BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

MASON SHOE COMPANY

and

BOOT AND SHOE WORKERS, LOCAL 268, AFL-CIO, chartered by UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION

Case 1
No. 59456
A-5901

Appearances:

Ms. Linda A. Wilson, Counsel, UFCW, Local 268, P.O. Box 126, Chippewa Falls, Wisconsin 54729, on behalf of the Union.

Mr. Richard Johnson, Vice-President, Human Resources and Operations, 1251 First Avenue, Chippewa Falls, Wisconsin 54729, on behalf of the Company.

ARBITRATION AWARD

Pursuant to the terms of the 2000-2003 collective bargaining agreement between Mason Shoe Co. (Company) and Boot and Shoe Workers Local 268, AFL-CIO (Union), the parties requested that the Federal Mediation and Conciliation Service furnish a list of seven qualified arbitrators (pursuant to Article VIII, Grievances), and the parties thereafter selected Sharon A. Gallagher to hear and resolve a dispute between them regarding the loss of wages from apparent misinformation. Upon being contacted by FMCS, the Arbitrator suggested that the parties agree to have the Arbitrator hear and resolve the dispute as a WERC arbitrator if the case was to be heard in Wisconsin. The parties agreed to this approach. Hearing was scheduled and held on January 16, 2001, at Chippewa Falls, Wisconsin. No stenographic transcript of the proceedings was made. The parties agreed to file their briefs directly with each other postmarked February 2, 2001. By February 5, 2001, the parties had submitted their briefs and the record was closed.

To maximize the ability of the parties we serve to utilize the Internet and computer software to research decisions and arbitration awards issued by the Commission and its staff, footnote text is found in the body of this decision.

ISSUES

The parties were unable to stipulate to the issues to be determined in this case. However, the parties stipulated that the Arbitrator could frame the issues based upon the relevant evidence and arguments in this case. The Union suggested the following issues for determination:

> Did the Company violate Article IX, Section D, of the collective bargaining agreement in connection with the posting of overtime work and the selection of employees to perform such work on July 22, 2000? If so, what is the appropriate remedy?

Although the Company was unwilling to stipulate to the Union's issues statement, it proposed no issue statement for the Arbitrator. The Company noted that in its view, there was no extra work available on July 22, 2000, to which Article IX, Section D, could be applied. Rather, the Company asserted that the work was overtime work, which is not covered by the collective bargaining agreement.

Based upon the relevant evidence and argument in this case, I find that the Union's issues statement is reasonable and it shall be determined herein.

RELEVANT CONTRACT PROVISIONS

IV. HOURS

A. The regular work week shall be Monday through Friday and regular hours shall be 7 a.m. to 3:30 p.m. for the day shift and 3:30 p.m. to 12:00 a.m. for the second shift.

Some unit members will start shifts earlier or later as the need arises.

The regular work hours and weeks specified in this article and this agreement are not guaranteed.

B. Forty (40) hours shall constitute a full week's work at eight (8) hours per day. Time and one-half will be paid for all work in excess of (8) hour [sic] in any one day, and for all work in excess of forty (40) hours in any one week. Time and one-half shall be paid for all work performed on Saturdays, and on designated holidays that are scheduled PTO days.

C. A twenty-four (24) hour notice will be given when the factory will not work on a regularly scheduled day, except when the cause is beyond the COMPANY'S control.

D. OVERTIME: Employees are required to work reasonable hours of overtime.

A twenty-four (24) hours notice will be given when it is necessary to work Saturdays and notice also will be given before noon when it is necessary to work in excess of eight (8) hours a day.

No employee shall be paid overtime unless the overtime was worked with the knowledge and direction of the COMPANY.

Job seniority shall determine who shall be assigned overtime work.

. . .

F. The senior employee shall have the first eight (8) hours work available within his department.

V. WAGES

A. Wage [sic] shall be paid as set forth in the Addendum to this Agreement.

B. Any employee required to report to work and no work is available, shall be paid for a minimum of four (4) hours at his/her regular wage rate.

. . .

IX. GENERAL PROVISIONS

A. No work may be performed by employees other than during regularly scheduled working hours unless instructed to do so by the supervisor.

B. When two or more employees perform the same operation there shall be no sorting (easy or hard) of work.

. . .

D. Extra Work shall be posted with job description and approximate duration. When the work is to be within a department, it shall be given to the senior signer or signers within the department, capable of performing the work. If a sufficient number of people fail to sign for the extra work within the department, the COMPANY will use enough senior signers from the other department capable of doing the work to complete the extra work. When the work is of a general nature, it shall be given to the senior factory signer or signers capable of performing the work. Rate of pay will be the employee's current hourly rate.

