

In the Matter of Arbitration Between

United Steel Workers of America, Local No. 9460)	FMCS Case No. 060418-55458-7
)	
“Union or USW”)	Issue: Step 20 Lump Sum Bonus
)	
)	Hearing Site: Duluth, MN
)	
and)	Hearing Date: 09-25-06
)	
)	Brief Submission Date: 10-25-06
)	
St. Mary’s Duluth Clinic Health System)	Award Date: 12-23-06
)	
“Employer or SMDC”)	Mario F. Bognanno, Labor Arbitrator
)	

JURISDICTION

Pursuant to the relevant provisions in the parties’ 2005 – 2008 Collective Bargaining Agreement this matter was heard on September 25, 2006 in Duluth, Minnesota. (Joint Exhibit 1). The parties, appearing through their designated representative, waived the article 14.5 requirement that an Award shall be issued within thirty (30) days of the close of the hearing. Further, they stipulated that the matter is properly before the undersigned for a “final and binding” determination. Both sides were afforded a full and fair opportunity to present their case; witness testimony was sworn and cross-examined; and exhibits were introduced into the record.

Arbitrator-Intern Richard J. Dunn attended the hearing under the auspices of the State of Minnesota, Bureau of Mediation Services’ arbitrator training program. In that capacity, Mr. Dunn prepared a mock draft of an award.

Nevertheless, the instant award was drafted and decided solely by the undersigned arbitrator of record.

APPEARANCES

For the Employer:

Joseph J. Mihalek	Attorney at Law
Teresa O'Toole	Associate General Counsel, SMDC
Sara Dorfman	Employee and Labor Relations Specialist, SMDC
Alison Zentz	Employee and Labor Relations Specialist, SMDC
Ron Niemi	Manager, SMDC
Ron Siebert	Director, Heart Center, SMDC
Roberta Klekotka	Radiology Director, SMDC
Renee Carlson	Lab Customer Relations Supervisor, SMDC
Shari Mlodozyniec	Respiratory Care Manager, SMDC

For the Union:

Cathy Warner, Staff Representative, USW
Kevin Nendick, President, USW, Local No. 9460
Daniel A. Johnson, Vascular Surgical Assistant, USW Negotiating Committee
Mary G. Kane Gau, Histologist, USW Negotiating Committee
Marily M. Sturdevant, Surgical Technician, USW Negotiating Committee

I. FACTS AND BACKGROUND

The United Steel Workers of America, Local 9460 has represented the SMDC's technical employees since 2002, at which time the parties entered into their first accord, namely, the 2002 – 2005 Collective Bargaining Agreement.

(Joint Exhibit 2). Effective July 1, 2002, employees received a 6% increase in their hourly base rate of pay. Effective July 1, 2003, employees were slotted into the Agreement's 20-step wage grid such that their total years and months of experience were taken into account, with incumbent employees having six (6) or more months toward their next year of employment, moved up a year on the wage grid. Moreover, the Agreement required that if a slotted employee's July 1, 2003 base rate of pay was less than \$0.50 per more than the employee's July 1, 2002 base rate of pay, then that employee received a "grid adjustment" paid each pay period using the formula: **[(\$.50) – ('02 – '03 increase in base rate of pay) x (FTE hours worked)] ÷ 26 = pay period grid adjustment.** (Union Exhibit 2, Appendices A and B).¹

Effective July 1, 2004, the rate of pay at each coordinate on the 2003 wage grid was increased by 3%, forming the 2004 wage grid. (Union Exhibit 2, Appendix C). Thus, most employees' base rate of pay was increased by that amount. However, there were twenty (20) employees who were at the 2003 wage grid's Step 20, but whose base wages exceeded the wage grid's Step 20 rates of pay. That is, they were being paid "above" the Step 20 rates of pay. Consequently, when the 2003 wage grid was increased by 3% on July 1, 2004, these employees received 2004 wage increases that were less than 3%, ranging from 0%-to-fractionally less than 3%. (Employer Tab 3). In the interest of pay equity, the SMDC proposed a "lump sum" mechanism whereby the twenty (20) employees would receive the full 2004 3% increase, but in the form of base

