BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	
GENERAL DRIVERS AND DAIRY EMPLOYEES UNION LOCAL NO. 563	Case 5 No. 43800 MA-4618
and	
S.C. SHANNON COMPANY	

Appearances:

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., Attorneys at Law, by Mr. Scott D. Soldon, on behalf of General Drivers and Dairy Employees Union Local No. 563.

Seyforth, Shaw, Fairweather & Geraldson, Attorneys at Law, by Mr. John S. Schauer, on behalf of the S.C. Shannon Company.

ARBITRATION AWARD

General Drivers and Dairy Employees Union Local No. 563, hereinafter the Union, requested that the Wisconsin Employment Relations Commission appoint a staff arbitrator to hear and decide the instant dispute between the Union and the S.C. Shannon Company, hereinafter the Company, in accordance with the grievance and arbitration procedures contained in the parties' labor agreement. The Company subsequently concurred in the request and the undersigned was designated to arbitrate in the dispute. A hearing was held before the undersigned on June 5, 1990, in Appleton, Wisconsin. There was no stenographic transcript made of the hearing and the parties submitted post-hearing briefs in the matter by July 18, 1990. Based upon the evidence and the arguments of the parties, the undersigned makes and issues the following Award.

ISSUES

The Union would state the issue as being:

> Did the Company violate the collective bargaining agreement by failing to pay double time for hours worked on December 30, 1989? If so, what is the appropriate remedy?

The Company would state the issue as follows:

> Did the Employer violate the collective bargaining agreement by paying the grievant, who was working five (5) eight (8) hour days, time and one-half (1 1/2) and not double time (2) for hours worked on his sixth day of work during his work week.
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> If so, what is the appropriate remedy under the collective bargaining agreement?

The parties agreed that the Arbitrator would frame the issue to be decided within the context of the grievance and the parties' respective statements of the issues. It is concluded that the issues to be decided may be stated as follows:

> Did the Company violate Article 20, Section 3b, of the parties' Agreement when it paid the grievants time and one-half for the hours they worked on December 30, 1989, rather than double time?
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> If so, what is the appropriate remedy?

CONTRACT PROVISIONS

The following provisions of the parties' 1988-1991 Agreement are cited:

> ARTICLE 4 - MAINTENANCE
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> Sec. 1 - The Employer agrees that all conditions of employment relating to wages, hours of work, overtime differentials, vacations now granted, and general working conditions shall be maintained at not less than the highest standards in effect at the time of the signing of this Agreement; and the conditions of employment shall be improved wherever specific

provisions for improvement are made elsewhere in this Agreement.

Sec. 2 - This provision does not give the Employer the right to impose or continue wages, hours, and working conditions less than those contained in this Agreement.

Sec. 3 - Any employee now receiving a higher wage than herein provided shall not suffer a reduction in pay because of the terms and provisions of this Agreement.

. . .

ARTICLE 20 - WORK WEEK, WAGES, AND CLASSIFICATION

Sec. 1a - Warehouse - The guaranteed work week for all regular warehouse employees shall be forty (40) hours to be worked in either five (5) consecutive eight (8)-hour days or four (4) consecutive ten (10) hour days each week, except when holiday(s) fall during the regular work week. The guaranteed work week shall then be reduced by eight (8) hours or ten (10) hours, as the case may be, for each paid holiday which falls therein.

Sec. 1b - The Employer shall establish regular starting times and weekly work schedules for all regular warehouse employees and shall give two (2) weeks notice before changing either.

Sec. 2a - Truck Drivers - The guaranteed work week for all regular truck drivers shall be forty (40) hours to be work in four (4) or five (5) consecutive tours of duty each week, except when a holiday(s) falls during the regular work week. The guaranteed work week shall then be reduced by eight (8) or ten (10) hours, as the case may be, for each paid holiday which falls therein.

. . .

Sec. 2d - Full time drivers shall not be required to work regularly in the warehouse beyond current practices to complete their guaranteed work week.

