BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between GREEN BAY BOARD OF EDUCATION (FOOD SERVICE) EMPLOYEES UNION, LOCAL 3055A, AFSCME, AFL-CIO and affiliated with the WISCONSIN COUNTY AND MUNICIPAL EMPLOYEES and BOARD OF EDUCATION, GREEN BAY AREA PUBLIC SCHOOL DISTRICT	Case 185 No. 53595 MA-9395

Appearances:

Mr. James E. Miller, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 936 Pilgrim Way, #6, Green Bay, Wisconsin 54304, appearing on behalf of Green Bay Board of Education (Food Service) Employees Union, Local 3055A, AFSCME, AFL-CIO and affiliated with the Wisconsin County and Municipal Employees, referred to below as the Union.

Mr. William G. Bracken, Coordinator of Collective Bargaining Services, Godfrey & Kahn, S.C., Attorneys at Law, 219 Washington Avenue, P. O. Box 1278, Oshkosh, Wisconsin 54902-1278, appearing on behalf of Board of Education, Green Bay Area Public School District, referred to below as the Employer.

ARBITRATION AWARD

The procedural history of this case is set forth in MA-9395 (McLaughlin, 4/96). In that decision, I determined that the grievance filed on behalf of Juanita Fruzen was arbitrable. Hearing on the grievance was held in Green Bay, Wisconsin, on April 4, 1996. The parties filed briefs and reply briefs, the last of which was received by the Commission on June 10, 1996.

ISSUES

The parties did not stipulate the issues for decision. I have determined the record poses the following issues:

Did the Employer violate Appendix 2 of the collective bargaining agreement by not offering the Grievant a choice between the Pirlot and Flom vacancies?

If so, what is the appropriate remedy?

RELEVANT CONTRACT PROVISIONS

AGREEMENT

. . .

Whereas, in order to increase general efficiency; to maintain the existing harmonious relations; to promote the morale, well-being and security of said employees; to maintain a uniform minimum scale of wages, hours and conditions of employment; to promote orderly procedures for the processing of any grievances; to ensure a proper and ethical conduct of business and relations between the Employer and the Union; to that end have reached the Agreement.

. . .

ARTICLE II

MANAGEMENT RIGHTS

The Employer, on its own behalf, hereby retains and reserves unto itself all powers, rights, authority, duties and responsibilities conferred upon and vested in it by the laws and the constitutions of the State of Wisconsin and of the United States, including the rights:

1. To the executive management and administrative control of the system and its properties and facilities;

2. To . . . subject to the provisions of law and this Agreement . . . transfer all such employees;

3. To determine hours of duty and assignment of work;

. . .

5. To manage the work force . . .

The exercise of management rights in the above shall be done in accordance with the specific terms of this Agreement . . .

The exercise of the foregoing powers, rights, authority, duties and responsibilities by the Employer, the adoption of policies, rules, regulations and practices in furtherance thereof, and the use of judgment and discretion in connection therewith, shall be limited only by the specific and express terms of this Agreement and Wisconsin Statues (sic), Section 111.70, and then only to the extent such specific and express terms are in conformance with the Constitution and laws of the State of Wisconsin and the constitution and laws of the United States.

. . .

ARTICLE VII

SENIORITY

The Employer agrees to the seniority principle.

Seniority shall be established for each employee and shall consist of the total calendar time elapsed since the date of h/er employment. Seniority rights terminate upon discharge or quitting.

In the event of lack of work or lack of funds, employees shall be laid off in inverse order to the length of service and the last employee laid off shall be the first to be called back from such layoff . . .

APPENDIX 2

. . .

IN SCHOOL MOVE-UP LIST
(Secondary Schools and Prep Center Only)

Employees willing to temporarily assume a position of more hours than their regular position within their school shall sign that school's

list. Each school shall submit a list once per year to the Food Service Director.

1. Seniority within the school shall apply in assigning these hours.
2. Employees transferring into a school shall be immediately eligible to sign the school list.

EXTENDED HOURS LIST

Employees willing to temporarily assume a position of more hours than their regular position at a different work location shall sign this list.

Assignments shall be made based on seniority to employees qualified to assume the position. The In-School Move-Up list shall apply prior to filling a vacancy with the Extended Hours List.