¹ Since the pay period grid adjustments could be as small as \$.01 per hour and as large as \$.49 per hour, the Employer deviated from the negotiated language by simply adding \$.50 to the affected employees' base rates to reduce administrative costs.

wages increases and/or lump sum payments. The USW agreed, and on October 13, 2004, the parties entered into a Letter of Understanding whereby the twenty (20) employees would remain at Step 20 on the wage grid; receive the appropriate 2004 Step 20 rate of pay in their biweekly paychecks, if applicable; and receive a quarterly lump sum bonus payment calculated as follows: **[(1.03 x '03 base rate of pay) – (current base rate of pay)] x all hours worked during quarter = 2004 quarterly lump sum bonus.** (Employer Tab 3). This adjustment cost the Employer \$18,670.00. (Employer Tab 37).²

During the 2005 round of contract negotiations, pay for the twenty (20) employees who were “above” or “off the grid” came up repeatedly. On July 11, 2005, the Union presented its opening economic proposals. In addition to increasing the wage grid by 8%, 7% and 7% effective July 1st of the years 2005, 2006 and 2007, respectively, the Union proposed expanding the wage grid from 20 to 30 steps, with 2% increments between the new steps, and providing a \$1 per hour base wage increase per year of the contract for “any employee who is currently above the grid...” (Union Exhibit 1 and Employer Tab 8). The SMDC countered with the view that the latter employees ought to be “red circled” until the wage grid catches up to their “above grid” base rates of pay. (Employer Tab 9).

On August 1, 2005, the Employer proposed increasing the wage grid by 1% on July 1st of the years 2006 and 2007. (Employer Tab 11). On that same

² On July 27, 2006, the Employer notified the USW that it had erroneously administered the lump sum bonus formula, overpaying all but one of the “above step 20” employees in the bargaining unit. (Employer Tab 4). The SMDC proceeded to correct this problem.

day, the Union withdrew its proposal to add ten (10) new steps to the wage grid; added a proposal to give a \$500 lump sum bonus to employees with 25 and 30 years of service³; reduced its previously proposed across-the-board annual percentage increases to 6%, 5% and 5%; and repeated its proposal to increase the base hourly wages of Step 20 employees who were “above the grid” by \$1 per hour per year of the contract. (Employer Tab 12). On September 8, 2005, the USW moved that “any employee who is currently above the grid shall receive an increase of \$0.75 (seventy-five cents) to their base wage in each year of the contract.”⁴ (Employer Tab 13). While holding to its “red circle” position, the Employer estimated that the first-year cost of the \$0.75 proposal was \$28,392: an estimate shared with the Union. (Employer Tab 15). Regardless, the Union rejected the Employer’s “red circling” idea for employees who were above the grid, and it pressed the need for “something for off grid” employees, according to sidebar negotiating notes. (Employer Tab 17).

On October 21, 2005, the Union made a “sidebar” proposal that included a number of adjustments to its position, including reducing the wage grid’s increases to 6%, 4% and 4% for each of the contract’s three (3) years, and sticking with the “\$0.75 increase to those off the grid”. (Employer Tab 18). On October 31, 2005, the Employer presented its “Article 51. Wages” proposal that included, *inter alia*, a contingent 3% wage grid increase effective on the first full pay period following contract ratification, followed by a 2.5% and 2% increase in

³ The Union withdrew this proposal on October 21, 2005. (Employer Tab 16).

⁴ Mr. Kevin Nendick, President, USW, Local No. 9460, testified on cross-examination that the Union’s \$0.75 proposal was targeted only at the twenty (20) employees that were “off the grid” at Step 20, and not at all employees at Step 20.

the wage grid effective July 1, 2006, and July 1, 2007, respectively. In addition, the Employer's proposal included the language:

51.6 As of the effective date of the increases set forth in sections 51.1, 51.3 and 51.4, employees whose current wage is at or above Step 20 shall receive a lump sum payment calculated in accordance with the following formula:

Current Wage x (FTE x 2080) x Percent of Grid Increase Stated as a Decimal.