Sec. 3a - All employees shall be paid time and one-half (1-1/2) for all hours worked over eight (8) hours per day (except those employees scheduled by the Employer to work four (4) ten (10) hour days in which event the daily overtime shall be paid after ten (10) hours) or forty (40) hours per week, whichever is greater, but not both. In weeks containing a holiday(s), weekly overtime shall be paid after the work week is reduced pursuant to Sections 1 and 2 above.

Sec. 3b - Employees working five (5) eight (8)-hour days will be paid time and one-half (1 1/2) for all hours worked on the sixth (6th) day of work during their work week. For employees working four (4) ten (10)-hour days time and one-half (1 1/2) shall be paid for all hours worked on the fifth (5th) and sixth (6th) day during their work week. Double time (2) shall be paid for all hours worked on the seventh (7th) day of work of all the employee's work week.

Sec. 3c - Warehouse employees who are called to work prior to their scheduled starting time shall receive time and one-half (1 1/2) their regular hourly rate for all time worked prior to their regular starting time.

Sec. 3d - There shall be no pyramiding of overtime premiums.

Sec 3e - Warehouse employees shall be notified of the necessity to work overtime not less than two and one-half (2 1/2) hours prior to the end of their scheduled shift. Revisions in the amount of overtime may be made until the end of the shift. Notice for work on the fifth, sixth or seven day of work must be given prior to the start of the fourth, fifth, or sixth day shift of work. If such notice as provided above is not given, the employee may refuse such assignment.

> Sec. 3f - Warehouse employees required to work one (1) or more hours beyond their scheduled shift shall receive a ten (10) minute paid break. Warehouse employee (sic) scheduled for less than eight (8) hours shall receive a ten (10) minute paid break after the completion of their fourth (4th) hour.
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> Sec. 4 - A first day of a work week shall be established for all work weeks and shall be recorded on one time card even though such work week may bridge two (2) consecutive calendar weeks. The first, (sic) sixth, and seventh day of a work week shall be the fifth, sixth, and seventh day following such established first day.
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> When there is a voluntary or involuntary change in an employee's schedule from one work week to the next work week, the second work week superceeds (sic) the first with respect to the weekly overtime provision of Section 3a and the determination of the fifth, sixth and seventh work days set forth in Section 3b in situations where the second work week creates weekly overtime or fifth, sixth, or seventh premium days in the fifth work week so as to avoid such payments.
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> . . .
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> Sec. 7 - If an employee reports for work and no work is available, such employee shall be paid a minimum of six (6) hours' pay at the applicable straight or premium hourly rate. If an employee performs any work, such employee shall be guaranteed eight (8) hours work or pay at the applicable hourly rate, provided, however, employees called to work on a fifth, sixth, or seventh work day in the employee's work week or on a holiday shall be guaranteed a minimum of four (4) hours pay at the time and one-half (1 1/2) or double (2) time rate, whichever is applicable.
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> . . .

BACKGROUND

The Company owns and operates a wholesale grocery warehouse and distribution business in Appleton, Wisconsin and employs approximately 250 employes, of which approximately 175 are in the bargaining unit of drivers, maintenance employes, journeyman, pipefitters and warehouse employes represented by the Union.

This grievance involves six warehouse employes who were called in to work five hours on December 30, 1989. Their work week had started on Sunday, December 24 and the parties stipulated they had worked the following hours: Sunday, December 24 - 8 hours; Monday, December 25 - Holiday (off); Tuesday, December 26 - 8 hours; Wednesday, December 27 - 8 hours; Thursday, December 28 - 8 hours; Friday, December 29 - 0 hours (off); Saturday, December 30 - 5 hours.

Pursuant to Sections 1a, 3b and 3c of Article 20 of the parties' prior Agreement, warehouse employes were guaranteed a work week of 40 hours to be worked in five consecutive eight hour days, Monday through Friday, (Sec. 1a) with time and one-half pay for all work performed on Saturday (Sec. 3b) and double time pay for all work performed on Sunday (Sec. 3c). 1/

1/ The provisions of Article 20 of the parties' prior Agreement provided as follows:

> Section 1(a). Warehouse - The guaranteed work week for all regular warehouse employees shall be forty (40) hours to be worked in five (5) consecutive eight (8) hour days, Monday through Friday, inclusive of each week except when holiday(s) fall during the regular work week. The guaranteed work week shall then be reduced by eight (8) hours for each paid holiday which falls therein.
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> . . .
>
> Section 3(a). All employees shall be paid time and one-half (1-1/2) for all hours worked over eight (8)

