

**IN THE MATTER OF ARBITRATION BETWEEN**

<b>HONEYWELL INTERNATIONAL, INC.,</b>	)	
	)	<b>ARBITRATION AWARD</b>
<b>Employer,</b>	)	
	)	
<b>and</b>	)	<b>AYALA DISCHARGE GRIEVANCE</b>
	)	
	)	
<b>TEAMSTERS LOCAL NO. 1145,</b>	)	
<b>Union.</b>	)	<b>FMCS Case No. 060504-55869-7</b>

Arbitrator: Stephen F. Befort

Hearing Date: December 6, 2006  
January 29, 2007  
April 9, 2007

Post-hearing briefs received: June 25, 2007

Date of decision: August 14, 2007

**APPEARANCES**

For the Union: Martin J. Costello

For the Employer: Brian L. McDermott  
Steven F. Pockrass

**INTRODUCTION**

Teamsters Local 1145 (Union) is the exclusive representative of a unit of production and maintenance workers employed by Honeywell International, Inc. (Employer). The Union brings this grievance claiming that the Employer violated the

parties' collective bargaining agreement by discharging the grievant, Genaro Ayala, without just cause. The Employer maintains that it had just cause to discharge the grievant for lying during an investigation. The grievance proceeded to an arbitration hearing at which the parties were afforded the opportunity to present evidence through the testimony of witnesses and the introduction of exhibits.

## **ISSUES**

Did the Employer discharge the grievant for just cause? If not, what is the appropriate remedy?

## **RELEVANT CONTRACT LANGUAGE**

### **ARTICLE XV - GRIEVANCES**

**Section 1.** A grievance is any controversy between the 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.** Grievances as defined in Section 1 above shall be settled in the following manner and the steps set forth must be followed in the order listed and within the time limits prescribed.

**Step 1.** The grievance shall be orally presented to the Supervisor by the aggrieved or the departmental committee within a reasonable period of time after it arises. The departmental supervisor and committee will make a fair and reasonable effort to settle the grievance in Step 1. Not more than eight (8) employees including the Union departmental committee shall participate in presenting grievances under this Step 1. No settlement in this Step 1 shall be made in violation of this Agreement.

If a settlement is not reached within two (2) working days after oral presentation to the Supervisor the grievance may be referred to Step 2.

After receiving a final reply from the Supervisor, grievances to be referred to Step 2 shall be reduced to writing by the departmental committee with a clear statement of the issues involved and relief sought. Grievances thus reduced to writing shall be presented to the Supervisor who shall promptly

transmit the written grievance to the Labor Relations Manager for handling in accordance with Step 2.

**Step 2.** The Union shall be represented by not more than a total of fifteen (15) persons of which not more than six (6) may be from the then working shift who shall serve as the Union's grievance committee. This committee shall meet with Company representatives within three (3) working days after the written grievance has been presented to the Supervisor. If the meeting is held during working hours, the Company agrees to pay employees for such time up the regular quitting time providing such employees would be normally working at that time.

The time and place for meeting under this Step 2 shall be at the discretion of the Director of Industrial Relations or his or her delegated authority. The Director of Industrial Relations or his or her delegated authority shall prepare a report of the meeting, together with a written disposition of the matter and forward copies thereof to the Union within ten (10) working days after the written grievance has been presented to the Supervisor in accordance with Step 1.

If settlement is not reached in this Step 2 within ten (10) working days after the grievance has been reduced to writing and presented to the Supervisor under Step 1, the grievance may be referred to Step 3. If the grievance is not referred to Step 3 within ten (10) working days after the written disposition of the Director of Industrial Relations or his or her delegated authority has been delivered to the Union, the settlement as set forth in his or her disposition shall be final and binding.

**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 a 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.

#### **LETTER OF AGREEMENT**

**[Applicable to Grievances Arising on or after August 8, 2005]**

#### **ARTICLE XV – GRIEVANCES**

**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.

### **FACTUAL BACKGROUND**

Honeywell International is a residential and avionics electronics systems manufacturing company with facilities in the Twin Cities area. Genaro Ayala worked for Honeywell for 28 years. He was hired initially on April 20, 1977 and was discharged on September 7, 2005.

Local 1145 is a local union affiliated with the International Brotherhood of Teamsters (IBT). The Teamsters local has represented employees at Honeywell for more than 40 years.

