Dunsford #1

IN THE MATTER OF ARBITRATION BETWEEN:

Employer

AND

Union

1. ISSUE

In the fall of 1991, as part of a series of cost cutting measures, the Employer undertook to obtain economic concessions from its work force, including employee groups represented by a number of different Unions. The concessions which were sought included a percentage wage reduction, and a suspension of the contractual pay progression steps, for a specified period of time.

The instant dispute concerns the proper interpretation of the Letter of Agreement entered into between the Union and the Employer with regard to the nature and duration of the suspension of pay progression steps for the mechanical and related personnel.

> Specifically, the parties have stipulated to the following statement of the issue:
>
> Does the one-year pay progression suspension specified in the October 15, 1992 "Pay Reduction and Pay Suspension" Letter provide for:
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> (1) A one-calendar year suspension of all pay progression steps during the period November 2, 1992 to November 1, 1993, or
>
> (2) A one-year progression suspension for each covered employee beginning on the date of his/her first progression step on or after November 2, 1992 and ending one year later?
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> If (1) is the proper interpretation, what is the remedy?

2. Background and Evidence

In a booklet dated October 14, 1991 that was widely distributed to employees, the Employer proposed a series of "drastic measures" of pay and benefit reductions to improve its financial position. The objective was to obtain short-term economic relief. A number of programs were proposed by the Employer for acceptance both by the employees represented by unions as well as the non-contract employees. Two of the concessions sought were a percentage wage reduction and a suspension of pay progression steps (called "Longevity Step Increases" in tin booklet). Under the Union labor agreement with the Employer, the rates of pay for various classifications of work are set forth in Schedule A, along with pay progression steps listed for the jobs held by junior employees. These progressions or increases in pay are based both on annual and six month intervals depending on the job. (For example, a mechanic would have a pay progression on an annual basis the first two years, and then on a six month basis thereafter for a period of three years.) The date of the progression is calculated from the anniversary date of employment.

In its initial proposal to the non-contract employees, the Employer asked for a 15 month suspension, as follows:

> Effective January 1, 1992, longevity step increases for all non-contract employees will be suspended until April, 1993. Nonunion employees will be affected by this change regardless of union agreement or participation. To insure that all employees impacted by this suspension are treated equally, each employee's pay anniversary date (the date you normally receive your step increase) will be adjusted by 15 months. This process will ensure that a person awaiting his/her step increase in January, 1992, and who now has to wait until April 1993 (15 months), is treated the same as a person receiving a step increase on December 31, 1991.

Later, as the Employer engaged in bargaining with the various Unions, some changes were made in the proposal. The suspension period was reduced from 15 to 12 months, and a provision was made for employees following the suspension to "snap back" to the step on the pay progression

where they would have been if the suspension had not been imposed. Ultimately, all of the unionized employees groups entered into agreements on suspension of pay progression steps through their bargaining agents. The same general pattern was imposed on non-union employees. When the Employer first approached the Union with these concessionary proposals, the parties were already in Section 6 negotiations. In November of 1991 the Employer presented to the Union the substance of the proposal quoted above for the non-contract employees. By May of 1992 the proposal made to the Union by the Employer had been revised to embody essentially the same language ultimately adopted by the parties (see the Letter of Agreement reprinted below); although changes were made in some of the numbers as the discussion proceeded. The proposal on these items was still on the table when the Union went on strike in October, 1992. With respect to the pay reduction, the Employer finally yielded to the Union's instance that the reduction not be progressive in nature depending upon an employee's monthly pay, but instead be an across the board reduction of 3.5 percent. That reduction was to be in effect for the period from November 2, 1992 to November 1, 1993. That portion of the agreement is not in dispute. The focus of the present dispute is on the application of that part of the agreement which embodied the suspension of the pay progression steps.

The Employer maintains that the language agreed to by the parties on this subject makes the suspension run for a twelve month period of time for each employee dating from the time his or her next step progression went into effect following the date of the agreement. According to the Employer, this meaning was fully explained to the negotiators for the Union when the parties met on September 10, 1992. This agreement was finally adopted on October 8, 1992.

