisions on to the arbitrator, who would then write up the agreement as if it had been the arbitrator's own decision.

As a result of this conduct, the grievance process was not transparent to the membership. And, significantly, many members who participated in the grievance process may have felt that they did not receive fair and impartial consideration.

The Panel unanimously recommended that the Local Union remain in trusteeship at this time. I have adopted the Panel's findings as my own and I have determined that continuation of the trusteeship of Local 1145 is necessary to ensure that the Local Union's members are properly represented. Accordingly, pursuant to the authority vested in the office of the General President under Article VI, Section 5 of the International Constitution, I hereby direct that the trusteeship over the affairs of Local 1145 be continued.

A copy of this Notice shall be posted immediately in the Local Union headquarters and in such other places as to ensure that the officers and members of the Local Union are informed of this decision."

Both Wrzos and Hedberg returned to work following their ouster from Union Office.

Former Business Agent Ayala who subsequently returned to work following his ouster in 2004 was terminated for giving false testimony during an Employer investigation after

the Employer's arbitration collusion investigation.⁵⁰ His termination is the subject of another arbitration proceeding.

The Grievant testified that he informed Daley by telephone on Friday September 2, 2005 that he was going to report to work on Tuesday September 6, 2005 following the Labor Day weekend. According to the Grievant, Daley indicated that this was fine and welcomed him back. He then went to the Coon Rapids facility and spoke to his supervisor and informed him of his pending return. His supervisor welcomed him back and told him that he would have the Grievant's tools ready for him on Tuesday. Later that day he received a message from a secretary in the Union office that Daley left a message informing him that he was not to report to work the following Tuesday. On Tuesday September 6, 2005, he received a message from Trustee Brad Slawson Sr. informing him that he had been terminated. A termination letter subsequently was issued to him on September 7, 2005.⁵¹ The letter, which the Grievant testified that he never received a copy of, stated:

"Monty Clemmer
C/O Brad Slawson
Fax: 651-641-1248

Dear Mr. Clemmer,

This letter is to inform you that your employment with Honeywell International is terminated effective September 7, 2005. In accordance with the Honeywell Factory Policy 01 and the Honeywell Code of Conduct, the cause for your termination is that you committed the fourth degree offense and code of conduct violation of giving false testimony during a company investigation. Please find attached a copy of the entry that will be made to your personnel record. Instead of terminating your employment in person or via certified mail, this letter is being transmitted via facsimile to the number above at the request of your union representation.

⁵⁰ Exact date unknown.

⁵¹ Joint Exhibit No. 3.

Vice-President and Deputy General Counsel of the Employer's Human Resources Department Kevin Covert testified that four individuals were terminated following the Employer's investigation of collusive arbitration practices—Sweet and Glasser for collusive arbitration practices, Ayala and the Grievant for providing false information during an Employer investigation. He said that he was directly involved in the decision to terminate the Grievant. He stated that the reason for his termination was that he provided falsified information during the course of an investigation. Covert said that he relied on the interview memorandums of Glasser and Sweet, which were totally self-incriminating, and the memorandums involving Daley, including the memorandum involving the B-79 incident. Covert added that the "smoking gun" was the Grievant's involvement, during the period between June 22 and June 30, 2005, in changing the B-79 and his subsequently lying about it during Magarian's investigative interview.

Covert further testified that providing false information during the course of an investigation is a clear violation of the Employer's Policies and is, per se, grounds for termination. In his role, Covert stated that he sees every request for termination because of his involvement in the Employer's severance plan. When an employee is terminated, he gets information on their severance package including ERISA information that has to be relayed to the federal government. Covert testified that every time someone lies during an investigation or lies on safety checks or gives false information on a time card or otherwise engages in giving false information during "communications", they are terminated pursuant to the Employer's Code of Conduct. Adding that, given the nature of the Employer's business as a defense contractor, they cannot tolerate any employee giving false information. Covert also testified that if the

Grievant had not been terminated for lying, he would have been terminated for his involvement in the collusive arbitration practices.

Finally, Covert testified that he does not get involved in situations where employees are terminated and granted severance. These are situations handled by local labor management officials. He only sees situations where employees are terminated and severance is contested. He also does not get involved in situations where an employee is caught lying and is given discipline other than termination.

