

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

PRICE COUNTY

and

**PRICE COUNTY HIGHWAY DEPARTMENT EMPLOYEES, LOCAL NO. 1405,
AFSCME, AFL-CIO**

Case 102
No. 68731
MA-14329

Appearances:

John Spiegelhoff, Staff Representative, 1105 E. 9th Street, Merrill, Wisconsin, appeared on behalf of the Union.

Lori Blair-Hill, Human Resources Coordinator, 126 Cherry Street, Phillips, Wisconsin, appeared on behalf of the Employer.

ARBITRATION AWARD

Price County Highway Department Employees, Local No. 1405, AFSCME, AFL-CIO, herein "Union" and Price County, herein referred to as the "Employer," jointly selected the undersigned from a panel of arbitrators from the staff of the Wisconsin Employment Relations Commission to serve as the impartial arbitrator to hear and decide the dispute specified below. The arbitrator held a hearing in Phillips, Wisconsin, on April 20, 2009. Each party filed a post-hearing brief and reply brief, the last of which was received June 1, 2009.

ISSUES

The parties stipulated to the following statement of the issues in this case:

1. Did the Employer violate the collective bargaining agreement when it terminated the employee, Bob Gebert on March 15, 2009?
2. If so, what is the appropriate remedy?¹

¹ The parties stipulated that I might reserve jurisdiction over the specification of remedy, including, but not limited to the calculation of back pay if either party requests that I do so in writing, copy to opposing party, within sixty (60) days of the date of the award.

FACTS

The background facts are not disputed. The Employer is a subdivision of the State of Wisconsin and provides, among other services, a highway department. The Union represents various employees of the Employer including non-supervisory and non-managerial employees in the Employer's Highway Department. Grievant Robert Gebert has been employed as a highway patrolman in that department for over twenty-five years and is a member of the bargaining unit represented by the Union. The Highway Patrolman position requires a Commercial Driver's License (herein also "CDL"). He has had no relevant disciplinary history and he was a good employee throughout the tenure of his employment. He was terminated from his employment

Mr. Gebert was stopped while driving his private vehicle in his off-duty hours by the Price County Sheriff's Department for operating his vehicle while being intoxicated on February 15, 2008. He refused to take the mandatory test for intoxication. He was issued a temporary driver's license which was good for thirty days. Mr. Gebert reported the traffic stop to Highway Commissioner on February 18, 2008. He took no action to challenge the suspension of his driver's license. His regular driver's license was suspended on March 14, 2008. On March 12, 2008, the Employer's Human Resources Coordinator, Lori Blair-Hill sent a letter to Mr. Gebert with a copy to the Union. The letter stated in relevant part:

...

Due to the fact that your driver's license will be revoked for one (1) year, effective March 14, 2008, you are hereby noticed that Price County is, per union contract (Article 14, Section C), placing you on an unpaid leave of absence. This unpaid leave of absence is effective March 14, 2008. Once your license has been regained you will be returned to your position in the Highway Department, provided you regain your license within one (1) year. If, however, you do not regain your license within one (1) year of the revocation, you will be terminated from your position at Price County.

Per union contract (Article 14, Section D), Price County will make one exception for any employee who has their license revoked or suspended and provide them with work, at the common laborer wage. However, that employee must have a regular driver's license. If and when you are able to acquire an occupational license the Highway Department will offer you this exception. Until you are able to provide us with evidence of the occupational license or the reinstatement of your regular license you will continue on the unpaid leave of absence. This exception is only for the first year of the revocation/suspension. As stated before, if the revocation/suspension continues beyond one (1) year your employment with the County shall be terminated.

...

The letter was received by Mr. Gebert and the Union shortly after it was sent. On March 25, 2008, Mr. Gebert received two letters from the Wisconsin Department of Transportation (herein "DOT"). The first told him his driving privilege was revoked for one year from March 14, 2008. He might be eligible for reinstatement on March 14, 2009. The second letter notified him that his privilege to drive a commercial motor vehicle was disqualified for one year from March 25, 2008, based upon his conviction for the offense of failure to take a mandatory test for intoxication on February 13, 2008. It provided that he might be eligible for reinstatement on March 25, 2009. On April 11, 2008, Mr. Gebert pleaded no contest to a charge of operating a motor vehicle while under the influence of an intoxicant. Other charges including, but not limited to, refusal to take a mandatory test were dismissed. His license was revoked for nine months. On April 14, 2008, Mr. Gebert received a letter from DOT stating that his license to drive a motor vehicle was revoked for nine months starting April 11, 2008. He was told that he might be eligible for reinstatement December 15, 2008, of his regular driver's license. That did not change the disqualification period for his Commercial Driver's License.

