In the Matter of the Arbitration of a Dispute Between

CITY OF EAU CLAIRE

and

EAU CLAIRE CITY EMPLOYEES, LOCAL 284, AFSCME, AFL-CIO

Case 259 No. 62789 MA-12426

(Supervisor Working Grievance)

Appearances:

Mr. Stephen G. Bohrer, Assistant City Attorney, City of Eau Claire, 203 South Farwell Street, P.O. Box 5148, Eau Claire, WI 54702, on behalf of the City.

Mr. Steve Day, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 318 Hampton Court, Altoona, WI 54720, on behalf of Local 284.

ARBITRATION AWARD

According to the terms of the 2001-04 labor agreement between the City of Eau Claire (City) and Eau Claire City Employees, Local 284, AFSCME, AFL-CIO (Union), the parties requested that the Wisconsin Employment Relations Commission assign a member of its staff as an impartial arbitrator to hear and resolve a dispute between them regarding a supervisor allegedly doing unit work on January 10, 2003. The Commission designated Sharon A. Gallagher to hear and resolve the dispute. Hearing was held by mutual agreement of the parties at Eau Claire, Wisconsin, on February 4, 2004. No stenographic transcript of the proceedings was made. The parties agreed at the end of the hearing that they would postmark their briefs to the Arbitrator on March 12, 2004, which the Arbitrator would thereafter exchange for them. The parties reserved the right to file reply briefs. The Arbitrator received the City's reply brief on April 2, 2004. On April 2, 2004, the Union advised it would not file a reply, whereupon the record was closed.

ISSUES

The parties stipulated that the Arbitrator should resolve the following issues in this case:

Did the City violate Article 31, Section 7, paragraph 1 of the parties' collective bargaining agreement when a supervisor put up a temporary stop sign at the intersection of Starr Street and Eddy Lane on Friday, January 10, 2003, at 5:30 p.m.? If so, what is the appropriate remedy?

RELEVANT CONTRACT PROVISIONS

Article 3 – UNION SECURITY AND MANAGEMENT RIGHTS

. . .

<u>Section 2.</u> The rights, power, and/or authority claimed by the City are not to be exercised in a manner that will cease to grant privileges and benefits, limited to mandatory subjects of bargaining, that the employees enjoyed prior to the adoption of this agreement and that will undermine the Union or as an attempt to evade the provisions of this agreement or to violate the spirit, intent, or purposes of this agreement.

<u>Section 3.</u> Management Rights. It shall be the exclusive function of the City to determine the mission of the agency, set standards of services to be offered to the public, and exercise control and discretion over its organization and operations.

Article 14 – OVERTIME

<u>Section 1.</u> Employees shall receive one and one-half $(1 \frac{1}{2})$ times their regular hourly rate of pay for all hours worked in addition to their regular standard work day and/or the standard work week, and a minimum of one (1) hour shall be paid for all overtime. For the purpose of computing overtime pay, vacation, holidays, sick and injury leave shall be considered as time worked.

<u>Section 5.</u> Employees who are recalled to work after the completion of their regular work day by their supervisor shall receive a minimum of two (2) hours pay for each call.

. . .

Article 31 – GENERAL PROVISIONS

. . .

<u>Section 7.</u> Supervisors shall not perform any work normally performed by bargaining unit employees, or serve as non-supervisory employees of a work crew except under the following circumstances:

1. During an emergency, when it is necessary in the interest of public safety to complete emergency tasks, to avoid injury and/or damages.

2. For training purposes.

3. When a shortage of bargaining personnel exists after following agreed-upon procedures.

•••

BACKGROUND

Since 1995, the City has had different call-in procedures for situations which occur after regular work hours. In the summer, the Water Plant Operator is the designated employee to call-in for after-hours work. The Water Plant Operators (members of the bargaining unit) call in only bargaining unit employees based on an agreed-upon "Overtime Call-In Procedure" and "After Hours Emergency Response List." The Overtime Call-In Procedure reads as follows:

Overtime Call-in Procedure

Light Equipment

- 1 Call all light equipment operators and tandem operators
- 2 Call heavy equipment operators and skilled workers
- 3 Call off duty operators all

When calling, start at the top of the list. Call down to get what you need.

Example: Need 1 light: Call 1, No, Call 2, Not home, Call 3, yes.