Director of Labor Relations Ed Merriman testified that the Employer's past practice is to discharge employees who give false information during an Employer investigation. Six arbitration awards were introduced wherein the issue was termination for giving false information.⁵² One of the awards resulted in the arbitrator rescinding the termination.⁵³

The Union presented evidence that other employees were not terminated for giving false testimony during an investigation. On November 14, 2006, Dinh Nguyen was given a fourth degree demerit for giving false testimony. Rather than being discharged, he received a 10-day suspension.⁵⁴ Sandy Dignan was given a second degree demerit for giving false testimony during an investigation.⁵⁵ This fact was discussed in Arbitrator Jacob's Arbitration Award in FMCS Case No. 06-0517, which was issued on February 1, 2007.

⁵² Employer Exhibit Nos. 3-7.

⁵³ Employer Exhibit No. 4

⁵⁴ Union Exhibit 21 (B).

⁵⁵ Union Exhibit No. 21 (A)

Finally, evidence disclosed that IBT officials were not aware of the Union's participation in its collusive grievance/arbitration practices with the Employer prior to Magarian's investigation. Evidence was adduced, however, that a number of Employer representatives including superiors of Glasser and Sweet were aware of some of the collusive practices. The Employer's Vice-President of Labor Relations Ed Bocik denied during his investigative interview that he was aware of the Employer's and Union's collusive practices.⁵⁶ In a latter interview he denied any knowledge of a memo that discussed the collusive practices from Sweet to him dated August 7, 2000, when it was shown to him by Magarian. A subsequent search of his computer by investigators revealed the memo. Also, evidence supplied by Sweet and Glasser further established that Bocik did indeed have some knowledge of the collusive practices.⁵⁷ According to Sweet's telephone interview with Magarian on July 22, 2005, Sweet stated that Bocik told him to keep quiet about the Step 4½ post-meetings.⁵⁸ Finally, according to Glasser's interview memorandum of August 23, 2005, he was informed by someone in Labor Relations (He thought it was Sweet, but was not sure.) that Bocik was aware of the collusive practices.⁵⁹ Bocik was neither terminated nor disciplined.

POSITION OF THE EMPLOYER

The Employer's position is that it had just cause to discharge the Grievant. The Employer argues the following;

⁵⁶ This evidence was redacted in Employer Exhibit No. 1 but included in Union Exhibit No. 11, which was the unredacted Report obtained by the Union through subpoena.

⁵⁷ Union Exhibit No. 11, Pgs 14-18.

⁵⁸ Id.

⁵⁹ Id.

- In June 2005, the Employer learned through Daley that Union Business Agents and certain Employer representatives were involved in collusive grievance/arbitration practices. Thereafter, the Employer hired an outside law firm to conduct an investigation into these allegations. The investigation was fair, unbiased and complete. Chief investigator Magarian and his staff conducted over 1000+ hours of investigation during which time numerous witnesses were interviewed and hundreds of documents analyzed. Magarian is an experienced investigator, particularly in the private sector where he has conducted 100+ investigations, including the well-publicized investigation into financial irregularities at Buca di Beppo. He is well skilled at questioning witnesses, analyzing documents and making credibility determinations. When Magarian or his associates interviewed witnesses, including the Grievant, they were apprised that it was important that they be honest in their answers.
- During the investigation the Grievant gave false testimony about his involvement in the parties' collusive practices. The Grievant, as he did at the hearing, admitted that he was involved in Step 3½ pre-meetings that also involved the arbitrator; however, he denied that he was involved in the pre-determination of arbitration awards with Employer representatives Glasser and Sweet. The evidence clearly shows that the Grievant lied. During Magarian's investigation the Grievant also denied being involved in altering arbitration awards, specifically B-79, or that he instructed Daley to shred this draft award. At the hearing the Grievant admitted both his involvement in altering award B-79 and in asking Daley to shred the draft award