However, the Union points out that the language in the agreement with Union 1 is substantially different from that found in agreements entered with other Unions, specifically those

representing the pilots and flight attendants and dispatchers. An examination of the differences demonstrates to the Union that the period of suspension for the wage progression steps was intended to run from the calendar dates of November 2, 1992 to November 1, 1993.

3. Terms of the Letter of Agreement

For the sake of clarity and convenience, it is helpful at this point to reproduce the relevant parts of the Letter of Agreement of October 15, 1992 which is in dispute: Now therefore it is mutually agreed as follows:

> 1. For a one (1) year period effective the first day of the first pay period following ratification of the Agreement base pay rates in effect on the day prior to the aforementioned date for each position will be reduced as follows for pay purposes only for the year:
>
> All base pay rates to be reduced by three and one-half percent (3.5%).
>
> 2. Suspension of Pay Progression Steps
>
> Effective the first pay period following ratification of the Agreement employees will have their pay progression step increases suspended for one (1) year. When the suspension ends, employees will return to the step on the pay scale where they would have been had the suspension not occurred. In the future, pay progression increases will be effective on the beginning of the first pay period after a pay anniversary date rather than on the exact pay anniversary date.
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> 3. There will be no diminution of pay related benefits due to the application of this Letter of Agreement. Retirement, Disability and Survivors Benefits and Life Insurance entitlement will be determined by actual pay rates.
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> 4. This Letter of Agreement shall become effective on the first day of the first pay period following ratification of the Agreement and will terminate at 2400 hours one (1) year from that date.
>
> The Employer explicitly waives any and all claims that either paragraphs 1 or 2 will extend past the respective dates stated in this Letter of Agreement.

4. Negotiation History

From October of 1991 when the Employer first proposed the Pay and Benefit Reduction Programs to the work force at large until a strike by the Union on October 5, 1992, the consistently rejected the proposed changes outright.

In early discussions the Union told the Employer that it objected particularly to the suspension of pay progression, because the people affected were junior employees, and they would not be able to recover their loss to the same degree as the senior employees who had completed their progressions. The latter would recover their pay reductions in a return package of profit-sharing which was part of the program, but those who lost the step progressions could not make that money up. In response, the Employer argued that if there were not a suspension of pay progression, there would be a problem, because those at the upper end of the scale who were taking a pay cut would object to the fact that juniors were still receiving increases in the progression. While there was no express reference in negotiations by the Employer to making the pay reduction coterminous with the pay progression suspension, the Union representatives said that they came to believe the Employer was attempting to solve the problem it had described by doing just that.

Sometime in May of 1992 the Employer put on the table for Union 1 a proposal which (except for the amount of pay reduction in Paragraph 1) was in all material respects the same as the agreement ultimately reached by the parties (reprinted above). On September 10, 1992 the parties sought to break through the full range of issues before them when, at the suggestion of Person 1, then Air Line Coordinator for the Union, an informal meeting outside the normal negotiations was scheduled. The two men who represented the Union were Person 1, and Person 2, then Assistant General Chairman. Representatives for the Employer were Person 3, Vice

President of Labor Relations for the Employer, and Person 4, Director of Labor Relations-Ground.

Both Person 1 and Person 2 testified that they did not recall anything specifically being discussed at this meeting in regard to the terms of the suspension of the pay progression. At that stage the Union position was that it would not agree to any such suspension at all. Although undated notes kept by Person 2 indicated that a "longevity freeze" was discussed, he had no memory of the Employer ever giving any examples of the way in which the suspension of pay progression was supposed to operate for individual employees. In this regard, the only thing on the table was the language of paragraph 2 of the Employer proposal which was in the same form as the language which ultimately appeared in the letter of agreement.

