BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of a Dispute Between

**GENERAL TEAMSTERS UNION, LOCAL 662, AFL-CIO**

and

**MCDONOUGH MANUFACTURING COMPANY**

Case 1
No. 59648
A-5913

(Michael Waite Grievance)

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Appearances:

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., by **Attorney Jill M. Hartley**, appearing on behalf of the Union.

Weld, Riley, Prenn & Ricci, S.C., by **Attorney Victoria L. Seltun**, appearing on behalf of the Company.

## ARBITRATION AWARD

General Teamsters Union Local 662, AFL-CIO (herein the Union) and McDonough Manufacturing Company (herein the Company) are parties to a collective bargaining agreement covering the period May 12, 2000 to February 28, 2003, and providing for binding arbitration of certain disputes between the parties. On February 2, 2001, the Union filed a request with the Wisconsin Employment Relations Commission (WERC) to initiate grievance arbitration over a refusal by the Company to advance Michael Waite (herein the Grievant) in his rate of accrual of Personal Time Off (PTO), as set forth in the contract and requested the appointment of a member of the WERC staff to arbitrate the issue. The undersigned was designated to hear the dispute and a hearing was conducted on April 11, 2001. The proceedings were not transcribed. The parties filed briefs on May 29, 2001, and the record was closed.

## ISSUES

The parties stipulated to the following statement of the threshold issue:

Is the grievance arbitrable pursuant to Article 8, Section 1, Step 3 of the collective bargaining agreement?

The parties were unable to stipulate to a formulation of the second issue.

The Union would frame the issue as follows:

Did the Company violate the parties' collective bargaining agreement by refusing to credit the grievant with PTO accrual at the 3-8 year level upon beginning his third year of employment with the Company?

If so, what is the remedy?

The Company would frame the issue as follows:

What is the definition of length of service for movement from one benefit rate to another?

The Arbitrator adopts the issue as framed by the Union.

## PERTINENT CONTRACT PROVISIONS

## ARTICLE 8
## GRIEVANCE PROCEDURE AND ARBITRATION

Section 1: Should any difference or dispute arise over the interpretation or application of the contents of this Agreement, there shall be an earnest effort on the part of the parties to settle such promptly through the following steps:

**Step 1**: An employee grievance shall first be taken up by conference between the aggrieved employee, his supervisor and the shop steward.

**Step 2**: If the grievance is not settled in Step 1, it shall be the responsibility of the aggrieved employee to reduce any grievance to writing, explaining the grievance in detail and specifying which provision of this Agreement is alleged to have been violated, and deliver the same to the Employer, not later than ten (10) days of the date the grievant knew or should have known of the action or non-action of the Employer being grieved. The Employer, at its option, may meet with

the grievant and his steward and/or Union representative, but in any event shall file a written response with the Union within ten (10) days of either receipt of the written grievance or the above-described meeting whichever is later.

**Step 3**: In the event no agreement has been reached at Step 2 or the Employer fails to file it written response within the period set forth above, the grievance may be submitted for arbitration upon the written request of either the Union or the Employer, to be received by the other party within ten (10) days of the employer's response in Step 2 or the employer's written notification that the Step 2 meeting will be waived.

**Step 4**: Upon request from the party seeking arbitration, the Wisconsin Employment Relations Commission shall appoint an arbitrator from its staff. Each party shall bear its own expenses in connection with the arbitration. The decision of the arbitrator shall be final and binding on all parties; provided, however, that the function of the arbitrator shall be to interpret and apply the specific terms of this Agreement and shall have no power to add to, subtract from, modify or amend any terms of this Agreement.

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## ARTICLE 24
## PERSONAL TIME OFF

Section 1. Definition. Personal Time Off (PTO) is a benefit which combines traditional sick leave, vacation time, funeral leave and personal leave into a singular package known as PTO. The employee can use accumulated PTO hours at the employee's discretion, provided that the Employer has approved the request in advance. The Employer may ask for a physician's documentation when PTO is taken due to illness and there has not been prior approval of the time off.