In the negotiations for the current Agreement the Company initially proposed to delete Secs. 3(b) and (c) and to change Secs. 1(a) and 3(a) as follows:

> Section 1(a). Warehouse - The guaranteed work week for all regular warehouse employees shall be forty (40) hours to be worked in five (5) consecutive days, inclusive of each week except when holiday(s) fall during the regular work week. The guaranteed work week shall then be reduced by eight (8) hours for each paid holiday which falls therein.
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> . . .
>
> Section 3(a). All employees shall be paid time and one-half (1-1/2) for all hours worked over forty (40) hours per week. In weeks containing a holiday(s) weekly overtime shall be paid after the work week is reduced pursuant to Sections 1(a) and 2(a) above.

Those proposals were part of the Company's goal of going to a flexible work week and reducing premium pay, and during the course of the negotiations the parties discussed changes to Article 20 on several occasions. On June 30, 1988 the Company gave the Union Bargaining Committee, including its chief negotiator, Local 563 Secretary-Treasurer Dennis Vandenbergen, the following "Discussion Draft" regarding Article 20, which included, in relevant part, the following:

> Section 1 - Warehouse -- The guaranteed work week for all regular warehouse employees shall be forty (40) hours to be worked in either five (5) consecutive eight (8)-hour days or four (4) consecutive ten (10)-hour days each week, except when holiday(s) fall during the regular work week. The guaranteed work week shall then be reduced by eight (8) hours or ten (10) hours, as the case may be, for each paid holiday which falls therein.
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> Section 2(a) - Truck Drivers -- The guaranteed work week for all regular truck drivers shall be forty (40) hours to be worked in four (4) or five (5) consecutive tours of duty each week, except when a holiday(s) falls during the regular work week. The guaranteed work week shall then be reduced by eight (8) or ten (10) hours, as the case may be, for each paid holiday which falls therein.
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> . . .
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> Section 3(a). All employees shall be paid time and one-half for all hours worked over eight (8) hours per work day (except those employees scheduled by the Employer to work four (4) ten (10)-hour days in which event daily overtime shall be after ten (10) hours) or forty (40) hours per week, whichever is greater, but not both. In weeks containing a holiday(s), weekly overtime shall be paid after the work week is reduced pursuant to Sections 1 and 2(a) above.
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> Section 3(b). Employees working five (5) eight (8)-hour days will be paid time and one-half (1 1/2 x) for all hours worked on their sixth (6th) consecutive work day during that week. For employees working four (4) ten (10)-hour days time and one-half (1 1/2 x) for all hours worked on their fifth (5th) and sixth (6th) consecutive work day that week. Double time (2 x)

> hours per day or forty (40) hours per week whichever is greater but not both. In weeks containing a holiday(s) weekly overtime shall be paid after the work week is reduced pursuant to Sections 1(a) and 2(a) above.
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> Section 3(b). Time and one-half (1-1/2) shall be paid for all work performed on Saturday.
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> Section 3(c). Double time (2) for all work performed on Sunday.

shall be paid for all hours worked on the seventh (7th) consecutive work day of that week.

Section 3(c). There shall be no pyramiding of overtime 06/20/88 premiums.

Another draft of Article 20 from the Company was provided to the Union and discussed by the parties on July 8, 1988:

