BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	
CUNA MUTUAL INSURANCE SOCIETY	Case 16 No. 46099 A-4823
and	
OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION LOCAL 39	

Appearances:
Mr. Lee Cullen, Cullen, Weston, Pines and Bach, S.C., Attorneys at Law, 20 Nor
Mr. Paul A. Hahn, Attorney at Law, Boardman, Suhr, Curry and Field, Attorn

ARBITRATION AWARD

On August 12, 1991, CUNA Mutual Insurance Society and Office and Professional Employees International Union Local 39 filed an arbitration request with the Wisconsin Employment Relations Commission, asking the Commission to appoint William C. Houlihan, a member of its staff, to hear and decide the matter. A hearing was conducted on October 30, 1991 in Madison, Wisconsin. A transcript of the proceedings was taken and distributed by November 14, 1991. Post-hearing briefs were filed and exchanged by December 6, 1991.

BACKGROUND AND FACTS

The facts giving rise to this grievance are not substantially in dispute. In July, 1991, the Company transferred approximately 400 bargaining unit employes, and a number of non-bargaining unit employes, from its Mineral Point Road, Madison, Wisconsin headquarters to a newly-constructed leased facility called World Trade Center, in Middleton, Wisconsin. The facilities are approximately 5 miles apart.

This grievance centers on a dispute over whether or not the Company violated the terms of the parties' labor agreement. It is the Union's claim that the new facility lacks a number of amenities, rising to the level of contractualized entitlements, available in the Home Base facility. The Union's claim in this regard is sweeping, but focuses on five general areas. The first is the loss of underground parking. Most employes at the Mineral Point Road site enjoy free underground secured parking. Engineering/Maintenance employes are on site to help change flat tires, jump start cars, and generally assist distressed motorists. The level of security is also high. Employes assigned to the World Trade Center park on surface lots, with reduced security and little, if any, employer provided and/or paid-for auto assistance. The second area is the loss of a subsidized cafeteria. The Company substantially subsidizes the cost of meals in its two Mineral Point Road site cafeterias. Those cafeterias are open during the bulk of the day shift and from 4:30 - 6:00 p.m. 1/ The Company has provided a catered cafeteria at the World Trade Center, but prices are somewhat higher to the employes and there are no hours available to second shift employes.

The third area of objection is the loss of exercise facilities. Exercise facilities at the World Trade Center facility are substantially smaller than those at the Mineral Point Road site. Hours are shorter, staffing levels lower, and there appears to be less equipment. The Company contends that the

1/ Second shift begins at 3:15 or 3:45 p.m.

facility was professionally developed for the employes assigned to the World Trade Center. It is smaller but services 450 people, whereas the Mineral Point Road facility services in excess of 2000. The facilities, on a per capita basis, are roughly equivalent and Middleton employes are able to use the Mineral Point Road facility.

The fourth area of concern is the lack of a smoking area at the World Trade Center. The owner of that leased facility will not permit smoking. Occupational Safety and Health Administration regulations would require separate ventilation for a smoking room and the building is not designed to accommodate such a system. Company officials say they continue to work on creating an area for smoking. At the Mineral Point Road building, both cafeterias allow smoking.

The fifth area of employe concern is the absence of medical facilities at the new site. The Mineral Point Road site has a staffed medical office, available to employes. No such facility is present at the World Trade Center, though the Company continues efforts in this area.

The Union claims compensation for the loss of these, and various other, employment benefits. That claim is driven by the parties' experiences in two other employe transfers to off site work locations. In 1989, the Company relocated approximately 200 employes from Headquarters to a building the Company had purchased on Old Sauk Trail in Madison. Employes expressed many of the concerns noted above relative to that move. The Union, in the person of Chief Steward Darlys Lawinger, engaged in discussions with the Company, in the person of Dan Davidson, over the move. Numerous problems arose, were addressed, and largely resolved. According to Lawinger, the parties negotiated a $100 per month off site differential. According to Lawinger, the $100 was for the inconvenience brought about by the lack of a cafeteria and underground parking. There is no exercise facility at Old Sauk Road, but employes continue to have access to the Mineral Point Road facility. Smoking is permitted on-site and there is no comparable medical office or staff. According to Davidson, there was no negotiation over the $100. Davidson testified that Company management made a unilateral and internal decision to give displaced employes $100 per month to offset the inconvenience of their new work site, and informed the Union of that fact. Management witnesses also testified that the $100 was for loss of cafeteria and underground parking.