Section 2. PTO Accrual.

(a) Each employee shall earn PTO from the first day of employment based upon the number of regular hours (excluding shift differentials and overtime) for which an employee is paid during the pay period, including excused absences during which the employee draws upon available PTO. New employees will be eligible to use PTO only after the completion of their probationary period.

(b) PTO shall not accrue or be earned on:

(i) Hours worked in excess of 80 hours in a pay period;
(ii) Hours worked in excess or 2080 hours during one year;
(iii) Unpaid time off;
(iv) Absences from work covered by Disability Insurance or Worker's Compensation payments.

(c) An employee's rate of accrued of PTO is based upon the employee's length of service, as set forth in the following chart, which represents the PTO accrued annually for a full-time employee. After each pay period, each covered employee's PTO accrual will be shown on the employee's pay statement.

| Years of Service | Hourly PTO Accrual (Hours) | Per Pay Period PTO Accrued (Hours) | Annual PTO Accrued Maximum Accrued (Days/Hours) | Maximum PTO Carryover (Days/Hours) |
|---|---|---|---|---|
| 0-2 | .027 | 2.15 | 7/56 | 10/80 |
| 3-8 | .046 | 3.69 | 12/96 | 10/80 |
| 9-14 | .065 | 5.23 | 17/136 | 10/80 |
| 15-19 | .085 | 6.77 | 22/176 | 10/80 |
| 20+ | .104 | 8.31 | 27/216 | 10/80 |

PTO accrual for part-time employees will also be based on the employee's actual paid hours. Temporary employees will not be eligible for the PTO program.

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**OTHER RELEVANT LANGUAGE**

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VACATION BENEFITS

As a regular full-time employee, you earn paid vacation time off based on your length of employment as outlined below:

| Length of Service | Paid Vacation Days |
|---|---|
| After 1 year | 5 days (40 hours) |
| After 3 years | 10 days (80 hours) |

| | |
|---|---|
| After 9 years | 15 days (120 hours) |
| After 15 years | 20 days (160 hours) |
| After 20 years | 25 days (200 hours) |

For example, based on the above schedule, if you were hired February 1 of this year, you will be eligible for one weeks vacation after February 1 of next year.

However, during your anniversary year in which you are eligible for additional vacation, the additional vacation will be available at January 1 of that year. For vacation purposes, your anniversary date is the actual date of hire. This date may be adjusted for leaves of absence, breaks in service, changing employment status from full to part time or vice versa, and other similar occurrences.

Vacation pay is calculated based on your straight-time rate of pay in effect when vacation benefits are used (maximum of eight hours a day). It is not used in calculating overtime pay.

Vacation time off must be requested, approved, and scheduled in advance with your manager. Your manager has the discretion to grant or refuse vacation requests, and to prioritize conflicting requests in an equitable manner.

Vacation can be taken in four hour increments.

You must take your vacation in the calendar year following its being awarded to you. Unused vacation time at the end of the year will be forfeited unless there are extenuating circumstances as discussed and approved by your manager in advance. If your manager requests you not take vacation and it results in your forfeiting time off, individual accommodations may be made.

In addition to rest and relaxation, vacation time can be used for illnesses (your own or a family member's) or attending to personal business that cannot be handled outside of regular business hours (doctor's appointments, family matters, emergencies, etc.) with your manager's approval.

Note: The Company may close for one week in July annually for equipment inspection and repairs. Adequate notice will be given to allow each employee to plan for this annual occurrence.

If your employment with McDonough should end, you will be paid for available vacation time as outlined in the section on EMPLOYMENT TERMINATION.