- The Employer also had just cause to discharge the Grievant for his lying about his involvement in collusive practices that compromised the parties' grievance/arbitration process. The collusive practices that the Grievant lied about were extremely serious. The Employer fired Sweet, Glasser and the Grievant's predecessor Ayala for their involvement in those same practices. In addition, the Grievant's collusive practices along with his predecessors' have resulted in 40 grievances that were filed by 26 individuals having to be re-opened.
- The Grievant, contrary to the Union's position, was an employee at the time he gave his false testimony. His employment status never terminated at the time he became a full-time Union official. The Grievant was an inactive employee on an approved LOA and continued to accumulate seniority and retirement benefits. Upon his request, the Grievant was entitled to reinstatement as an active employee. Thus, even as an inactive employee, he was subject to the Employer's Code of Conduct and Factory Policies. The Employer cited numerous cases where arbitrators found that a union official's employment relationship continues while on a leave of absence; and have consistently found that being an inactive employee does not insulate an employee from being disciplined, including being discharged for misconduct engaged while in an inactive status. This includes full-time Business Agents who engage in misconduct (leading a wildcat strike) while in an inactive employment status.

The Grievant violated the Employer's Code of Conduct and Factory Policies when he gave false testimony during the course of an investigation. Giving false testimony is a fourth degree demerit with the penalty being discharge.

- The Employer has consistently applied discharge as the appropriate disciplinary action for giving false testimony during the course of an investigation. Sweet, Glasser and Ayala were terminated along with the Grievant. In addition, the five arbitration awards entered into evidence clearly show that the Employer follows this practice. The Employer acknowledged that Nguyen was given a fourth degree demerit that resulted in 10-day suspension for lying about using a curse word directed at a supervisor. The Employer stated it leveled suspension, which is the most severe discipline short of discharge, rather than going through a costly arbitration process. With respect to the Union's disparate allegation regarding Dignan, the Employer states the investigative report never expressly accused her of lying. Rather, she was given a second degree demerit for causing discord in the work place. Finally, these limited incidents are hardly comparable to the Grievant's actions.
- The IBT placed the Union under emergency trusteeship on August 8, 2005 and extended the trusteeship on January 18, 2006. This trusteeship is still in effect. The IBT concluded that (1) Union officers allowed the grievance mechanism to be compromised. (2) Union officials engaged in off-the-record discussions with Arbitrator Bellman concerning individual grievances. (3) The Employer and the Union decided the outcome of grievances without the grievant's or membership's knowledge. (4) The Union and the Employer passed their decisions on to the

arbitrator, who would then write up the award as if it was his own decision. (5)
The grievance process was not transparent to the membership.

- IBT President Hoffa specifically cited this in his January 18, 2006 letter wherein he stated, *“The trusteeship has been imposed because the Local 1145 officers allowed the grievance mechanism to be compromised. Officials from the Union and the Company were engaging in off-the-record discussions with the arbitrator, Howard Bellman, concerning individual grievances. In addition, the Company and the Union decided the outcome of grievances without the grievant’s or the membership’s knowledge or participation. The Union and the Company passed their decisions on to the arbitrator, who would then write up the agreement as if it had been the arbitrator’s own decision.”*
- The IBT conducted an investigative hearing into the collusive grievance/arbitration practices engaged in by Union officials wherein a court reporter was present and a transcript of the proceedings was prepared. The IBT refused to respond to an Employer subpoena regarding this proceeding and did not respond to individual subpoenas issued to IBT officers and investigators. The reason for their refusal to cooperate in the hearing was that the information it gathered *“could be utilized to the detriment of Mr. Clemmer.”*⁶⁰ Further, testimony of Union member Gilreath disclosed that Schatz specifically named the Grievant as one of the “Union officials” who allowed the grievance mechanism to be compromised. For this reason, the Union cannot seriously contend that the

⁶⁰Letter dated June 14, 2007 to this Arbitrator from Gary S. Witlen, Director of the IBT Legal Department. Attachment B to the Employer’s brief.

Grievant was truthful when he stated during the interview that no such pre-arbitration agreements were reached. If the Grievant had not been involved, why wouldn't the Union have limited reconsideration of tainted arbitration decisions solely to the prior Ayala administration? The Union's own investigation and the extraordinary actions it took based on that investigation provide further substantial confirmation that the Employer's investigative findings were sound.