> Section 1. Warehouse - The guaranteed work week for all regular warehouse employees shall be forty (40) hours to be worked in either five (5) consecutive eight (8)-hour days or four (4) consecutive ten hour days each week, except when holiday(s) fall during the regular work week. The guaranteed work week shall then be reduced by eight (8) hours or ten (10) hours, as the case may be, for each paid holiday which falls therein.
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> Section 2(a). Truck Drivers - The guaranteed work week for all regular truck drivers shall be forty (40) hours to be worked in four (4) or five (5) consecutive tours of duty each week, except when a holiday(s) falls during the regular work week. The guaranteed work week shall then be reduced by eight (8) or ten (10) hours, as the case may be, for each paid holiday which falls therein.
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> . . .
>
> Section 3(a). All employees shall be paid time and one-half (1-1/2) for all hours worked over eight (8) hours per day (except those employees scheduled by the Employer to work four (4) ten (10)-hour days in which event daily overtime shall be paid after ten (10) hours) or forty (40) hours per their work week, whichever is greater, but not both. In weeks containing a holiday(s), weekly overtime shall be paid after the work week is reduced pursuant to Sections 1 and 2(a) above.
>
> Section 3(b). Employees working five (5) eight (8)-hour days will be paid time and one-half (1 1/2 x) for all hours worked on the sixth (6th) day of work during their work week. For employees working four (4) ten (10)-hour days time and one-half (1 1/2 x) shall be paid for all hours worked on the fifth (5th) and sixth (6th) day of work of their work week. Double time (2 x) shall be paid for all hours worked on the seventh (7th) day of work of the employee's work week.
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> Section 3(c). Warehouse employees who are called to work prior to their scheduled starting time shall receive time and one-half (1 1/2) their regular hourly rate for all time worked prior to their regular starting time.
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> Section 3(d). There shall be no pyramiding of overtime premiums.

There is some dispute as to what was said at that meeting.

On August 8, 1988 the parties met and reached tentative agreement on a number of items including the above proposed changes in Sections 1, 2(a) and 3(b) of Article 20. There is also a dispute as to what was said by the Company's spokesman in response to questions from the Union's Bargaining Committee at that meeting regarding the effect of the new Section 3(b).

In all there were approximately twelve bargaining sessions beginning in May of 1988 and ending in August of 1988. The Union ratified the Agreement in August of 1988 and the parties met and signed the Agreement on September 9, 1988, with the Agreement being effective as of that date.

The "flex week" was implemented shortly thereafter with regard to the employes in the perishables warehouse working Monday through Thursday as their regular work week. There is a dispute as to the first time a situation like that involved in this grievance arose, the Union asserting it was the situation in December of 1989 that is the subject of this grievance, and the Company

asserting that it first arose in February of 1989 and continued to happen thereafter.

The parties were unable to resolve their dispute and proceeded to arbitration before the undersigned.

POSITIONS OF THE PARTIES

Union

The Union asserts that in the negotiations for the present contract the Company initially sought the right to eliminate Saturday and Sunday premiums and to be able to select any four or five days during a work week without incurring overtime. On June 30, 1988 the Company presented a proposal which sought to pay time and one-half for hours worked on the sixth "consecutive" work day and the seventh "consecutive" work day and included a Section 3b for the first time in these negotiations, initially having sought to eliminate that provision. The Union expressed concern about the proposal, wanting to know how the payroll week would work and whether weekly shifts would spill over into the following calendar week. The Union's concerns were then addressed in the Company's July 8th proposal wherein the Company eliminated the notion of "consecutive" work days and the Union obtained an understanding as to how the work week would work. It is asserted that there was a great deal of discussion as to how the work week would work and that in the discussions between July 8 and August 8 the parties decided that it was unnecessary to specify a Sunday through Saturday work week given the language in the July 8 proposal as to Section 3b. According to the Union, the parties ultimately agreed in Section 4 that the first day of the work week would be established and thereafter the fifth, sixth and seventh days of the work week would follow in order. This met the Union's concerns by properly framing the start of the work week and by specifically fixing the fifth, sixth and seventh days of the week, and this made Section 3b, as drafted by the Company, acceptable to the Union.