## BACKGROUND

McDonough Manufacturing Company is a manufacturing company located in Eau Claire, Wisconsin. In July, 1999, the McDonough employees voted to organize a union and chose General Teamsters Union Local 662 as its exclusive bargaining representative. The parties thereafter entered into contract negotiations, which resulted in the adoption of a collective bargaining agreement on May 12, 2000.

During the contract negotiations, the Company offered a proposal (which was ultimately adopted) regarding employee leave, which incorporated vacation, sick leave and personal leave under the denomination Personal Time Off (PTO). The proposal had been developed by an outside consultant retained by the Company. The pertinent aspects of the proposal were that employees would accrue PTO in fractional increments for each hour worked, according to a schedule set forth in the contract, commencing on their date of hire, and would be eligible to use accrued PTO time upon completing probation. The schedule established different rates of accrual for employees with 0-2 years of service, 3-8 years of service, 9-14 years of service, 15-19 years of service and 20 or more years of service. This was a significant departure from the vacation policy the Company had maintained prior to organization. Under that system, vacation accrued annually in five-day increments and employees were ineligible to take vacation until they had completed their first year of employment. Also, under the previous system, employees accrued additional days of vacation in 5-day increments, up to a maximum of 25, after completing 3, 9, 15 and 20 of years of employment.

The Grievant, Michael Waite, has worked for the Company since July 27, 1998. At the time the contract was approved, he began accruing PTO at a rate of 2.15 hours per pay period, according to the schedule. On July 27, 2000, the Grievant completed his second year of employment. Sometime thereafter he discovered that he had not been advanced to the next higher rate of PTO accrual. Believing an error to have been made, he approached his supervisor and various Company management personnel to have the matter resolved. He was then informed that, according to the Company's interpretation of the schedule, he was not eligible for the higher rate of accrual until he had completed his third year of employment.

The Grievant filed a grievance on September 14, 2000, according to Step 2 of the grievance procedure. There is no allegation that the grievance was filed untimely. The grievance was processed by the Company's new Plant Manager, Thomas Jeffery. Jeffery received an extension on the contract's 10-day deadline for responding to the grievance from the Union and ultimately issued a written denial on October 16. The Union Representative, Steve Novacek, responded to the denial on October 25, asking Jeffery for a meeting and informing him that if there was no resolution the Union would petition for arbitration. The parties met on November 7, but were unable to resolve the dispute. Novacek then informed Jeffery that he wished to consult with counsel before deciding to proceed further, to which there was no objection, although Step 3 of the grievance procedure calls for the filing of a

request for arbitration within 10 days of receipt of either Company's denial of the grievance, or the Company's waiver of the Step 2 meeting requirement. On February 2, 2001, the Union filed its petition for arbitration. At the hearing, on April 11, 2001, the Company raised an objection to arbitrability based on the Union's untimely filing of its petition under Step 3 of the grievance procedure. Additional facts will be included, as necessary, in the discussion section of the Award.

## POSITIONS OF THE PARTIES

### The Union

Arbitrability

On the issue of arbitrability, the burden is on the party asserting that the grievance is inarbitrable. The presumption is heavily in favor of arbitrability and requires clear and convincing evidence to rebut. UNITED TELEPHONE – SOUTHEAST, 101 LA 316, 321 (NOLAN, 1993); UNIVERSITY OF CALIFORNIA – DAVIS, 100 LA 30, 533 (WILCOX, 1992); SCIOTO COUNTY ENGINEER, 104 LA 743, 750. There is long standing precedent that any doubts as to arbitrability should be resolved in favor of coverage. STEAMSHIP TRADE ASSN. OF BALTIMORE, 100 LA 830, 834 (SERGENT, 1993); HUGHES ASPHALT CO., 99 LA 445, 450 (DONALD, 1992).

There is also precedent favoring arbitrability where timeliness is an issue. Clear time limits should ordinarily be enforced, but an exception has been made where the parties have a history of lax enforcement of timelines. SANFORD CORP., 89 LA 968 (WIES, 1987); AIR FORCE LOGISTICS COMMAND, 85 LA 1168 (SERGENT, 1985). These parties have not strictly adhered to contractual timelines in the past. The contract has short response times and, according to Union Representative Steve Novacek, in order to foster settlement of disputes the parties have typically ignored timelines to encourage ongoing discussion.