> If extra work involves moving machinery, transporters or other systems, the COMPANY reserves the right to select the operators.
>
> . . .

FACTS

The Union and the Company have been parties to collective bargaining agreements over a period of time. The Company manufactures and ships shoes to its customers from its facilities in Chippewa Falls, Wisconsin. The Company operates a manufacturing site as well as a separate shipping and receiving facility and a separate warehouse, all located in Chippewa Falls. The shipping and receiving facility is separated into front and back areas with separate time clocks in each area. The front area contains conveyor belts and rows of shoe bins from which employees sort and package shoes for shipment to customers. Employees who "pick shoes" are given a computer printout and they select the requested shoes from the shoe bins in the front and place them on a conveyor belt so that they can be packed into boxes and cases and loaded onto pallets for shipment to the Company's customers.

"Processing returns" is done in the back area of the shipping and receiving facility. This work includes removing returned shoes from their original packaging, entering information about the return into a computer and placing the returned shoes on a conveyor belt to be transported to a different area for re-boxing and placing the re-boxed shoes into racks to be returned to the shoe bins in the front area.

In its separate warehouse facility, the Company stores shoes. The Company employs approximately nine bargaining unit employees in the warehouse who are considered part of the shipping and receiving department located in the separate shipping and receiving facility. The Company Operations Director is Tina Rude and its Utility Operator is Laura Frata. Frata is a bargaining unit employee but Rude is an exempt manager.

Sometime during the week of Saturday, July 22, 2000, Rude directed Frata to post notices of opportunities for voluntary overtime work on Saturday, July 22, for the shipping and receiving departments. The notices read as follows:

> We need people to work 6 o'clock to Noon on Saturday, July 22 in back where needed. Sign below.
>
> Thanks to the cooperation and team efforts, we were able to do nearly two weeks of returns in one week! We started last Monday with mail from the 27th of June and we are now on the 10th of July.
>
> Thank you!

A second notice read as follows:

We need volunteers to work Saturday, July 22 to pick store shoes. Sign below.

The following employees signed the first notice describing work "in back where needed:"

Diane Satter
Kathy Gonyer
Pam Thompson
Wendy Larson
Marsha Burdick

The description of work "in back where needed" apparently meant to these employees that they would be processing returns using the computer located in the back of the shipping and receiving facility on July 22, 2000. The same notice was posted in the front of the shipping and receiving facility, describing work "in back where needed" and was signed by the following employees:

Brenda Zehm
Mary Kohls
Judy Turner
Sandy Walters
Peggy Stoffel
Cheryle Malecki
Kim Bowe
Sue Anderson

The notice describing work "to pick store shoes" was signed by the following employees, some of whom had signed the other posting to work in the back on returns:

Diane Satter
Kathy Gonyer
Pam Thompson
Wendy Larson 1/
Marsha Burdick
Betty Boiteau
Sue Anderson
Kim Bowe
Judy Turner

1/ The employees listed above the line signed both postings. The employees listed below the line were listed there by Utility Operator Frata who combined the employee names from the postings in the front and back of the facility to show all of the employees who had signed up to pick shoes.

Prior to July 22nd, warehouse employees were asked by Frata whether they wished to volunteer to work on Saturday, July 22nd doing returns — no posting was put up at the warehouse. Judy Klukas and Debbie Schemenauer volunteered.

At some point toward the end of the week, but before July 22nd, Utility Operator Frata posted the following notice for employees at the Shipping and Receiving facility:

> Due to the limited number of volunteers to work in the returned goods area, returns will not be processed on Saturday. However, those that volunteered to help with store shoes will be working.

Frata also called Union Steward Schemenauer at the warehouse to tell her that the Company was not going to process returns on Saturday because there were not enough people interested in that work. Frata asked Schemenauer if anyone at the warehouse was interested in picking shoes on Saturday and Schemenauer reported back to Frata that she (Schemenauer) was interested but that Klukas was not. 2/

2/ Although the Union never specifically argued a separate violation of the contract occurred at the warehouse because the Company failed to post the work there, the facts clearly show that the Company failed to follow Article IX, Section D, by failing to properly post the available work at the warehouse.