In 1990 the Company moved 10-15 employes from Headquarters to a physically separate warehouse site. Lawinger, Davidson, Union Business Representative John Peterson, and Jeanne Leyda, Assistant Vice-President in Charge of Servicing, toured the new site. Lawinger asked if the Company intended to pay employes assigned to the warehouse the $100/month differential. Davidson responded that it intended to do so.

All employes, both bargaining unit and non-bargaining unit, have been paid $100 a month since their transfer.

ISSUE

The parties were unable to stipulate an issue.

The issue advanced by the Union is whether or not the relocation of employes to the World Trade Center caused a lowering of working conditions in violation of Article XIV, Section 2 or any other provision of the Collective Bargaining Agreement, and, two, if so, what is the appropriate remedy.

The issue as presented by the Employer is whether the failure of the Employer to provide an off-site allowance to the represented employes at the

World Trade Center violated the terms of the Collective Bargaining Agreement, and, if so, what should be the appropriate remedy.

RELEVANT CONTRACT PROVISIONS

PREAMBLE

WHEREAS, the parties hereto desire to cooperate in establishing conditions which will tend to secure to the Employees concerned, a living wage and fair and reasonable conditions of employment and to provide methods for fair and peaceful adjustment of all disputes which may arise between them, so as to secure uninterrupted operations of the office involved.

NOW THEREFORE, be it mutually agreed to as follows:

COOPERATION

The Union agrees for its members that they will individually and collectively perform loyal and efficient work and service, that they will use their influence and best efforts to protect the property of the Society, and that they will cooperate in improving and expanding the welfare of the Society.

The Society agrees that it will cooperate with the Union in the future as it has in the past promoting harmony among all of its Employees.

RECOGNITION

The Employer recognizes the Union as the exclusive bargaining representative for all employees located in the United States employed by the Employer under the Graded, Classified and Administrative and Professional pay categories but excluding all officers of the Employer, attorneys in the Office of General Counsel, confidential secretaries, field personnel and all members of the Management Staff performing the functions of Management, provided, however, that any Employees involved in offices other than Madison, Wisconsin; Pomona, California; Jackson, Mississippi; Metairie, Louisiana; and Bellevue, Washington, in pay categories equivalent to the above-indicated Graded, Classified and Administrative and Professional pay categories shall have the option to join the Union but shall not be required to join unless a majority of Employees in each such office **currently located in Lynfield, Massachusetts; Towson, Maryland; Albany, New York; Harrisburg, Pennsylvania; Minneapolis, Minnesota; St. Louis, Missouri; Indianapolis, Indiana; Salt Lake City, Utah; Dallas, Texas; Duluth, Georgia; Chattanooga, Tennessee; Arvada, Colorado; or other District Offices designated by the Employer;** request representation by the Union. Any office in any state with a right-to-work law shall be subject to such law.

ARTICLE XIV

NONDISCRIMINATION

SECTION 1. The Employer will not discriminate against an Employee because of his/her activity as a member of the Union.

SECTION 2. No clause in this Agreement shall be understood to imply any lowering of the working conditions heretofore existing in the office of the Employer.

ARTICLE XV

WAGES

. . .

SECTION 8. All questions of the salary structure changes for all Employees are to be settled by a Negotiating Committee of the Union with the Employer. Each such settlement approved by this Negotiating Committee and the Employer shall immediately become binding as part of this Agreement.

. . .

ARTICLE XIX

TRANSFER OF OPERATIONS

SECTION 1. Employees shall have the right to go with the Employer if such offices are moved to another city, without loss of any rights.

SECTION 2. Bargaining unit work will not be moved out of the offices currently performing that work without discussion with the Chief Steward of the Union.