In this particular case, the parties held a Step 2 meeting on November 7, 2000. No settlement was reached and the Union indicated it would consult with counsel before deciding whether to move to arbitration. The Union did not set a specific time within which it would make its decision, nor did the Company request one. Inasmuch as there was a tacit agreement to extend the Step 3 timelines for an indefinite period, the Company cannot now claim that the grievance is untimely and, therefore, inarbitrable.

Merits of the Grievance

The language of Article 24 is clear. Employees who have completed their second year of employment begin accruing PTO hours at the 3-8 year rate. PTO benefits differ from traditional vacation benefits in that they may be used in the year accrued. Thus, it is accrued

as it is earned, not after the fact, as with vacation benefits which can only be used in the year after they are earned. Therefore, an employee who has completed his second year of employment and begun his third should accrue PTO benefits at the 3-8 year rate. Article 24 contains a chart which sets forth the PTO accrual rates. This chart does not specify that accrual at the 3-8 year rate only begins after completion of the third year and a fair reading of the language leads to the conclusion that it must begin at the beginning of the third year. A general rule of contract interpretation states that a contract should be construed to give effect to all language. Reading this contract as a whole requires a finding that PTO accrual at the 3-8 year level commences at the outset of an employee's third year.

The contract language is clear. To give it the meaning the Company suggests requires reading more into it than is there and would violate the principle of giving the plain meaning to clear and unambiguous language. SEALY MATTRESS CO., 99 LA 1020, 1024. The Company argues that the current provision was intended to apply as the vacation language had in the former employee handbook, but offered no evidence at the hearing to support its position. In fact, the evidence shows that the meaning of the years of service language was not discussed in negotiations. The Company proposed the PTO provision and the years of service language at issue here was incorporated into the contract unchanged. In the former handbook, the vacation language clearly indicated that employees moved to the next level *after* completing certain years of service. That language was not included here. Deleting that reference rebuts the Company's claim that the language was intended to operate the same. At the least, it creates confusion as to the Company's intention. In such cases, any ambiguity is to be construed against the drafter of the language. CITY OF CLEVELAND, 103 LA 534 (MILLER, 1994).

To read the language as the Company suggests would lead to nonsensical results. According to its interpretation, employment through two years of service provides one level of accrual. Employment after three years of service provides another level of accrual. There is, however, a gap for employees who have completed two years of service, but not three. This would be an unreasonable construction and cannot comport with the parties' intent in agreeing to the language. Arbitrators choose interpretations of contract language which lead to reasonable results over those which lead to harsh, absurd, or nonsensical results. SQUARE D. CO., 99 LA 879, 882 (GOODSTEIN, 1992). In this case, the Union's interpretation of the contract is more reasonable and should be adopted. For all the foregoing reasons, therefore, the grievance should be sustained.

**The Company**

Arbitrability

The Union's grievance is untimely and must be dismissed. The grievance procedure prescribes time deadlines for various steps to be taken. At Step 2, once the grievance is filed the Employer must respond within the later of 10 days after receiving the written grievance or

10 days after a Step 2 meeting. The Step 2 meeting occurred on October 2, 2000, at which time the Company asked for, and received, an extension of a few days to issue a written response to the grievance. The response was issued on October 16. On October 25, the Union requested an additional meeting, to which the Company agreed. The meeting occurred on November 7, but no resolution was reached. The Union, likewise, requested an extension of "a few days" to consult with counsel before determining whether to proceed to arbitration. The actual arbitration request was not filed, however, until February 2, 2001, nearly three months later.