Mr. Gebert took no action with respect to the aforementioned letter from the Employer or letters from the DOT. He had no contact with the Employer and he had no contact with the Union concerning their contents.

The Union took no action with respect to these matters until it the facts specified below. The Employer's Human Resources Department took no further action until the facts specified below.

Mr. Gebert obtained an occupational license which allowed him to exercise his ordinary driving privileges in April, 2008, at all material times thereafter. The Employer allowed Mr. Gebert to perform work at all times thereafter in its common laborer classification under the terms of Article 14.

There is a disagreement between the parties as to when the next discussions took place relating to this issue. The Employer contends that Highway Commissioner Knaack and Human Resources Coordinator Bliar-Hill discussed the matter with Union President Joe Baratka in December, 2008. Mr. Gebert indicated that although he received the Employer's March 12, 2008, letter, he was not aware there would be any difficulty in him retaining his employment until he noticed that the matter was scheduled on the Personnel Committee's agenda for February, 2009. He then discussed the matter with Union President Baratka who determined there would be a dispute if the Employer terminated Mr. Gebert as planned. He filed a grievance February 23, 2009.

Mr. Gebert obtained his regular driver's license in December, 2008. The Employer terminated Mr. Gebert on March 14, 2009. He obtained his CDL on March 25, 2009.

The grievance was properly processed through the grievance procedure to arbitration. More facts are stated in the Discussion below.

RELEVANT AGREEMENT PROVISIONS

“ . . .

ARTICLE 4 – MANAGEMENT RIGHTS

The County possesses the sole right to operate the County and all management rights repose in it, subject only to the provisions of this contract and applicable law. These rights include the following:

. . .

- D. To suspend, demote, discharge and take other disciplinary action against employees for just cause.

. . .

Whether or not the County has been reasonable in the exercise of the above mentioned management rights, which are mandatorily bargainable, shall be subject to the grievance and arbitration procedure.

. . .

ARTICLE 7 – SENIORITY

A. Definition:

Upon completion of the employee’s probationary period, the seniority of employees covered by the terms of this Agreement shall begin with the employee’s original date of employment provided, however, that no time prior to a discharge, termination or quit shall be included. An employee’s seniority shall not be diminished by temporary layoffs of less than 18 months due to a lack of work or lack of funds, provided that the employee reports to work able to fulfill all assigned responsibilities when recalled.

. . .

D. Loss of Seniority:

Seniority and the employment relationship shall be terminated if any employee:

1. Is absent from work for three (3) consecutive working days without notification to or approval by the Employer unless unable to notify for physical or other reasons;
2. Is on a leave of absence for personal or health reasons and accepts other employment without permission.
3. Retires, resigns, or quits employment with the County;
4. Is discharged for just cause by the Employer;
5. Has been on lay-off status for 18 months.

...

ARTICLE 11 – GRIEVANCE PROCEDURE

A. Definition of a Grievance:

A grievance shall mean a dispute concerning the interpretation or application of this contract or any question regarding wages, hours and conditions of employment.

B. Subject Matter:

Only one incident shall be covered in any one grievance. A written grievance shall contain the name and position of the grievant, a clear and concise statement of the grievance, the issue involved, the relief sought, the date the incident or violation took place, and the specific section of the Agreement alleged to have been violated.

C. Time Limitations:

If it is impossible to comply with the time limits specified in the procedure because of work schedules, illness, vacations, etc., these limits may be extended by mutual agreement.

D. Settlement of Grievance:

Any grievance shall be considered settled at the completion of any step in the procedure. Dissatisfaction is implied in recourse in one step to the next.

E. Steps In Procedure:

Step 1. The employee and Steward shall submit the grievance in writing to the employee's supervisor no later than ten (10) working days after the employee knew, or should have known, of the cause of such grievance. In the event of a grievance, the employee and steward shall perform their assigned work task and grieve the complaint later. Grievance conferences shall be held during non-working hours whenever possible. If the supervisor does not respond within ten (10) working days, the grievance is deemed denied effective the end of the tenth (10th) working day and the grievant can proceed to Step 2.