POSITIONS OF THE PARTIES

It is the view of the Union that the Company violated the Collective Bargaining Agreement by lowering the working conditions of employes who it transferred to the World Trade Center. Article XIV, Section 2 is a Maintenance of Standards Clause. Such a clause protects established working conditions, even though those conditions are not specifically referred to in the Agreement and indeed may never have been the subject of formal negotiations. They guarantee that the floor on which the employes stand will not be eroded by unilateral actions of the Company. Indeed, the precise function of such clauses is to "contractualize" certain employe benefits which are not referred to in the contract.

The Union points to Hellenic Lines, Ltd. (39 LA 31) where Arbitrator Loucks interpreted the exact language found in this agreement as a Maintenance of Standards clause. That dispute involved another local of the OPEIU and in ruling for the Union, Arbitrator Loucks interpreted this same clause as follows:

> The purpose and intent of such a provision clearly is to forestall a "lowering of some one or more 'working

> conditions'" by a Company signatory to a labor agreement. Its intent is to prohibit the Employer from taking away some privilege, right or benefit which employes have enjoyed prior to the effective date of that Employer's first contract which he believes is no longer required of him by the specific terms of that contract. It is a catch-all provision which means that employes, under the first contract, are to retain all rights, privileges, and benefits they previously enjoyed, plus any new ones the first contract specifically provides for, unless, of course, an already existing right, privilege, or benefit is lowered by some specific provision in the first Agreement. . .

The Union claims that same construction is applicable to these same words and that the Company violated that construction and those words when it lowered the working conditions of its WTC employes by depriving them without compensation of underground, secure parking, subsidized cafeteria meals and certain other benefits.

The Union also points to Article XIX, Section 1. According to the Union, this provision is pertinent because the WTC move did involve the transfer of operations to another city (from Madison to Middleton). Under this provision, employes who exercised their right to go with the Employer on this move were entitled to do so without loss of any of their rights, including their right to maintain previously existing working conditions in the new location.

The Union argues that underground parking, subsidized cafeteria meals and certain other benefits were previously-existing working conditions within the meaning of Article XIV, Section 2. The broad, general language contained in Article XIV, Section 2 is emphatically not limited to specific contractual benefits or items negotiated by the parties and incorporated into a written document. All witnesses who were asked testified that employes had continuously enjoyed underground, secure parking and subsidized cafeteria meals for many years. Those benefits over the passage of time have become well-established as prevailing working conditions.

Until about 1986, the Company presented its employes with an annual "Employe Benefits Profile". Included in the list of the Company's "excellent benefit package" were various insurances and fringe benefits such as vacations and holidays. Also included was this reference:

> In addition the CUNA Mutual Insurance Group currently provides employes with the advantages of. . .cafeteria subsidy. . .parking. . .and a medical and exercise resource facility, all without cost to the employe.

The Company itself thus characterized these matters as benefits comparable to insurances and other traditional fringes. The Union cites arbitral authority where benefits similar to the ones at issue here were held to be working conditions protected by a Maintenance of Standards clause.

Certain working conditions were lowered as a result of the Company's transfer of employes to the World Trade Center. The Union's "bill of particulars" reads as follows:

> There is only outdoor surface parking at the World Trade Center. There is no security parking, i.e. there is open access to all the lots.

Unlike the headquarters building, there is no municipal bus service available to the World Trade Center.

Employes must pay themselves for jump-starts, tire changes and other assistance to disabled vehicles. The cost per call is $15 to $20 and none of the three stations is available at the time the second shift ends.

Even with the Company-provided discount at the World Trade Center cafeteria, all but two of the 25 typical food items cost more at the World Trade Center than at CUNA headquarters. An employe who eats daily at the World Trade Center cafeteria will pay about $211 more than an employe who eats daily at the CUNA cafeteria. With regard to scheduling, the World Trade Center cafeteria, unlike the CUNA cafeteria, is not even open for second shift employes.

The WTC gym is a single, moderate-sized room with some weights and exercise equipment, as opposed to the CUNA gym which has multiple, fully-equipped exercise areas, shower rooms and a track. The WTC room is small even when the smaller number of employes is considered. The Union did some calculations which demonstrate that there are fewer per capita square feet at the WTC room than there are at the CUNA facility. The WTC facility is staffed from 10:00 a.m. to 2:00 p.m. while the CUNA facility is staffed from 7:00 a.m. to 7:00 p.m. The WTC has no exercise classes, while CUNA has regular classes.