There is an apparent understanding between the parties to permit extra time to process grievances, when necessary. Three months is an excessive amount of time, however, and nothing in the record suggests an agreement to such a lengthy extension. Union Representative Novacek does not recall a specific number of days for the extension being discussed. The past practice of the parties, however, is one of short-term extensions. It is unlikely, therefore, that three months was contemplated here and, if so, the Union would have put such a request in writing. Since the Union's violation of the timeline was more than a minor one which could be interpreted as within the parties' contemplation, the grievance is untimely and should be dismissed.

Merits of the Grievance

Article 24, Section 2(c) of the collective bargaining agreement bases PTO accrual on length of service. The included chart breaks PTO accrual down into categories based on years of service. The two at issue here are "0-2" and "3-8." The Union contends that an employee moves to the next level after completing 2 years of service. In the past, however, employees did not beginning accruing vacation at the next level until completing the base year in question (i.e., 1, 3, 9, 15, 20). The language in the past employee handbooks made it clear that vacation wasn't earned until after having completed the specific year of service. The schedule in the contract is the same as that in the previous employee handbook and bases accrual on "length of service." The only improvements were that accrual would begin at date of hire, rather than after one year and that two extra days were added. The testimony of Sue Tietz makes clear that the Company always understood accrual to be based on years completed, not years begun.

When the contract was negotiated, there was no discussion of what the term "years of service" meant. The Union witnesses testified that they saw the vacation policy as an improvement because it provided two additional days and immediate accrual. There was no understanding, however, that immediate accrual changed the standing practice of having to complete a specified year of service before moving to the next benefit level. The notes of the Company's attorney reveal extensive discussions over the PTO language, but none over the interpretation of "years of service." The record does not support the Union's contention. In NERCON ENGINEERING & MANUFACTURING, FMCS NO. 83K/15569 (11/30/83), an employee

grieved a company's denial of 10 day's vacation time, when it based it's decision on a previous personnel policy, rather than seniority, even though the contract didn't provide for seniority. The arbitrator observed that, while the personnel policy language was not controlling, it was largely incorporated into the contract and, further, that if the Union wanted a seniority based system, it should have bargained for it. Here, had the parties wanted a vacation accrual system that deviated from the previous method they could have included language to that effect. They did not, therefore, it is reasonable to conclude that the former system of calculation was intended to continue.

In this case, the Grievant has two completed years of service with the Company and believes that entitles him to be advanced to the 3-8 year level for purposes for PTO accrual. This is inconsistent with the language of the contract. The Grievant referred to two instances where employees with less than three years experience were moved to the 3-8 year level. In each case, the change was made in error and, once discovered, was corrected, with the employees being returned to the 0-2 year level. The express language of the contract provides that advancement only occurs after completing the full year of entry to the next level. Since the Grievant had not completed three years of service when the grievance was filed, it must be denied.

## DISCUSSION

### Arbitrability

In a case where a party has raised a question regarding the arbitrability of the grievance, it is necessary to address this issue before addressing the merits of the case. Indeed, a ruling regarding arbitrability will frequently determine whether the merits are addressed at all. In this case, the Company's contention is that the Union failed to move the grievance to arbitration in a timely fashion under the timelines set forth in the contract and that, therefore, the grievance should be dismissed. This is a question of procedural arbitrability, which it is within the province of the Arbitrator to determine.

Where the parties have included fixed timelines in their grievance procedure, the general rule is to require strict observance of all deadlines. Failure to do so may result in the dismissal of the grievance and, thus, the loss of opportunity to have the merits of the matter considered. Inasmuch as this is such a harsh result, however, arbitrators often will not impose it where there are extenuating circumstances to justify mitigating the penalty.