On Friday, July 21, Frata spoke to Kohls and indicated that no returns work would be done on Saturday. Kohls, therefore, decided not to show up as she believed employees would be offered only work picking store shoes, because of the heavy lifting that is sometimes involved in picking shoes. Frata also told Sandy Walters on Friday, July 21, that the employees working the next day would only be picking store shoes. Employee Betty Boiteau stated that she spoke to Utility Operator Frata on Friday, July 21, and Frata told her that they would only be picking store shoes on July 22. As Boiteau only wished to pick shoes, she showed up to work on July 22. At that time, Boiteau was told that she would have to do returns because there was not enough work picking store shoes for that day. Boiteau performed returns work for six hours on July 22. Employee Sue Anderson did only returns and did not pick store shoes for the six hours that she worked on July 22nd. Although Debbie Schemenauer's name was not on any posting, she had spoken to Tina Rude indicating that she would be able to do returns on July 22, and she showed up for work that day. Schemenauer was given six hours of returns work.

The following table summarizes the activities of employees on July 22 at the Company:

JULY 22, 2000 OVERTIME

Employee	Signed Up to Pick Shoes	Signed up to Work in Back In Returned Goods	Overtime Assignment
Sue Anderson	X	X	Returns
Betty Boiteau	X		Returns
Kimberly Bowe	X	X	Returns
Marsha Burdick	X	X	Returns
Kathy Gonyer	X	X	Returns
Judy Klukas*		X**	None
Mary Kohls*		X	None
Wendy Larson	X	X	Picking Shoes
Cheryle Malecki*		X	None
Diane Satter	X	X	Picking Shoes/Returns
Debbie Schemenauer	X	X**	Returns
Peggy Stoffel*		X	None
Pam Thompson	X	X	Returns
Judy Turner	X	X	Returns
Sandy Walters*		X	None
Charlene Welch	X		Picking Shoes/Returns
Brenda Zehm		X	Returns

*Grievants
**Verbal Sign Up/ No posting at warehouse

Of the 17 employees who responded to the postings, 9 signed up to either pick store shoes or process returns, 6 signed only to process returns and 2 signed only to pick shoes. Klukas, Kohls and Walters, who signed only to work returns, did not sign to pick store shoes because of the physical lifting requirements often associated with the latter job. Following the posted announcement, Grievants Kohls, Stoffel and Walters checked with Utility Operator Frata to verify that the Company only desired workers to pick store shoes on Saturday, July 22. Frata confirmed that she had checked with Rude and that Rude said that employees were not going to be processing returns on Saturday. The Grievants, Klukas, Kohls, Walters, Stoffel and Malecki did not go to the Company to perform Saturday work on July 22. The vast majority of the work performed by the 12 workers who reported on July 22 was returns work: 9 employees spent the entire six-hour shift processing returns.

The Union grieved the Company's failure to offer returns work on July 22 to employees who had signed the posting for that work. The Grievants sought paid time and one-half for the six-hour shift on July 22, 2000, and queried why they were not contacted to come in, stating that they could have been at the Company in a short period of time and were not given a chance to work the returns work that they had signed for. In its response to the Grievants, the Company stated as follows:

> All employees had a chance to sign up to work the overtime to pick store shoes. It didn't take as long as anticipated to pick the store shoes, so we provided work for the people that were here. The employees who did not sign up and who did not work the overtime will not be paid for not working.

Operations Director Rude stated herein that performing returns processing is like an assembly line and that if too few employees volunteer to do that work on an extra day, it is impossible to perform returns efficiently and productively. In this regard, Rude noted that a minimum of 15 employees is necessary to make returns work productive. Rude stated that regarding the work available on July 22, the Company posted work for anyone who wanted to come in and perform that work. At the time of the postings, both returns and picking store shoes were posted for work on July 22. Rude stated that everyone in the shipping and receiving facility is crossed-trained and knows how to pick shoes and perform returns.

On July 22, when employees arrived to pick store shoes, Rude realized that the majority of the shoes to be picked were in case goods, that is in bulk at the warehouse. Rude stated that she decided not to give the employees who showed up to perform work on July 22 the work of picking store shoes, in part because they might have trouble lifting this much weight and because many of the shoes were located at the warehouse, several miles away from the shipping and receiving facility. In addition, Rude realized that she had more people than she needed to pick shoes.

