

**IN RE ARBITRATION BETWEEN:**

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**CAMBRIDGE MEDICAL CENTER**

**and**

**INTERNATIONAL UNION OF OPERATING ENGINEERS, (IUOE) LOCAL #70**

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**DECISION AND AWARD OF ARBITRATOR**

**FMCS CASE 061220-50874-7**

**JEFFREY W. JACOBS**

**ARBITRATOR**

**July 24, 2006**

**IN RE ARBITRATION BETWEEN:**

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Cambridge Medical Center,

and

DECISION AND AWARD OF ARBITRATOR

FMCS CASE 061220-50874-7

Weekend premium/Weldon Lang grievance

IUOE #70.

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**APPEARANCES:**

**FOR THE EMPLOYER:**

Paul Zech, Felhaber, Larson, Fenlon & Vogt

Ed (Tony) Sworsky, HR Director

Carleen Murphy, HR Coordinator

**FOR THE UNION**

Meg Luger-Nikolai, Esq., Miller & O'Brien

Kelly Jeanetta, Esq., Miller & O'Brien

Marianne Yernberg, Business Rep., Local 70

Weldon Lang, Grievant

Joel Bazey, Business Representative

**PRELIMINARY STATEMENT**

The above matter came on for hearing on June 15, 2006 at the Federal Mediation and Conciliation Services offices at 1300 Godward St. in Minneapolis, MN. The parties presented testimony and documentary evidence at that time at which point the evidentiary record was closed. The parties filed post-hearing Briefs which were received by the arbitrator on July 11, 2006.

**CONTRACTUAL JURISDICTION**

The parties are signatories to a labor agreement covering the period from January 1, 2004 through December 31, 2006. Article 11 provides for submission of disputes to binding arbitration. The arbitrator was selected from a list provided by the FMCS. The parties stipulated that there were no procedural or substantive arbitrability issues and that the matter was properly before the arbitrator

**ISSUE PRESENTED**

Did the Employer violate the contract at Article 23 (3) and Article 24 (7) when it refused to pay employees premiums for unscheduled weekend shifts that begin 8 hours or less after the employees' regular shift? If so what shall the remedy be?

## PARTIES' POSITIONS

### UNION'S POSITION

The Union took the position that the Employer must pay a premium for the unscheduled weekend shift *and* a double back bonus since the unscheduled weekend shift started 8 hours or less after the employee's regular shift. In support of this position the Union made the following contentions:

1. The Union pointed to Article 23 (3) that provides as follows:

Unscheduled weekend premium: All employees will receive one and one half (1 ½ ) time their regular rate of pay for working an unscheduled weekend. This premium does not apply to trades made by Employees for their own convenience subject to the manager's approval.

Employees that move to a higher range shall be placed on the step closest to or greater than the rate of pay in the lower range but in no case less.

2. The Union also pointed to Article 24 (7) that provides as follows:

Double Back: Employees working with eight (8) hours or less between shifts will receive a premium of time and one half (1-1/2) for the double back shift.

Voluntary trades and requests made by the employees for the convenience of the employee will not receive the premium pay.

3. The Union asserts that these provisions are clear and require that any employee working both an unscheduled weekend shift and a double back shift at the same time must receive *both* time and one half plus another half for the affected shift if it meets the requirements of both provisions. The Union argues that this is a simple matter of interpreting the plain meaning of these clauses. The Union argued that the contract contains very specific definitions of overtime and that "premium pay" such as double back and unscheduled shift pay is not included in those definitions. Thus, any clause prohibiting pyramiding applies only to overtime and not to premium pay.

4. Here the grievant worked on a Friday and was called in for an unscheduled weekend shift the following day. It is also clear that he worked a double back since there was 8 hours or less between shifts. Accordingly, both of the above provisions apply and he and all similarly situated employees must receive time and one half plus another half, or essentially double time, for that weekend double back shift.

5. The Union pointed to the negotiation history of this provision, which appears in this contract for the first time. It did not appear in the parties' 2000-2003 contract. The Union introduced testimony that the parties discussed whether the double back provision would count if the employee worked a holiday and agreed that it would not. The Union also pointed out that there was no discussion or similar agreement regarding an unscheduled weekend shift.

6. Further, the Union contends that it specifically rejected an Employer proposal that would have negated the double back provision where the double back shift fell on a holiday. Since that was not included in the contract it must be presumed that no exceptions exist other than those specifically listed in the double back provision, i.e. the prohibition against payment of double back premium pay where the employee traded shifts.