Ayala has been very active in Union affairs. He won election to the position of Welfare Director in 1997. Four years later he challenged the incumbent union officer slate and was elected President of Local 1145. He then became Secretary-Treasurer – the Union’s highest ranking officer position – following the death of then Secretary-Treasurer Jim Holte in June 2002.

Consistent with prior collective bargaining agreements (CBAs), the parties’ 2002-07 agreement contained a four-step grievance process that culminated with arbitration at the fourth step. Also consistent with prior CBAs, the 2002-07 CBA called for a single

arbitrator to hear the cases. The 2002-07 CBA expressly named Arlen Christenson to serve as the single arbitrator. Christenson had held that position since 1982.

During Christenson's tenure, the practice developed by which he would hear a number of arbitration cases quarterly over a brief two or three day span. After the arbitration hearings had concluded, Christenson then would hold secret meetings, sometimes known as "Step 4½" meetings, with the Employer's lead labor relations representatives and the Union's three business agents (i.e., the Secretary-Treasurer, President, and Vice President) at a different location.

Although he previously had been a Union official, Ayala did not learn about the secret meetings until he was elected Union President. Sometime late in 2001, following a day of arbitration hearings at the Four Points by Sheraton Hotel in Minneapolis, Secretary-Treasurer Holte told President Ayala and Vice-President Nancy Sims to meet him for drinks at the Doubletree Hotel more than five miles away. Ayala and Sims went to the Doubletree, where Holte escorted them to a room and they met with Christenson as well as Honeywell Minneapolis Labor Relations Director Michael Sweet and Honeywell Minneapolis Labor Relations Manager George Glasser. Christenson used the occasion to explain the Step 4½ process. Ayala and Sims continued to participate in these Step 4½ meetings after Holte died, at which time Ayala ascended to the Secretary-Treasurer position, Sims ascended to position of President, and Warren Bindewald ascended from Recording Secretary to Vice President.

Arbitrator Christenson retired shortly after Holte's death in 2002. Christenson recommended that the parties appoint Howard S. Bellman as his successor. The parties entered into a letter of agreement confirming Bellman's appointment as sole arbitrator on

August 20, 2002. Ayala and Glasser subsequently flew to Madison, Wisconsin where they met with Bellman for the purpose of orienting him with respect to the parties' arbitration practices.

During the twenty month-period from the summer of 2002 until the spring of 2004, the parties processed more than 60 arbitration cases before Arbitrator Bellman. Ayala, Sims or Bindewald would represent the Union in these cases, while Glasser and Sweet carried the load for the Employer. Throughout this period, it is uncontroverted that these representatives would meet with Bellman in secret post-hearing meetings to which the individual grievants and other Union and Employer officials were not invited. Ayala, Sims, and Bindewald testified that the purpose of these meetings was simply to provide an opportunity to clarify issues and positions following each hectic round of arbitration hearings. The Employer, on the other hand, maintains that the representatives actively "horse-traded" many grievances and instructed the arbitrator in terms of the desired rulings. The record also establishes that Bellman sent copies of draft arbitration awards to Ayala and Glasser at their homes prior to issuing the final version of these decisions.

In April 2004, the Ayala slate lost a hotly contested re-election bid. Monty Clemmer replaced Ayala as Secretary-Treasurer, and Sims and Bindewald also were swept from Union office. Following a brief leave of absence, Ayala returned to the bargaining unit in September 2004.

The election of Clemmer signaled a change in the arbitration process. The Union and Employer representatives, as well as Arbitrator Bellman, decided to scrap the secret post-hearing meetings and to substitute pre-hearing meetings, sometimes referred to as Step 3½ meetings. Here again, the parties dispute whether the purpose of these meetings

was merely to facilitate the arbitration process or whether they were designed to pre-determine the outcome of individual grievances.

Honeywell Labor Relations Manager Lora Daley usually attended the secret meetings as an assistant to Glasser and Sweet. She became increasingly uncomfortable with the process, and, in June 2005, she reported to high-ranking Honeywell officers that the Employer and Union grievance representatives held off-the-record meetings with the arbitrator during which cases were settled, traded, or otherwise compromised.

The Employer responded to Daley's allegations by hiring the law firm of Dorsey & Whitney to conduct an investigation. Over the course of the next two months, Ed Magarian, a partner at Dorsey & Whitney, led a team that interviewed 24 individuals and reviewed thousands of pages of documents.