Step 2. If the grievance is not settled in Step 1, the Union may appeal the grievance in writing to the Personnel Committee within ten (10) working days after receipt of the written decision of the supervisor. Within thirty (30) working days of the appeal, the parties shall meet and discuss the grievance. The Union Grievance Committee and Representative shall represent the aggrieved person(s). Said conference shall be held during non-working hours. The Committee shall respond in writing within ten (10) working days of said conference.

F. Arbitration:

1. **Time Limit:** If a satisfactory settlement is not reached in Step 2, the Union must notify the Personnel Committee in writing within five (5) working days that they intend to process the grievance to arbitration.
2. **Arbitration Board:** Any grievance concerning the meaning and application of this agreement which cannot be settled through the above procedures may be submitted to an Arbitration Board comprised of three (3) persons, to be selected as follows: The County and the Union shall each select one (1) member of the Arbitration Board, and the two members selected by the parties shall use their best efforts to select a mutually agreeable Chairman of the Arbitration Board. If the two selected persons are unable to agree on the Chairman within thirty (30) days, either party may request the Wisconsin Employment Relations Commission to appoint a member of its staff as the Chairman.
3. **Arbitration Hearing:** The Arbitration Board selected or appointed shall meet with the parties at a mutually agreeable date to review the evidence and hear testimony relating to the grievance. Upon completion of this review and hearing, the Arbitration Board shall render a written decision to both the County and the Union which shall be binding upon both parties.
4. Each party shall pay its own costs for the Board member selected by it, and all other out-of-pocket expenses including possible attorneys' fees. Employees will be released from their normal duties and suffer no loss in wages for the period of time their attendance is required at the proceedings and reasonable travel time. Every effort will be made to reduce this disruption of the employee's normal duties to the degree possible. The arbitration hearing shall be conducted in the County Courthouse.

5. **Transcript:** The parties shall share the cost of the transcript equally if one is requested by either party, unless the other party declines to make use of the same in the proceeding. In the event the arbitrator requires a transcript, both parties shall equally share the cost.
6. **Limitation:** The Arbitration Board shall not modify, add to or delete from the express terms of the Agreement.

...

ARTICLE 14 – COMMERCIAL DRIVERS LICENSE

A. Commercial Drivers License Required:

All employees of Price County Highway Department, as a condition of their employment, must hold a valid commercial driver's license including the endorsements for classes a, b, c, d, h, and n. Employees employed prior to January 1, 1996, will not be penalized if they are unable to obtain endorsements h and n; however, these employees must make a good faith effort to attempt to obtain endorsements h and n.

B. Cost of Maintaining License:

Price County will pay the difference in cost for renewing a commercial driver's license over and above the cost of a regular driver's license for employees. Price County will also make available to employees taking a driving skills test a vehicle in good operating condition.

C. Suspension or Revocation of License:

Any employee whose license is suspended or revoked will be placed on unpaid leave of absence until they regain their license, provided the license is regained within one year. If after 12 months the employee has still not regained their license, the employee will be terminated. Any employee whose license has been suspended or revoked more than once within a rolling five-year period of time will be terminated and any employee whose license has been permanently revoked will be terminated effective the date of the loss of license.

If an employee has their license suspended and they are able to get an occupational license whereby they are able to perform their full job duties, that suspension will not be counted against the employee when looking at the 5-year termination rule.

D. Exception For One Employee on Loss of Commercial Drivers License:

The Employer will make an exception for only one employee at a time that has lost their commercial drivers license. The employee who has lost his commercial drivers license must have a valid regular driver's license. The employee is to be paid at the common laborer rate for all work done. If a second employee loses their commercial drivers license, the employee entitled to this exception is the employee with the most seniority. An employee with more seniority can bump an employee with less seniority if the employee with less seniority is filling the one exception. Once an employee is terminated that employee has no right to re-employment even if later the employee with more seniority who is filling this exception terminates his employment.

E. Failure to Comply with Notification Requirements:

Any employee who fails to comply with notification requirements of convictions for driver violations or drivers license suspensions or notifications requirements of previous employment may be subject to immediate discharge at the Employer's sole discretion.

...”

POSITIONS OF THE PARTIES

UNION:

The grievance is timely filed. Grievant could not know there was a dispute when the Employer sent out its March 12, 2008, letter because the letter was ambiguous in its reference to “license.” If it had referred to his ordinary driver's license rather than his CDL, he would have had no dispute to grieve about. He had that returned to him within the one year stated in the letter. Further, the Employer admitted it received a public driver record abstract with respect to Mr. Gebert which informed it that he would not get his CDL back until after the one year. Although they were then aware that Gebert was not scheduled to get his CDL back by the date specified by the Employer for termination, they did nothing as well. In any event, Mr. Gebert's employment was terminated March 15, 2009. This is the date from which the time limit to file a grievance should be calculated. On that basis, the grievance was timely.