According to the Union, its negotiating team questioned the Company's negotiator carefully to insure that there were no hidden problems or ambiguities in the language of Section 3b. The prior Agreement had contained provisions making Saturday automatically a time and one-half day and Sunday automatically a double time day and the Union sought to maintain the same system in the new flexible work week. It was at the August 8th meeting that the Union specifically questioned the Company as to what it meant by the sixth day of work and the seventh day of work referenced in Section 3b. Specific examples were discussed, such as if an employe had a work week beginning on a Monday and worked through Friday, but did not work Saturday, and then worked Sunday, would Sunday be his seventh day of work for the week and therefore compensated at double time. The Company's negotiator responded that it would. Further, he stated that it was not the Company's intention to attempt to eliminate double time for members where they had received it under the prior contract. The specific example cited above was confirmed by the testimony of Valentine, a member of the Union's Bargaining Committee. Valentine testified that when he asked what do you mean by "day of work" the Company's negotiator responded "What do you do at the Company, play or work?" The Company's negotiator went on to say that the Company was not trying to take away Saturday and Sunday premiums, it was simply trying to move them to a different day pursuant to the new flexible work week. Both Vandenbergen and Valentine testified that it was this assurance upon which the Union relied in agreeing to Section 3b. The Company presented only one witness to rebut the Union's version, the office manager and head of personnel who testified that she had no specific recollection regarding the questions posed and the answers given. She testified that she could not remember everything that happened and that she did not take verbatim notes of the bargaining sessions.

The Union asserts that its version of the bargaining history is more persuasive. It is internally consistent and presents a forthright interpretation of the plain language of the contract. The reference to "days of work" in Section 3b must be read in conjunction with the prior contract language and the bargaining history. The Company gave the Union specific assurances that it did not intend to change the pay practice with regard to Saturday and Sunday premium pay, and it was in reliance on those assurances that the Union settled the contract. Further, as the drafter of the language and the giver of the assurances, the Company should not now be heard to complain that the language is ambiguous and means something other than what it told the Union in negotiations. The Union asserts that the fact that the Company may have improperly paid a few other employes in the past has no significance, as it merely illustrates that some employes do not file grievances for a variety of reasons. This is the first grievance which has arisen over the issue and it has been signed by every member of the Union's Bargaining Committee who works at the Company. They all agree as to what occurred in bargaining, the specific assurances given by the Company and how the Union relied on those assurances in settling the contract. The Union cites Elkouri and Elkouri, How Arbitration Works, (4th Ed.) for the proposition that arbitrators routinely construe ambiguous language "against the party who

proposed it." Similarly, where the employer provides a union with oral assurances during bargaining in order to induce the union to end a job action and agree to a contract, the employer is estopped from asserting a contrary position in subsequent arbitration and is bound by its assurances. Citing, International Harvester Company, 17 LA 101 (McCoy), and Elkouri and Elkouri, at 400-401.

Company

The Company notes that the provision in question is the product of the parties' last negotiations. The Company contends it made many compromises in those negotiations in order to achieve the overtime language contained in the present Section 3b, and that it must now be given the benefit of the provision achieved by those compromises.

The Company asserts that the language in Section 3b is "clear and concise" with respect to an employe who works five 8 hour days being paid time and one-half on his sixth day of work and double time on his seventh day of work. According to the Company, the benefit to the employe is obvious as he receives premium pay if asked to work on a sixth or seventh day, even if he missed part of a day earlier in the week. In agreeing to schedule its consecutive work days on other than Monday through Friday, it was necessary for purposes of Section 3b to define what days would be the potential time and one-half or double time days. The words selected by the parties for that purpose were "of work" which allowed the unquestioned identification of the potential premium days. The Company asserts that once the beginning of the work week is set for an employe, his fifth, sixth or seventh days can always be determined by days he worked and that, therefore, the use of the defining words "of work" is dispositive of the grievance.

The Company argues that if the language of the Agreement is clear and unequivocal, the arbitrator must give it that meaning, even though the parties may disagree as to its meaning and even though the results are contrary to the original expectations of one of the parties. The Company contends that there is no doubt as to the import of the words "of work," since they immediately follow and define the sixth or seventh day, as the sixth day of work or the seventh day of work, and not as a day of the work week. The parties reference "work" in a number of provisions and all make clear that the reference is to a day of work and not a day of the work week. Section 3e provides that "(n)otice for work on the fifth, sixth or seventh day of work must be given . . .", indicating that the parties carried over the same definition "of work" into the notice requirements. This is also true in Section 7. The Company contends that the parties used the ordinary words "of work" as universally understood and used throughout their Agreement. Words must be given their ordinary and popularly accepted meaning in the absence of anything indicating they were used in a different sense or that a special colloquial meaning was intended. Here the word "work" is commonly understood and is used with the same meaning throughout the parties' Agreement.