Personal security is a special concern at the WTC, where, for example, 58 of the 60 second shift employes are women. At the WTC there is one security guard for five floors, and no video monitoring of exits and entrances. At CUNA there are numerous patrolling security guards and the facility is fully video-monitored.

At the WTC, there is no medical clinic staffed by a physician and nurse. Thus, there are no scheduled appointments or physical exams as there are at CUNA.

At the WTC, there is no credit union branch for the many employes who belong to the credit union. Employes have to travel at their own expense to the headquarters to make a banking transaction. There is no operational TYME machine at the WTC.

At CUNA, there are two designated indoor smoking areas. At the WTC, there are none. The entire building is no smoking, and employes who wish to smoke must go outdoors.

The Company appears to suggest that because some things like break rooms and office equipment were allegedly better at the WTC that this makes up for the loss of the above benefits. In other words, there was an overall "balance" of benefits. The accuracy of this assertion is alleged to be dubious, since there have been major ongoing problems at the WTC. In any event it is settled that such a "compensating advantages" defense does not justify lowering of benefits when there is a Maintenance of Standards clause (Dane County, A/P M-84-244 (Kerkman, 1985)). Finally, the Union contends that the Company's good faith efforts to expedite and enhance the terms of the transfer is no defense to the exercise of its rights under the Maintenance of Standards clause.

As a remedy, the Union claims $100 per month per employe as a reasonable figure to offset losses incurred by employes involved in the transfer. The Union goes through a quantification of the value of the various lost benefits and totals near $100. The Union also cites the prior benchmark of $100 per month utilized in the last two transfers.

It is the position of the Employer that no bargaining occurred over the relocation of employes to the old Sauk Trail office facility, the American warehouse, or the World Trade Center. The Employer does not dispute that the Union had the right to engage in "effects" bargaining due to the three relocations, but, however, equally, it is the position of the Employer that bargaining never occurred in any of these three relocations and the Union waived its right to request and engage in "effects" bargaining connected with the three relocations and the Union-perceived lowering of benefits to the employes who were relocated. The Employer cites several NLRB decisions in support of its position that the Union has waived bargaining rights in this matter. The Employer makes reference to the discussions between Lawinger and Davidson, characterizing them as "conversations," "discussions," and distinguishing those characterizations from bargaining. These informal discussions are contrasted with the more formal negotiations periodically conducted between the parties.

The Employer claims that the failure of the Union to request formal bargaining over the allegedly lost benefits of employment calls into question the sincerity of the Union's contention that these benefits which were being lowered by the relocations were benefits required by the Collective Bargaining Agreement. It makes sense, argues the Employer, to assume that if the Union had felt that underground parking, subsidized cafeteria, medical facility, exercise facility, smoking rooms, etc., were "terms" of the Collective Bargaining Agreement that they would have requested formal bargaining and, after formal bargaining, the results of those benefits negotiations, including a relocation allowance, would have been delineated in a written agreement. No such agreement exists. The Employer points to the testimony of its witnesses for the proposition that the $100 relocation allowance given employes relocated to the old Sauk Trail building and the American warehouse was unilateral, and not the product of bargaining.

The Company argues that numerous requests were made by the Union to negotiate over the move to the World Trade Center. That despite these numerous requests and some meetings, the Employer advised the Union that the $100 monthly subsidy would not be paid and Mr. Hubing indicated that he lacked the authority to negotiate the $100 allowance. Other matters were raised and were essentially resolved. Hubing further testified, without contradiction, that he and McCarney (the new Chief Steward, who replaced Lawinger) agreed that the particular issue of the $100, or any allowance, would be set aside and addressed in arbitration. Had the Union really believed it was engaged in collective bargaining it had strong legal recourse to object to the Employer's, through Mr. Hubing, refusal to negotiate the subsidy allowance. It is the position of that Employer that, if the Union felt that the Employer was attempting to modify a provision of or change an established practice in the existing collective bargaining agreement, it was required to bargain the $100 allowance related to the World Trade Center and any other unilateral contractual changes that it felt were being made by the Employer. By not bargaining, the Union has conceded that these "benefits", about which it has grieved, are not "terms" covered by the parties' Collective Bargaining Agreement.