The language of the disputed provision is ambiguous as to whether the employee has to obtain his regular driver's license within the year or his CDL. The Employer's version should be rejected because it has a harsh result. Similarly, the Employer's position would render the disputed contact provision meaningless. Mr. Gebert was never given a chance to regain his CDL. He did so ten days after he was terminated. The Employer set up a no-win situation.

Article 14 should be broadly interpreted to evidence the true intent of the parties. Union witness Haskins testified that the provision was adopted for the purpose of giving employees an opportunity to get their CDL's back. At the time the language, employees who lost their regular driver's license could get an occupational CDL almost immediately. Federal DOT regulations were changed after this language was adopted to automatically suspend the CDL while an employee's regular driver's license was suspended or revoked. This resulted in the employee not having any opportunity to get his license back within one year. There are a number of provisions in Article 14 which refer to "driver's license" versus a "commercial driver's license." This provision should be interpreted to refer to the personal driver's license. The arbitrator should interpret this provision in the light of the parties' intent.

Section 343.315(4), Stats. directly addresses when the disqualification of a Commercial Driver's License commences and support the position of the Union. Under the statute the CDL disqualification commences on the date the Department of Transportation mails the notice of disqualification. In this case, the disqualification of the CDL commenced March 25. The disqualification under the Agreement should be deemed to have commenced only then. The Union asks that the arbitrator sustain the grievance and order that Mr. Gebert be reinstated and made whole for all lost wages and benefits.

UNION REPLY BRIEF:

The Employer's letter was sent March 14 which was before the traffic citations were scheduled to be heard in court. The Employer admits that it "jumped-the-gun" by issuing that letter early. However, there were two differing dates when Mr. Gebert's CDL would be reinstated. The first was when the Employer appeared to allege when he would be eligible to get his CDL back and when the Wisconsin Department of Transportation said he would. The Employer sent no follow-up letter to clarify the misimpression it created. The Employer contributed to the employee's confusion and participated in preventing him from recognizing that he could not get his license back in time. "Should have known" is a speculative concept. Mr. Gebert expected that he would be back to work March 25, 2009. He first recognized an issue when the matter was placed on the Highway Committee's agenda in February, 2009, and took appropriate action.

The "should have known" concept should be applied not to the individual employee, but to the Union because this issue has significance beyond the individual employee. The time limits should be applied based on the Union's knowledge. The Union first had discussions with the employee in February, 2009. They filed the grievance in a timely manner from that point.

The Employer asserted that it was hard to determine the intent of Article 14 because the provision was placed in the agreement in 1991. The testimony of Haskins demonstrated that the purpose of the provision was to give the employee a chance to regain his or her CDL. The Employer offered no contrary testimony. Because the parties never encountered this situation before, the evidence of bargaining history must be considered by the Arbitrator to establish the parties' intent.

EMPLOYER:

The grievance is untimely. Neither Mr. Gebert, nor the Union filed a grievance within the “ten (10) working days after the employee knew, or should have known, of the cause of such grievance” as required by step 1 of the grievance procedure. Mr. Gebert received the Employer’s letter of March 12 on March 17, 2008, telling him he would be discharged if he did not get his CDL back in one year. He also knew that he would not get his license back in the one year. He should have filed the grievance then, but did not. The Union received the same letter and, therefore, should have been on notice as well. Neither the employee, nor the Union had any discussion with management until February, 2009.

The contract language requires that the employee regain his or her CDL in one year or he or she will be terminated. The one year begins the day the employee is unable to perform his or her duties. The Employer concedes that the new DOT regulations which became effective October 1, 2005, changed the rules underlying the suspension of CDL’s when an underlying regular driver’s license is suspended or revoked. Under the new rules, there is a lag time between when the underlying regular driver’s license is suspended or revoked and when the related disqualification for the CDL commences. Thus, the total time of loss of CDL will actually be greater than one year. It is the Employer’s position that the March 14, 2008, date (day regular driver’s license was suspended) was the date the one-year began. This is true because the CDL is administratively linked to the employee’s regular driver’s license and is automatically suspended when an employee’s regular driver’s license is suspended. If the Employer were to use the March 25, 2008, date, he would have been administratively without a CDL for a period of eleven days.