7. The Union countered the Employer's argument regarding the no-pyramiding clause found in Article 24, sec. 3 (2) by pointing out that the weekend shift provision is found in a different Article, 23, whereas the no pyramiding clause appears in Article 24. Using generally accepted standards of contract interpretation, the no pyramiding clause applies certainly only to those provisions of Article 24, and arguably only to the specific overtime provisions of Article 24, section 3 since it is found under that subheading.

8. In addition, the Union also argues that the no-pyramiding language applies only to overtime. It is found in the overtime section and specifically uses the term "overtime." In neither of the other two premium articles does the word "overtime" appear. Moreover, the Union argued that even if the pyramiding clause did apply, the practice of paying double back and unscheduled shift premium is not pyramiding. Pyramiding occurs when an hour of overtime is used to essentially bootstrap another hour into overtime. Here the premiums are calculated on the employee's base rate.

9. Further, the only stated exception in the premium pay provisions are for employee trades of shifts. Under contract interpretation principles if exceptions are stated the arbitrator can add no further exceptions to them. Had the parties intended to include additional restrictions, such as a restriction against the use of both premiums at the same time for the same shift, they would have so stated in the language but they did not.

10. The essence of the Union's claim is thus that the language is clear and unambiguous and requires a payment of both premiums if the shift worked falls under both provisions, i.e. article 23, (3) and Article 24, (7). The no pyramiding clause applies to overtime and not shift premium pay so the Employer's claim is unsupported. Since the parties never discussed this the arbitrator must rely on the language itself for the interpretation of the language and it clearly provides for both premiums to be paid under these circumstances.

The Union seeks an award of the arbitrator directing the Employer to adhere to the contract and pay employees all applicable shift premiums where the employees work unscheduled weekend and double back shifts. The Union also requests an award requiring the Employer to make whole any employee injured by its refusal to pay both premiums.

**EMPLOYER'S POSITION:**

The Employer's position was that the non-pyramiding clause in the contract prevents the payment of both premiums in this situation. In support of this position the Employer made the following contentions:

1. The Employer argued simply that the no-pyramiding clause found in Article 24, section 3, provides as follows:

Pyramiding: Overtime payments shall not be pyramided.

2. The Employer argues that this straightforward language, which is also found in the same Article as the double back provision, clearly states and means that overtime payments are not to be stacked/pyramided.

3. The Employer also pointed to standard contract interpretation principles and argued that the no-pyramiding clause was intended to apply to all overtime payments. Clearly, any payments are made at time and one half under this contract are considered “overtime” payments and are subject to that clause. Moreover, the no-pyramiding clause is found in the same article as the double back [provision and even though it appears as a subdivision of the overtime section, Article 24, Sec. 3, it is and always has been intended to apply to any and all time and one half payments.

4. The Employer further argues that the meaning of a no-pyramiding clause is to prevent this very thing from happening, i.e. the payment of multiple overtime payments by using one type of premium to create another type of overtime or premium payment. To read it any other way would be to create a double payment where only one was intended.

5. The Employer also cited to arbitration precedent and commentators who have all stated clearly that a no-pyramiding clause is designed and generally intended to prohibit the very practice sought by the Union here. The Union seeks to essentially double count a shift in two different types of premiums. Here the Union seeks also to have the grievant [paid overtime, since he worked more than the prescribed time in his pay period, unscheduled shift time since it was an unscheduled shift and double back time since he was called back 8 hours or less after the end of the previous shift. This would really be to pay the employee premium time 3 times for the same shift.

6. The Employer argued that the negotiation history was to simply put into the contract that which had always been done and was never intended to allow the stacking of premium pay as the Union suggests. The Employer argued that the inclusion of the double back provision in the current contract was never intended to allow payment of two premium wages for the same hours but was rather simply to bring the contract into conformity with the existing practice of paying double backs and to make it consistent across employee groups. The Employer argued strongly that there was an existing past practice of never paying double backs on top of any other overtime or other premium pay and that the double back clause that was added to the contract simply formalized that arrangement.

7. The Employer also argued that the payroll system does not even allow for the double premium payments. The past practice of these parties has always been to pay one premium where it applies but never both.