The two representatives of the Employer had different recollections of the September 10 meeting on this point. Person 3 and Person 4 testified that in anticipation of the meeting they had prepared a hard-covered booklet containing the various issues in the negotiations, and a section of it referred to the suspension of pay progression. Person 3 said that the four men went through the various Employer proposals, including the following material in the outline contained in the booklet given to the Union:

> Suspension of Longevity Steps
>
> - One-time savings to Employer $ 7.4M
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> - Length of suspension - 1 year
>
> - Suspension commences the next longevity increase an employee is scheduled to receive following ratification (1st pay period to occur).
>
> - At end of one year suspension, employee will return to step on pay scale where would have been had suspension not occurred. (For Example: a second year mechanic who reaches his third year of longevity on November 30, 1992, will continue to be paid second year rates through November 30, 1993 and will commence fourth year rates on December 1, 1993.) •

- Employee at top of scale on date of ratification not affected.

The notes taken by Person 4 at the meeting reflect the fact that Person 3 spoke about longevity suspension. It was at that point, Person 4 said, that the Employer explained that the pay reduction was for one year, and the longevity suspensions varied with the anniversary dates of individual employees. The Union was still rejecting the proposal.

Following that September 10 meeting, the parties did not have any further discussions over the Employer proposal on the suspension of pay progression steps, and the language on the table at that time finally ended up being adopted word for word in the Letter of Agreement at the end of the strike.

Person 3 also pointed out that in an Employer communication sent to the Union employees on October 1 during the ratification process management made the following assertion:

> We cannot sign a contract that is inconsistent with the Pay and Benefit Reduction Program already in place and agreed to by other employee groups.

There is no dispute that members of the other Unions, as well as non-contract employees, accepted an arrangement under which each individual experienced a one-year suspension of pay progression starting on an anniversary date and continuing for a year.

In support of the Union interpretation, however, Person 2 points out that immediately after the Employer and Union had agreed to the terms of the October 15, 1992 Letter of Agreement, Person 4 faxed a letter to the Union stating

> ...the effective date of the Pay Reduction and Pay Progression suspension will be November 2, 1992. The period of the Reduction and Suspension shall be one (1) year from that date.

Furthermore, in a published message around this time the Employer's Chief Executive Officer Seth Schofield referred to the calculated savings of $13.1 million for wage reduction and $7.4 million for the pay progression suspension in the following manner:

> The new contract with the UNION calls for wage savings of 20 Million over the next 12 months through reductions and a pay scale freeze.
>
> (Emphasis added)

5. Agreements with Other Unions

In this arbitration the Union notes and relies on the fact that the Employer's agreements with other Unions regarding pay progression suspensions contains different language than the language that is in dispute here. In these other relationships, the Union argues, the extension of the freeze for 12 months for each individual employee is expressly provided for.

Union 2 was the first Union to negotiate an agreement with the Employer on the proposals for pay cuts and longevity step suspensions. The agreement, which was reached in May of 1992 and signed by the parties on July 9, 1992, reads, in relevant part:

> 2. Extension of Longevity Steps
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> Longevity steps six through eleven, if completed during the period June 1, 1992 through May 31, 1993, will be extended twelve (12) months for pay purposes only; upon completion of an extended longevity step a pilot will return for all purposes to his normal longevity progression scale. (Example: a pilot who reaches his seventh year of longevity on November 30, 1992 will be paid sixth year rates through November 30, 1993 and will commence eighth year rates on December 1, 1993).
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> ***
>
> 4. This Letter of Agreement shall become effective on June 1, 1992. Paragraph 1 [dealing with wage reduction] will terminate at 2400 hours May 31, 1993 and pilot pay will revert to rates in Section 3 (Compensation) effective 0001 June 1, 1993. Paragraph 2 will terminate on the date that the last pilot completes his extended longevity period under paragraph 2 but not later than 2400 hours May 31, 1995.
>
> The Employer explicitly waives any and all claims that either paragraphs 1 or 2 will extend past the respective dates stated in this Letter of Agreement.

In June of 1992, the Employer implemented a 12 month suspension of step increases for its non-union employees based on the agreement with the Union 2.