Here, the parties have bargained fixed time periods for taking certain steps into their grievance procedure. Under Step 3 of that provision, the Union was to have filed its petition for arbitration within 10 days of receiving the Company's written Step 2 response, which occurred around October 17. Thus, under the contract, the Union's petition was properly due on or before October 27. In fact, what occurred was that the Union representative contacted

the Company's manager and asked for a meeting to discuss the matter further, which was held on November 7. It was at this meeting that the Union asked for and received an additional extension for an indefinite period to consider whether it would file for arbitration. There appears to be a practice of lax observance of these time limits generally between these parties. According to the testimony of Union Representative Novacek, this policy is intended to facilitate settlement, which the short time periods contained in the contract tend to inhibit. This appears to have worked well, as all previous grievances filed between these parties have been apparently settled without recourse to arbitration.

The Company contends, however, that the Union took an unreasonable amount of time to make its decision and ultimately file its petition. The Union points out in reply that had the Company wished to set a fixed date for the Union's response it could have done so. I find some merit in both arguments. Even accepting the Union's assertion that it did not limit its request by asking for a "few days," one assumes that its deliberative process need not have taken three months and the Company was justified in wondering after such a time whether the Union had decided not to go forward. On the other hand, until the petition was filed, the Company apparently showed no outward interest in the question. No deadline was discussed at the time of the extension request, and no inquiries were made later as to what the Union intended to do. Thus, the Union was likewise justified in assuming that the Company was unconcerned by the delay. While this assumption could not legitimately be carried out to an indefinite extreme, I do not find the delay here to have been unreasonable under the circumstances and, therefore, find the grievance to be arbitrable.

**Merits of the Grievance**

This case boils down to a question of contract interpretation. The contract language provides one level of Personal Time Off (PTO) accrual for employees with 0-2 years of service and another for employees with 3-8 years of service. As the Union would read the contract, the Grievant should have begun accruing PTO at a higher level after completing his second year of service. As the Company would read it, the Grievant is not eligible to move to the next level until completing his third year of service.

In addressing this problem, the Arbitrator must first determine whether the language is clear and unambiguous. If it is, it must be assigned its clear meaning and applied accordingly. If it is not, then reference must be made to traditional tools of contract interpretation to determine the proper meaning and application. Here, the provision in question is unquestionably ambiguous. On its face, it provides one level of benefits for employees with up to two years of service and another level of benefits for employees with more than three years of service. It does not, however, indicate the status of employees between their second and third years of service. Here lies the ambiguity.

Typically, at this point one would look to see if there were any binding past practice or bargaining history to indicate how the parties have handled this issue in the past or what meaning they have ascribed to the language. Unfortunately, these are not available here. This is the first collective bargaining agreement between these parties, thus no standing practice in applying this language has developed. There was testimony that two other employees had been moved to the second benefit level after completing their second years, but that this had been regarded by the Company as a clerical error and, once discovered, they were moved back again. This occurred just prior to the Grievant's request and somewhat precipitated it. Neither of the other employees grieved the Company's action, but I do not find that this rises to the level of an established practice such that it should be binding upon the parties. There was also extensive testimony regarding the bargaining history, which centered upon the development of the provision in question. That testimony revealed, however, that while there was considerable discussion of other aspects of the leave provision, little or nothing was said about the timetable for accruing PTO. Bargaining history, therefore, is also unhelpful.

The Company maintains that the language and application of the vacation provisions in the previous employee handbooks, utilized before the collective bargaining relationship was established, is useful in resolving this ambiguity. Under those manuals, vacation time did not accrue until after the first year of service and vacation time did not increase until after an employee had completed the year of service, which was the threshold for the increase. The Company argues that this principle should likewise be imputed to the collective bargaining agreement and cites NERCON ENGINEERING AND MANUFACTURING, INC., FMCS NO. 83K/15569 (11/30/83) in support of its position. I disagree. Employee manuals are not the product of a bargaining process. They are unilateral documents, drafted by the employer and containing policies and procedures the employer has adopted and expects the employees to observe. Unless language is carried over verbatim from an employee handbook to a successor collective bargaining agreement, or there is other clear evidence of intent, I am reluctant to make any assumptions about what the parties interpret particular contract language to mean based upon the practice under a previous handbook. In NERCON, the arbitrator relied on the Company's previous vacation policy and dismissed the Union's arguments in favor of a seniority based system, despite the fact that the parties had subsequently entered into a collective bargaining agreement. There, however, the previous vacation policy had been largely incorporated into the agreement. Also, the Union had attempted to negotiate a seniority based system and failed. Neither of those circumstances exists here.