The Employer claims no violation of the collective bargaining agreement by refusing to provide the World Trade Center employes with the $100 off-site relocation allowance or with benefits exactly the same as, or similar to, benefits in effect at the Employer's headquarter complex. The Employer, citing authority, claims that it is the Union's burden of proof to demonstrate breach of contract by a preponderance of the evidence. In this dispute no specific provision of the collective bargaining agreement explicitly covers the benefits which are the subject matter of this arbitration. Additionally, argues the Employer, there is nothing in this record that suggests a mutually agreed-upon practice that would bind the Employer to the provision of these levels of

benefits following a move. Specifically, the $100 per month allowance did not exist as of the negotiation of the prior collective bargaining agreement. Furthermore, there was no bargaining that would lead the parties to a mutually agreed-upon $100 a month allowance in the absence of any particular benefit.

It is the Employer's view that Article XIV, Section 2 is not a Maintenance of Benefits clause. The clause is ambiguous. Read carefully, and literally, it makes no sense. Since the Union proposed the clause, it must bear the drafting difficulties.

The Employer was not obligated to provide the exact same benefits to employes who relocated to the World Trade Center as may have been in effect at the Employer's headquarters complex. The employes at the headquarters complex enjoy a subsidized cafeteria. The subsidy at the headquarters complex was at one time 33% of operational cost. As of the date of the arbitration hearing, that subsidy was 20.2%. Employes transferred to the World Trade Center are also beneficiaries of a cafeteria subsidy, in the amount of 25%. While, as postulated by the Union, there may be differences in the prices between the menus at the World Trade Center and the headquarters complex cafeterias, whether an employe would in fact pay more would depend upon that employe's individual eating habits. While there was testimony that the second shift employes as of October 14 do not have access to a cafeteria, it is equally clear that the Employer is addressing that particular situation to extend the hours of the cafeteria to make it available to second shift employes.

The second major issue relates to parking. The fact remains that not all employes at all times have enjoyed underground parking. What the employes have always had is free parking, either surface parking or underground parking. There is no factual dispute that the employes at the World Trade Center have free parking next to the World Trade Center. Even assuming this is a benefit that has achieved contract-level status, the Employer has done what it could to provide a similar benefit at the World Trade Center. What the Union forgets in all of this is that it is simply not possible to provide employes with the exact same benefits in a relocation situation, nor is the Employer obligated to do so under arbitration case law.

The exercise facility was another area the Union believed the Employer had reduced a benefit, again a benefit that is not covered by any provision of the Collective Bargaining Agreement. Employes at the Old Sauk Trail building and the warehouse do not have an exercise facility. That lack of an exercise facility was a non-issue and had nothing to do with the allowance paid to the employes who moved to those particular facilities. In fact, the Employer went to the expense of providing an exercise facility in the World Trade Center. In the Employer's eyes, given the disparate number of employes at the respective worksites the World Trade Center exercise facility approximates that found at the headquarters complex.

The Employer is attending to the lack of medical facilities and a smoking area at the World Trade Center. Similarly, the Employer continues to work on the provision of free service for employes who experience car problems. The Employer characterizes many of the complaints brought forward by the Union as petty. It believes that the Union has ignored the fact that the Employer has moved its employes into a first-class building, albeit one with new building problems. It has made a good-faith effort, in fact at times a Herculean effort, to provide first-rate surroundings to its employes.

DISCUSSION

Five articles of the contract are cited by the grievance and/or union brief as having been violated. Four of those claims can be dismissed with

relative ease. Both the Preamble and Cooperation Provisions are proclamations of good faith. To construe either as requiring compensation of a specified amount under these varying circumstances is to inflate their substantive meanings. Such would not be a reasonable construction of the words used by the parties. Article XV, Section 8 refers to salary structure, and as such, appears to refer to Exhibits A, B, C, Represented Salary Structure. Differential monies were paid on the basis of physical location and not on the basis of occupation or pay grade. I do not believe a salary structure change occurred here.