(Union Exhibit 3 and Employer Tab 19)⁵. The USW initially rejected the article 51.6 language, holding to its \$0.75 position for those "off the grid". (Employer Tab 20). However, on November 4, 2005, the Union withdrew its \$0.75 position and proposed continuing the quarterly lump sum practice that was established under the Letter of Understanding. (Employer Tab 21). During negotiations on November 4, 2005, the Employer "officially" presented the above-quoted language to the Union. (Employer Tab 22). On November 11, 2005, the Union offered a package of counterproposals to the SMDC that included acceptance of the SMDC's article 51.6 language as quoted above. (Employer Tab 23).

On November 15, 2005, a Memorandum of Tentative Agreement was signed by the parties. (Union Exhibit 5 and Employer Tab 26). On November 22, 2005, the Employer's article 51.6 language was incorporated into the 2005 – 2008 Collective Bargaining Agreement, as were the final July 1st 2005, 2006 and

⁵ Ms. Teresa O'Toole, Assistant General Counsel, SMDC, testified that when presenting this proposal to the Union, she explained that the language was intended to incorporate into the Agreement the practice that had been set by the Letter of Understanding. Mr. Nendick testified that he could not recall any discussion linking article 51.6 and the Letter of Understanding, but he was sure that neither Ms. O'Toole nor the Union mentioned the so-called "double pay" interpretation of this article, which is at the heart of the instant dispute.

2007 wage grid increases of 5%, 3.2% and 3%, as spelled out in articles 51.1, 51.3 and 51.4, respectively. (Joint Exhibit 1).

After the 2005 Agreement was ratified, the USW contacted the SMDC, observing that all of the employees at Step 20 did not receive a 2005 lump sum payment in violation of article 51.6. The Employer responded by observing that the intent of article 51.6 was to provide lump sum payments exclusively for Step 20 employees whose base wages were at or above the grid and, therefore, whose earnings did not adjust upward at the same rate the wage grid's base rates of pay were being increased. The Union demurred, arguing that the article 51.6 lump sum payments were intended for all employees at Step 20, even for the 104 employees who were at Step 20 but whose base wage had never been "above the grid", and who received the full benefit of the 2005 percentage increase in the wage grid's rates of pay. On December 8, 2005, the Union formally grieved this matter. (Union Exhibit 6). The parties were unable to resolve the grievance, and it was advanced to arbitration as prescribed in article 14.5 on the Agreement.

II. Statement of the Issue

The undersigned states the issue in this dispute as follows:

Did the Employer violate article 51.6 of the Collective Bargaining Agreement by refusing to make lump sum wage payments to all employees who were at Step 20 on the wage grid? If so, what is an appropriate remedy?

III. Relevant Contract Provisions

Article 51. Wages

Article 51.1 Provided the Employer receives written notice of ratification of this Agreement on or before 4:00 p.m. on December 2, 2005, and

provided further such ratified Agreement includes a requirement that all employees enrolled at ratification in the SMDC group health insurance program's Plan A move to either Plan B or Plan C effective as of January 1, 2006, the SMDC Technical Grid labeled Exhibit A (5% increase) shall take effect retroactive to July 1, 2005, but only for those employees who remain employed in bargaining unit positions as of the date of ratification.

Article 51.2 Progression through the steps of the SMDC Technical Grid will be based upon Hours Paid exclusive of Sick Leave pay and Call Pay, triggering a step increase for each 2080 hours.

Article 51.3 Effective July 1, 2006, the SMDC Technical Grid shall be increased by three and one-quarter percent (3.25%) as shown in Exhibit B.

Article 51.4 Effective July 1, 2007, the SMDC Technical Grid shall be increased by three percent (3%) as shown in Exhibit C.

Article 51.6 As of the effective date of the increases set forth in sections 51.1, 51.3 and 51.4, employees whose current wage is at or above Step 20 shall receive a lump sum payment calculated in accordance with the following formula:

Current Wage x (FTE x 2080) x Percent of Grid Increase Stated as a Decimal.

(Joint Exhibit 1).

IV. Position of the Union

Initially, the Union charges that on or about December 8, 2005, and subsequent thereto, the SMDC has been in violation of article 51.6 of the Collective Bargaining Agreement for making lump sum bonus payments only to Step 20 employees whose base rates of pay are "above Step 20" on the wage grid, to the exclusion of employees whose base wages are "at or above Step 20", as expressly required by article 51.6. As a remedy, the USW demands that the Employer be directed to make the relevant lump sum bonus payments, with

interest, to all employees who are at or above Step 20 retroactive to July 1, 2005, and to otherwise make them whole.