Next call, start at number 4. Call until you can get what you need. Start next call at next person on the list.

Go to bottom of Lights & Tandems, start over at top and go through again before calling Heavies & Skilleds.

A weekend counts as one day from Friday 4 pm until Monday 8 am.

The "After Hours Emergency Response List" states that a "Light Equipment Operator or Tandem Operator" must be called in for "stop sign down or missing." A calling list entitled "Street Overtime" is used by the Water Plant Operator who calls the most senior employee on the list, and so forth, in rotation to perform the after-hours work in the summer (Union Exh.1).

In contrast, during the winter, the City has used a different procedure for call-ins after hours. In winter, one supervisor is on call each week and all other supervisors are listed as back-ups for the one on call. If a situation arises after work hours, the supervisor on call for the week is called at home usually by the Police Department. If the supervisor does not answer his/her telephone, the supervisor is then paged and if he/she does not answer the page within 15 minutes, the next supervisor is called to handle the situation, and so forth down the supervisory rotation.

Union President Horlacher, who has been employed in the City's Streets Department for the past 28 years, stated that putting up temporary stop signs after hours has traditionally been considered unit work, not emergency work, and unit employees have normally done this work. Some supervisors call in unit employees from the "Street Overtime" list in the winter rather than performing the after hours work themselves. Union Exhibits 4 and 5 showed that there were a total of 19 call-ins of unit employees to take care of missing or down stop signs during the period from September 7, 2002, to January 31, 2004. Union Exhibit 5 also showed that in the winter, for five overtime call-ins in February, 2003, and for three such in March and April, 2003, unit employees, not supervisors, were called in on overtime to perform the necessary work. No testimonial evidence was offered to show that supervisors regularly perform down stop sign after-hours work. The City presented no documents to show how many times (if at all) during September, 2002, to January, 2004, supervisors had put up temporary stop signs after hours. This is the first grievance regarding supervisors performing after-hours work.

FACTS

The facts of this case are not in dispute. Rather, it is how the facts should be characterized that the parties dispute. On Friday, January 10, 2003, a truck struck and caused a stop sign at the intersection of Starr and Eddy to fall down. The speed limit at Starr and Eddy is 30 mph and the intersection is regulated by four stop signs marked "4-way" below each sign. The police were notified of the down stop sign at 5:16 p.m. and a police officer was dispatched to the intersection and arrived there at 5:24 p.m. (Union Exh. 6). According to the police report filled out by the officer at the scene, it was dusk when he arrived, the road conditions were dry and the terrain at the intersection was level/flat and the roadway was straight.

The police then called the Water Plant Operator (not normally done in the winter) and advised the Operator of the situation. The Water Plant Operator that evening was Michael Johnson. Johnson called the supervisor on-call that week, Jim Lund and reached him at home. 1/ Lund stated that as is his practice, 2/ he went to the intersection to check on the situation in his City truck. Lund put his City cell phone and a copy of the "Streets Overtime" list in his truck.

2/ Lund stated other City supervisors follow this practice.

When Lund arrived at Starr and Eddy, he saw the police officer in his squad car parked next to the down sign with his roof lights flashing. Lund stated he also had the yellow light on his truck flashing. Lund stated that while he was checking out the situation, he saw two cars "blow through" the intersection without stopping. Lund stated that he felt the situation at Starr and Eddy needed to be taken care of immediately and he felt that he could take care of the problem faster than if he called in a unit employee. 3/ Lund stated that it took him 24 minutes to drive from Starr and Eddy to the Shop, to get a sign and to return to the intersection. Lund admitted that he could not recall whether the police officer was still at the intersection when he (Lund) returned with the temporary stop sign.

3/ Lund estimated that it would have taken more than one hour for a unit employee to take care of the down stop sign on January 10^{th} .

Lund admitted that he did not speak to the police officer at the scene at any time on January 10th; that he simply turned around in his truck and assumed that the police officer knew he intended to take care of the sign problem. Lund stated he has no authority to direct police officers to remain at the scene of a down stop sign; but that he believed that the officer was still parked at the intersection when he returned from the shop with a temporary stop sign. Lund also stated that he did not believe he had flares in his truck although he did have safety triangles in his truck which he could have used on January 10th. (Lund did not stop and put out safety triangles on January 10th.)