8. Here the grievant was entitled to a premium payment, and received it. Either provision at issue here would apply, but not both. The grievant was entitled to premium pay at time and one half for the unscheduled weekend or he was entitled to time and one half for the double back. However, due to the clear provision of the no-pyramiding clause and the long past practice at work here, he is not entitled to payment of both premiums.

9. The essence of the Employer's argument is that the no-pyramiding clause and the parties' practice are clear that one cannot count the same hour twice for purposes of overtime or premium pay. That, according to the Employer, is precisely what the Union is seeking here, i.e. the payment of the Saturday hours worked by the grievant as both unscheduled weekend pay and double back pay. The grievant gets one of those but not both.

The Employer seeks an award of the arbitrator denying the grievance in its entirety.

#### **MEMORANDUM AND DISCUSSION**

With some minor exceptions, the facts were undisputed. The grievant worked on Friday, October 7, 2005 with his shift ending at 11:30 p.m. He worked an unscheduled weekend shift on Saturday, October 8, 2005, starting 8 or less hours after the end of his Friday shift. He thus worked an unscheduled weekend shift on the Saturday in question that also started 8 hours or less from the previous shift. It was clear that the Saturday shift fell within the definition of both an unscheduled weekend shift pursuant to Articles 23, (3) and a double back shift pursuant to Article 24, (7).

The dispute centers over whether the Saturday time the grievant worked is to be counted for purposes of payment of premium time as *both* a double back, since his shift started 8 hours or less after the end of his last shift, *and* as an unscheduled weekend shift, since it was indeed an unscheduled weekend shift. The grievant was paid time and one half his base pay for the Saturday shift.

The Union contends that he should have been paid that plus another half times his base rate since the Saturday shift qualified as both unscheduled shift pay and double back pay as those terms are defined in the labor agreement. The Union did not contend that he should have been paid for all three, i.e. overtime, double back and unscheduled weekend shift premium. The Union contended that the employee should have been paid for the double back and the unscheduled weekend shift since they are premium payments and are defined and treated differently from overtime under the contract.

The Employer argued that under the no-pyramiding clause found at Article 24, section 3(2), the Saturday hours must be counted only once for purposes of receiving premium pay and that this clause prohibits hours from being counted under more than one type of premium pay. It further argued that the clear and generally accepted meaning of such a clause is to prevent this exact scenario, i.e. the double counting, or pyramiding, of the same hours for two different types of overtime pay. The Employer further argued that the mere fact that the no-pyramiding clause uses the term “overtime” whereas the double back and weekend shift provisions, Articles 23, (3) and Article 24, (7), use the term “premium,” is of no consequence. They are all overtime provisions since they provide for overtime pay. Hence, the no-pyramiding clause prevails to prevent the double counting of the hours.

The Union argued on the other hand that the no-pyramiding clause applies only to overtime and essentially prevents the payment of overtime created by other overtime. It does not operate outside the purview of Article 24, section 3 to prevent payment of premiums for hours that fit under separate and distinct premium pay provisions.

This is a far more difficult case to decide than it at first appeared. Obviously if one interprets the term “overtime” found in the no-pyramiding clause to include the premium pay in the other provisions of the contract, the Employer’s position prevails. If on the other hand, one interprets the term to include only the overtime found in Article 24 section 3 then the Union must prevail.

Roberts Dictionary of Industrial Relations defines “Pyramiding” as the payment of overtime on overtime. It may result from payment of both daily and weekly overtime for the same hours of work.” It is essentially therefore a prohibition on double counting of hours under different overtime provisions. It is designed to prevent time already paid as overtime from creating more overtime and from being counted twice for overtime purposes. Classic overtime might be for example where the employee works extra hours during his regularly scheduled workweek. If the employee seeks to have those hours count as overtime due to a clause that provides for overtime pay for more than 8 hours in a day *and* overtime due to a clause that provides for overtime pay for more than 40 hours in a week, that would be pyramiding. Generally, one cannot count the same hours as overtime twice. The difficulty here is that the hours the Union seeks to count twice do not fall neatly within the definition of overtime and are indeed defined separately in different parts of the labor agreement.

The fact that the no-pyramiding clause appears in the contract is evidence of the parties’ intent to disallow the practice of counting hours twice for multiple premiums. The fact that it appears in one subsection only of the overtime provisions is on the other hand evidence that the parties could have intended it to be limited to overtime under Article 24, section 3 only. The no pyramiding clause appears in the parties’ earlier contract in the same spot, prior to the inclusion of the double back provision.