Next, the Union points out that labor negotiations typically involve a host of reciprocal exchanges, *quid pro quos*, and that in exchange for scrapping the Plan “A” health insurance option, saving the Employer about \$330,000 over the life of the Agreement, the Union accepted article 51.6. In addition, the USW contends that the SMDC drafted and first proposed the article 51.6 language in question during sidebar discussions; that the SMDC again proposed it during formal negotiations; and that as negotiations unfolded, the Union finally acquiesced to it. Consequently, the Union urges, disputes over the interpretation and application of article 51.6 ought to be resolved against the party that drafted it. Moreover, the Union points out that the parties’ 2003 – 2006 Collective Bargaining Agreement covering Duluth Clinic – Main, and Duluth Area Satellite includes language that is similar in form to the article 51.6 language, and that the former’s interpretation and application parallels that which the Union is urging in this case. Specifically, the Union calls attention to article 46 in that agreement, which provides, for example:

Year Two (fifth bullet) – “Employees who are at Step 20 or who are off the scale receive a 2% increase in their base rate.”

(Union Exhibit 4; emphasis added). The Union further contends that it understood the intent and administrative practices associated with this Union Exhibit 4’s language, just as it understood the Employer-proposed “at or above” step 20-language appearing in article 51.6. Said language speaks for itself and, therefore, the Union urges, expansive bargaining-table discussions and

explanations about its meaning were not necessary.

Pointing to an arbitration decision handed down on September 25, 2003, the USW argues that in that case the SMDC unsuccessfully attempted to twist or contort otherwise “clear and unambiguous” language, and that it is attempting to do the same thing in the instant case. Finally, the Union avers that article 51.6’s “at or above” Step 20 phrase is crystal clear; that there is no evidence to support a finding that the word “at” was intended to be limited to employees who were “above or off the grid”; and that it is Ms. Teresa O’Toole – the Employer’s lead negotiator and the person who drafted article 51.6 – who now claims that it is unclear and ambiguous.

V. Employer’s Position

For several reasons, the Employer begs that the grievance be denied. First, the SMDC points out that on October 31, 2005, Ms. O’Toole described the intent of article 51.6 to the USW, stating that it was a way of incorporating the past practices established by the October 13, 2004, Letter of Understanding. Moreover, the Employer asserts, nobody from the Union’s side questioned Ms. O’Toole’s description; rather, at that time, the Union was holding to its proposal that the twenty (20) employees who were “above the grid” should be given \$0.75 per hour per year; and that when it finally withdrew its \$0.75 proposal on November 4, 2005, the Union asserted that it was willing to go along with the “current lump sum practice” (i.e., the Letter of Understanding). Thus, the SMDC points out that on November 11, 2005, when the USW presented its next set of formal proposals, it included the Employer’s article 51.6 language, which had

been previously described to the Union as a way of perpetuating the “current practice”.

Second, the SMDC contends that on November 11, 2005, when the Union replicated the Employer’s article 51.6 language, it did not comment. Hence, Ms. O’Toole’s October 31, 2005, explanation of the intent of this language must be controlling. In fact, the Employer notes that Mr. Nendick and Daniel Johnson, Negotiating Committee Member, USW, Local No. 9460, both testified that the Union did not reveal its present interpretation of article 51.6 during contract negotiations, and yet on cross-examination Mr. Nendick admitted that he knew that the SMDC intended article 51.6 to apply only to the twenty (20) employees who were “above” the wage grid.

Third, the Employer observes that the Union’s “surprise” interpretation of article 51.6 implies that the 104 employees who are “at” but not “above” Step 20 on the wage grid would receive “double pay” increases. That is, they would receive the full 5% wage grid adjustment as provided in article 51.1, followed by the 5% lump sum payment as provided in article 51.6; and, with compounding, the latter lump sum increase is actually 5.25%, for a total increase in pay is 10.25%. (Employer Tabs 29, 30 and 31). Continuing, the SMDC also notes that among the 104 employees “at” Step 20 are those who moved up from Step 19 to Step 20, and that they would receive an extra 2% increase in base pay on top of the 5% wage grid adjustment, and 5% lump sum payment, because each higher step in the wage grid is incremented by 2%. Further, the Employer contends, the Union did not mention this “double pay” effect during negotiations; “double pay”

contradicts Ms. O'Toole's explanation that the lump sum payments were intended to provide relative pay equity for employees "above" the wage grid at Step 20, and nothing more; and, finally, that none of the referenced 104 employees have current wages that are "above" the wage grid at Step 20, and all of these employees received the full benefit of the 2005 adjustment to the wage grid.

