STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

DISTRICT 10, INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO, Complainant, vs. LADISH COMPANY, Respondent.	:	Case 49 No. 33908 CE-2008 Decision No. 22481-A

Appearances:

Goldberg, Previant, Uelmen, Gratz, Miller & Brueggeman, S.C., Attorneys at Law, by Mr. Scott D. Soldon, 788 North Jefferson Street, Milwaukee, Wisconsin 53202, on behalf of the Union.

Quarles & Brady, Attorneys at Law, by Mr. Fred G. Groiss, 780 North Water Street, Milwaukee, Wisconsin 53202, on behalf of the Company.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

AMEDEO GRECO, Hearing Examiner: District 10, International Association of Machinists and Aerospace Workers, AFL-CIO, herein the Union, filed a complaint with the Wisconsin Employment Relations Commission on October 3, 1984, alleging that Ladish Company, herein the Company, had committed an unfair labor practice within the meaning of the Wisconsin Employment Peace Act, herein WEPA, by violating the terms of the collective bargaining agreement between the parties when it failed to properly recall employe James Jutrzonka. The Commission appointed the undersigned to make and issue Findings of Fact, Conclusion of Law and Order, as provided for in Section 111.07(5), Stats. and a hearing was subsequently held in Milwaukee, Wisconsin on May 24, 1985. The parties thereafter filed briefs which were received by July 16, 1985.

Having considered the arguments and the record, the Examiner makes and files the following Findings of Fact, Conclusion of Law and Order.

FINDINGS OF FACT

1. The Union, a labor organization whose principal office is 624 North 24th Street, Milwaukee, Wisconsin 53233, represents for collective bargaining purposes certain employes of the Company.

2. The Company, a wholly owned subsidiary of Armco Co., has its principal office at 5481 Packard Avenue, Cudahy, Wisconsin 53110.

3. The Union and Company were privy to a collective bargaining agreement which ran from April 13, 1982 to February 17, 1985. In the 1982 negotiations which led to said contract, the parties discussed and negotiated whether prospective laid off employes who were bumped to other jobs could refuse to take the second job because they were either less desirable jobs or because their medical disabilities prevented them from performing those job duties. The minutes of the March 2, 1982 bargaining session dealing with this matter stated that the parties then "agreed that such employees should be placed on layoff status - medical restriction and would not be allowed to return to work in either classification until such time as the employee is able to produce a fully, unrestricted doctor's release." However, in addressing this issue, the parties never discussed the separate question of whether the Company could refuse to recall laid off employes because of medical disabilities arising after employes had been laid off. The agreement reached at that time was not expressly referred to in the 1982-85 contract.

4. The 1982-1985 contract provided for a grievance procedure which did not culminate in final and binding arbitration. Article III of said contract entitled, "Management Clause", also provided:

> 3.01 The management of the works and the direction of the working forces, including, but not limited to the assignment of work, the movement to other plants of, or the cessation of operations, or any part thereof, the right to hire or discharge for just cause, and the right to relieve employees from duty because of lack of work, or for other legitimate reasons, is vested exclusively in the Company. This will not be used for purposes of discrimination against any member of the Union.

5. Article V of the contract, entitled "Seniority," provided in pertinent part:

. . .

> 5.02 Bargaining Unit seniority shall be the determing factor in all of the following cases: In the case of reduction of forces, the employee with the greater departmental seniority shall be the last laid off and the first rehired and shall be given the first opportunity in the filling of any positions or permanent vacancies, provided that said employee has sufficient ability to do any of the work available.
>
> a) Employees with eight (8) or more years Bargaining Unit seniority who have gone through the inactivation procedure and who face layoff from their respective departments, may excerise (sic) Bargaining Unit seniority in other departments as follows:
>
> By filling vacancies, if any, in lieu of layoff as provided in Section 6.20 of contract. Being unable to do so, by displacing the last senior employee in the Bargaining Unit, providing such employee has the necessary qualifications to satisfactorily perform the work without training.
>
> Employees exercising Bargaining Unit seniority, as set forth above, must have acquired eight (8) years seniority no later than last day of work prior to layoff.
>
> Employees who attain eight (8) or more years of Bargaining Unit seniority while on layoff status shall not be permitted to bump back into Bargaining Unit. Such employees will return to Bargaining Unit per normal recall procedure under other provisions of this Agreement.
>
> The overtime restrictions under 6.26 of contract will not apply to the affected department(s) or classification(s) experiencing layoffs as a result of the application of this section.