The Union attempted to argue about the intent of the language. It is hard to say what the intent of the language was because it was adopted in 1991. At that time, it allowed eighteen months. It was amended by consent of the parties in 1993 to reduce that period to twelve months. This indicates that the intent was to set the limit at one year, making it consistent with the length of the unpaid leave of absence. This is the first time that the Employer has ever had to discharge an employee under this language. If the Employer made an exception, it would set a negative precedent. Accordingly, the Employer asks that the grievance be denied.

EMPLOYER’S REPLY BRIEF:

The Union’s argument that the letter sent by the Employer on March 12, 2008, was unclear is without merit. It clearly stated that Mr. Gebert needed to regain his CDL by March 14, 2009. Grievant knew or should have known when he needed to regain his CDL as of March, 2008. Similarly, the evidence does not sustain the Union’s view that it first learned of this issue in February, 2009. The Union received the March 12, 2008, letter. Highway Commissioner Knaack and Lori Blair-Hill testified that they each talked to the Union President Barathka in December, 2008, and again in February, 2009. Mr. Gebert never contacted management to seek clarification.

The Union's argument concerning harsh results is without merit. It is true that the new DOT rules disqualifying the CDL went into effect October 1, 2005, many years after this contract language was adopted. This did create a situation in which Mr. Gebert was unable to get his CDL back in time to retain his job. However, he lost his license due to serious traffic violations. The choice was his.

The Union's argument that Article 14 should be broadly interpreted is incorrect. The provision protects both the Employer and the employee. The language of the agreement is very generous to the employee. The language is set up to protect management so that they do not have to continue to employ someone who cannot perform the full range of his or her duties. Regardless of the intent of the provision at the time it was adopted, the Employer must make decisions based on the present set of circumstances. Since this language has never been put into practice until now, whatever the Employer does this time sets the precedent.

Finally, the language of the provision relates to a commercial driver's license. When the language was placed in the agreement, the CDL was a separate license and employees could only lose the CDL when they committed a traffic violation while operating a commercial vehicle. At that time, an employee could get an occupational driver's license and continue his or her normal duties. Accordingly, the grievance should be denied.

DISCUSSION

1. Timeliness

Step 1 requires that an employee or the Union file a grievance “. . . in writing to the employee's supervisor no later than ten (10) working days after the employee knew, or should have known, of the cause of such grievance.” The concept underlying the Employer's position as to timeliness is correct as to what should have occurred, but incorrect as to the minimum standard for filing a grievance. It certainly would have been wiser for the parties to address these issues at the beginning rather than waiting to the last minute. It makes sense that the grievance procedure framework might be used voluntarily for that purpose. However, the issue in this case is whether the Employer violated the agreement when it terminated Mr. Gebert. The time limits do not begin to run as to that issue until the termination occurs. The Employer's legal position appears to confuse several issues. First, there is some division between the issues which are subject to the grievance procedure, including but not limited to, when the unpaid leave begins. For example, the employee must file a grievance challenging whether he or she was properly placed on unpaid leave within ten working days of when the Employer places the employee on leave. However, the issue concerning whether the Employer properly computed the total of “twelve months” under Article 14 Section C can only be addressed after the end of the period. Thus, the issue as to when the period began for computation purposes is properly part of a grievance concerning a termination. The concept of judicial economy as it is practiced in labor relations and reflected in the first sentence of Article 11, Section B is to avoid the filing of numerous grievances. Although the Employer

was explicit in its letter of March 12, the letter was a statement of intent as to when it would terminate Mr. Gebert. The Employer had not acted to recommend termination and it was free to make another judgment at a later point until it so acted. The grievance was filed February 13, 2009, before the termination occurred. It was timely filed.

2. Contract Interpretation

The role of the arbitrator is to apply the parties' agreement as it is expressed. When language is clear and unambiguous, the arbitrator applies it as it is written. When language is reasonably susceptible to alternative meanings, it is said to be "ambiguous." Ambiguities are of two common types; patent and latent. A "latent" ambiguity is one which is not obvious from the face of the agreement. When language is ambiguous arbitrators determine the parties' intent by looking at the history of the language, past practices, if any, of the parties, the purposes of the provisions, the context of the language, and the rules of construction applied by courts.