- Based on its position as to tainted arbitrations, as well as the IBT's removal of the Grievant from office and its position that his actions supported the trusteeship, the Union should be estopped from arguing that the Grievant was not involved in collusive arbitration practices and was "substantially" truthful in the investigation.
- Finally, the Employer argues that Magarian's Report should be given significant weight. Contrary to the Union's position that Magarian's Report and interview memorandums are hearsay, Magarian's findings on the Grievant's conduct are highly credible. Such a Report falls under the hearsay exceptions contained in Federal Rule of Evidence 803, as it is a Report kept in the ordinary course of business. Also, even if it were not covered by Rule 803, the investigative Report still would fall under the catch-all exception to the hearsay rule under Fed.R.Evid. 807 and former Fed.R.Evid. 803 (24).

POSITION OF THE UNION

It is the Union's position that the Employer did not have just cause to discharge the Grievant. The Union argues the following:

- The Grievant was not an employee of the Employer at the time he was interviewed by Magarian; and, therefore, not subject to the Employer's Code of Conduct or its Factory Policies. Rather, the Grievant was on a LOA and employed full-time as a Business Agent for the Union. As such, he was subject to the employment jurisdiction of the Union not the Employer. Further, The Agreement specifically points out that an individual on a Union LOA is no longer an employee. Article XII Section 4 states; "*An employee elected or appointed to a position with the Union which takes the employee from the employment of the Company shall upon written request by the Union, receive a leave of absence of the period of his or her service for the Union, but not to exceed one (1) year provided such leaves do not materially interfere with the operation of the employee's then department.*"
- The rule that was applied to the Grievant resulting in his termination was not reasonably applied. The Employer's Code of Conduct and Factory Policies, which includes the rule against giving false and its penalty, were not the subject of negotiations; but rather were unilaterally implemented by the Employer. The Employer's Code of Conduct and Factory Policies are not substitutes for the negotiated just cause standard. They attempt to quantify the just cause requirement of the Agreement by assigning a severity level or degree of demerit to various offenses. However, since the disciplinary system does not accommodate the Agreement's just cause requirement, it was unreasonably applied.

- The Rule was not reasonably applied to the Grievant because he did not give testimony. The Grievant did not provide false testimony, because he did not provide testimony at all. Testimony is a statement made by someone “who has been sworn according to law and deposes as to his knowledge of facts in issue upon trial of a case” or “by the witness under oath in the trial of a case or in a legal proceeding.” Testimony is also synonymous with “evidence” and means oral evidence, which is distinguishable from evidence that is acquired through the use of written sources such as documents. The Grievant made his statements during an informal interview and was not under oath. He was not told that he was a witness providing evidence in a legal proceeding. He was merely told that honesty was important.
- The Employer concededly has a right to create and impose reasonable work rules on its employees covering terms and conditions of their employment. As a general matter, a rule prohibiting false testimony is reasonable. However, a rule requiring cooperation in an investigation is not reasonable as applied to an officer and full-time employee of the Union.
- The Employer did not put the Grievant on notice that he could be terminated for lying during the course of an investigation. This is a foremost standard of just cause. Thus, the Employer failed in its obligation to inform the Grievant that his lying in his testimony given at Teamsters Joint Council 32 offices would result in his discharge if the Employer determined that the rule would be violated. There was also no evidence that the Grievant was aware of the Employer’s policies, which could result in his discharge. The Employer produced no acknowledgment

by the Grievant that he ever received copies of the documents contained in the policies. There was no sign-in sheet from training sessions about such policies or any showing of when the policies went into effect. Even if he was aware of such policies, clearly there was no evidence that the Grievant could have known that the policies applied to his interview at the Teamsters offices. The only instruction he received was that “it was important to be honest in his answers”, not that he was required to tell the truth and could be fired if he did not.

- The Employer did not investigate the charge against the Grievant or conduct a fair and reasonable investigation. The Employer’s investigation was not an investigation into the Grievant’s discharge conduct; but rather encompassed collusive arbitration practices. Once the Employer had reason to believe the Grievant lied during this investigation; it had an obligation to investigate further, and not merely rely on Magarian’s Report which made specific credibility conclusions. Had the Employer confronted the Grievant about giving false testimony, and given him an opportunity to explain, a different scenario might have unfolded.
- The Employer’s evidence was insufficient to justify discharge. The Employer has a heavy burden of proving just cause in terminations. Because of the severity of the discipline, arbitrators generally agree that the proof of a grievant’s wrongdoing must be substantial. Here, the Employer relied on hearsay evidence through Magarian’s Report of the Grievant’s conduct to justify termination. The witnesses themselves were not offered to give testimony in depositions or at the