6. Article VI of said contract, entitled "Upgrading of Employees, Transfers, Inactivations, Layoffs and Recalls," provided in pertinent part:

. . .

> 6.20 Qualified employees laid off in any department shall have the right to fill vacancies in other departments coming under the jurisdiction of this Union on the basis of their Bargaining Unit seniority, but no employee shall have the right to displace any employee holding any seniority in any other department. Employees filling vacancies in other departments under this provision shall be considered as temporarily transferred and paid as provided for in Section 6.22 and accumulate no seniority in such department. Such transfers may be of indefinite duration, but said employees must return to their regular department when work is again

available. No new employee will be hired in any department while qualified laid off employees, able and willing to accept temporary transfers to other departments under this provision are available.

. . .

6.27 Employees on the seniority list, but on layoff, shall be given five (5) days in which to report for work after recall notification has been given by the Company. Such notification by the Company shall be by certified mail, return receipt requested. This section shall not apply to any employee, who, by reason of illness or other just cause, is not able to report by the end of the five (5) day period and so advises the Company. Employees who are on layoff must advise Employment Department of any permanent changes in address and/or phone numbers in writing on form provided by Company, LCO 5486 FC.

. . .

7. Article XVII of said contract, entitled "General," provided in pertinent part:

. . .

17.03 The right of the Company to enact and enforce by discharge or other reasonable disciplinary measures all Company Regulations, especially the shop rules contained in "Employee Handbook" not in conflict with the express terms of this agreement, is recognized for efficient plant operation and safety considerations. However, employees so desiring may smoke during all working hours except in areas deemed hazardous and now designated or which may hereafter be designated by the Company as restricted areas, and except that no smoking shall be done at any or in any place when the employee is operating any equipment or is handling material.

. . .

8. In March, 1983, the Company adopted a work rule, never formally communicated to either the Union or bargaining unit employes, requiring all employes who were laid off for six months or more to pass a physical examination before being allowed to return to work.

9. Employe James Jutrzonka was hired by the Company on March 2, 1966 as a fork lift operator. Before being hired, Jutrzonka, who measures about 5'8" tall, passed a Company physical examination where he claimed that he only weighed about 270 pounds; in fact, his weight then was about 350 pounds and the Company's doctor at the time laughed and asked Jutrzonka "you are a little off in that weight, aren't you?", to which Jutrzonka replied "a little"; however, the Company doctor at that time never weighed Jutrzonka. Jutrzonka admittedly lied about his weight because he was afraid that the Company might not hire him if he listed his correct weight. Jutrzonka at that time also filled out a medical history questionaire which stated that he had high blood pressure. Jutrzonka, who still weighed about 350 pounds, became a paint sprayer in 1976, after the Company initially refused to award him that job because of his weight. The Company ultimately did so only after the Union interceded on Jutrzonka's behalf and after he promised not to climb any ladders that might be unsafe. Once in the painters' classification, Jutrzonka lost about 80 pounds, which he subsequently regained in about a year. Jutrzonka subsequently transferred to another job and ultimately became a hammer repairman, a physically strenuous job he held for the next four years. Throughout that time, Jutrzonka was required to climb stairs and ladders, sometimes as much as 65 feet as part of his regular job duties and he did so without any difficulty. Jutrzonka subsequently became a floating crib attendant for a short time and then returned to his hammer repair job. In about 1980, Jutrzonka had cellulitis in his leg and missed work for several weeks; upon his return to work, he told the Company's Medical Director, Dr. William Potos, that his weight probably caused the problem with his leg. The Company laid off Jutrzonka in 1982; at that time he weighed about 365 pounds. Throughout his employment, the Company never criticized the way that Jutrzonka performed any of his job tasks.

10. Pursuant to the contractual recall language, Jutrzonka was notified by letter dated January 17, 1984 that he would be recalled to work to his prior hammer repair job; however, before he was allowed back to work, the Company insisted that he first pass a physical examination administered by Dr. Potos. Accordingly, Dr. Potos gave Jutrzonka a properly administered physical examination on Janaury 19, 1984 and told him that his blood pressure was too high and that he would not permit Jutrzonka to return to work unless he first cured his hypertension. Jutrzonka on the same day went to see his own doctor, D. A. Nuyda, who told him that his blood pressure was only sightly above normal. Dr. Nuyda at the time gave Jutrzonka a note reading:

> To whom It May Concern:
>
> James Jutrzonka was seen at my office today for weight reductions. He presently weighs 365 lbs., allegedly on a field mill scale.
>
> His blood pressures were 140/92, 130/90, 148/84. He has not taken any antihypertensive medications for one year.
>
> Lopresser 100mg. daily were prescribed on his last visit of 1-19-84 during which time his BP was 140/98. In my opinion, his mild hypertension is no problem as far as work is concerned. He has been advised to follow a 1500 calorie reductions diet. He has been placed on Ionamin 30 mg and Dyzide.