Lund requested and was paid for .6 hours pay (at time and one half) for the work he performed at Starr and Eddy on January 10, 2003, at his rate of \$22.68 per hour. The Union filed the instant grievance on behalf of the most senior employee on the "Street Overtime" list, John Franson who should have received overtime pay pursuant to Article 14, Section 5.

^{1/} Lund lives about six blocks from the Starr and Eddy intersection. Lund drives a City truck (which is assigned to him) to and from work.

POSITIONS OF THE PARTIES

The Union

The Union noted that an "emergency" is defined as "a sudden generally unexpected occurrence demanding immediate action" and that an emergency did not exist at Starr and Eddy on January 10, 2003. In this regard, the Union argued that erecting temporary stop signs is a task normally performed by bargaining unit employees. In this regard, the Union noted that Union witness Horlacher stated that unit employees erect temporary stop signs regularly; that Union Exhibit Nos. 4 and 5 (the overtime call-in sheets for 2002-03) showed 11 entries indicating "portable stop sign," and 8 references to "stop sign" or "stop sign down," all of which, Horlacher stated, showed that unit employees had replaced stop signs on overtime on the dates shown on the Exhibits. Horlacher also stated that the normal procedure to deal with a down stop sign has been that the supervisor on-call calls a unit employee in on overtime to put up a temporary sign.

Union witness Johnson, Water Plant Operator, stated that as WP Operator, he receives calls (mostly from the police but also from the public) regarding down stop signs as well as other problems which arise after normal work hours. Johnson stated that unit employees are called-in in summer to erect down signs but that in winter, supervisors sometimes do this work. Johnson also stated that none of this work is considered "emergency" work. The Union noted that erection of temporary stop signs has been grouped by the City with removal of street debris and replacing missing catch basin grates (Union Exh. 2), none of which is considered emergency work.

The Union argued that the evidence proffered by the City failed to show that erection of temporary stop signs is "emergency" work. In this regard, the Union noted that there is a potential for an accident whenever a stop sign is down; that the City failed to show that the intersection at Starr and Eddy is either a busy intersection or a dangerous one. The police report showed that conditions at Starr and Eddy on January 10th were dry and clear at dusk and that the pavement/intersection was straight (not curving or hilly). The Union noted that three of the four stop signs were still up at Starr and Eddy on January 10th and that the City's contention was unsupported by any documentary evidence that more serious accidents tend to occur at four-way intersections than at two-way intersections when one stop sign is down.

The Union asserted that the police presence at the Starr and Eddy intersection on January 10th negated the need for Supervisor Lund to act immediately. In this regard, the Union observed that Lund's actions did not demonstrate that he believed he was responding to a true emergency when he arrived at Starr and Eddy after 5:00 p.m. on January 10th. The Union noted that before leaving to check out the situation, Lund put his City cell phone and the Union overtime call-in list in his truck; that when he arrived at Starr and Eddy, Lund saw a police officer in his car with its roof lights flashing next to the down sign. There were no fire trucks and no accidents at the intersection on January 10th. On January 10th, Lund did not

speak to or gesture to the police officer, so he did not know why the officer was there or if the officer would remain there until his return. Yet, Lund went through the intersection, turned around and went back through the intersection and drove to the Shop without first putting out flares or danger triangles at Starr and Eddy.

The Union disputed Lund's testimony that it would have taken one hour for a unit employee to be called in and to complete the sign erection (not the .6 hours Lund spent), as the employee at the top of the overtime call-in list was John Franson, who lived close to Starr and Eddy. The Union also argued that Lund's estimate of the distance and travel time form Starr and Eddy to the Shop was exaggerated.

The Union suggested that Lund's motivation in acting as he did on January 10th was to earn overtime for himself. As no emergency existed at Starr and Eddy when he arrived due to the police officer's presence, Lund should have called a unit employee to erect a temporary sign. Therefore, the Union sought that John Franson be paid the minimum call-in pay under Article 14, Section 5.

The City

The City argued that Article 31, Section 7, paragraph 1, is clear and unambiguous. In this case, "emergency" must be understood in the context of the remaining contract language and the circumstances extant on January 10, 2003. The City observed that the latter included:

. . .