There are significant differences between the PTO language in the contract and the Vacation Benefits provision in the most recent employee handbook, which was adopted in 1993. Under the contract, all paid leave is characterized as personal time off (PTO), including vacation, sick leave, funeral leave and personal leave. PTO begins accruing incrementally from the first day of employment, and the increments are determined by length of employment as previously described. Under the previous handbook, Vacation Benefits could be used for vacation, illness, or personal business. Vacation only accrued annually and could only be used after it was earned. Further, the formula for the rate of vacation accrual made it clear that

moving to the next level only occurred after a particular number of years of service. This language, which appears in all the employee handbooks distributed by the Company since at least 1989, is noticeably absent in the contract. There were also no apparent gaps as is the case under the contract language. It appears there was no paid sick leave or personal leave under the handbook. The lack of similarity between the provisions, and particularly the formulae for calculating leave accrual, dissuades me from drawing the requested correlation.

In construing the language in question, further, I am mindful of the need to read the contract in such a way as to give effect to all the language, and also to avoid an interpretation which will lead to an absurd or unreasonable result. These tenets of contract interpretation lead me to the conclusion that the grievance must be sustained. The first level of PTO accrual is 0-2 years of service. The second level of accrual is 3-8 years of service. In my view, the schedule begins at zero to show that PTO accrual begins as of the first day of employment, unlike the previous formula under which an employee only received vacation after a year of service. Furthermore, the first level of accrual clearly only runs through the second full year of employment, hence the language "0-2." To hold, as the Company requests, that the next level is only achieved after three years of service would thus leave one year, the year between completing the second and third years of employment, unaccounted for, and this problem will arise again when each successive level of accrual is reached, because the same gaps exist throughout the PTO accrual grid. The choice I am confronted with is between a construction which leaves the Grievant at the 0-2 level through the end of year three, or one which places the Grievant at the 3-8 year level at the beginning of year three. For the reasons set forth, I choose the latter. Had the language been drafted such that the first level was 0-3, or the second level was 2-8, the meaning would have been obvious. As it is, however, logic dictates an inference that an employee is at the first level through the completion of his or her second year of service and that beyond that point the next level applies. In making my award, I am also mindful of the fact that this provision was proposed by the Company in contract negotiations, and was developed on the Company's behalf by a private consultant. Long standing contract interpretation principles hold that ambiguous language should be construed against the party offering it. Under the circumstances, therefore, it is my view that the Company should rightfully bear the burden of the ambiguity here.

Based upon the foregoing and the record as a whole, the undersigned enters the following:

## AWARD

Because the parties have a history of lax enforcement of timelines under the grievance procedure and the Company had in this case granted the Union an extension for an indefinite period to decide whether to petition for arbitration, the grievance is arbitrable pursuant to Article 8, Section 1, Step 3 of the collective bargaining agreement.

By refusing to credit the grievant with PTO accrual at the 3-8 year level upon beginning his third year of employment, the Company violated the collective bargaining agreement. Accordingly, the Company is ordered to provide the Grievant with 5 days of PTO in addition to that normally accrued, representing additional paid time off he earned between July 28, 2000 and July 27, 2001, to be used by the Grievant before January 1, 2003.

I will retain jurisdiction over this award for a period of 90 days in order to resolve any issues that may arise over its implementation.

Dated at Eau Claire, Wisconsin, this 22nd day of August, 2001.

John R. Emery /s/
John R. Emery, Arbitrator

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