11. The Company that same day told Jutrzonka to speak to Dr. Potos again regarding the matter and Jutrzonka subsequently did so a few days later; Dr. Potos at that time told Jutrzonka that he would have to lose 100 pounds before he would be allowed back to work because his weight was hazardous to his health.

12. Jutrzonka also visited Dr. Nuyda again and by letter dated January 23, 1984, the latter advised Dr. Potos:

> Dear Dr. Potos:
>
> In our telephone conversations last week, I did agree with you that Mr. James Jutrzonka's extreme obesity does post a hazard to his health and safety in a job that involves climbing stairs or ladders or other types of work that one may see unfit for his weight problem.
>
> However, this person, a patient of mine, doggedly maintains that he has done this type of job for many years without any difficulty. He weighed 375 lbs. (which he more or less weighs now allegedly) in November 1980, when he was hospitalized for cellulitis of the leg. After recovery, he returned to his same job until he was laid off in September 1982.
>
> I, therefore, leave it to you or Ladish Company to decide whether he is employable or not.
>
> Whether he should go for a gastric stapline procedure and therefore consult with Dr. Sleight, should be his own decision.

13. By letter dated January 23, 1984, Assistant Employment Manager Eileen Luettgen informed Jutrzonka:

> Dear Mr. Jutrzonka:
>
> This will confirm our decision based on Dr. Potos' judgment at time of physical exam on company premises 1/19/84, that you are not currently physically able to perform regular job requirements as a Maintenance Mechanic-Forge due to hypertension, and excessive weight.
>
> Therefore, you are to remain on layoff with medical restriction until such time as you produce an unrestricted

return to work release from your own personal physician indicating that above mentioned medical problems have been resolved to a point that you are able to physically handle requirements of your job.

When you obtain such a release to return to work, you are to report to Employment Department and will be advised of your work status at such time.

If you have any questions call 747-3518.

Very truly yours,

This apparently marked the first time that the Company referred to recall an employe laid off for more than six months because of a failure to pass a physical examination. Jutrzonka refused to heed either Dr. Potos' or Dr. Nuyda's recommendations that he lose weight and he also stopped using the hypertension drugs Dr. Nuyda prescribed for him.

14. Instead, he filed a grievance over the Company's refusal to recall him, but that grievance remained unresolved as it progressed through the grievance procedure which, as noted earlier, does not provide for arbitration of any such unresolved disputes. Throughout the discussions on the grievance, the Company never complained that Jutrzonka's weight had interferred with his job duties. The Company finally took Jutrzonka back to work on or about March 6, 1985, under a restricted duty program which recently had been negotiated between the parties in their successor contract. Thus, Dr. Potos on March 6, 1985, prescribed the following unrestricted duty program for Jutrzonka:

RESTRICTED DUTY PROGRAM -- JAMES JUTRZONKA I.D. #18101 -- MAINT. MECHANIC - FORGE

- No Ladder climbing higher than 5 feet.

- No climbing to catwalks or overhead cranes.

- May use safety pallet in conjunction with fork truck.

- Evaluation by personal physician monthly with a written statement about blood pressure and weight. Evaluation to be submitted to Dr. Potos.

- Evaluation by Dr. Potos in Main First Aid every month; to include blood pressure and weight.

- Required weight loss of 8 pounds each month which is reasonable on the recommended diet of 1500 calories/24 hours by his personal physician.

- If subject employee does not conform to above requirements, Medical Director, Dr. Potos, has the option of removing him from restricted duty program.

Discussion of employee's progress will be held on a monthly basis with Medical Department, AP & OH, Labor Relations & Department Head.

As a result of that program which he has followed, Jutrzonka who weighed about 365 pounds at the time of his March, 1985 recall, weighed about 310 pounds by the time of the instant hearing.

15. The Company's refusal in January, 1984 to recall Jutrzonka because of his overweight condition was violative of the contractual recall provisions set out in Article 6.27 of the contract.