Magarian interviewed Ayala as part of the investigation on June 11, 2005. During the interview, Ayala admitted taking part in secret post-hearing meetings. Ayala, however, denied that the meetings were used to settle, trade, or otherwise compromise the outcome of individual arbitration cases.

Late in June 2005, Daley showed Magarian three arbitration awards from Bellman dated June 22, 2005 that Clemmer had brought to her office. According to Daley, Clemmer and Glasser had reached an agreement as to how the remedy provided by one of the awards, B-79, should be changed from that of Bellman's draft. Daley wrote down the agreed upon language change and shared that information with Magarian. On June 30, 2005, Bellman officially issued his award in Case B-79 which by then contained the language agreed upon by Clemmer and Glasser. The final award made no reference to

any settlement and appeared to constitute a wholly independent decision of Arbitrator Bellman.

Magarian issued a report to Honeywell dated August 15, 2005. Magarian's factual conclusions, set out at pages 32-34 of his report, state as follows:

**A. Post-Arbitration Meetings: Step 4 1/2**

We have no questions that these secret, post-arbitration meetings between the union, LR, and the arbitrator (at least Arbitrators Christenson and Bellman) have been taking place for a number of years. Although it appears that not every Honeywell employee involved in the grievance process, including some in LR, knew about the post-arbitration meetings, many that we interviewed were aware of them and openly admitted that they existed. Even among those who knew about the meetings, though, not all were aware that the meetings sometimes involved secret agreements between the union, LR, and the arbitrator about the outcome of some grievance.

Based on the candid comments and admissions of some LR employees (including Sweet and Glasser) and the arbitrator, and other information gathered, we also believe that there were unofficial, secret settlements reached between the participants at these meetings regarding the outcome of some arbitrations. These secret settlements were not known or approved by the grievant or responsible Company management, and were not reflected in the written awards. The awards would not lead any unknowing reader to believe anything other than that they were the product of an independent decision by the arbitrator. Interestingly, though, since about 2004 there has been a mediation process in place at Honeywell and Arbitrator Bellman has written mediation agreements which plainly reflect that they were the result of a settlement between the parties. (*See, e.g.*, INT 000204) Clearly Bellman knows how to write an opinion showing that it resulted from a settlement. Genaro Ayala's denials are simply not credible.

The primary non-union Honeywell participants in this process with leadership responsibilities included Michael Sweet and George Glasser.

**B. Pre-Arbitration Meetings**

As with the post-arbitration meetings know as "Step 4 1/2," the pre-arbitration meetings took place without the knowledge of the grievant, union members, or company management. It appears that many of these pre-meetings did not necessarily involve decisions about how arbitration should conclude, but may have simply involved discussion of the issues to be presented during the arbitration and the background of the matter. However, while not as prevalent as with the post-meetings, we do believe that there were instances when those

attending the pre-meetings discussed and decided language to be used in the awards, and sometimes decided what the result should be or would be after the arbitration. The evidence of these actions is less in the pre-arbitration meetings compared to the amount of evidence supporting them in the Step 4 ½ meetings. Clemmer's categorical denials are not credible in the face of other admissions received and his categorical denial of receiving the June 22 awards, as noted below.

\* \* \*

**C. Illicit Payments or Other Improper Benefits to Honeywell Employees**

Allegations concerning former union officers Genaro Ayala and Warren Bindewald suggested that either or both may have received some form of improper "pay-off" in order to secure their silence regarding the secret, post-arbitration meetings.

\* \* \*

We have been unable to confirm allegations that Bindewald may have received a \$30,000 payment, much less that the payment was tied to Ayala's threats. Based on what Lizabeth Halva found, there appears to have been no payment to Bindewald recorded in either payroll or accounts payable.

With regard to the allegations that Ayala may have received a leave of absence right after he lost the union elections and about the time he made the threats, we have not been able to confirm any connection between the threats and the leave other than the timing. Nor does it appear Ayala ever followed up on his threat, although it is possible this could have been due to his own self-interest in not exposing his part in the secret meetings.

\* \* \*

The employer terminated Ayala's employment on September 7, 2005 on the grounds that he violated Employer work rules by giving false testimony during the Dorsey & Whitney investigation. The Union grieved the termination, asking for reinstatement, back pay, and lost benefits.