Next, the Company contends that the meaning of the words "of work" is best demonstrated by reading the provision without them. The clause would then require time and one-half to be paid "on the sixth (6) day during their work week" or "double time on the seventh (7) day of the employee's work week." That is what the Union now desires, but it is not what the parties provided for when they agreed to the inclusion of the words "of work" as the defining factor. If the parties intended to use the work week, they simply could have removed the words "of work," but did not.

The Company also cites arbitrable precedent for the principle that "all words used in an Agreement must be given effect." The arbitrator cannot ignore the words "of work" as they have a meaning which must be given its full effect. The Union is requesting that the arbitrator delete or not apply the plain meanings of the words "of work." It is asserted that not only would such a deletion be improper contract construction, it would be in violation of Article 18, Section 5 of the parties' Agreement which prohibits the arbitrator from changing or modifying the terms of the Agreement.

The Company next contends that the defining words "of work" were part of its July 8th written proposal that was in the Union's possession a month before the parties' final meetings. The new language requiring days "of work" was available to, and approved by, the Union's full membership at its ratification meeting. The Company cites arbitrable precedent for the principle that parties to a contract are charged with full knowledge of its provisions and of the significance of its language.

The Company also asserts that the fact the provision was consistently applied for ten months without a single grievance, further evidences that there was no misunderstanding its meaning. Beginning in February of 1989 there were 25 separate applications of Section 3b identical to that which is the subject of this grievance. Those prior applications of the provision affected ten

different employes, two of whom were on the Union's Bargaining Committee and none of the employes raised any question regarding its application. Such a consistent practice affecting so many employes over such a long period of time is significant evidence that Section 3b means exactly what it says.

The Company contends that the Union's argument regarding bargaining history is unavailing for several reasons. First, the language of Section 3b is not ambiguous and it is therefore improper to modify its meaning by involving bargaining history. Also, nothing that occurred supports the Union's position. The deletion of the word "consecutive" in the July 8 written proposal (and hence the final Agreement) is consistent with the Company's position. In the "Discussion Draft" of June 30 where the word "consecutive" was used, no premium payment would be available if there were a gap in the employe's days of work, i.e., an employe working Sunday through Thursday, but not on Friday, and again on Saturday would not receive premium pay for that Saturday because it was not his sixth consecutive work day during that week. Removal of the word "consecutive" was due to the parties recognizing that there may be gaps of no work days in an employe's work week, and inserting the words "of work" to replace the more restrictive "consecutive" provided that an employe would receive time and one-half on his sixth day of work, whether or not it was "consecutive." The Company also contends that the Union's argument that Section 3b was simply replacing the old Saturday and Sunday "as such" premium days is neither possible nor the case. Under the work week in the prior contract, Saturday and Sunday were the preferred days off and therefore were paid at a premium rate; however, under the new work week structure an employe's days off could be any two or three days of the week and not necessarily weekends. Since, the "as such" concept covering weekends was gone, the parties had to select a different method of identifying potential premium days, and they chose to identify them as the fifth, sixth or seventh day <u>of work</u>. This was consistent with the Company's desire for eliminating premium pay for any day "as such" and was agreed to by the Union. The Company cites arbitrable precedent for the principle that when parties change the language of their Agreement there is a presumption that they intend a changed meaning.

The Company also takes issue with the Union's reliance on its recollection of statements made during negotiations. It is asserted that such reliance on alleged statements is both inappropriate and misplaced. The Company notes that there were 12 bargaining sessions, each lasting a full day and all of which took place almost two years prior to the hearing in this case. The testimony of the Union's witnesses was based solely on their recollection without any corrobor-ation by notes and that testimony, while unreliable on its face, is also refuted by the extensive notes and recollection of the Company's personnel director. The Union's recollection is further refuted by the fact that the words "of work" were placed in the contract. If those words had no meaning, as was inferred by the alleged statement "work or play," why would the Union's Bargaining Committee leave in alleged meaningless words which were counter to the Union's now expressed intent. The Company argues that this is particularly telling when simply deleting those words that the Union now alleges are meaningless would have made the clause read exactly as the Union now asserts. Since the words remained in the agreed-to provision, they have meaning. Further, the Union's recollection is refuted by the Company's consistent application of Section 3b, and acquiescence in that application by two members of the Union's Bargaining Committee. It is asserted that if the application of Section 3b for so long a period had been counter to the Union's understanding, some question would have arisen before this.