Union 3 signed its Letter of Agreement with the Employer on March 26, 1993, and its provisions are also different from those of Union 1, as evidenced by the following provisions:

> 2. Extension of Longevity Steps
>
> Longevity steps six through thirteen, if completed during the period April 1, 1993 through March 31, 1994, will be extended twelve (12) months for pay purposes only; upon completion of an extended longevity step a flight attendant will return for all purposes to his/her normal longevity progression scale. (Example: A flight attendant who reaches his/her seventh year of longevity on May 30, 1993 will be paid sixth year rates through May 30, 1994 and will commence eighth year rates on June 1, 1994.)
>
> 4. This Letter of Agreement shall become effective on April 1, 1993. Paragraph 1 will terminate at 2400 hours March 31, 1994 and flight attendant pay will revert to rates in Section 3 (Compensation) effective 0001 April, 1994. Paragraph 2 will terminate on the date that the last flight attendant completes his/her extended longevity period under paragraph 2 but not later than 2400 hours March 31, 1994.
>
> The Employer explicitly waives any and all claims that either paragraph 1 or 2 will extend past the respective dates stated in this Letter of Agreement.

On the other hand, the Employer points out that its July, 1993 agreement with Union 4 on behalf of the Flight Simulators contains exactly the same language for the Pay Reduction and Pay Progression Suspension as is found in the Union 1 Letter of Agreement (except for the percentage of reduction in pay rates in paragraph 1). Yet the Flight Simulators' agreement has been interpreted to embody a 12-month suspension for each eligible employee, without any challenge or complaint from Union 4. In fact, the Employer argues that every other employee group in the company (unionized or not) has received the same pay progression treatment that Union 1 now claims does not apply to it.

However, the Union contends that the maintenance and engineering management employees, who are compensated according to a matrix pay progression system, took a freeze which was

ended in November of 1993, at the same time that the Machinists should have snapped back in their pay progression. This work force was supposed to take the same pay reduction as the group they supervised, so the timing of the suspension allegedly supports the Union interpretation. However, the Employer notes that the maintenance foremen had their matrix progression frozen from January 1991 until March 1993, which was a much longer suspension that the Machinists endured. Thus, the Employer maintains the treatment of the maintenance foremen is not relevant, and lends no support to the Union position.

6. Positions of the Parties

A. The Union

It is the position of the Union that the pay progression suspension was restricted to the calendar period from November 2, 1992 to November 1, 1993.

The Union argues that the clear and unequivocal language of the Letter of Agreement indicates that the parties intended to impose a pay progression suspension that ended one calendar year after the first pay period following ratification.

It is significant that Paragraph 2 refers to "employees" in the plural, showing that the parties were contracting for a uniform suspension period, not one measured (as in the contracts with other Unions) by individual anniversary dates. Furthermore, the first sentence of Paragraph 4 states that the agreement becomes effective on the "first day of the first pay period" which was November 2, 1992 and terminates "at 2400 hours one (1) year from that date."

Even assuming solely for purposes of argument that the language of the agreement is considered ambiguous, it must be construed against the Employer which proposed it. The failure of the Employer in drafting the language to specify that each employee would have a one-year

suspension is particularly glaring, the more so when the language of Paragraph 2 is compared with that chosen for use in other agreements. It is obvious that the Employer knew how to specify if and when it meant a one-year freeze to apply to each individual employee based on an anniversary date, and the Union 1 agreement certainly does not do that.

Moreover, the Union 1 agreement expressly terminates a year after its effective date, and the Employer in Paragraph 4 expressly waives any claims that the freeze would extend beyond the dates mentioned in the letter. Under the Employer interpretation of the agreement (that the purpose of the limitations period of the first sentence of Paragraph 4 was to assure that persons hired after November 1, 1993 would not be affected), there would be no purpose in including the second sentence of Paragraph 4 waiving all claims filed subsequent to the termination date. But a well-established principle of contract interpretation is that any reading which tends to render a part of a contract a nullity is to be avoided.