To make matters even less clear the double back provision was made a part of the Overtime/premium pay article, Article 24, whereas the weekend shift provision appears in Article 23 Wages. While arbitrators should be careful not to read too much into where provisions like this are, their placement in the contract is certainly a factor to be considered in determining the intent of the parties. Here though there are strong factors mitigating in both directions and no one clear answer appears from the language itself.

In addition, while there was some evidence of a practice regarding payment of double back shifts in the prior contract, it was clear that there was no provision dealing with double backs in the prior contract. The no-pyramiding clause was in the prior contract but was not changed in the current contract. What was added was the double back provision. Moreover, the practice was not consistent and under these facts could not be defined clearly as a binding past practice. Finally, even a true past practice does not survive a change in the contract that is inconsistent with the prior practice.

Here the Employer argued that the parties simply desired to formalize the existing practice by adding the double back clause in the current agreement. There was however, no clear evidence of why this was added or that it was in fact to formalize any particular practice. Neither was there any clear showing of a true past practice under the prior agreement. It is of some note that even the Employer acknowledged that it was not consistent. Consistency is one of the main components of a past practice. See Elkouri and Elkouri, *How Arbitration Works*, 6<sup>th</sup> ed. at page 623. See also, *Past Practice and the Administration of Collective bargaining Agreements*, in *Arbitration and Public Policy* 30 S. Pollard Ed., 1961). In virtually all of the arbitral precedent discussing past practices, the element of consistency is a main, even the main factor. Here there was an insufficient showing that the practice was consistent either in time or throughout the facility to constitute a binding past practice.

Even if one did exist, the question is whether it survived the change in the collective bargaining agreement. Past practices can of course be changed or eliminated through the negotiation process. The no-pyramiding clause was in the prior contract and appears in the current agreement with no change in its language. The double back provision is new to this agreement. Thus, the real question is what impact the addition of the double back clause had on the parties.

The parties differed greatly on the negotiation history of this clause. The evidence showed that the discussions centered over whether double backs would be paid for “less than 8 hours between sifts” or “8 hours or less” between shifts. The parties resolved that with the current language. It was apparent that the focus of the negotiation over the double back clause was on the question of whether the threshold would be 8 hours or less than 8 hours.

The evidence also showed that there was apparently some discussion about how double backs would be treated when they fell on a holiday. The Union introduced testimony that the negotiators discussed the double back provision in the context of holidays and argued that the Employer sought to introduce language that would have limited payment of double back when that also fell on a holiday. See, Union Brief at pages 14-16 and Union Exhibit 3 (Tab 7). The Union claimed that this was settled in the negotiations with the current language and that the Employer’s proposal was specifically rejected by the Union. The Union therefore argues that the Employer is now really trying to get something it was not able to gain through negotiations. The Union also noted that there is one very specific exception to the payment of a double back and that no others were contemplated. The Union argued that the Employer is essentially trying to add another exception to this language.

The Employer on the other hand argued that just the opposite happened and that the parties actually agreed that double back pay would not be paid when it also fell on a paid holiday. See Employer Brief at p 9-10 and Employer Exhibit 7.

The September 24, 2005 minutes say “[q]uestion regarding working double back shifts when a holiday is one of them. No pyramiding for the three holidays that already get premium pay. Proposal was not intended for this, therefore, this raises an issue of the holidays that currently do not get a premium pay. If employee signs up or requests a certain shift on a holiday for their rotation then this would not apply. This would be almost impossible to cost out, but a rough estimate is \$2,000.00. NOT COMPLETE.” (Capitalization in the original.). It as not entirely clear what this meant.

The Employer argued that what this really means is that there was an agreement that double backs would not be counted where they fell on a holiday. By analogy, this would import a clear intent that double backs would also not count for any other types of premium pay hours either.

The Union argued the exact opposite and claimed that the discussion was really about the Employer attempting to place language in the contract that would have limited double back from being counted twice if they fell on a holiday but that the Union rejected that proposal. Neither position has overwhelming support in the evidence and testimony.

The handwritten notes introduced as Union Exhibit 7 confirm that this item was discussed and say “holidays how would it apply. [sic] 3 pd holidays they would get premium pay already so the 8 hours between shifts wouldn’t apply. But this doesn’t answer the question 8 hours or less would be double back. Holidays worked = L70 is looking for the 1 ½ + the holiday.” There was no evidence of language proposed by the Employer that would have added another stated exception into the double back provision.