Meanwhile, the IBT's legal department also initiated its own separate investigation into these grievance practices led by investigator Thomas Schatz. The IBT placed Local 1145 in emergency trusteeship in August 2005 and removed the incumbent

officers from their posts. Brad Slawson, Sr. became trustee and assumed day-to-day administration of local 1145.

On October 24, 2005, the IBT conducted a hearing in which Trustee Slawson was given the opportunity to present evidence in support of the continuation of the trusteeship. IBT investigator Schatz also spoke and presented a report at the hearing. A court reporter was present, and a transcript was prepared. After reviewing the transcript and the recommendations of a three-member panel, IBT President James Hoffa issued the following public notice, which was posted on the Union bulletin boards and the door of the Union office:

### **NOTICE**

January 18, 2006

TO: The Members of Local Union 1145  
Saint Paul, Minnesota

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.

### **POSITIONS OF THE PARTIES**

The Employer contends that it had just cause to discharge Ayala because he participated in a collusive arbitration process and then lied to the Employer during an investigation into those practices. The Employer maintains that this misconduct is adequately established through the testimony of Daly and the credible investigative report prepared by Dorsey & Whitney. The misconduct is further evidenced by the IBT's action in putting the local Union into trusteeship for allowing "the grievance mechanism to be compromised." The Employer asserts that discharge is an appropriate sanction in this instance because giving false testimony is an offense cited by Employer work rules as subject to punishment up to and including discharge. The Employer also claims that discharge is a remedy that it has routinely imposed in similar circumstances.

**Union:**

The Union raises several arguments in contending that the Employer has failed to show that its discharge decision is supported by just cause. First, the Union argues that a union representative who is also an employee has a privilege not to disclose information concerning union activities to the Employer and may not be disciplined on the basis of such information. Second, the Union maintains that the investigative report itself is flawed because of the investigator's failure to interview key individuals such as Union officers Sims and Bindewald. Third, the Union argues that the evidence submitted by the Employer is insufficient to establish a finding of misconduct since it is premised almost entirely on the hearsay Dorsey & Whitney report. Fourth, the Union claims that the hearsay evidence provided in the report, in any event, is more than offset by the credible direct testimony of Ayala, Sims, and Bindewald denying participation in any collusive activity. Finally, the Union maintains that the Employer does not have a consistent practice of terminating employees who have given false testimony and that Ayala's long-term record of employment militates against such a sanction in this instance.

### **DISCUSSION AND OPINION**

In accordance with the terms of the parties' collective bargaining agreement, the Employer bears the burden of establishing that it had just cause to support its disciplinary decision. This inquiry typically involves two distinct steps. The first step concerns whether the Employer has submitted sufficient proof that the employee actually engaged in the alleged misconduct or other behavior warranting discipline. If that proof is established, the remaining question is whether the level of discipline imposed is appropriate in light of all of the relevant circumstances. *See Elkouri & Elkouri, HOW ARBITRATION WORKS* 948 (6<sup>th</sup> ed. 2003). Both of these issues are discussed below.

## **A. The Alleged Misconduct**

### **1. The Employer's Evidence**

The Employer primarily relies on the Dorsey & Whitney investigation as evidence of Ayala's untruthfulness. The Dorsey & Whitney report concluded that Ayala had participated in collusive arbitration activities, yet lied about their existence during the Employer-sponsored investigation. The Employer maintains that this conclusion is credible due to the thoroughness of the investigation. Ed Magarian, who led the investigative team, has conducted more than 100 investigations. The Dorsey & Whitney team spent more than two months interviewing 24 individuals and reviewing several thousand pages of documents.

The Employer particularly stresses the fact that three key individuals involved in the secret arbitration process – Labor Relations Director Sweet, Labor Relations Manager Glasser, and Arbitrator Bellman – acknowledged to investigators that deals impacting case outcomes were struck during these secret meetings. These acknowledgements arguably constitute admissions against interest as evidenced by the fact that the Employer subsequently severed its relationship with all three individuals because of such conduct.