1. Vacancy must be six (6) consecutive workdays or more.
2. The regular hours of the employee assigned must be less than the hours of the vacant position.
3. The employee assigned must be able to work the full duration of the vacancy period.
4. Refusing a position three (3) times upon being called shall result in removal of the employee's name from the list.

BACKGROUND

The grievance, filed on January 25, 1995, 1/ states the following as the relevant factual background:

> (The Grievant) was not offered an extended hours position according to her seniority. She was offered a 6 hour position guaranteed for only 2 weeks and not a 5.25 hour position guaranteed for six weeks. According to her seniority, she should have had her choice of positions and she didn't.

1/ References to dates are to 1995, unless otherwise noted.

The grievance form states the following as the relevant contractual violation:

> Management failed to follow the "Extended Hours" list set up and agreed upon by both sides -- Appendix 2 of our contract.

The Employer had an extended hours call-in procedure before any procedure was codified in the labor agreement. The procedure was first codified in the 1992-94 labor agreement.

The list of volunteers comprising the Extended Hours List is typically updated early in each school year. The list can be supplemented during the school year. The Employer and the Union agreed to recreate the Extended Hours List in early January, and agreed to make the list effective on January 23. The January 23 Extended Hours List reads thus:

EXTENDED HOURS

1 . . . Bev Speeschneider	69-01-02		6.0
2 . . . Lori Dombroski	86-09-16-1		5.25
3 . . . Kathleen Verheyden	88-10-10		4.0
4 . . . Debbie DeNoble	89-10-02		5.5
5 . . . Juanita Fruzen	91-10-21	3.5	
6 . . . Mary Willemon	93-03-02-1		3.0
7 . . . Diane Dimmer	93-08-24	3.5	
8 . . . Nancy Vanness	93-10-11	3.5	
9 . . . Kay Moore	93-11-01		3.0
10 . . . Eugenia Hocking	94-11-16-2		3.0
11 . . . Jane Stencil	94-11-16-5		3.0

Laurie Taylor is employed as a Food Service Secretary, but is a member of a clerical bargaining unit, not a member of the Food Service bargaining unit. She has been responsible for calling in employes from the Extended Hours List for roughly the past three years.

The Employer does not maintain written rules governing Extended Hours List call-ins. Taylor learned call-in procedures from the predecessor in her position. Taylor noted that she follows the procedures set forth in Appendix 2 regarding Extended Hours, but has developed additional procedures to make the process more efficient. For example, she does not necessarily fill a vacant position as soon as she is aware of the opening. She noted that where she has two weeks' or more notice of an opening, she will typically wait before filling the open position. She does so because she has found that filling a position too early may require further changes since events between the notice of a vacancy and the actual staffing of the vacancy may create new

vacancies to be filled, or may alter the availability of employe volunteers and substitutes. She also noted that once an employe from the Extended Hours List accepts an extended hours position, the employe is not called again regarding openings which may arise during the term of the position the employe has accepted. Beyond this, she noted that she treats each extended hours vacancy as an independent event to be filled in the order of need, by date and time, for the position.

The roots of the events prompting the grievance can be traced to October of 1994. At that time an employe occupying a seven hour position left work for a long term medical leave. Mary Pirlot, then in a six hour position, moved into the temporarily vacant seven hour position. This left Pirlot's six hour position vacant for that period. Kathy Verheyden, then a four hour employe, moved into the six hour position vacated by Pirlot. The following January, Verheyden successfully bid for another position which she was scheduled to start on Monday, January 23. This left Pirlot's six hour position again vacant. Pirlot was not expected to come back into the position for another three weeks. On January 19, Taylor was informed of the need to again fill Pirlot's six hour position.

On or about January 17, Marlene Flom advised Taylor that she was scheduled for surgery on January 23, and would be unavailable for work from January 24 through her recuperation. Flom worked in a 5.25 hour position, and anticipated needing from four to eight weeks of recuperation after the surgery. Flom informed Taylor she would rather not have the surgery become common knowledge until necessary.

Taylor decided, on January 19, to fill at least the Pirlot vacancy. She expected to take Friday, January 20 off on vacation and knew that Prep Center and Elementary School Food Service workers would also be off that day. She thought she could reach In House and Extended Hours List employes on January 19 and believed filling the vacant position would make the following Monday less hectic.