hearing. The Union did not have an opportunity to cross-examine them or to challenge their credibility before this Arbitrator. Thus, this Arbitrator should not rely on the hearsay evidence contained in Magarian's Report over the direct testimony of witnesses at the hearing. The only witness the Employer produced at the hearing was Daley, who undeniably had a falling out with her supervisor Glasser. When she testified, her testimony was too general and unfocused to prove that collusive conduct occurred under the Grievant's administration. She failed to place the Grievant at any specific Step 3½ pre-meeting. She also failed even to identify one case that the Grievant allegedly settled, traded off or compromised. Even if the Report is given some weight, it pales in comparison to the documentary evidence produced by the Union and the testimony of the Grievant, Wroz and Hedberg.

- The Employer did not treat similar employees equally. Just cause requires that the Employer's policies and rules must be equally, even-handedly and consistently applied to all employees. The prohibition against disparate treatment also requires that supervisory and hourly employees be treated equally when it comes to the imposition of discipline. The Union produced evidence that other employees who lied during investigations were not terminated. In addition, Bocik lied during the same investigation and was not terminated nor even disciplined.
- The Employer did not prove the severe punishment of discharge was justified. He testified that he participated in secret arbitrator, Employer and Union Step 3½

pre-meetings during his administration, which although extra-contractual, were not collusive, nor were they shown to be collusive by the Employer, much less illicit. Even if the Grievant committed misconduct, the discipline was not appropriate given the circumstances surrounding the Grievant's lengthy employment free of discipline, save a verbal warning in 1986, which the Grievant disputes.

OPINION

The matter before the undersigned has been a long and arduous process, which involved four days of testimony with numerous motions and objections and a review of hundreds of documents. Numerous subpoenas were issued on behalf of both parties. Many were not complied with including the Employer's subpoenas to various IBT officials and their records involving the initial imposition and subsequent extension of the Union's trusteeship as well as subpoenas issued to Glasser and Sweet. Post-hearing motions were also made.

The Employer in its post-hearing Brief made a motion to re-open the record to receive three documents incorporated as attachments to its Brief. ATTACHMENT A includes a letter dated June 4, 2007 from Plant Steward Michael Vincent to the Union's membership wherein Vincent is telling members they must move forward from the corruption of the previous leaders and merge with Teamsters Local 120.

ATTACHMENT A also includes a letter dated June 5, 2007 from Steward Richard Nolden to the Union's membership that acknowledged the member's dissatisfaction with the past leadership. It also urges members to merge with Local 120 citing a new

grievance procedure, recent arbitration award wins and old grievance resurrections achieved by Local 120 since the trusteeship was imposed.

ATTACHMENT B is a letter dated June 14, 2007 from Gary Witlen, Director of the Legal Department of the IBT to the undersigned Arbitrator with the IBT's position as to why it failed to comply with the Employer's subpoenas. The Union objected to including into evidence the letters from Vincent and Nolden. The Union did not oppose the inclusion of the letter from Witlen to the undersigned.

On August 7, 2007 the Employer made another motion to re-open the record for receipt of Teamsters Joint Council 32's President Daniel Fortier's letter dated August 3, 2007 to former Union officer Michael Gough, which the Union opposed. The letter outlined charges that were filed by Vincent on August 2, 2007 against the Grievant, Genaro Ayala, Nancy Sims, David Hedberg, Michael Gough and Joseph Witzmann.⁶¹

After duly considering the motions and the oppositions thereto, the letter from Witlen is being admitted into evidence. The reason being is that the letter is identical to the letter dated January 9, 2007 that Witlen sent to Arbitrator Steven Befort during the arbitration proceeding involving former Secretary-Treasurer Ayala. This letter was admitted into evidence as Employer Exhibit No. 17 without objection from the Union... The other letters, however, are being rejected. The reason being is that they constitute hearsay and bear no evidentiary relevance to the instant proceeding wherein the issue is the Grievant's allegedly giving false testimony.

⁶¹ The Grievant was notified by letter dated August 17, 2007 from Teamsters Joint Council 32's Secretary-Treasurer Susan Mauren that the charges against him were dismissed.