Fourth, the SMDC argues that to limit the application of article 51.6 to the twenty (20) employees at Step 20 who received less than the full 5% wage increase *via* the wage grid's 2006 adjustment, as intended, would cost the Employer an estimated \$12,296 in 2006. (Employer Tab 31). This outlay, the Employer implies, was preferred by SMDC's management to the USW's \$0.75 proposal that would have cost \$28,392 in 2006. Moreover, the Employer urges, even the \$0.75 proposal and its \$28,392 price tag would have been preferred by SMDC's management to the Union's "double pay" interpretation of article 51.6, which is expensed at \$257,168 in the first year and \$661,100 over the life of the Agreement. (Employer Tabs 29, 30 and 31).

Fifth, the SMDC contends that the language in article 51.6 is not clear and unambiguous, as the Union insists. For instance, the definitions and interplay among phrases like "current wage", "step 20", and "effective dates" are not spelled out in the Agreement; and the Employer contends, that their intended meaning can only be discerned against the relief of past practices and bargaining history. In addition, the Employer argues, an interpretation of article 51.6 ought not to turn simply on the phrase "at or above Step 20", as the Union urges,

because even common words may not be clear within the context of a given dispute, and because article 51.6 must be construed as a whole. According to the Employer, the phrase “employees whose current wage is at or above Step 20” clarifies that not all employees at Step 20 are eligible for the lump sum bonus; rather, eligible employees must have a “current wage” that is “at or above Step 20”. Continuing in this vein, the Employer argues that “current wage” means the wage paid to an employee prior to the occasion of a wage grid adjustment.⁶ If this were not the case, the Employer observes then the 2006 lump sum payment would be 5.25%, rather than 5% as implied by the formula’s phrase “Percent of Grid Increase Stated as a Decimal”.⁷

Sixth, the Employer points out that article 46 in the parties’ Agreement covering Main and Duluth Area Satellites, was negotiated in 2006, and was purposefully expansive to avoid the interpretation problems inherent in article 51.6’s “terse” language. (Union Exhibit 4). In addition, the SMDC notes that article 46 is two (2) pages in length; spells out in detail the actual application of the October 13, 2004, Letter of Understanding, and only provides wage increases for employees who do not receive the full benefit of the wage grid adjustment; and that the Union accepted article 46 without debate although it does not incorporate the disputed “double pay” interpretation of article 51.6. (Employer Exhibit 35).

⁶ Mr. Nendick testified that “current wage” means the wage paid to the employee after the wage grid is adjusted.

⁷ The SMDC also contends that the phrase “Step 20” can only be interpreted to mean the employees whose rate of pay on June 30, 2005, was at or above the Step 20 rate of pay on the 2005-2006 adjusted wage grid.

Seventh, relying on bargaining history, the Employer argues that the weight of record evidence indicates that the parties intended article 51.6 to continue the practice that was established by the Letter of Understanding. In addition, the Employer urges that the parties' past practice of paying lump sums to only the twenty (20) employees whose base wage rates were at or above Step 20 before wage grid adjustments is clearly enunciated in the Letter of Understanding. Further, the SMDC contends that during negotiations neither party expressed an interest in granting some employees "double pay". Next, the Employer observes that it meticulously expensed every economic issue raised during the bargaining process and that it shared its costing data with the Union. Critically, the Employer continues, the fact that the Union did not challenge its \$12,296 first year estimate of the cost of article 51.6, alleging that it should be in the "double pay" neighborhood of \$257,168, implies that the Union accepted the Employer's interpretation of same.

Finally, the Employer urges that there is no evidence that article 51.6 was offered in exchange for elimination Plan "A", which saved the SMDC \$330,000 during the term of the contract.