The Company contends that the Union's reliance on Article 20, Section 4, the payroll week and pay day provision, is misplaced. That provision was meant to cover a different subject, with the provisions regarding overtime pay being contained in Sections 3a - f. Section 4 establishes a payroll week and pay day for every employe so that they are able to verify their pay check against the hours they know they have worked. While the second paragraph discusses the overtime provisions it is only in the sense of identifying which payroll week supercedes the other if an employe changes work weeks in mid-stream. Even then, the language correspondingly refers to the "fifth, sixth or seventh <u>work days</u>."

Lastly, the Company asserts that any reference to Article 4, Maintenance, is clearly inapplicable considering the changes agreed to in the Agreement.

DISCUSSION

In essence, the Company asserts that the wording of Article 20, Section 3b is clear and unambiguous and must be given its normal meaning, while the Union asserts that the wording of that provision must be read in conjunction with the prior contract language and bargaining history. The undersigned does not agree that Section 3b is clear and unambiguous. This is due in part to what the Company asserts is a typographical error - the omission of the words "of work" after the words "fifth (5th) and sixth (6th) day" in reference to employes who work four 10 hour days, that apparently resulted from

the rush to have the new contract typed. That omission, along with the reference in Section 4 cited by the Union, creates a need to look beyond the wording of Section 3b to determine the parties' intent.

For the following reasons the undersigned has concluded that the Company's interpretation of Section 3b reflects what the parties intended when they agreed to the changes in that provision. First, as the Company points out, had the parties intended that the provision refer to the fifth, sixth or seventh days of an employe's work week, rather than the number of the days he/she had worked in the work week, simply leaving the words "of work" out the provision would have clearly expressed such an intent. The Union's interpretation requires that the words "of work" be given no effect. It is a principle of contract interpretation that when the parties place words in their contract, they intend for them to have meaning and effect, and an interpretation that would make wording in the contract meaningless is to be avoided if there is a reasonable interpretation that would not have such a result. In this case the Company's interpretation gives meaning and effect to all words in the provision and, therefore, is preferable on that basis. Secondly, the Company's interpretation is consistent with the manner in which the words "of work" are used in Section 3e. That provision requires that "Notice for work on the fifth, sixth or seventh day of work must be given prior to the start of the fourth, fifth, or sixth day shift of work." The reference is to days of work, not days of the work week. Third, the Company's interpretation is consistent with the manner in which Section 3b has been applied since the new work week was implemented in February of 1989 with regard to the employes in the perishables warehouse. While it appears Vandenbergen was not aware of the practice, the Company's unrebutted evidence (Company Exhibit 1) indicates that two members of the Union's Bargaining Committee, Luedtke and Phillips, were paid in accord with the Company's interpretation of Section 3b and did not grieve or raise an objection to the manner in which they were paid. The evidence indicates that Phillips was paid in that manner in situations essentially the same as in this case on three different occasions prior to this without any objection on his part. On that basis, the Union is deemed to have been aware of and to have tacitly acquiesced in the Company's application of Section 3b.

The Union has relied primarily on bargaining history to support its interpretation. The deletion of the word "consecutive" in the Company's "Discussion Draft" of Section 3b during negotiations seemingly cuts against the Company's interpretation; however, that deletion, along with the disputed claims as to statements made by the Company in bargaining on the provision, are not sufficient to overcome the above-noted problems with the Union's interpretation and the consistent practice as to Section 3b.

Therefore, it is concluded that the Company did not violate Article 20, Section 3b, of the parties' Agreement when it paid the grievants at the rate of time and one-half for the hours they worked on December 30, 1989.

On the basis of the foregoing, the evidence and the arguments of the parties, the undersigned makes and issues the following

AWARD

The grievance is denied.

Dated at Madison, Wisconsin this 27th day of November, 1990.

By _____
David E. Shaw, Arbitrator