The Union, contrary to the Employer, argues that hearsay evidence contained in Magarian's Report should not be considered in resolving the issue before this Arbitrator. Strict adherence to the Rules of Evidence is usually not required in arbitration proceedings.⁶² Hearsay evidence is permissible if the evidence is relevant and material to the issue at hand. It is up to the arbitrator to judge the "weight" that he/she gives to hearsay evidence.

I have gone to great lengths to lay out in detail, the facts that this Arbitrator considers relevant and material to resolve the issue at hand. This includes the discussion of the IBT's trusteeship imposition. It is clear that the trusteeship was leveled because the Union officers compromised the grievance/arbitration process. This was a practice that dominated the Employer and the Union's relationship for decades; and extended into the Grievant's administration, albeit not nearly as pervasive. There is, however, no evidence that the trusteeship was imposed because Union officials, including the Grievant, lied during Employer investigative interviews.

As discussed under the heading RELEVANT FACTS, the Employer has a Code of Conduct that all employees are expected to abide by, which mandates cooperation in the investigative process. The Code states, "*In order to facilitate implementation of this Code of Business Conduct, employees have a duty to cooperate fully with the Company's investigation process and to maintain the confidentiality of investigative information unless specifically authorized or required by law to disclose such information.*" It also mandates honesty and integrity wherein it states, "*Integrity is a*

⁶² Elkouri & Elkouri, How Arbitration Works; Fifth Edition, pgs.403-407 (1996).

bedrock principle of all our behaviors. All employees must abide by and uphold the Code of Business Conduct and all laws. There will be no exceptions.”

The Employer also has a disciplinary policy where various employee offenses are categorized by Degrees, ranging from First Degree through Fourth Degree. Each Degree of offense results in a specific discipline that ranges from a warning to discharge. In addition, an accumulation of lesser Demerits during a specific time period results in progressively higher Degree Demerits. “*Giving false information*” is one of the specific offenses that results in a Fourth Degree Demerit, with a penalty of discharge.

The issue before the undersigned is whether the Employer had just cause pursuant to Article XXIX Section 7 to discharge the Grievant. This issue presents a well-settled two-step analysis: first, whether the Grievant engaged in activity which gave the Employer just and proper cause to discipline him; and second, whether the discipline imposed was appropriate under all the relevant circumstances. It is the Employer’s burden to show that the Grievant engaged in conduct warranting discipline and that the appropriate discipline was a termination.

Before these criteria can be examined, the Grievant’s employee status must be resolved. Contrary to the Employer’s assertions, the Union argues that the Grievant was not an employee at the time he allegedly gave false testimony; and, therefore, he was not subject to the Employer’s Code of Conduct or its Factory Policies. I conclude that the Grievant had limited employee status during the time in question. At best he was an inactive employee. As an inactive employee, the only employment rights the Grievant had were an opportunity to apply for re-employment once his position with the Union ceased and he could accrue seniority and retirement credit for the time that he

was on his LOA. During his inactive status, the Grievant was employed full-time by the Union and subject to its rules, regulations and control, rather than the Employer's. Article XII Section 4 of the Agreement also recognizes that the Grievant leaves the employment of the Employer once he assumes his Union position wherein it states, "*An employee elected or appointed to a position with the Union **which takes the employee from the employment of the Company....***" [Emphasis added] This unambiguous phrase clearly shows that the Grievant would not be subject to an employment relationship with the Employer including being subject to its rules, regulations and policies during his LOA.

Since he was not under the direct control of the Employer at the time the alleged infraction of the Employer's Policies occurred, he could not be disciplined for violating them. That is not to say that an inactive employee could never be subject to discharge or rehire. As the Employer correctly points out, an inactive employee can be refused re-employment (terminated) for engaging in egregious conduct that would render him ineligible for future employment. I am not by any means condoning the Grievant's conduct; however, giving false testimony during an investigation does not rise to the level that would independently constitute the type of egregious conduct, such as criminal behavior or violating Federal Labor Laws, which arbitrators and the courts have recognized when finding union officials or others unfit for re-employment after a LOA.