She knew that the Employer and Union had agreed to a new Extended Hours List, and called Mary Collard, the Union's Secretary, to obtain the new list. After obtaining the list, she began the process of filling the Pirlot vacancy. She did this because that vacancy opened on January 23 at 5:30 a.m., while the Flom vacancy opened on January 24 at 5:00 a.m.

Taylor first attempted to fill the Pirlot vacancy with an In-House move. She could not do so. She then went to the Extended Hours List. Dombroski was the most senior employe on the list who would benefit from the hours. Dombroski had, however, already declined the position as an In-House move up. Verheyden's unavailability has been noted above. DeNoble, the next most senior employe on the list, had, like Dombroski, already declined the position as an In-House move up. Taylor could not reach the Grievant by phone. Willemon was already on an Extended Hours move-up. Dimmer declined the offer. Taylor filled the Pirlot opening when Vanness accepted the offer. Taylor then made four more calls in an attempt to fill the Vanness position. She could not do so, and was compelled to call in a substitute. This completed her effort on January 19 to fill the Pirlot vacancy. Taylor estimated this process took roughly one to one and one-half hours.

Taylor then decided to fill the Flom vacancy. She had already contacted the bulk of the people she knew she would have to contact to fill the vacancy. She followed the same procedure, ultimately finding that Dimmer was willing to accept the offer of the Flom vacancy. She then

made four more calls in an unsuccessful attempt to fill Dimmer's position. She then

found a substitute to fill in for Dimmer, and arranged for the substitute to observe Dimmer on January 23 before filling in for her on January 24. This process took roughly the same amount of time as filling the Pirlot vacancy had required.

Believing her work was complete, Taylor took January 20 off. She was not home during that weekend until Sunday afternoon. On returning home, she noted that Collard had left a message on her answering machine. Taylor returned Collard's call. Collard informed Taylor that the Union had determined that each employe on the Extended Hours List had to be contacted before an employe with less seniority could be offered a move-up. Taylor had, until this conversation, followed a "15 minute rule." She would leave a call-back message at an employe's residence, wait fifteen minutes, then proceed down the list if the employe had not returned the call. Taylor, fearing a grievance or bad feelings if she continued her prior policy, redid the Extended Hours List call-in on her own time.

After about four hours, Taylor had again filled the Pirlot and Flom vacancies. She again filled first the Pirlot vacancy, then the Flom. While filling the Pirlot vacancy, Taylor succeeded in reaching the Grievant, who accepted the offer. Dimmer ended up with the Flom vacancy.

Taylor did not offer the Grievant or any other employe a choice between the Pirlot and Flom vacancies. She stated that she has consistently not offered employes a choice of vacancies.

Debra DeNoble is the Union's Vice-President and Chief Steward. She works for the Employer's Food Service. She testified that when the Employer learns of a vacancy within twenty-four hours of the time an employe was to start a move-up on a different vacancy, the employe would be offered a choice between the vacancies. Taylor was unaware of any such policy. DeNoble stated she recalled that this policy had been followed, but could not recall any specific examples.

Further facts will be set forth in the DISCUSSION section below.

THE PARTIES' POSITIONS

The Union's Initial Brief

The Union states the issues for decision thus:

> Did the employer violate the contract when (the Grievant) was not offered a choice between two available extended hour positions in accordance with the provisions of Appendix 2 of the collective bargaining agreement and practices of the department as to how

such positions are assigned? If so, what is the appropriate remedy?

After a review of the evidence, the Union notes that the "first consideration in offering an extended hours position is whether the open position would benefit the individual by providing more hours and/or pay." Typically, such openings are filled in the order in which they need to be filled "due to the fact that openings generally occurred one at a time." The Union asserts that where more than one position opens within a twenty-four hour period, the District has, in the past, allowed the most senior employe to choose between the positions. This practice honors the principle of seniority and the guiding consideration of Appendix 2.

This grievance is unique, the Union asserts, because the District was aware of two openings before either had been filled. Because the Grievant was not permitted to choose between these openings, the Union concludes that she was denied her contractual seniority rights.