Rude stated it was not her intent to deny employees overtime on July 22. Rude admitted that she was aware of both sets of postings and stated that the notices quoted above were placed in posting areas in the shipping and receiving facility. Although Rude stated that she was not aware that Frata had posted the notice indicating that employees who wished to perform returns should not show up for work on July 22. Rude admitted that she asked Frata to go to the employees who had signed up for returns and indicate that the Company was still looking for more volunteers to work on picking store shoes on July 22. Rude stated that she had anticipated employees would be picking single pairs of shoes out of the bins based on computer lists but that this had not materialized on Saturday, July 22, as the shoes to be picked were in case goods lots weighing 40 pounds or more each. Rude admitted that the posting made no distinction between picking single pairs of shoes and picking case goods. Rude stated that all employees who worked on July 22 worked for six hours at overtime rates. No one was sent home early and the work that was performed was voluntary work.

POSITIONS OF THE PARTIES

The Union

The Union argued that the Company violated the collective bargaining agreement by

failing to offer extra return processing work to those who had signed the postings to do that work prior to Saturday, July 22, 2000. In this regard, the Union noted that the evidence is

undisputed that the Company posted separate postings for picking shoes and processing returns for July 22. The posting and selection provisions of Article IX, Section D, applied to the work performed on July 22, 2000, in the Union's view. The Union noted that Article IV, Sections A and B of the labor agreement, establish the regular work week to be eight hours per day Monday through Friday and requires that time and one-half be paid for all other work, including work in excess of eight hours in any day and forty hours in a week. Article IV, Section D, also authorizes the Company to require employees to work overtime and provides that "job seniority shall determine who shall be assigned to work overtime." In addition, Article IX, Section D, spells out posting and selection criteria for situations in which overtime is voluntary, rather than mandatory. Therefore, in the Union's view, the Company's argument at hearing that Article IX, Section D, does not apply because the work in question was overtime work rather than extra work would gut Article IX, Section D, rendering it virtually meaningless since all work outside of a full-time employees' regular work week is contractually defined as overtime.

The Union urged that the Company was obliged to offer return processing work to all those who signed the posting for that work. As Article IX, Section D, requires that postings for extra work include a job description as well as the approximate duration of the work, all those who signed to work returns should have been offered return work on July 22. This is particularly true where, as here, the Company stipulated that it was willing and able to provide work for anyone who wanted to work on July 22, thus making it unimportant for the Arbitrator to consider the relative seniority and abilities of those who signed up to do return work on July 22.

The Company's argument that those who wanted to work returns on July 22 should have signed the posting to pick shoes is illogical, in the Union's view. As the contract requires the Company to include job descriptions in its postings for extra Saturday work, the employees should have been entitled to rely upon those job descriptions as well as the hours stated. In addition, the Union noted that the Company posted separately for two jobs to be performed on July 22, and informed workers that only those signing up to perform one of the jobs should report to work. In those circumstances, it would be grossly unfair to penalize those who signed up for return work for having taken the Company at its word that it was not going to process returns on July 22.

The Union noted that the Company has argued that the overtime work here is *de minimus*. The Union urged that the Company's argument is not based on the record facts. Even if the Arbitrator were to accept Rude's testimony that she reassigned employees to returns because she did not want them to risk heavy lifting and because she did not know what store orders there would be to fill on Saturday, July 22, until that morning, this does not excuse the Company's failure to call workers who signed up for returns work on July 22. Thus, the Union urged that the Company is not free to ignore its own postings and the contractual obligations stated in Article IX. As the employees' right to sign up for extra work

based upon a description of that work and the time involved is an important right to employees

which allows them to choose work appropriate for them on a variety of factors they deem appropriate, the Company should not be allowed to fill extra work without meeting the rigors of the contract, thus denying employees their contractual right to make informed choices regarding their wish to volunteer for extra work. Therefore, the Union urged that the grievance be sustained in its entirety and that the six Grievants be made whole for the six-hours of work they lost on July 22 at time and one-half their regular rate.

In addition, the Union noted that Article IV, Section D, should not preclude the award of overtime back pay in this case to employees who did not work on July 22. In this regard, the Union noted that previous grievance settlements providing for back pay in cases where employees were improperly denied overtime opportunities make it clear that the language of Article IV, Section D, only precludes unauthorized overtime work rather than overtime back pay in appropriate cases.