Even assuming *arguendo* that the Grievant was bound by the Employer's Rules and Policies, the Employer has not sustained its burden to prove just cause. As I have stated in other Arbitration Awards, an Employer's self-imposed disciplinary policy does

not, per se, justify discharge.⁶³ Such a perfunctory assessment of discipline is inconsistent with a just cause standard. When the Employer entered into the just cause standard in Article XXIX Section 7, it created more than an absolute right to discharge the Grievant solely because of its disciplinary policy.

In a discharge case, where just cause is the standard, a significant quantum of proof is required to show not only that a grievant engaged in the misconduct alleged, but also that the misconduct justifies discharge. In this matter, it is whether the Grievant violated the Employer's policy by giving false testimony during an Employer investigation; and whether this conduct, per se, satisfies the just cause standard warranting discharge because of its seriousness.

Although just cause has no universally accepted definition, arbitrators often determine the existence of just cause by applying the well-known "Seven Tests Standard". Arbitrator Daugherty in *Grief Brothers Cooperage*, 42 LA 555, first articulated these tests. 558 (1964).⁶⁴ In these cases Professor Daugherty notes that a negative answer to any of these questions may well mean that there is insufficient cause for the discipline imposed. The Seven Tests are as follows:

1. Notice: Did the Company give to the employee forewarning or foreknowledge of the possible consequences of the employee's conduct?
2. REASONABLE RULE: Was the Company's rule or managerial order reasonably related to the orderly efficient and safe operation of the Company's business?
3. INVESTIGATION: Did the Company before administering the discipline to the employee make an effort to discover whether the employee did in fact violate or disobey a rule or order of management?

⁶³ The evidence suggests that this was a unilaterally adopted policy.

⁶⁴ See also. *Enterprise Wire Co.*, 46 LA 359 (Daugherty 1966).

4. FAIR INVESTIGATION: Was the Company's investigation fair and objective?

5. PROOF: At the investigation, did the "judge" obtain substantial evidence of proof that the employee was guilty as charged?

6. EQUAL TREATMENT: Has the Company applied its rules, orders and penalties evenhandedly and without discrimination to all employees?

7. PENALTY: Was the degree of discipline administered by the Company in a particular case reasonably related to (a) the seriousness of the employee's proven offense and (b) the record of the employee in his service with the Company?

When the particularized facts surrounding the Grievant's discharge are fully examined, it is apparent that discharge was not appropriate. . In making the decision to terminate the Grievant, the Employer relied solely on the findings and credibility resolutions contained in Magarian's Report. The evidence clearly shows the Grievant was then subsequently terminated for (1) giving false testimony regarding his involvement in Step 3½ pre-meetings and (2) his involvement in the changing and shredding of the draft award in Arbitration Award B-79.

. It is abundantly clear from the evidence that the Grievant gave false testimony during his interview to Magarian regarding his involvement in formulating a remedy in Arbitration B-79 and in instructing Daley to shred the initial draft award; both of which the Grievant admitted to during the hearing. It is also clear that the Employer failed to establish any direct evidence that the Grievant was involved in changing any draft award other than B-79.

With respect to the Grievant's alleged conduct during Step 3½ meetings, the hearsay testimony of Sweet, Glasser and Bellman in their interview memorandums fail to specifically identify the Grievant's involvement. This is also true of Daley's interview memorandum and her direct hearing testimony. A review of the evidence proffered by

the Employer fails to disclose that it was in fact the Grievant who engaged in the conduct cited in interview memorandums and in hearing testimony. Since individuals were not specifically identified, it is entirely possible that the Employer's witnesses and interviewees could have been referring to Ayala or other individuals in his administration; or even Wroz or Hedberg, who were also involved in pre-meetings during the time that Bellman was the Arbitrator.

The evidence in the interview memorandums and hearing testimonies of the Grievant, Wroz and Hedberg established that they all participated in similar conduct during those meetings; and they all categorically deny that they made deals, gave away cases or compromised any grievance/arbitration proceeding. Thus, if the Grievant lied about his participation in the pre-meetings during his interview, it follows that both Wroz and Hedberg must have also been untruthful; and, therefore, also committed a dischargable offense. Even Magarian could not conclusively establish in his Report that the Grievant lied about his involvement in pre-meetings. Magarian only presumed the Grievant lied because he had also lied about his involvement in B-79. On the other hand, the Grievant as did Wroz and Hedberg testified credibly about their involvement in the pre-meetings. In view of this, I conclude that the Employer failed to establish that the Grievant gave false testimony during his investigative interview concerning Step 3½ pre-meetings.