Finally, the statements of Employer officials themselves confirm that the Union 1 agreement only provided for a one calendar year suspensions of pay progression steps. Both the Chief Executive Officer of the Employer and the Director of Labor Relations-Ground publicly expressed in a written form the view that the pay progression suspension would only apply for a one year period after the November 2, 1992 date.

The grievance has merit and must be granted.

B. The Employer

It is the position of the Employer that the agreement with Union 1 provided for a 12 month pay suspension for each employee who was eligible for a pay progression.

According to the Employer, the plain language of the agreement supports that conclusion. The clause in Paragraph 2 which states "employees will have their pay progression step increases suspended for one year" clearly conveys the understanding that the suspension applies for a period of 12 months to all who are eligible for a progression. The first part of the sentence ("Effective the first pay period following ratification") merely indicates when these pay suspensions will begin. And since employees only attain such progressions on anniversary dates (or six months after anniversary dates), the reasonable inference is that it is on those dates that the one-year suspension would begin.

If there were any doubt on that score, the third sentence in Paragraph 2 ("In the future, pay progression increases will be effective on the beginning of the first pay period after a pay anniversary date rather than on the exact pay anniversary date") reinforces the Employer interpretation. The third sentence demonstrates that the entire paragraph is controlled by individual employee anniversary dates, and these dates in the future (after November 1, 1993) would be replaced by "the beginning of the first pay period after a pay anniversary date...."

By contrast, the Union's reading of the agreement would lead to the absurd result that no employee other than those whose anniversary date fell on November 2 would actually experience a one (1) year suspension in their pay progression.

The second sentence of Paragraph 4 of the letter lends further support to the Employer interpretation by referring to "the respective dates stated in the Letter of Agreement." (Emphasis added) The plural usage distinguishes between the expiration date for pay reduction, and the multiple expiration dates for pay progression suspensions.

A review of the negotiation history compels the adoption of the Employer interpretation. From the Fall of 1991 when the Employer first initiated concessionary discussions, the Union has been

on notice of the manner in which each of the employees receiving pay progressions would have them suspended for a 12 month period based on anniversary dates. Through the period of the negotiations, the Employer never deviated from its insistence that all employees eligible for a wage progression should be treated the same with respect to the duration of the suspension based on an anniversary date. In a meeting on September 10, 1992, in explanation of the proposal on the table containing the same language found in the final document, Employer representatives explained how the 12 month suspension of the pay progression would work for each employee. The final agreement on these concessions was entered by the parties after the strike, without any further discussion.

The grievance must be denied.

7. Discussion and Award

The question before the System Board of Adjustment is whether the pay progression suspension specified in the October 15, 1992 Letter of Agreement between the parties extends for one calendar year (during the period November 2, 1992 to November 1, 1993), or instead extends for a period of one year for each covered employee beginning on the date of his/her first progression step on or after November 2, 1992.

For convenience, the relevant language of the agreement should be reprinted at this point:

> 2. Suspension of Pay Progression Steps
>
> Effective the first pay period following ratification of the Agreement employees will have their pay progression step increases suspended for one (1) year. When the suspension ends, employees will return to the step on the pay scale where they would have been had the suspension not occurred. In the future, pay progression increases will be effective on the beginning of the first pay period after a pay anniversary date rather than on the exact pay anniversary date.

> 4. This Letter of Agreement shall become effective on the first day of the first pay period following ratification of the Agreement and will terminate at 2400 hours one (1) year from that date.
>
> The Employer explicitly waives any and all claims that either paragraphs 1 or 2 will extend past the respective dates stated in this Letter of Agreement.

Each side maintains that the language under review clearly and unequivocally supports its position. The Union argues that the Agreement states that the pay progression suspension will last for one invariable calendar year. With equal vigor, the Employer insists that the agreement calls for a one year pay progression suspension for each eligible employee (that is, the suspension continues for a full 12 months from each individual employee's pay progression, anniversary date, or six month pay progression date).