The predecessor of Article 14 was adopted in negotiations leading to the 1991-1992 agreement. It has remained essentially substantively unchanged, except as noted herein. The parties agree that the language was adopted to deal with the potential situation in which an employee lost his or her commercial driver's license due to traffic violations. There is no evidence as to whether there were any other considerations.² The provision makes clear that; 1. maintaining a CDL is an essential requirement of unit jobs, 2. employees are responsible to comply with traffic laws on and off the job to maintain that license, 3. the Employer will try to accommodate license suspensions or revocations but it needs to maintain a complement of employees with a CDL and 4. employees were entitled to a chance to maintain their employment if they had one serious traffic violation in their career. There is no evidence as to whether there were any other considerations. At that time Section C read in it's entirety:

Any employee whose license is suspended or revoked will be placed on unpaid leave of absence until they regain their license, provided the license is regained with one year. After eighteen (18) months the employee will be terminated. Any employee whose license has been suspended or revoked a second time will be immediately terminated.

It is unclear how the parties intended to administer the eighteen month provision. Successive changes occurred in the negotiations leading to the 1993-5 agreement, 1996-8 agreement and the 2004-2007 agreement. After the parties negotiated the 2004-7 agreement, Congress enacted substantial changes to the CDL system in the Motor Carrier Safety Improvement Act which became effective September 30, 2005. Prior to that act, testimony indicates that employees who had their ordinary driver's license suspended or revoked could obtain an occupational permit fairly shortly and could continue to operate under their CDL. Ordinary license suspensions were relatively short, about six months. CDL's were not administratively

² For example, does this apply to medical conditions affecting the ability to maintain a CDL.

made invalid when the person's ordinary driver's license expired or became invalid. The Safety Act changed all that. Under the new law when a person's ordinary driver's license was suspended or revoked for Operating While Intoxicated and other offenses, the CDL automatically became invalid. In addition, the law required that the CDL also become "disqualified" for a period of time for certain offenses. For OWI, the period of disqualification ran for one year from the date the notice was sent. The result of the new law is the situation presented here: an employee would lose his license for more than one year for his or her first OWI. Even though the law was changed, the parties did not make changes to the current provision. The arguments of the parties outline the latent ambiguities created by that situation. Specifically, the Union seeks to have the provision broadly construed to give the employee a chance to maintain his or her employment for the first offense OWI even though the inability to operate a CDL lasts longer than one year. The Employer seeks to include the period where the CDL is automatically suspended by operation of law in addition to the period the license is "disqualified" for one year for the OWI offense. I conclude that neither is correct and the only period which counts under Article C for termination purposes (as opposed to leave purposes) is the twelve month CDL disqualification period not including a short period of invalidity due to the connected suspension of the underlying regular driver's license.

The undisputed evidence indicates that the parties did not ever consider the automatic suspension of the CDL with the connected suspension of the regular driver's license because the concept did not exist at the time the language was negotiated. Further, the 18 month provision cited above recognized that there might be a reinstatement even after a twelve month period of leave. While it is unclear what this meant, it did mean that there were opportunities for the employee to maintain employment even after the leave.³ Even though the parties ultimately reduced the time to twelve months, the history of language suggests that the two time periods are not necessarily co-extensive.

The express language of Section C applies to "suspensions" or "revocations." The testimony indicates that these terms apply to penalties applied to the CDL. They do not apply to short lag time and they do not expressly apply to other administrative disqualifications. The "disqualification" specified as a penalty for a serious traffic offense is one year. Mr. Gebert received that penalty and got his CDL back in the one year period from March 25, 2008, to March 25, 2009. This is the period effectively referred to in the termination provision.⁴ Accordingly, the Employer violated Article 14 when it terminated Mr. Gebert. I herewith order the traditional remedy and reserve jurisdiction as agreed by the parties.

³ It is conceivable that, for example, the employee might be allowed to seek other employment with the Employer not requiring a CDL.

⁴ No decision is expressed or implied as to how this provision is to be administered where the employee's CDL is disqualified where there is no additional penalty imposed under the CDL rules.

AWARD

The Employer violated the agreement when it terminated Mr. Gebert. He shall be reinstated to his former position and made whole for all lost wages and benefits. I reserve jurisdiction over issues arising from the specification of remedy if either party requests in writing with a copy to opposing party that I exercise that jurisdiction within sixty (60) days of the date of this award.

Dated at Madison, Wisconsin, this 28th day of August, 2009.

Stanley H. Michelstetter II /s/

Stanley H. Michelstetter II, Arbitrator