1) low visibility; 2) vehicles northbound not stopping; 3) police flashing lights had no affect; 4) heavy traffic; 5) rush hour; 6) the Friday fatigue factor; 7) the personal and commercial vehicle mix near an airport; 8) 30 mph in all directions; 9) lack of similar intersections nearby; and 10) the delay factor, i.e., that it would be much more expedient for Lund to do the work. (City Brief, p.5)

•••

The City contended that the Union's comparability evidence (Union Exhibits 4 and 5) did not actually demonstrate any instances that were comparable. In this regard, the City urged that the volume of traffic at Starr and Eddy was, on average, 492 vehicles per hour, and up to 1,000 at rush hour; that Starr and Eddy is the third busiest intersection in the City of Eau Claire (a city with a population of more than 61,000); and that none of the 19 examples cited by the Union in Exhibits 4 and 5 involved four-way intersections. The City also noted that the Union offered no direct testimony on most of the examples it gave, making the weight of the evidence "questionable."

						Union
	Date	Day	Time	Employee	Location	Exhibit
1.	10/02/02	Wed.	1:00 a.m.	Monty	9 th /Water	5, pg. 1
2.	10/12/02	Sat.	8:30 a.m.	Ryan R.	Hudson and 2 nd	5, pg. 2
3.	10/14/02	Mon.	12:40 a.m.	Ryan R.	Madison/Franklin	5, pg. 2
4.	10/14/02	Mon.	7:00 p.m.	Eric W.	7 th /Truax	5, pg. 2
5.	02/09/03	Sun.	8:00 a.m.	Sheuter	Huebsh/Summer	5, pg. 3
6.	02/22/03	Sat.	2:50 p.m.	Ryan	Tony Ct/Fairfax	5, pg. 3
7.	04/06/03	Sun.	6:00 p.m.	Monty	Clairemont/American	5, pg. 4
8.	05/14/03	Wed.	7:48 p.m.	Campbell	Belleview/Galloway	5, pg. 5
9.	07/02/03	Wed.	(no time)	Terry D.	(no location)	5, pg. 6
10.	07/05/03	Sat.	9:30 a.m.	Franson	6 th /Broadway	5, pg. 6
11.	07/13/03	Sun.	2:45 a.m.	Deetz	3 rd /Broadway	5, pg. 7
12.	(no date)	(??)	5:00 a.m.	Bob H.	2 nd /Chippewa	5, pg. 7
13.	07/20/03	Sun.	1:00 a.m.	Jeff K.	1 st /Broadway	5, pg. 7
14.	07/20/03	Sun.	8:00 a.m.	Mike C.	3 rd /Niagara	5, pg.8
15.	07/27/03	Sun.	3:30 a.m.	Jeff K.	Germania/Madison	5, pg. 8
16.	08/30/03	Sat.	8.24 p.m.	Campbell	Margaret/Sherwin	5, pg. 8
17.	09/13/03	Sat.	6:45 p.m.	Wold	110 th St.	5, pg. 9
18.	09/13/03	Sat.	9:45 p.m.	Deetz	Western/Seymour	5, pg. 9
19.	01/31/04	Sat.	3:30 a.m.	Bob H.	E. Grand/S. Dewey	4, pg. 1

The City summarized the evidence contained in Union Exhibits 4 and 5 as follows:

. . .

. . .

Based on the above, the City urged that 15 examples occurred in the early morning or on a weekend when traffic is lighter than at rush hour, that one example stated no date, and two examples occurred on a Monday and a Wednesday at 7:00 p.m. and 7:48 p.m., respectively. The City also argued that its expert, Walter, stated that the situation at Starr and Eddy on January 10, 2003, was not comparable to the above-listed Union examples and that a down stop sign at a four-way stop intersection is more dangerous than the same situation at a two-way stop sign intersection. Walter also stated that immediate action regarding the down stop sign at Starr and Eddy on January 10th was a matter of public safety.

The City observed that Union witness Horlacher's statement that police are rarely at the site of down stop signs undercuts the Union's arguments that the situation on January 10th was not an emergency. In addition, the City pointed out that the Union's argument that Lund was motivated to avoid using the Union call-in list by a desire to earn overtime pay for himself was unsupported by the evidence.