Examining the language of the agreement, the System Board of Adjustment finds that each side offers a plausible interpretation on the basis of the words of the agreement alone. As the Union points out, the first sentence of Paragraph 2 provides that "employees" will have their progression suspended for one year. This use of the plural (in contrast to the program for non-contract employees in which the language refers to "each employee's pay anniversary date") indicates that the parties intended to contract for a uniform suspension period which applied to all employees as a group. The period started on November 2, 1992 and ended on November 1, 1993. Moreover, the language of the first sentence of Paragraph Four is crystal clear that the Letter of Agreement (which became effective on November 2, 1992) was to remain in effect for only one year after that date. To cinch the point, in the second sentence of Paragraph 4 the Employer explicitly waives any claim that the suspension period would be extended.

On the other hand, the Employer reads the language of the agreement in a much different way. According to the Employer, Paragraph 2 plainly states that "employees will have their pay

progression step increases suspended for one (1) year," and since it is common knowledge that the dates of these step increases vary with each employee, that must mean that the suspension continued for a full 12 months from each employee's next pay progression step. Moreover, the third sentence of Paragraph 2 specifically refers to the individual's pay anniversary date, which is further confirmation that the entire paragraph is dealing with that subject rather than one invariable calendar year. Further, the second sentence in Paragraph 4 mentions the "respective dates stated in this Letter of Agreement" (emphasis added), which contradicts the Union interpretation that there was only one expiration date for both the 3.5 percent pay reduction mentioned in Paragraph 1 of the Agreement, and the pay progression suspension of Paragraph 2. On analysis, it appears that each party has presented a tenable interpretation of the language to support its position. Obviously, the language of the document itself does not compel a reading one way or the other. In short, there is an ambiguity in the terms of the agreement with respect to its meaning.

Since the language contains an ambiguity, the System Board is forced to look to other sources of illumination to determine what is the most reasonable interpretation of intent of both parties. Among those sources are the particular circumstances surrounding the execution of the understanding, the agreements reached by the Employer with other Unions on this subject, the negotiating history between Union 1 and the Employer, and the possible disparities resulting from an application of the agreement in the manner urged by each side.

One of the surrounding circumstances relates to the fact that the Employer made statements, contemporaneously with the parties having reached agreement, which the Union contends is supportive of its position. For example, a letter dated October 12, 1992 from the Employer to the Union stated that "the period of the Reduction and Suspension shall be one (1) year from" the

date of November 2, 1992 (emphasis added). Further, a memo issued by the Chief Executive Officer of the Employer on October 13, 1992 referred to a savings "of $20 Million over the next 12 months through wage reductions and a pay scale freeze" (emphasis added). If taken at face value, these statements do seem to buttress the Union argument. The Employer is forced to concede that the phraseology of these statements is loose and misleading.

At the same time, the Employer notes that the CEO memo expressly stated the savings calculated on the basis of 7.4 million being derived from the pay progression suspension, which could only result if a 12-month suspension ran for each individual employee.

A circumstance on which the Employer relies is the communication sent to Union 1 employees on October 1 during the ratification process, which flatly states that no contract could be signed with the Union which "is inconsistent with the Pay and Benefit Reduction Program already in place and agreed to by other employee groups." Beyond that, the Employer maintains that the Union could not possibly have been unaware that from the beginning of the concessionary bargaining, the Employer's position was that eligible employees (whether unionized or not) would waive pay progression steps for a period of time that would be the same for all.

In the light of these circumstances, there is something to be said for each side's interpretation. But since these general circumstances surrounding the agreement are in conflict, and certainly do not provide a definitive answer to the issue in dispute, the System Board next looks to the history of negotiations between the parties. A crucial element in that regard is the meeting of representatives from both sides on September 10, 1992 in an effort to break the deadlock over a variety of issues in Section 6 negotiations. At that time the Employer prepared and delivered to the Union a booklet containing its proposals. With respect to the suspension of pay progression step increases, a written outline in the booklet made it clear that for each individual employee the

suspension would last for a year beginning on the next progression increase after ratification. An example was provided in the outline, stating that "a second year mechanic who reaches his third year of longevity on November 30, 1992 will continue to be paid second year rates through November 30, 1993 and will commence fourth year rates on December 1, 1993."