The Employer asserts that the conclusions of the Dorsey & Whitney report also find support in three other sources. First, Lora Daley testified at the hearing that Glasser and sometimes Ayala would tell Bellman how to rule in the post-hearing meetings. Second, although it occurred during the Clemmer administration, the evidence showing that Bellman altered an arbitration award (B-79) based upon a secret agreement between Glasser and Clemmer provides a smoking-gun illustration of the type of collusive conduct that the Employer alleges. Third, the IBT also concluded, following its own

investigation, that “the Local 1145 officers allowed the grievance mechanism to be compromised.” Based upon the totality of this evidence, the Employer argues that Magarian was clearly correct in concluding that “Ayala’s denials [of collusion] are simply not credible.”

It is important to note that the Employer’s termination of Ayala was not based upon his alleged involvement in the collusive arbitration practices, but upon Ayala’s alleged untruthfulness during the Dorsey & Whitney investigation. Lying during an investigation constitutes a fourth degree offense subjecting employees to discharge under applicable Employer work rules (Factory Policy 0-1).

## **2. The Union’s Objections**

### **a. Privilege**

The Union argues that a union officer such as Ayala enjoys a privilege not to disclose information related to his or her activities as a union representative. The Union further asserts that a union officer also may not be disciplined based upon information disclosed concerning actions taken while acting within this zone of protected activity.

It is true that employees who act as union representatives have a certain degree of immunity where the imposition of discipline would impede grievance handling responsibilities or otherwise disrupt legitimate labor-management activities. As an example, arbitrators sometimes set aside the discipline of union stewards who use loud or profane language during the grievance-handling process. *See generally* Elkouri & Elkouri, *HOW ARBITRATION WORKS* 252-53 (6<sup>th</sup> ed. 2003).

That immunity, however, does not extend to the instant context. First, of all, the Employer's discipline in this matter is not based upon the grievant's conduct while carrying out union responsibilities, but upon his comments made at an Employer-instigated investigation. But even if the comments and underlying conduct are deemed to be inextricably linked, a representative's immunity does not apply when he or she acts beyond the legitimate bounds of representative responsibilities. Elkouri & Elkouri, *HOW ARBITRATION WORKS* 253-55. Thus, arbitrators have upheld the discipline of a union steward who sexually harassed another employee in the course of performing representative duties, *Hobart Corp.*, 88 LA 512 (Strasshofer, 1986), as well as a steward who extorted money from employees hired through a union hiring hall, *OK Grocery Co.*, 92 LA 440 (Stoltenberg, 1989). Discipline related to collusive arbitration practices similarly fall outside the scope of legitimate representational tasks that qualify for privilege or immunity.

**b. The Investigation**

The Union claims that the Employer's investigation of this matter was flawed. The Union makes two principal contentions in this regard.

The Union initially claims that the Dorsey & Whitney investigation erred by not interviewing Union officers Sims and Bindewald. The Union argues that the two Union officers were the only individuals privy to the secret meetings during the period in question who were not interviewed by the Dorsey & Whitney investigators. The Union

further alleges that the Employer violated basic notions of due process by accepting the findings of the Dorsey & Whitney investigation without making any independent inquiry of its own. In particular, the Union claims that the Employer at a minimum needed to confront Ayala with the allegation of lying and to provide him with an opportunity to respond.

While these arguments may have some validity in terms of the weight to be accorded to the overall evidentiary record, they do not require either the wholesale rejection of the investigative report or the imposition of some independent due process remedy. The Employer hired the Dorsey & Whitney firm to conduct a detailed investigation on its behalf and certainly had the right as a matter of procedure to take action without duplicating that effort. Further, any prejudice suffered by Ayala with respect to a less than complete investigation is cured by this proceeding in which the testimony of all three Union officers has been admitted and given due consideration.

**c. Hearsay Evidence**

The Union objects to the Employer's reliance on the Dorsey & Whitney report because the conclusions of the report constitute only hearsay evidence of the facts asserted. The Union points out that the Employer failed to call Sweet, Glasser, and Bellman as witnesses at the arbitration hearing and instead relied solely on their statements made to the investigative team.

The Union argues that hearsay evidence by itself is insufficient to establish just cause for discipline, particularly when that evidence is contradicted by the credible sworn testimony of the grievant and other witnesses. The leading treatise on labor arbitration --

Elkouri & Elkouri, HOW ARBITRATION WORKS 367-68 (6<sup>th</sup> ed. 2003) -- summarizes the weight of arbitral opinion on this issue as follows:

. . . In many cases very little weight is given to hearsay evidence, and it is exceedingly unlikely that an arbitrator will render a decision supported by hearsay evidence alone. Further, hearsay evidence will be given little weight if contradicted by evidence that has been subjected to cross-examination.