Noting that Taylor undertook two call-ins to fill the available openings, the Union asserts that a review of her account demonstrates no reason, "(o)ther than the District's argument that they only fill positions in the order that they begin to be open," why employes cannot be "allowed to indicate their preference for either position during a call-up when both positions were unfilled." Taylor did not feel obligated to make such an inquiry, and the Union concludes "there is no logical reason not to ask each person by seniority if they were interested in any of the positions." The Union contends that this places no undue burden on the District, which must fill both positions in any case.

Accepting the District's interpretation violates employes' seniority rights under Article VII, and defeats the purpose of the Extended Hours list, which is "to permit employees to better themselves by temporary transfers to positions in other schools . . ." Accepting the District's contention that "it must have efficiency in how it fills these positions" constitutes, according to the Union, "pure rationalization after the fact." The two call-ins made in this case did no more than assure "all employees had a chance to know what job or jobs were open." Denying the Grievant the choice between these jobs denied her contractually provided seniority rights for no logical purpose. The Union concludes that "the District has violated the contract and that the grievant . . . should be made whole."

The Employer's Initial Brief

The Employer states the issues for decision thus:

> Were (the Grievant's) seniority rights violated, pursuant to the 1994-96 Master Agreement, Appendix 2, Extended Hours List, when the Employer removed her name from further consideration for filling the Flom vacancy after (the Grievant) had accepted the

> Mary Pirlot extended hours vacant position? If so, what is the appropriate remedy?

After a review of the evidence, the Employer contends that Article II states a broad pool of rights reserved to management and limited only by the express terms of the labor agreement. The Employer also notes that the Preamble to the agreement stresses the significance of increasing efficiency. The ultimate effect of these provisions, according to the Employer, is that it is granted broad latitude to establish procedures to promote the efficiency of District services. It follows, according to the Employer, that any gaps in contractual coverage fall to the Employer to fill through the exercise of its management authority. The Employer contends that arbitral authority underscores the wisdom of resisting "the temptation to legislate contractual terms."

The choice advocated by the Union has, in the Employer's view, no express contractual basis. Appendix 2 is detailed in its procedures, yet silent on the choice advocated by the Union. This demonstrates, according to the Employer, that the Union could have bargained the procedure it advocates, yet failed to do so. It follows that adopting the Union's view of the agreement would grant the Union through arbitration a benefit it failed to gain in negotiation.

Evidence and testimony establish that "each vacancy has been treated as an independent event." This procedure, the Employer avers, avoids the "'domino effect' of filling vacancies and the administrative inefficiencies that would result if each vacancy were not treated independently." From this, the District concludes that the Grievant's acceptance of the Pirlot position automatically disqualified her from consideration for the Flom position.

Taylor's testimony demonstrates the depth of the Employer's good faith effort to implement Appendix 2. On Collard's request, Taylor filled the positions twice, once on her own time. Beyond this, Taylor used the new Extended Hours List. Had she continued to use the old list, the Grievant would not have been considered for either opening.

The Employer then contends that Taylor's and Wilson's testimony establish that it has never offered an employe a choice between positions. DeNoble's testimony on the point lacks detail and should, the Employer urges, not be credited. Extending choice to employes would, in any event, only draw the Employer into the impossible task of determining the relative merits of a position or positions to individual employes. Viewing the record as a whole, the Employer concludes "the grievance must be denied."

The Union's Reply Brief

The Union challenges the Employer's general statement of the source of its authority. The Employer's view "loses sight of . . . the day to day administration of a contract." This process is

"often the result of the parties' interaction, interpretation and reinterpretation of the terms of that agreement." Such fine tuning is apparent in this case regarding Taylor's interaction with food service management and with Collard. The "good faith" cited by the Employer is a reflection of this ongoing interaction. The Employer's view of the contract is too rigid to reflect this reality.

Contrary to the Employer's assertion, the agreement and the parties' practices make the valuation of a particular position a simple process. The "only criteria to be used by either the District or the individual is the monetary increase from their original status." Beyond this, the "domino effect" cited by the Employer "is really just a smoke screen." Taylor's testimony indicates, at most, that the filling of vacancies can potentially involve a number of moves. An examination of the moves necessary to fill the two positions at issue demonstrates, however, that the process need not be unduly complex. On the first round regarding the Pirlot position, Taylor had only to offer the position to four staff at Preble and then resort to the Extended Hours List to fill only two positions. On the first round regarding the Flom position, Taylor had to make only one call. On the second round, Taylor had to make only one call to fill the Pirlot position, and six more before the Grievant's position was filled by a substitute. Filling the Flom position on the second round required no additional calls. Even if this process is considered complex, the Union urges that affording the Grievant a choice in positions would not have added any more complexity to the process: "There is no reason, based upon the description of how these positions are now filled, to believe that offering a choice between positions would have resulted in any more positions having to be offered by the District than they did in the instant case."