Under the circumstances of this case, the City asked the Arbitrator to limit her ruling to a finding that the situation on January 10, 2003, constituted an emergency in the interest of public safety and to avoid injury and/or damages, Supervisor Lund had acted reasonably in erecting a temporary stop sign at the intersection of Starr and Eddy that day. The City therefore sought denial and dismissal of the grievance in its entirety.

Reply Briefs

The Union advised by letter received on April 2, 2004, that it would not file a reply brief. The City's reply brief was received on April 2, 2004.

The City

In its reply brief, the City noted that the Union had made several major arguments in its initial brief to which the City wished to respond. The City argued that the Union had failed to prove that putting up temporary stop signs is work regularly performed by unit employees. In this regard, the City noted that Horlacher's testimony was limited and that most of the situations listed in Union Exhibit 5 were factually distinguishable from this case. The City also argued that it has made no distinction between summer and winter emergencies (as evidenced by City Exh. 4) and that the Union's argument thereon was neither helpful nor relevant.

The City reiterated that the intersection of Starr and Eddy is a very busy one and that this played an important part in Lund's decision not to use the call-in list on January 10, 2003, demonstrating the reasonableness of that decision. In addition, the City pointed out that Engineer Walter's testimony was unrefuted that a downed stop sign at a "4-way" stop intersection is more dangerous than one at a two-way stop intersection, making the Union's argument on this point far less weighty.

The City also disputed certain facts relied upon by the Union to show that Lund did not actually believe that an emergency existed at Starr and Eddy on January 10th. In this regard, the City asserted that Lund's driving through the intersection twice only indicated good judgment in checking out the situation thoroughly before he went to the Shop to get a temporary stop sign. The fact that a police officer was at the scene when Lund arrived there did not negate the need for Lund to act immediately, as Lund had no authority to direct the work of the police officer at the scene. Therefore, Lund's failure to stop to speak to the officer at the scene on January 10th was an "inconsequential" omission. As Lund stated herein that he did not know where Franson lived, Lund's failure to call-in Franson also constituted a non-argument. The City noted that there was no evidence proffered to show that Lund "dawdled or otherwise reacted inappropriately."

In all of the circumstances of this case, the City contended that Lund's decision to perform the work of putting up a temporary stop sign at the intersection of Starr and Eddy on January 10, 2003, was reasonable and the City urged the Arbitrator to deny and dismiss the grievance.

DISCUSSION

Article 31, Section 7, paragraph 1 of the parties' labor agreement specifically states that supervisors "shall not perform any work normally performed by bargaining unit employees" This clear language represents the general rule to which only three exceptions are made. The only one of these exceptions to the general rule that the City has argued is applicable to this case, which it argued allowed Supervisor Lund to put up the temporary stop sign at Starr and Eddy on January 10, 2003, read as follows:

1. During an emergency, when it is necessary in the interest of public safety to complete emergency tasks, to avoid injury and/or damages.

I note that the above-quoted language is extremely broad and that none of the terms used therein is defined in the labor agreement. The broadness of this language makes evidence of past practice concerning how down stop signs have been handled after hours in the past both relevant and admissible herein.

It is significant that unit employees in the "Light Equipment Operator or Tandem Operator" positions, not supervisors, must be called in after hours to take care of down or missing stop signs, according to a City memorandum still in effect and made a part of this record as Union Exhibit 2. Furthermore, the "supervisor from the list" is to be called in, according to this memo, only for the following problems:

Heavy rain—standing water Wind storm—trees down Any other weather related calls, such as, sand or salt requests Other unusual occurances [sic] not listed (Union Exhibit 2)

In addition, Union Exhibits 4 and 5 showed that in both the winter and summer seasons, unit employees have been called in after hours to take care of missing or down stop signs as well as to perform other work between September, 2002, and January, 2004. 4/ No evidence was submitted by the City to show how many times (if at all) during this period supervisors took care of missing or down stop signs.

⁴/ The City argued that the examples listed in Union Exhibits 4 and 5 are distinguishable from the January 10^{th} situation at Starr and Eddy. In my view, these examples need not be identical to the situation at Starr and Eddy to support the Union's assertions that putting up temporary stop signs has been considered unit work done normally by unit employees.