The two Employer representatives present at the September 10 meeting testified that they reviewed this subject in detail with the Union representatives and explained that the suspensions varied with the anniversary dates of individual employees. However, the two Union representatives testified that they did not have any recollection of any specific discussion in regard to step suspensions at that meeting.

It is surely conceivable that in view of the array of issues before the negotiators at that time, the Union representatives may not have focused on specific Employer comments pertaining to the subject of step suspensions. The System Board does not doubt that each side is giving a basically accurate account of what it remembers about the September 10 meeting. Accordingly, the apparent conflict in testimony on this point is impossible to resolve.

Nevertheless, certain things about the September 10 meeting are not in dispute. In the first place, the record does establish that the written outline was received by the Union as part of the negotiation booklet. That outline spelled out the meaning of the proposal as the Employer intended it. Furthermore, the Union did not make any counterproposal on this issue, since all along the position it took was an outright rejection of the pay progression suspension. At a minimum, therefore, the inference has to be that the Employer intended its proposal to be substantially the same as offered to other Unions, and the Union did not attempt to modify that proposal. It should be recalled that the language on the table at the time of the September 10 meeting was the same as that which was ultimately agreed to by the parties on October 8, 1992,

without any further discussion of the matter. Taken as a whole, this sequence of events can only be taken as an indication that what the parties in effect adopted was the version propounded by the Employer in its written outline presented at the September 10 meeting.

However, the Union resists this conclusion by pointing to the language employed by the Employer in the agreements which were reached with other Unions on the subject of pay step suspensions. It is certainly true that the agreements made with the Union 2 and Union 3 are much more explicit in relating the twelve month period to an individual employee and his/her longevity steps, and in spelling out the time frame of the suspension period (e.g., from the Union 2 agreement: "Paragraph 2 will terminate on the date that the last pilot completes his extended longevity period under paragraph 2 but not later than 2400 hours May 31, 1995"). Since the Employer knew how to express unmistakably the requirement that the step suspension of each eligible employee would run twelve months, the Union argues that the failure to do so in the Union 1 agreement means that a common period of twelve months was intended for all (no matter when their anniversary dates occurred).

The Employer is forced to concede that the drafting of the Union 1 agreement does not win any prizes for precision. Unfortunately for the Union, however, the fact that the Union 1 agreement is not phrased as clearly as the agreements with the other Unions does not necessarily mean that it carries a different meaning. The issue is not whether the Union 1 agreement could have been written differently or better, but whether taken on its own terms it still embodies the interpretation which the Employer maintains.

In seeking to identify what must have been the intent of the parties, both sides have come down strongly on arguments pointing to the unacceptable disparities in the treatment of employees that are produced by an acceptance of the other side's interpretation. Each claims that there are

inequities if the opponent's view is adopted. However, one of the Union's contentions in this regard is actually beyond the scope of the present dispute, since it deals with the assertion that there is an inequity in requiring junior employees to accept a pay progression suspension while senior employees, who are at the high end of the rate and no longer receiving step increases, are not similarly affected. The fact is, however, that there were tradeoffs involved in the package arrangement by which both pay rates and pay steps were reduced. These were accepted by both sides when they entered the agreement; whatever the resolution of the present dispute over the length of the pay progression suspension, that fact cannot be changed.

The only comparisons among the employees which are relevant in this case, as far as issues of disparity are concerned, are those which are drawn between employees who were subject to the pay step suspension. In that respect, the Union focuses on the disparity produced under the Employer's interpretation when a junior within the eligible group comes out earning more than others in his job category with more seniority. Person 5, an AGC for the Union, effectively presented an example of such a disparity at the hearing. He cited the situation (summarized in the Union brief) of a mechanic hired in November of 1989 who would end his suspension in November of 1993, when his wages would snap back to $20.47 an hour at that point. By contrast, a mechanic with more seniority who was hired in August of 1989 would not end his suspension until February of 1994, and until then, would be earning $19.19 an hour. Person 5 pointed out that in the intervening months between November of 1993 and February of 1994, the junior would be compensated at $1.28 an hour more than the senior.