Based upon the foregoing Findings of Fact, the Examiner issues the following

CONCLUSION OF LAW

The Company's refusal in January, 1984 to recall Jutrzonka because of his overweight condition breached Article 6.27 of the contract and said contractual violation thereby also violated Section 111.06 (1)(f) of the WEPA.

Upon the basis of the foregoing Findings of Fact and Conclusion of Law, the Examiner issues the following

ORDER 1/

IT IS ORDERED that the Company, its officers, agents, successors, and assigns shall immediately:

1. Make James J. Jutrzonka whole by paying to him a sum of money, including all benefits, that he otherwise would have earned from the time of the Company's initial refusal to recall him in January, 1984, until his subsequent March, 1985 recall, minus any earnings that he otherwise would not have received.

2. Pay interest at the rate of 12% per year on any such back pay.

3. Cease and desist from refusing to recall Jutrzonka or any other employes because of pre-existing medical conditions - including obesity--they may have had before their layoff and which were never questioned by the Company during their prior employment.

4. Take the following affirmative action to rectify the Company's unfair labor practice:

a. Immediately make Jutrzonka whole by paying to him back pay and interest in the above-described manner;

b. Notify all employes by posting in conspicuous places in its offices where employes are employed, copies of the notice attached hereto and marked "Appendix A". That notice shall be signed by the Company and shall be posted immediately upon receipt of a copy of the Order and shall remain posted for thirty days thereafter. Reasonable steps shall be taken by the Company to insure that said notice is not altered, defaced or covered by other material; and,

c. Notify the Wisconsin Employment Relations Commission, in writing, within twenty days following the date of this Order as to what steps have been taken to comply herewith.

Dated at Madison, Wisconsin this 23rd day of September, 1985.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Amedeo Greco
Amedeo Greco, Examiner

1/ Any party may file a petition for review with the Commission by following the procedures set forth in Sec. 111.07(5), Stats.

Section 111.07(5), Stats.

(5) The commission may authorize a commissioner or examiner to make findings and orders. Any party in interest who is dissatisfied with the findings or order of a commissioner or examiner may file a written petition with the commission as a body to review the findings or order. If no petition is filed within 20 days from the date that a copy of the findings or order of the commissioner or examiner was mailed to the last known address of the parties in interest, such findings or order shall be considered the findings or order of the commission as a body unless set aside, reversed or modified by such commissioner or examiner within such time. If the findings or order are set aside by the commissioner or examiner the status shall be the same as prior to the findings or order set aside. If the findings or order are reversed or modified by the commissioner or examiner the time for

filing petition with the commission shall run from the time that notice of such reversal or modification is mailed to the last known address of the parties in interest. Within 45 days after the filing of such petition with the commission, the commission shall either affirm, reverse, set aside or modify such findings or order, in whole or in part, or direct the taking of additional testimony. Such action shall be based on a review of the evidence submitted. If the commission is satisfied that a party in interest has been prejudiced because of exceptional delay in the receipt of a copy of any findings or order it may extend the time another 20 days for filing a petition with the commission.

"APPENDIX A"

NOTICE TO ALL EMPLOYES

Pursuant to an Order of the Wisconsin Employment Relations Commission, and in order to effectuate the policies of the Wisconsin Employment Peace Act, we hereby notify our employes that:

1. We will not refuse to recall to work James Jutrzonka, or any other employes, because of pre-existing medical conditions including obesity--which they had prior to their initial layoffs and which were never questioned by the Company during their prior employment.

2. We will make Jutrzonka whole by paying to him at the rate of 12% interest per annum a sum of money, including all benefits, that he otherwise would have earned from the time of the Company's initial refusal to recall him in January, 1984 until his subsequent March, 1985 recall, minus any earnings that he otherwise would not have received.

LADISH COMPANY

By _____

Dated this ____ day of _____ 1985.

THIS NOTICE MUST BE POSTED FOR THIRTY DAYS FROM THE DATE HERETO AND MUST NOT BE ALTERED, DEFACED OR COVERED BY ANY MATERIAL.

LADISH COMPANY

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

The Union's complaint alleges that the Company acted unlawfully when, contrary to the contractual recall procedure it initially refused to reinstate Jutrzonka in January, 1984 because of his obesity. The Union therefore primarily maintains that the Company unilaterally changed the conditions and terms of the collective bargaining agreement; that the Company improperly denied Jutrzonka his contractual seniority rights and applied an unreasonable rule to him; that the Company acted improperly when it relied upon the Company doctor's recommendation regarding Jutrzonka's ability to return to work; and that the Company was not justified in refusing Jutrzonka's reinstatement to either his former position or some other position in the plant.