VI. Discussion and Opinion

In this case, the dispute has to do with interpreting article 51.6 in the Agreement, which states:

51.6 As of the effective dates of the increases set forth in sections 51.1, 51.3 and 51.4, employees whose current wage is at or above Step 20 shall receive a lump sum payment calculated in accordance with the following formula:

Current Wage x (FTE x 2080) x Percent of Grid Increase Stated as a Decimal

(Joint Exhibit 1). Sections 51.1, 51.3 and 51.4, it will be recalled, provide that on January 1, 2006 (retroactively to July 1, 2005), July 1, 2006, and July 1, 2007, the wage grid shall be increased by 5%, 3.25% and 3%, respectively. The Union contends that the plain language of article 51.6 is clear and unambiguous, and it means that all “employees whose current wage is at or above Step 20” on the wage grid should receive annual lump sum payments. The SMDC disagrees, arguing that the language in article 51.6, while unclear and ambiguous with respect to some undefined terms and phrases appearing therein, does not state that “all employees whose current wage is at or above Step 20”, as the Union argues; rather, it simply states “employees whose current wage is at or above Step 20” shall receive the lump sum payments.

Following a careful review the record evidence it seems clear that the fighting issue in this case has to do with *determining whether* an employee “is at or above Step 20” and, therefore, qualifies for a lump sum payment, and not whether the term “is” means “is” and “above” means “above”, as the Union urges. Article 51.6 clearly indicates that if an employee’s “current wage is at or above Step 20”, then that employee qualifies for a lump sum payment. However, to apply this language requires that the phrases, “current wage” and “Step 20” must be interpreted or defined, something the parties failed to do. Thus, the undersigned must look to extra-contractual sources to discern the parties’ intended meaning of the phrases “current wage” and “Step 20”. Candidate sources for insight include past practices, the parties’ bargaining history and the

“reasonableness” of the outcome or results associated with the accepted interpretations.

This analysis begins with the question: “What did the parties intend these phrases to mean? Implicit in the Union’s proposed application of article 51.6 and the testimony of its witnesses suggests the following meanings: first, “current wage” is defined as an employee’s effective base rate subsequent to the wage grid’s upward annual percentage adjustment; and second, “20 Step” is defined as the wage grid’s prevailing base rates of pay prior to the wage grid’s annual upward adjustment. *The application of these definitions implies that while some employees at Step 20 will receive all or part of the wage grid’s upward percentage adjustment, all of them will receive lump sum payments because their current wages will be “at or above” Step 20’s pre-adjusted rates of pay.*

On the other hand, the SMDC contends that these phrases were intended to be defined quite differently. First, that “current wage” is defined as an employee’s base rate of pay as it existed before the negotiated percentage increases in the wage grid is applied. Second, “Step 20” is defined as the wage grid’s base rates as they prevail after the wage grid’s annual upward adjustments. *Applying these definitions suggests that employees at Step 20 will receive either an annual wage grid adjustment to their base pay, or the formula-based lump sum increase in earnings, but not both.*

These competing definitions and the different outcomes resulting from their application are summarized in table 1. Moreover, implicit in these outcomes are different economic consequences and pay policies. As for the economic

consequences, the Union’s “double pay” outcome would cost the Employer approximately \$257,168 in the first year of the Agreement and \$661,000 over its three (3) year term, at the margin. Whereas, the Employer’s “either/or” outcome would cost only \$12,296 in the first year of the contract: a per year amount that declines each year thereafter. With respect to pay policy, under the Union’s interpretation of the relevant phrases in article 51.6 some employees at Step 20 would be receiving annual wage increases plus lump sum payments, which suggests a negotiated pay policy skewed toward rewarding “longevity” as opposed to preserving “pay equity”; whereas, under the Employer’s scheme article 51.6 is aimed entirely at the maintenance of “pay equity”.