Arbitrator William Berquist has offered a similar view in considering a case arising in

Minnesota, stating:

. . . arbitrators are careful in the admission and consideration and the giving of weight to hearsay because of its inherent unreliability and to insure that it does not result in a lack of due process and a fair hearing to the grievant. This is particularly so when the offered hearsay evidence is critical, essential and material to a determination of the case and is not of a peripheral character . . . .

*Beverly Industries d/b/a Metro Care and Rehabilitation Center and United Food and Commercial Workers Union Local 653*, 100 LA 522 (Berquist, 1993).

Most arbitrators, however, will not reject hearsay evidence altogether in circumstances where the declarant's absence from the hearing is due to understandable reasons. Instead, the hearsay evidence, even though lacking in some indicia of reliability, will be balanced against the sworn testimony and considered along with other evidence bearing on credibility. *See e.g., City of Minneapolis and Int'l Assn. of Fire Fighters, Local 82*, 121 LA 77 (Befort, 2005); *AFSCME Council 14 and Ramsey Action Programs, Inc.*, BMS Case No. 99-RA-7 (Gallagher, 1999). That approach will be followed here.

**d. The Credibility of Ayala, Sims, and Bindewald**

The Union ultimately argues that the live testimony of former Union officers Ayala, Sims, and Bindewald is entitled to greater weight than the hearsay evidence contained in the Dorsey & Whitney report. The Union points out that all three former

officers denied participation in any collusive arbitration practices and that each consistently testified that the secret meetings only served to clarify, but not resolve, individual arbitration cases.

In the end, however, the testimony of Ayala, Sims, and Bindewald cannot withstand the great weight of the evidence to the contrary. The Dorsey & Whitney investigation was very thorough, and the report's findings are very credible. The report did not simply rubber stamp all of Daley's allegations but found some to be substantiated by the evidence while others were not. Even though Sweet, Glasser, and Bellman did not testify at trial, their admissions during the investigation are credible and quite damaging to the Union's cause. Each made admissions against interest by acknowledging that deals were made during the secret meetings. As a result of their admissions, each lost a valued relationship with the Employer. In contrast, the denials asserted by the three former Union officers coincide with evident self interest.

The findings of the Dorsey & Whitney report also are supported by three strong additional sources. Daley testified that Glasser and Ayala would tell Bellman how to rule in the post-hearing meetings. Daley and Magarian's observation of the secret alteration made to the B-79 arbitration award provided direct evidence of the type of collusive conduct identified in the report. And, the IBT itself concluded that "the Local 1145 officers allowed the grievance mechanism to be compromised."

Viewing the record as a whole, the considerable weight of the evidence establishes that Ayala was not truthful in denying that any collusive conduct occurred during the secret post-hearing meetings. Accordingly, the Employer has carried its burden of showing that the grievant engaged in the alleged misconduct in question.

## **B. The Appropriate Remedy**

The Employer argues that discharge is an appropriate remedy in this case because of the serious nature of the misconduct, and because Employer work rules provide that the giving of false testimony is an offense subject to punishment up to and including discharge. The Employer also maintains that it has a consistent practice of terminating employees for lying during an investigation.

The Union urges a reduction in penalty in light of Ayala's 28 years of service with Honeywell. The Union also introduced evidence tending to show that the Employer, on at least one occasion, did not terminate an employee for being untruthful during an investigation.

Genaro Ayala is a sympathetic grievant in many respects. He overcame a poor background and chemical dependency to climb the ladder to the top administrative post of one of Minnesota's largest private sector unions. He also devoted virtually all of his working life to the Employer.

That said, once it has been determined that Ayala engaged in the alleged misconduct, it is difficult to justify a remedy short of discharge. Ayala's participation in the collusive arbitration practices subverted the integrity of the parties' dispute resolution process. By lying during an investigation concerning these practices, Ayala also impeded the ability of the parties to fix this broken system. These actions constitute violations of trust that are extremely serious in nature. Coupled with the Employer's past practice of terminating employees who give false testimony during an investigation, it is clear that the Employer had just cause for its discharge decision.

**AWARD**

The grievance is denied.

Dated: August 14, 2007

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Stephen F. Befort  
Arbitrator