While the situation described by Person 5 may at first glance seem odd and unacceptable, it is easily justified once the following facts are recalled. The senior advanced to his next step shortly before the freeze went into effect on November 2, and was receiving that higher rate from

August until his suspension was over. In the meantime, the junior had been deprived of his next step because the freeze occurred before the date in November on which his step was scheduled. During his twelve months the junior was deprived of the higher step (or at least one of them) to which he would otherwise be entitled, while the senior enjoyed the rate at the step he reached before the freeze. It is only because the junior began his one-year suspension earlier than the senior that he snapped back first. And the snap back (when the employee went from his second year rate to his fourth year) would account for his forging ahead of the senior for a few months. However, once the senior snapped back, he would automatically assume his pay level proportionately higher than the junior. Put in other words, the senior enjoyed an advantage on the front end of the transition (with his last step increase before the freeze) while the junior caught up with him on the back end (when he made the snap back prior to the senior.) In the final analysis, the two employees were treated comparably with respect to the application of the suspension. Each employee who was eligible for step progressions received a 260 work day suspension which represented his/her contribution, at the applicable pay progression rate, which was the same for comparable seniority employees.

On the other hand, the Employer's argument about the disparities produced by the Union interpretation is not so readily dismissed. In fact, there are substantial differences produced among employees under the Union approach that are obviously arbitrary. That is due to the fact that the controlling standard under the Union's interpretation is the anniversary date of an employee, without regard to the consequences of using that date for a period of one invariable calendar year. Thus, the only employees who would receive a full year suspension of pay steps would be those whose anniversary date was on November 2. By way of contrast, an employee under the Union interpretation who had just reached a new pay step immediately before that date

would for practical purposes have a suspension of only six months (assuming a pay step six months later). The bottom line is that there would be a wide discrepancy between what one employee gave up in wages, as compared to another employee, based on no better ground than that they had different anniversary dates. For example, as set forth in the Employer brief, one employee for the 12 months might have to make a concession of $457 under the Union interpretation, while another in the same job category might have to make a concession of $1388. Such disparities are so great and so irrational that they totally discredit any contention that the parties could have intended to produce such a result.

In conclusion, the language of the Letter of Agreement when initially examined may leave some doubt about what period of time the one-year pay progression suspension provided for. It is understandable that an employee focusing on the language of certain parts of the agreement might think the suspension for each person ran only from November 2, 1992 to November 1, 1993. Some of the sweeping comments made in Employer correspondence might lend support to such a view. But when the language of the agreement is more carefully examined with reference to certain factors, a majority of the System Board of Adjustment is persuaded that the intent of the parties is that which is urged by the Employer. The factors which support that conclusion include 1) the well-established understanding that a pay progression step increase is determined by reference to each employee's anniversary date; 2) the announced object of the concessionary bargaining initiated by the Employer to treat each eligible employee within a work group equally as far as step suspensions were concerned; 3) the exchange of views by representatives of the parties at the September 10 meeting particularly including the presentation of a written outline reflecting the meaning of the proposed language on the table; 4) a mutual awareness of the total amount which was being projected as concessions to be derived from the Union 1 pay step

suspensions; and 5) the irrational and arbitrary discrepancies which would otherwise be produced in the treatment of individual employees if the Union's interpretation were to be adopted.

For the reasons stated above, a majority of the System Board of Adjustment is forced to the conclusion that under the stipulation of the issue by the parties, the Letter of Agreement provides for a one-year progression suspension for each covered employee beginning on the date of his/her first progression step on or after November 2, 1992 and ending one year later.

Accordingly, the grievance is denied.

AWARD

The grievance is denied.