Furthermore, City Exhibit 4 cited by the City in support of its contentions herein, in fact tends to support the Union's case. In this regard, I note that this May 1, 1995 memorandum was issued to limit the amount of on-call pay given to supervisors in the Streets Department to "one hour regular pay." The memo also stated that supervisors had been issued pagers after the City eliminated "around-the-clock watchmen" and two of five supervisor positions in order to save money. This memorandum further stated: "Work done by supervision will be shifted to non-management positions." In these circumstances, supervisors have been on notice since at least May 1, 1995, that they are expected to limit their on-call work/costs by shifting them to non-management (unit) positions.

Although the City submitted a great deal of evidence to try to show that the intersection at Starr and Eddy is very busy on Friday afternoons, that the conditions on January 10th were potentially dangerous, and that therefore a down stop sign at Starr and Eddy could have caused injury or damages, it offered no evidence to show that Supervisor Lund was aware of any of this evidence at the time he made his decision to perform after hours work at the intersection of Starr and Eddy on January 10, 2003. Clearly, it is Lund's judgment regarding whether the situation at Starr and Eddy was in fact an emergency that is determinative in this case.

An analysis of Lund's testimony and his actions on January 10th show that Lund did not believe the situation at Starr and Eddy constituted an "emergency" and that putting up a temporary stop sign at that intersection was not truly an "emergency task" which, was necessary "in the interest of public safety," which he believed he had to complete "to avoid injury and/or damages" under Article 31, Section 7(1). The fact that Lund did not stop and put out danger triangles, that he did not stop and speak to the police officer on the scene 5/ to find out whether the officer would stay at the scene, and that Lund then drove through the "unsafe" intersection twice before driving to the shop, demonstrate that Lund did not believe the situation at Starr and Eddy constituted a true "emergency" under Article 31.

^{5/} The fact that Lund lacked the authority to order the officer at the scene to remain there is not particularly pertinent to the outcome of this case. However, this fact also tends to support a conclusion that if Lund had truly been concerned that he was facing an emergency at Starr and Eddy on January 10^{th} , he would have spoken to the officer to request that the officer remain at the intersection until his return, without regard to his (Lund's) authority over the officer.

Rather, Lund's actions clearly showed that he was not concerned that an emergency existed at Starr and Eddy or that injury and/or damages would occur before he (Lund) could return with a temporary stop sign. Looking at the police report (Union Exhibit 6), I note that the police were notified at 5:16 p.m. that one stop sign was down at Starr and Eddy and that eight minutes later, a police officer arrived at the intersection; that the officer found no accidents and no fire trucks at the intersection; and that the officer apparently decided not to

get out of his vehicle to direct traffic, deciding instead to park next to the down stop sign with Page 12 MA-12426

his roof lights flashing. The fact that Lund stated he did not recall whether the officer was still present at the intersection when he (Lund) returned 24 minutes later with the temporary stop sign further supports a conclusion that Lund did not believe and emergency existed at Starr and Eddy on January 10, 2003.

Finally, and most significant to this Arbitrator, was Lund's testimony as to why he performed the work at Starr and Eddy. Lund stated that he did the work because the situation needed to be taken care of as soon as possible and, due to the time it normally takes to get a Union employee to do these tasks, Lund felt he could do the work faster himself and he therefore decided not to call in a unit employee. 6/ These reasons do not convince me that Lund truly believed he faced an emergency at Starr and Eddy on January 10, 2003. 7/

Finally, it is also important to the outcome of this case that Union Witness Horlacher testified without contradiction that putting up temporary stop signs has always been considered unit work and that it has been regularly done by unit employees. In the specific circumstances of this case, I therefore issue the following

AWARD

The City violated Article 31, Section 7, paragraph 1 of the labor agreement when Supervisor Lund put up a temporary stop sign at the intersection of Starr and Eddy on January 10, 2003. The City shall, therefore, pay John Franson, the most senior unit employee on the call-in list on January 10th, the minimum two hours call-in pay pursuant to Article 14, Section 5.

Dated at Oshkosh, Wisconsin, this 23rd day of April, 2004.

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

^{6/} The Union argued herein that Lund was motivated to perform the work at Starr and Eddy so that he could earn overtime pay for himself. As the Union submitted no evidence to support this assertion, I have rejected it.

^{7/} Furthermore, I note that Lund was led by the City Attorney to answer herein that the situation at Starr and Eddy was unsafe and an emergency in the interest of public safety. Lund did not volunteer this opinion without prompting.

SAG/anl 6671.doc