In its brief, the Union points to Article XIX, "Transfer of Operations", in support of its position that employes are entitled to compensation. Read literally, that Article, particularly Section 1, indicates that employes carry rights with them if their offices are moved to another city. I do not regard that Article as dispositive of this issue. While it is true, that the employes were transferred to Middleton, Wisconsin from Madison, Wisconsin I do not believe that transfer falls within the meaning originally attributed to the section in question. At the time of the negotiation of the contract the Employer did not have a satellite located in Middleton, Wisconsin. I believe that Article XIX must be read in conjunction with the Recognition Clause which sets forth the various cities around the country in which the Employer operates. It appears to me that the parties made reference to the then-existing worksites in the crafting of Article XIX. While it is true that Middleton is a city separate and distinct from Madison it is further true that the distance from the headquarters site to the Middleton satellite is a distance of five miles. What has occurred is that suburban Middleton and suburban Madison have grown into one another. I simply do not regard Article XIX, Section 1 as a "Maintenance of Standards" clause applicable to a move within the same metropolitan area.

I believe Article 14, Section 2 lies at the core of this dispute. I do regard that article as a Maintenance of Standards provision. On its face, it preserves existing working conditions. I do not regard the disagreement over whether or not the $100 per month was negotiated to be meaningful. The contract does not preserve only those working conditions which have been "negotiated". The experience of the parties is that, prior to the World Trade Center transfer, there had been two transfers of unit employes away from the Mineral Point Road worksite. On both occasions, all affected employes had been compensated $100 per month for the loss of Mineral Point Road amenities. All parties testifying agree that the $100 was intended to compensate for loss of underground parking and subsidized cafeteria.

To me, certain consequences follow from the prior transfers. Certain benefits pointed to by the Union have been subordinated to certain other benefits. Specifically, the loss of exercise facilities and medical facilities have been economically subordinated to the parking and cafeteria benefits. Neither the Old Sauk Road nor the warehouse had either exercise or medical facilities. No witness attributed any compensation to the loss of either of these. All parties indicated that the $100 per month was to compensate employes for loss of cafeteria and underground parking benefits. Even more specifically, all witnesses allocated the $100 evenly between the two benefits. It does not appear that smoking was previously impacted. However, testimony indicated that the Company continues to make efforts to secure smoking quarters for its World Trade Center employes.

What I am left with is two characterizations of an arrangement. From the Union's perspective, the parties struck a deal which called for $100 a month for the loss of cafeteria and indoor parking. That deal permitted the reduction of benefit levels in the areas of exercise facilities and medical facilities. From the Company point of view, it (the Company) unilaterally

determined to compensate employes for loss of cafeteria and parking and not for the other two. The Union acquiesced (i.e. failed to invoke its right to bargain). However characterized, the arrangement is the same. The $100 a month represents a jointly embraced liquidated damages payment for the loss of cafeteria and underground parking. The contractual entitlement is the availability of underground parking and a subsidized cafeteria. Those are the benefits protected by the Standards Clause of the labor agreement. In my view, by agreement or acquiescence, the parties have established $100 per month as appropriate compensation for the loss of these benefits. My task is to derive the intent of the parties as expressed by their words in the contract and their actions in interpreting those words. I am hardly free to ignore the $100 per month.

The Employer explains the initial $100 per month subsidy as a unilateral business-driven initiative. According to the Employer, the initial concern of management in the Old Sauk Trail relocation was whether people involuntarily moved to Old Sauk Trail would bid back to the headquarters complex because they felt they were losing something by moving off-site. Further, one of the first groups to be moved were employes involved in handling employe benefits claims, and management was concerned that if these highly-trained employes bid back to the headquarters complex, business might suffer. The Employer then developed an off-site subsidy or relocation allowance in the amount of $100, which was primarily to address two things the employes would not have in the Old Sauk Trail building: a cafeteria and underground parking.

I accept the premise that the Company was motivated by its concern that substantial employe bids back into the headquarters complex would adversely affect its business in the formulation of the $100. That fact leaves unaddressed the virtually automatic extension of the $100 subsidy that arose during the warehouse move. There has been no claim that employes sent to the warehouse had similar skills and critical placement as did the employes sent to the Old Sauk Trail building. This automatic extension of the benefit to the warehouse move lends support to the notion that the money represented compensation for lost amenities. It is inconsistent with the view that the money served the sole narrow business purpose of discouraging costly transfer of key personnel.