The Company

The Company urged that it did not violate the collective bargaining agreement regarding the assignment of work on July 22, 2000. In this regard, the Company noted that all bargaining unit employees were given the opportunity to work overtime on July 22, 2000; that work was available including picking store shoes to be sent to the Company's outlet store as well as processing customer returns. The Company noted that overtime was voluntary and had no connection to any type of seniority so that any employee in shipping and receiving and the warehouse could have performed the work. Second, the Company observed that not enough employees signed up to process the returns that were available on July 22; that all employees that signed up to work overtime processing returns were informed that they could work overtime picking store shoes instead and that five employees choose not to work the available overtime. However, when the pick tickets were sorted on Saturday morning, Operations Director Rude found that the majority of the shoes were not in the bins, but were in case storage. The fact that the shoes were in case storage meant that the shoes were in 12-pair cases stored at another location and that each 12-pair case would weigh between 40 and 60 pounds. Also, given the fact that there were fewer shoes to pick from the bins, less time than originally anticipated would be needed to pick those shoes.

When Operations Director Rude realized there was not enough work available picking store shoes, she assigned employees to process returns instead. Furthermore, the Company argued that employees were assigned to process returns in part because Article V, Section B of the collective bargaining agreement requires that a minimum of four hours work be provided when an employee reports to work. As the employees had volunteered to work overtime on Saturday from 6 a.m. to 12 p.m., Rude honored their commitment and provided them with six hours of work processing returns when it became apparent that there was not six hours work picking discounted shoes.

Finally, the Company disagreed with the Union's position that the Company had violated the extra work provisions of Article IX, Section D, when Rude reassigned available employees to process returns. In addition, the Company urged that the two past grievance exhibits submitted by the Union relate to seniority issues and have nothing to do with the issues in this case. For these reasons, the Company urged that the grievance be denied and dismissed in its entirety.

DISCUSSION

Article IV, Section A of the effective collective bargaining agreement establishes the regular work week as Monday through Friday with regular work hours for a first and second shift. Article IV, Section B, indicates that all work beyond 8 hours per day and 40 hours per week shall be paid at time and one-half and that time and one-half shall be paid for all work performed on Saturdays. Article IV, Section D, states that employees will be required to work reasonable overtime hours with 24 hours notice being given for mandatory Saturday overtime work. Voluntary overtime work is described in Article IX, Section D. Such voluntary overtime is denominated "extra work." Article IX requires that a job description and the approximate duration of the extra work be posted prior to the work being performed. In addition, Article IX, Section D, states that "rate of pay will be the employee's current hourly rate."

Thus, Article IV, Sections A and B, establish the regular work day and work week and require the Company to pay time and one-half for all work done in excess of 8 hours per day and in access of 40 hours per week. Article IV, Section D, clearly indicates that the Company can require employees to work "reasonable hours of overtime." In addition, Article IX, Section D, clearly indicates that voluntary overtime, known as "extra work," shall be posted with a job description and an approximate duration of the work.

In the instant case, the Company argued that Article IX, Section D, does not apply as the work available on July 22 was mandatory overtime work covered by Article IV, Section D. The facts of this case belie this assertion. In particular, I note that prior to Saturday, July 22, the Company posted notices at the shipping and receiving facility and directed Utility Operator Frata to make inquiries at the warehouse regarding work that would be available on July 22 including both the duration of the work (6 a.m. to 12 Noon) as well as a description of the tasks to be performed. If the work available on July 22 had been mandatory overtime work not covered by Article IX, Section D, the Company would not have had to post or announce the duration as well as the job description as required by Article IX, Section D. In addition, I note that the Company stipulated herein it was willing and able to provide work for anyone who wanted to work on July 22, thus making relative seniority and ability questions irrelevant which would otherwise have been relevant under Article IV, Section D. The Union urged that the Company's argument at hearing that Article IX, Section D, should not apply because the work in question was mandatory overtime work would render Article IX, Section D,

essentially meaningless. In my view, the Union's argument on this point has merit.

In this case, the facts demonstrated that the Company notified employees that work involving picking store shoes and returns would be available on July 22, 2000. Later, however, the Company decided that it would only offer work to those willing to pick store shoes on July 22, as not enough employees had volunteered to process returns. Therefore, some employees were notified of this change and decided not to volunteer for the Saturday overtime on July 22 because they did not want to pick store shoes due to the heavy lifting that is sometimes involved in that work. These employees were the five Grievants, Klukas, Kohls, Malecki, Stoffel and Walters. However, on July 22, Operations Director Rude decided that employees who showed up for work on that date would have to work processing returns as there were not enough employees to pick store shoes and most of the shoes to be picked were in large case lots located at the warehouse. Thus, on the morning of July 22, 2000, Rude took the employees who were willing to pick shoes and who had shown up for that work and directed them to process returns instead. In this regard, the evidence showed that 9 of the 12 employees who reported to work on July 22 worked on returns only, while 2 employees worked picking shoes and processing returns and only 1 employee picked store shoes for the entire six-hour shift.