The testimony from the witnesses was similarly murky and clear-cut conclusions about what was actually agreed to were difficult at best. The Employer argued that considering the [past practice, the most logical conclusion is that the parties intended that only one form of premium pay can apply. The difficulty is that the language does not say that nor does it provide any clear answers to this ultimate question. Try as I might, no clear-cut conclusions could be reached from the testimony or the documentary evidence of the negotiation history here.

The Employer and the Union cited other arbitration decisions in support of their respective positions. The Employer argued that many arbitrators use the terms overtime and premium pay interchangeably when referencing a no-pyramiding clause.

The Employer cited one very prominent arbitration commentator as follows: “most agreements between Employers and Unions prohibit the pyramiding of premium pay. ‘Pyramiding’ occurs when an employee seeks multiple types of premium pay for hours worked. The prohibition on multiple premium payments prevents an employee from receiving a windfall when circumstances occur that two or more different premium rates would otherwise apply.” St. Antoine, *The Common Law of the Workplace*, 2<sup>nd</sup> Ed., BNA (2005) at Section 7.11, page 281.

Professor St. Antoine also noted that “overtime is normally understood as time worked in addition to an employee’s normal work period, calculated on a daily or weekly basis. Employees typically receive premium pay for working overtime. ... However, most contracts forbid pyramiding overtime and, even when they are silent on the matter, arbitrators typically will not permit one day to count for more than one premium payment.” Id, at Section 7.18, page 295-96.

Here of course the Union seeks to apply two such premiums to the same hours of work, i.e. the double back provision and the unscheduled weekend provision. The thorny question here is whether there is sufficient evidence or contractual support to overcome the proposition that hours can count only once and may not be counted multiple times under separate premiums pay provisions.

The Union cited several arbitration decisions in support of its position in this matter. In *City of Fairbanks and Public Safety Employees Ass’n*, 2005 WL 3121217 Savage 2005) the arbitrator allowed payment of payment of both a holiday and shift differential for the same time. In so doing the arbitrator rejected an argument by the Employer that this was pyramiding since it was being counted twice under two separate provisions of the labor agreement. The case is however inapposite because, as the arbitrator noted, “there is no such prohibition [against pyramiding] in the parties’ agreement.” Slip op. at page 8. Thus the case is quite distinguishable since there was no clause regarding pyramiding in the agreement.

In *City of Naples and Frat. Order of Police #38*, 1993 WL 788631 (1993 Abrams) the arbitrator did a marvelous job of inserting clever little quips and citations to such noted labor relations experts as Gilbert and Sullivan which certainly made for entertaining reading but did not provide any real assistance or support for the proposition that hours are generally to be counted only once unless there is strong language or evidence to the contrary.

More importantly, the arbitrator neglected to include the actual facts of the case that formed the basis of the decision or whether there was a no-pyramiding clause in that labor agreement. There was not one cited and it can only be presumed that no such clause appeared in the contract. It was also apparent that there was a strong past practice in that case of paying the double premium when that was requested and was really based on a past practice theory rather than one of strict contract interpretation. In any event, neither of these cases provided adequate support for the Union's claim here and were due to the absence of a pyramiding clause.

Turning to the case at hand, it must first be said that arbitral precedent, while helpful, is obviously based on different contractual language and bargaining history and different facts. They are guideposts only and cannot be used exclusively to determine the result in any given case. This case must turn on this language and these facts.

Based on a review of the contract it is determined that the operative language in the relevant provisions is ambiguous. The words are clear enough but it is simply not clear from the language itself whether the no-pyramiding clause was intended to prevent *only* the double counting of overtime in that solitary section dealing with overtime or whether it was intended on these facts to also prohibit the multiple payment of premiums such as double back or other premium pay. On these facts, an examination of the negotiations and other factors must be made.

This case was in fact was a very close call; both parties made arguments that very much supported their positions in this matter. The language of the parties gave contradicting indications for what the parties intended when they negotiated this language. Having a no-pyramiding clause can be a strong indication of the parties' intentions but this was in a subdivision of a provision that was separate from the premium payment provisions at issue. Moreover, contrary to what many no-pyramiding clauses say, this one does not contain a reference to premium pay. While some commentators use overtime and premium pay somewhat interchangeably, many do not. Further, there was some merit to the Union's claim that there is a very specific definition of overtime found in the agreement that is different from premium pay.