The Employer complains that the Union had a forum to address this dispute. That forum, argues the Employer, is collective bargaining. In the Employer's view, the Union should have come forward with proposals and negotiated those proposals with respect to the impact of the relocation to the World Trade Center. The Employer argues that having waived its opportunity to do so, the Union has waived its entitlement to compensation of any sort attaching to this move. That assumes that there is no contractually enforceable agreement with respect to the value of the lost amenities. To the contrary, I find that the parties had essentially liquidated the value of the lost cafeteria and lost parking in two prior incidents. The Union had no obligation to come forward and bargain under these circumstances. Whether by negotiation or by tacit understanding, the Union had an agreement. That agreement was for the Employer to liquidate the value of the lost cafeteria and the lost underground parking in an amount equal to $100. I find no waiver attaching to the failure of the Union to come forward and bargain over these matters.

The Employer argues that the $100 allowance is not a benefit within the meaning of the terms of the contract in that it did not exist as of the renegotiation of the existing agreement and therefore cannot be a benefit preserved by the Maintenance of Standards clause. I agree with the Employer's

factual assertion that the $100 allowance did not exist as of the time the parties renegotiated their agreement. However, cafeteria benefits and underground parking did exist as benefits as of the renegotiation of the parties' labor agreements. It is those benefits that are preserved by the Maintenance of Standards clause. In the absence of those benefits, I regard the parties as having agreed to liquidate the loss of those benefits in an amount equal to $100 per employe per month.

In the move to the World Trade Center, the Company decided not to provide the $100 differential. It appears that the Company viewed the World Trade Center as an upscale facility with amenities, including a subsidized cafeteria, that offset those lost. In my view, Article 14, Section 2 does not permit the Company to unilaterally make the trade-offs that are implicit in its decision. Underground parking, particularly in a Wisconsin winter, is a significant employment benefit. Parking security is an equally significant benefit to a predominantly female work force arriving or leaving after dark. Whether negotiated or not, it fits comfortably within Article 14, Section 2's scope. While larger break rooms may or may not be an equitable trade-off for the loss of such parking, that is a matter for negotiation and not for unilateral Company determination.

AWARD

The Company has violated Article 14, Section 2.

RELIEF

Parking

All testimony indicates that $50 a month was provided to all employes at Old Sauk Trail and the warehouse for loss of underground parking. The Company has simply failed to provide indoor parking. Effective July, 1991, the Company owes all World Trade Center employes $50 per month for the loss of underground parking.

Cafeteria

The Company has provided cafeteria facilities at the World Trade Center. The prices are subsidized by 25%, i.e., the Company pays 25% of the cost of meals. Those meals are on balance more expensive than those served at the Mineral Point Road Headquarters. However, the record shows that the level of company subsidy at Mineral Point Road has dropped from approximately 33% at one time, to a current subsidy of 20%. According to Company witnesses, this is pursuant to a conscious decision to lower that subsidy. The Company subsidy is actually a greater percentage of the cost of serving the food at World Trade Center. Given the economy of scale or whatever other factor(s) drive the World Trade Center cafeteria prices, both the employe and employer pay more for food at the World Trade Center. I believe the Company has achieved rough equity with respect to first shift employes at the World Trade Center. That being the case, the underlying basis for the cafeteria portion of the differential does not exist for first shift employes.

The story is different for second shift employes. The cafeteria is not open during any portion of their work shift. At Mineral Point Road, the cafeteria is open from 4:30 - 6:00 p.m. To these employes, the benefit has been eliminated. I believe the Company owes these employes a $50 per month cafeteria differential, retroactive to July, 1991. The Company is free to terminate this differential at such time as it replicates the Mineral Point Road cafeteria hours for these employes.

In summary, I find that all World Trade Center employes are entitled to a $50 per month parking differential and that second shift employes are entitled to an additional $50 per month differential until such time as the Company replicates the Mineral Point Road cafeteria hours at its World Trade Center cafeteria. Differentials are retroactive to July, 1991, the date the grievance was filed.

Dated at Madison, Wisconsin this 30th day of January, 1992.

By William C. Houlihan /s/
William C. Houlihan, Arbitrator

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