The Union has argued that Rude should have called the other employees who signed the job postings to process returns on July 22 and offered them the overtime work on that date. I agree. Although the contract contains no language requiring the Employer to call employees, and the contract does not anticipate that the job description of the work involved will change after the posting has been made, it is clear that employees must be given the opportunity to select voluntary overtime work based both upon a job description of the work involved as well as the hours that the job is to proceed. It is also clear based upon this record that Rude was fully aware of all of the employees who were interested in processing returns on July 22, based upon the postings at the Company's Shipping and Receiving facility, as well as conversations that Utility Operator Frata had with warehouse employees prior to July 22, 2000. Thus, it was entirely reasonable that employees should be able to rely upon the job description and hours of the voluntary overtime as listed in the postings. It was only because Company officials indicated to the five Grievants that no returns work would be done on July 22 that they failed to appear on that day for the extra work.

A ruling in favor of the Company in this case would effectively dilute the employees' contractual right to sign up for extra work based upon a description of that work and the time involved. It is clear that the parties intended employees to have the option to choose to work voluntary overtime based upon both the work and the duration of the overtime involved. Thus, the Company's actions in this case denied the Grievants their contractual rights to make choices regarding what voluntary overtime (extra work) they wished to perform for the Company.

The Company essentially argued that the work involved is *de minimis* and that Operations Director Rude had valid business reasons for switching the work to be performed from picking store shoes to processing returns on July 22, 2000. In addition, the Company

noted that Rude was subject to the strictures of Article V, Section B, which requires that a minimum of four hours of work be provided to employees whenever they report to work. Given the clear language of Article IX, Section D, 3/ Although the Company argued that all employees were given the opportunity to work overtime on July 22, 2000, it was only because the Company representatives stated on July 21, 2000, that employees would be needed only to pick store shoes that the Grievants did not present themselves to work on July 22. As the Company's *de minimis* argument would essentially mean that the Union could not prevail on any overtime pay grievance, I do not find it persuasive. In addition, I note the contract does not recognize the *de minimis* nature of a claim as a defense to contract violation. Rude's business reasons and the Article V, Section B argument fail to address the fact that Rude knew who had signed or agreed to process returns on July 22 and that the Company had enough work for as many employees as wished to work. Therefore, it cannot be said that the five Grievants knowingly chose not to work the available voluntary overtime on July 22, 2000. Given the above analysis, I do not find the Company's arguments to be persuasive.

3/ I note that Article IX, Section D, specifically states that the rate of pay for extra work will be the employee's current hourly rate. This portion of Article IX must be read in the context of the entire contract. Under Article IV, HOURS, it is clear that time and one-half must be paid to employees for all hours worked in excess of 8 in one day and in excess of 40 in one week and that all Saturday work shall be paid at time and one-half. Therefore, the proper rate of pay for extra work occurring on a Saturday, such as that performed on July 22, 2000, must be the time and one-half rate as required by Article IV, Section B.

Based upon all of the relevant evidence and argument in this case, I find that the Company has violated the contract and I issue the following

AWARD

The Company violated Article IX, Section D of the collective bargaining agreement in connection with the posting of overtime work and the selection of employees to perform such work on July 22, 2000. The Company shall, therefore, make whole the five Grievants listed herein — Klukas, Kohls, Malecki, Stoffel and Walters — by paying them for six hours at time and one-half their regular rates. 4/ The Company is also directed to follow Article IX, Section D, and post extra work at its facilities.

4/ Contrary to the contentions of the Company in this case, Article IV, Section D, does not prohibit the award of overtime pay to the five Grievants in this case. The second paragraph of Article IV, Section D, refers only to a restriction that no employee can be paid overtime unless the overtime was worked with the knowledge and direction of Company officials. This provisions is clearly designed to avoid the situation where an employee may attempt to work overtime, past their normal working hours,

without

the authority of their supervisor in order to earn extra pay at time and one-half. In addition, I note that there is nothing in this collective bargaining agreement which restricts the arbitrator from issuing a make whole remedy where it is warranted. I have found such a make whole remedy to be warranted in this case.

Dated at Oshkosh, Wisconsin, 30th day of March, 2001.

Sharon A. Gallagher /s/
Sharon A. Gallagher, Arbitrator

SAG/ans