For its part, the Company argues that the Union has failed to meet its burden of proof on this issue; that the contract preserves the right of the Company to require physical examinations; that the policy has been applied fairly to everyone; that the parties in their 1982 contract negotiations expressly agreed that medical restrictions could be imposed on employes returning from layoff; and that the Company's right to require physical examinations upon return from layoffs of more than six months accords with the contract and traditionally recognized management rights.

In resolving this issue, it must first be noted that the Company can promulgate reasonable work rules since Section 17.03 of the contract provides that the Company has the right "to enact and enforce by discharge or other reasonable disciplinary measures all Company regulations, especially the shop rules contained in the 'Employee Handbook' not in conflict with the express terms of this agreement, is recognized for efficient plant operation and safety considerations." In addition, Section 3.01 of the contractual "Management Clause" gives the Company the right to assign work and to "relieve employees from duty because of lack of work, or for other legitimate reasons . . . ."

The Company in 1983 therefore adopted a rule--never communicated to the Union or publically posted--to the effect that employes laid off for six months or more must pass a physical examination before they will be recalled to work. In its brief, the Company asserts, "this (the rule) clearly concerns their ability to perform the work safely for which they have been recalled" and its brief cites several arbitration cases where arbitrators have upheld the right of employers to refuse to recall employes suffering from physical infirmities. Thus, in Bethlehem Steel Co., 26 LA 514 (1956), Arbitrator Ralph Seward ruled that the Company properly refused to recall a grievant to his prior job because of his obesity, a heart murmur, and psoriasis. In so ruling, Arbitrator Seward stated:

> No evidence has been introduced which throws doubt on Dr. Marsteller's judgment. The fact that Repasch had been working as Chainman up until the time of his lay-off is not evidence that he was not thereby endangering his health. It is evidence only that his physical condition had not recently been brought to the Company's attention. It seems to the Umpire that when--through the routine operation of recall procedure--the grievant's condition was brought to its attention the Company acted properly to protect the grievant's health and to fulfill its own obligations under Article XIV."

The Company also relies upon Chris-Craft Corp. 27 LA 404, 406 (1956) where Arbitrator Wilbur C. Bothwell found:

> "The management of an industrial enterprise is quite appropriately interested in the establishment of sound health requirements and providing physical examinations to see that these standards are secured. This is of value to the enterprise in terms of increased plant efficiency, lower workmen's compensation costs, and improved employee morale, but it is also of value to the individual employee in

protecting him from the hazards of physically incompetent fellow employees, and from work assignments injurious to his health."

There is much to be said for this point of view. After all, if recalled employes are unable to properly perform their duties because of physical or other disabilities, there is always the possibility that their return to work will be injurious to either themselves, fellow employes, or to an employer's operations. That is why employers have a legitimate interest in seeing that their employes are physically able to properly perform their jobs and why it is well recognized that employers have broad discretion in promulgating reasonable work rules to achieve that objective.

Here, Dr. Nuyda, Jutrzonka's own doctor, reported on January 23, 1984, that "Jutrzonka's extreme obesity does pose a hazard to his health and safety in a job that involves climbing stairs or ladders or other types of work that one may see unfit for his weight problem." In addition, Dr. Potos on January 19, 1984, gave him a physical examination which found that his blood pressure was too high and a few days later indicated that he would not permit Jutrzonka's recall until he had lost about 100 pounds. 2/ Along with that, the Employer rightfully points out that Jutrzonka refused to continue taking the medication that was prescribed for his hypertension and that he also refused to lose weight after being told by Dr. Potos that he should do so. All of these factors support the Company's claim that it acted reasonably when it refused to recall Jutrzonka in January, 1984 because of his extreme obesity.

But having acknowledged all that, something else must also be noted: Article 17.03 of the contract provides that the Company can only "enact and enforce by discharge or other reasonable disciplinary measures . . . " whatever work rules it chooses to adopt. Any work rules adopted, then, must pass this reasonableness standard. Moreover, this reasonableness requirement must be read alongside Articles 5.02 and 6.27, both of which provide that strict seniority will govern the layoff and recall of employes. Since neither of these provisions on their face give the Company the right to insist on physical examinations for recalled employes who have been laid off for at least six months, the Company's defense rests on the premise that the contractual language implicitly gives it the right to do so by virtue of the contractual management rights clause and the Company's right to promulgate reasonable work rules.