What eventually governs this case is what the language means when read in context with the contract taken as a whole. Obviously, contract provisions must mean something. The fact that there is a no-pyramiding clause must mean that some types of overtime cannot be pyramided with other types of overtime pay. On the other hand, the fact that there exists both a double back provision and an overtime provision and an unscheduled weekend shift provision must also mean something. It is axiomatic that parties do not include provisions into their agreements without some purpose or meaning to be ascribed to them and overly technical rules of contract interpretation applicable to the classroom do not always neatly apply. As Arbitrator Abrams noted in the *Naples* arbitration matter that was particularly applicable was that contract language does not come labeled "clear and unambiguous." That was never truer than here.

Several things swayed the result here. First, the double back provision is new and was placed in a separate article from unscheduled weekend shifts. One might legitimately ask why it was placed there except to provide for an additional premium if applicable. It is best never to overlook the obvious in cases like this. This clause was newly negotiated into the contract, was placed in a section separate from other types of premiums and contains only one very specific exception and no others. There was no clear answer on the question of whether this was or was not designed to simply memorialize a specific past practice. There were very specific discussions about it yet no clear answer or document showing the limitation the Employer insisted was supposed to be in it.

Nowhere in its language does the no-pyramiding clause contain a reference to premium pay. Certainly it could have, as some of the arbitrations cited herein show. The parties could certainly have amended the no-pyramiding clause to prohibit the payment of this new double back premium along with any other premium but they did not do so. An arbitrator cannot add that to the agreement now. That is for the parties to negotiate.

The fact that the contract has both a double back and an unscheduled weekend shift premium provision must be given effect somehow. To read the clause in the way the Employer insists could in some cases result in its virtual nullification especially for full time employees. In this particular grievant's case, working more hours on a weekend would be both overtime and an unscheduled weekend shift. He would under those circumstances be entitled to time and one half pay under some provision. Here for the no-pyramiding clause to have meaning under those circumstances it is most reasonable to read it as prohibiting the payment of both time and one half for the overtime hours and time and one half for the unscheduled weekend shift. That is not the case presented here however.

Here the grievant worked hours that counted under both the double back and the unscheduled weekend shift clauses of the agreement. To read the no-pyramiding clause of the agreement as the Employer suggests there would nullify the effect of these premium pay clauses.

There must also be some effect to the no pyramiding clause. It is certainly significant that it is there even though it is found within the overtime provision and contains reference only to overtime. Here, the most reasonable reading of the contract when taken as a whole is to prohibit the payment of overtime as that term is defined in the contract and some other form of premium pay but require the payment of multiple premiums where two different premiums payments apply.

Under these unique facts, the grievant is thus entitled pursuant to the terms of the agreement to both a premium for the double back and an additional premium for the unscheduled weekend shift but not to any additional pay for the overtime hours. In that way, all the clauses of the agreement have meaning and allow the payment of the premiums called for in the agreement while at the same time preventing overtime, as that term is used and defined in Article 24, from being paid on top of another type of premium pay.

Accordingly, on these very limited facts, the grievance is sustained. The grievant is entitled to double time pay as the result of his working a shift that constituted both a double back and unscheduled weekend shift. The Union sought a dual remedy and asked for an award that required the Employer to pay employees all applicable shift premiums where the employees have worked unscheduled weekend and double back shifts. Since this is the precise scenario presented this will be awarded.

However the Union also sought a remedy that required the Employer to make whole all employees injured by its refusal to pay premiums required by the collective bargaining agreement. This cannot be awarded on these facts. Initially, this requested remedy goes far beyond the scope of this arbitration. This matter is limited to the facts presented here, i.e. where the employee works both a double back and an unscheduled weekend shift. It was not about other forms of premium or overtime pay. Further, it is clear from the agreement that the no-pyramiding clause prevents the payment of overtime, as that term is defined in Article 24, from being paid in addition to other forms of premium pay. Thus, that part of the Union's remedy is not awarded. The grievance is thus sustained on the limited facts presented here only.

### **AWARD**

The grievance is **SUSTAINED** on the limited facts set forth herein and as set forth above.

Dated: July 24, 2006

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Jeffrey W. Jacobs, arbitrator