Beyond this, the Union notes that the facts posed here are atypical and could potentially have been avoided had the Employer acted to fill the vacancies on different dates. Because the Employer was aware of two openings when it applied the Extended Hours List to the Grievant, it was obligated under Article VII and Appendix 2 to offer the Grievant a choice between those positions.

The Employer's Reply Brief

The Employer initially challenges the Union's position that "greater financial gain" can be considered the defining criterion of what position the Employer is obligated to offer to employes on the Extended Hours List: "This is not the standard that is found anywhere in the Master Agreement."

The Employer then challenges the assertion that it has offered employes a choice of positions where two positions become available within a twenty four hour period. DeNoble's testimony is "not credible" and may reflect "an in-house move up, not an extended hours move up." Beyond this, the Employer notes that the Union's position fundamentally ignores that the Employer assigns each position a priority in filling multiple openings. This makes each opening, without regard to when it opens, "a separate, distinct and independent event."

The Union also inaccurately asserts that the Grievant was not contacted on the first round of calls. The Employer contends that a more accurate view is that the Grievant was contacted, but was unavailable. It would be, the Employer argues, unreasonable to expect the Employer to wait indefinitely for an employe to become reachable by phone. Beyond this, the Employer contends the assertion that there is no logical reason to deny employes a choice ignores that there

is no contractual requirement to do so. If the point is considered in doubt, the Employer argues "(b)usiness necessity and operational efficiency require that each extended hours position be filled before moving on to the next one."

The circumstances surrounding the second round of calls offer, according to the Employer, no assistance in interpreting the agreement. The assertion that two positions were open at the same time is itself misleading. One of the positions opened on a Monday, the other on a Tuesday. The Employer's filling of the positions as separate events recognizes this fundamental fact. The Union's view does not. Beyond this, the Union's interpretation ignores Taylor's good faith efforts to fill the positions and seeks to impose on the Employer a call-in procedure which is an administrative nightmare.

DISCUSSION

I have adopted issues for decision which seek to avoid the broader implications of the issues stated by the advocates. The Union's view seeks to call into play the "practices of the department." The Employer's view is more narrowly focused on the contract. That focus is, however, enlarged considerably by its "reserved rights" analysis.

The issue I have adopted focuses on Appendix 2. Article VII states the Employer's general recognition of the "seniority principle." The specific language of the article deals, however, with layoff and recall. Appendix 2 specifically states "seniority" governs Extended Hours List call-in "(a)ssignments." The generality of Article VII coupled with the express statement of seniority in Appendix 2 means Article VII adds nothing of independent significance to the interpretation of Appendix 2.

Arbitral authority is rooted in the parties' agreement. First and foremost, this agreement is the written contract executed by them. To the extent the contract is unclear, the most persuasive guides to the resolution of ambiguity are past practice and bargaining history. Each derives its persuasive force from the agreement manifested by the conduct of the parties whose intent is the source and the goal of contract interpretation.

The language of Appendix 2 favors the Employer's interpretation. That language cannot be considered clear and unambiguous, but there is no evidence of past practice or bargaining history sufficient to make the Union's interpretation more persuasive than the Employer's.

Each party acknowledges that the most striking feature of the language of Appendix 2 as it applies to this grievance is that it does not mention what should happen when more than one vacancy is filled. The parties argue this indicates a gap which should be filled by either "reserved rights" or by "departmental practice."

It is not, however, necessary to resort to these broad concepts to note that Appendix 2 uses the singular to refer to the "vacancy" or "position" to be filled through the call-in process. The reference to "a position" in the first paragraph can be ignored because an employe can fill only one position at a time. The first sentence of the second paragraph uses the plural term "(a)ssignments" to refer to openings. This plural reference appears, however, to denote only that every assignment is to be filled through the same procedure. That the sentence ends with a singular reference to "the position" underscores this point. Each sentence which follows refers to either a "vacancy" or a "position" in the singular.