The Company asserts that it can because the Union expressly agreed during its 1982 collective bargaining negotiations that physically unfit employes need not be recalled from layoff. The problem with this claim, as the Union correctly points out, is that the parties in their negotiations only discussed what happens when an employe slated for layoff is to bump into another job which that employe's doctor finds to be injurious to his/her health at that time. However, the parties then never discussed whether--in the absence of any medical restrictions at the time of layoff--the Company could insist on physical examinations for recalled employes. Thus, Labor Relations Supervisor Larry Navarre, who sat in on those negotiations for the Company, testified that this issue arose because some bumped employes wanted to pick and choose which other jobs they wanted and that the Company sought the agreement it did because it did not know how to handle that situation. However, Navarre expressly acknowledged that there was never any discussion between the parties regarding whether the Company could insist that an employe could be subjected to a medical exam coming back from layoff when, as here, the employe originally was not under any medical restriction at the time of layoff.

2/ Jutrzonka testified that Dr. Potos did not properly administer the blood pressure test in issue on January 19, 1984, and that he, Dr. Potos, therefore had to retake it several times. Dr. Potos, on the other hand, testified that he properly administered the test and that its readings therefore were accurate even though he admittedly gave gave the test several times. Given Dr. Potos' expertise in the matter, I credit his testimony and find that the test was properly administered.

For the reasons noted above, it may well be reasonable for the Company to insist on such physical examinations in order to detect medical problems arising from the time of layoff to the time of recall. However, that is not the issue presented in this case and it therefore need not be decided; rather, the very narrow issue in this case centers on whether the Company can refuse to recall Jutrzonka for a longstanding pre-existing medical condition he had at the time of his layoff and which had not previously interferred with the performance of his regular job duties. Thus, the Company knew from day one of Jutrzonka's employment that he was extremely overweight, even though Jutrzonka apparently with the Company doctor's knowledge lied about his weight at the time of his hire. The Company then also knew of Jutrzonka's hypertension since he admitted to it when filling out his medical questionaire at the time of his hire. Moreover, when Jutrzonka suffered from cellulitis in his leg and was absent from work in 1980 for several weeks, he told Dr. Potos that it was caused by his obesity, a diagnosis which Dr. Potos shared. Dr. Potos, then, certainly was well aware of Jutrzonka's condition. Yet despite that obesity, Jutrzonka over the years satisfactorily performed his various jobs, with no complaints from the Company that his obesity was interfering with his work.

Absent any past linkage between Jutrzonka's obesity and his ability to do his job, coupled with the Company's acquiescence of that problem throughout Jutrzonka's nearly 18 years of employment, it must be concluded that the Company acted unreasonably and violated the contractual recall provision when it refused to recall Jutrzonka because it is a well recognized principle or arbitrable law that an employer under the kind of recall procedures presented here cannot require laid-off employes to meet higher physical standards than those imposed during an employer's prior employment. 3/ Thus, Arbitrator Whitley P. McCoy in Allegheny Ludlem Steel Corp., 25 LA 214 (1955) ruled that the employer could not refuse to recall an employe with a history of high blood pressure, finding that the contract "contains no provision justifying the application of different standards of health or physical conditions to those laid off for a day, three days, three months or a year, . . ." and that unified physical standards "must be reasonable, otherwise the seniority rights conferred by the contract would be illusory." Arbitrator John A. Hogan reached the same counclusion in Columbia Packing Co., 31 LA 152 (1958) where the employer had refused to recall an employe who had varicose veins for nearly 20 years, during which time she had always properly performed her job duties; he found that the Company violated the contractual recall procedures because there had been no linkage of her longstanding medical conditions to her ability to do her job.

Applying this principle here, it follows that the Company violated Article 6.27 when it refused to recall Jutrzonka in 1984 because of his obesity and hypertension. In order to make him whole, the Company therfore shall reimburse him for all money and benefits in the manner set forth in the remedial order above.

Dated at Madison, Wisconsin this 23rd day of September, 1985.

By Amedeo Greco
Amedeo Greco, Examiner

3/ The two arbitration cases cited by the Company, Bethlehem Steel Co. and Chris - Craft Corp., supra, are therefore distinguishable from the present case because the facts in those cases centered on employes who became medically disabled after, not before, their layoff. Moreover, it should be noted that Arbitrator Bothwell in the latter case acknowledged that there were limits on an employer's right to refuse to recall medically unfit employes, stating that "the employee must be protected against the arbitrary, erroneous, or over-zealous application of the medical program" in order to protect contractual seniority provisions.