What we are left with then is the Grievant's admission that he was untruthful during his investigative interview about his involvement in B-79. Does this untruthful admission constitute giving false testimony in violation of the Employer's Code of Conduct and Factory Policies? The Union argues that the Grievant could not be charged with

violating the aforementioned Policies because his interview was not testimony as defined in legal terms. I reject this argument. The Employer has consistently identified lying during an investigation as giving false testimony. The Grievant clearly was aware of this during his employment status as both an employee and Union official, and during the time that he was a Business Agent.

The Union also asserts that the investigation into the Grievant's conduct was neither complete nor fair. I also reject this argument. While some aspects of the investigation may be questionable relating to his conduct during pre-meetings, the fact of the matter is that there is a plethora of hard evidence established during the Employer's investigation that the Grievant had lied about his involvement in B-79. In view of this, any additional investigation would not change this fact or the result thereof.

The Union also argues that the Employer falls short in the other applications of the "Seven Test Standard" for just cause. First, the Grievant was not told in his investigative interview that he was subject to the Employer's Code of Conduct or its Factory Policies., only that he should give honest answers. He was also not warned of any consequences associated with being less than honest.⁶⁵ It is understandable that the Grievant as a full-time employee of the Union believed that he was not subject to the Employer's control, including its Code of Conduct and Factory Policies. The language in Article XII Section 4 reinforced this believe. Had the Employer made the Grievant aware that in spite of the language in Article XII Section 4, he was still bound to the Code of Conduct and Factory Policies; and made him aware that in giving false

⁶⁵ It is noted that Magarian and his associates gave "instructions" to all the interviewees, but all were not the same.

information he would be subject to discharge, it is conceivable that his answers may have been more forthcoming.

Second, the Employer engaged in disparate treatment when it discharged the Grievant. Although, it appears most employees are terminated for giving false information during an investigation, it is also clear that some employees have received a lesser discipline. Also, evidence, which the Employer initially redacted in Magarian's Report, disclosed that Vice-President of Human Resources Bocik informed investigators that he had no knowledge of the parties' collusive grievance/arbitration practices. This was later rebutted by Sweet's memo to Bocik uncovered during an ensuing investigation and in his interview memorandum of what Sweet told investigators during his interview that is contained in the unredacted Report of Magarian's investigation. Bocik's knowledge was also established in Glasser's interview memorandum, which also came to light in the unredacted Report. There is no evidence that Bocik was discharged, much less disciplined.

Finally, the Grievant was employed for over 25 years during which time he had an unblemished disciplinary record, save the 1986 verbal warning that he disputed. The evidence also disclosed that he was an above average employee. While these factors do not excuse the Grievant's conduct, they are mitigating factors in assessing punishment in light of the total circumstances herein.

In conclusion, the evidence clearly establishes that the Employer failed in its burden to establish that it had just cause to terminate the Grievant. The Grievant was not an active employee subject to the Employer's Code of Conduct or its Factory Policies at the time he gave false testimony. Even assuming *arguendo* that he was an employee

subject to the Employer's rules and regulations, the Employer failed to establish it had just cause to discharge the Grievant for the reasons set forth herein. Finally, even if some discipline was justified, the evidence clearly established that discharge was not the appropriate discipline, again for all of the reasons set forth herein.

AWARD

It is hereby ordered that the grievance in the above entitled matter be and hereby is sustained for the reasons set forth in this Decision.

It is further ordered that the discharge of Monty Clemmer be rescinded and any reference to his discharge be expunged from his personnel file, consistent with my Decision herein.

It is further ordered that Monty Clemmer be reinstated to his former position; and be made whole for any loss of wages, economic benefits, seniority, or any other benefits or rights or privileges suffered as a result of the Employer's action, less any interim earnings.

The undersigned Arbitrator will retain jurisdiction in this matter for a period of forty-five (45) days from the receipt of this Award to resolve any matters relative to implementation.

Dated: August 25, 2007

Richard R. Anderson, Arbitrator