The significance of the use of the singular is that the process set out in Appendix 2 deals not with choice between multiple positions but with how each individual vacancy is filled. The use of the singular underscores the Employer's assertion that vacancies are filled as separate events, one position at a time. In this case, on each call-in, Taylor filled the Pirlot vacancy first, then the Flom. The choice sought by the Union appears more an unintended by-product than a function of an understanding between the parties.

There is no persuasive evidence of past practice or bargaining history to undercut a conclusion that the language of Appendix 2 favors the Employer's interpretation. Wilson noted the parties did not discuss the issue of employe choice between vacancies during the bargaining process. DeNoble testified that choice has been afforded employes in limited circumstances. This testimony cannot, however, support finding a binding past practice, since she could recall no specific instances of such a practice. Taylor's testimony precludes finding that the Employer participated in such a practice. She noted she has not, in the past three years, offered the choice asserted by DeNoble. It may be that the Employer, at some point in the past, afforded employes a choice. On this record, however, it is impossible to conclude that the practices shared by the parties manifest an agreement that employes should be afforded a choice between vacancies where the Employer is aware of more than one vacancy prior to an employe moving up to an Extended Hours List vacancy.

In sum, there is no basis to support the finding of a contract violation when Taylor filled the Pirlot and Flom vacancies as separate events. Once the Grievant accepted the Pirlot vacancy, she was no longer available for the Flom vacancy.

Before closing, it is necessary to tailor this conclusion more closely to the parties' arguments. It should be stressed that this conclusion does not turn on employment based policy. The Union persuasively notes that adding employe choice does not necessarily make the cumbersome call-in procedure appreciably worse. Whether this is the case or not, the determinative point here is that the language of Appendix 2 favors the Employer's view.

It can accurately be noted that treating each vacancy as a separate event still would have put the Grievant in the Flom position if the Flom and Pirlot vacancies had been filled in the order the Employer became aware of them. There is, however, no contractual basis to compel the

Employer to so fill vacancies. The "seniority principle" of Article VII and Appendix 2 has no demonstrated applicability when a vacancy is filled. It would appear that Article II addresses this point to the extent the contract addresses it at all. That provision is broad enough to permit the Employer to fill vacancies on the basis of need at the point determined by the Employer to be the most efficient.

The Union's contention that a labor agreement is a living document, which must be considered flexible enough to incorporate an ongoing dialogue which can itself produce binding understandings is persuasive. It must be stressed, however, that the arbitration process focuses not on what the parties can permissibly do but on what an unwilling party to the agreement can be compelled to do. That compulsion must rest on the parties' mutual intent. That mutual intent must in turn be rooted in contract language standing alone or as supplemented by evidence of conduct manifesting mutual agreement. Evidence of practice in this case is inconclusive. The practice noted by DeNoble appears to be rooted in the distant past, in circumstances sufficiently dated to be undefinable at the present time. Taylor's testimony establishes that the Employer has not agreed for at least the past three years to offer employes a choice between positions. There is no persuasive basis for the compulsion the Union seeks in this grievance. It may be that Taylor and Collard could have developed a procedure which incorporated employe choice into the call-in process. Until such a process was recognized or repeated to the point it became a known and mutually accepted part of the work environment, it would not be enforceable through arbitration.

Whether the seniority principle of Article VII or Appendix 2 can compel employe choice between positions which open on the same date and at the same time is not posed on these facts. The facts posed here offer a dubious basis to compel the choice sought by the Union. Had Taylor chosen to fill each vacancy the day before the vacancy opened, the grievance would not have arisen. If an award were to be issued affirming the grievance, the result could be easily avoided in the future by filling multiple vacancies at different times. Beyond this, the Grievant arguably could have secured the Flom vacancy simply by asking Taylor if more than one slot was to be filled, then by refusing the Pirlot vacancy. In any event, the choice sought by the Union must be won at the bargaining table before it can be enforced in arbitration.

AWARD

The Employer did not violate Appendix 2 of the collective bargaining agreement by not offering the Grievant a choice between the Pirlot and Flom vacancies.

The grievance is, therefore, denied.

Dated at Madison, Wisconsin, this 6th day of September, 1996.

By Richard B. McLaughlin /s/
Richard B. McLaughlin, Arbitrator