Table 1

Salient Differences and Outcomes Associated with the Union and Employer Definitions/Applications of Article 51.6 in the Collective Bargaining Agreement

Ambiguous Phrase	Union Definitions & Outcomes	Employer Definitions & Outcomes
1. “current wage”	1. rate of pay <u>after</u> wage grid adjustment	1. rate of pay <u>prior to</u> wage grid adjustment
2. “Step 20”	2. wage grid rate of pay <u>prior to</u> wage grid adjustment	2. wage grid rate of pay <u>after</u> wage grid adjustment
	3. Outcomes – Some employees at Step 20 will receive the wage grid’s annual percent increase in pay and all employees will receive a lump sum payment	3. Outcomes – The employees at Step 20 will receive either the wage grid’s annual percent increase in pay or a lump sum payment

For the reasons discussed below, the undersigned concludes that the Union definitions of the phrases “current wage” and “Step 20” and the effects of their application are not consistent with what the parties’ had intended. First, the

record makes it quite clear that article 51.6 is the result of the pay equity concern the Union brought to the bargaining table: a concern akin to the concern the Employer had previously expressed during the term of the 2002 – 2005 Agreement and that cumulated in the Letter of Understanding. Namely, that without corrective language Step 20 employees whose base wages were at or above the Step 20 rates of pay would not receive the same relative increase in earnings as others in the bargaining unit. Accordingly, the USW recoiled to the Employer's "red circle" proposal of freezing the base pay of the affected employees until upward adjustments in the wage grid's Step 20 base rates reached the base wages of employees at or above Step 20. The Union viewed the "red circle" proposal as a step back from the lump sum practices of the past. Addressing its concern, the Union initially proposed a \$1.00 and later a \$0.75 per hour wage increase per year for "employees...above the grid", insisting that it needed "something for [the employees] off grid". Ultimately, the Employer substituted its article 51.6 proposal for the "red circle" proposal and the Union accepted it.

This review of bargaining history established that the intent of article 51.6 was to formulate a "lump sum strategy" designed to address the Union's pay equity concerns, not to reward "longevity" as the Union's contemporary interpretation of article 51.6 would do. Moreover, the undersigned is convinced that as the parties' proposals and counter-proposals converged to the language in article 51.6, and as the associated estimated costs of these reciprocal moves converged to the 2006 price tag of \$12,296, that they had agreed on a new "lump

sum” accord designed to apply only to Step 20 employees whose base wages were “at or above Step 20” and not to all Step 20 employees at a cost of 257,168 for the year 2006 alone. Ms. O’Toole credibly testified that she explained the limited purpose of article 51.6: a purpose that paralleled both the purpose and practice established under the Letter of Understanding.

In the past, lump sum payments were based on two (2) factors: (1) the base wage (a/k/a “current wage”) of the twenty (20) employees who wages were at or above the Step 20 wage grid’s rates of pay, and (2) the post-adjusted Step 20 wage grid’s rates of pay (a/k/a “Step 20”). These factors and their use in applying the Letter of Understanding’s lump sum bonus formula parallels the Employer’s definitions and applications depicted in table 1. In addition, there is nothing in the record to support the conclusion that as the parties’ were negotiating their pay parity strategy, they intended to grant lump sum payments to employees at Step 20 who had already received full wage grid adjustments. Indeed, the testimony of Mr. Nendick supports this finding. From the record of evidence, it clear that “double pay” was never expressly negotiated. The Union failed to prove that its proffered interpretation of article 51.6 is anything but an “economic windfall” for certain employees at Step 20. Further, beyond vague and non-specific testimony, there is no evidence to corroborate the argument that the Union specifically acquiesced to the Employer’s proposed elimination of the Plan “A” health insurance option in exchange for receiving the “double pay” benefit for most of the employees at Step 20.

Finally, to construe article 51.6's ambiguous terms along the lines argued by the Union would yield an economic outcome that is hardly insignificant, exceeding \$600,000 over the term of the Agreement. Based on this fact, to find in the Union's favor would work an economic hardship on the Employer and would be unreasonable in the absence of a preponderance of proof to the contrary. Thus, for all of the above-discussed reasons the Employer's definitions of the ambiguous terms in article 51.6 and its application of article 51.6 are deemed to be consistent with the parties intended construction of this article.

VII. The Award

For the reasons discussed, the grievance is denied. The Employer's administration of article 51.6 of the Collective Bargaining Agreement is not in violation of same.

Issued and ordered on this 23rd day of
December 2006 from Tucson, Arizona.

Mario F. Bognanno, Labor Arbitrator