Vernon #1

IN THE MATTER OF ARBITRATION BETWEEN:

Employer

AND

Union

ISSUE

The parties agreed to the following statement of the issue in this case:

"When there is a conflict between the contractual right to smoke in the workplace and the contractual obligation placed on the parties to maintain a safe, sanitary and healthful workplace, which contractual language controls?"

RELEVANT CONTRACTURAL LANGUAGE

Article 5 (B) of the Agreement between the Employer and the Union provides in pertinent part as follows:

> "On jobs where smoking has been permitted while the employee is working, such right to smoke while working shall be continued."

Article 16 (A) of the Agreement provides in pertinent part:

> "The Company hereby agrees to maintain safe, sanitary and healthful conditions in all facilities..." and, "The Union and employees recognize their duty and responsibility to assist in maintaining safe, healthful and sanitary conditions."

BACKGROUND AND FACTS

On March 15, 1993 the Employer published a new "Employer Smoking Policy," which restricted smoking throughout the Employer facilities. This policy was, according to the Employer,

developed following the passage of several state and local ordinances governing smoking in the workplace and the January, 1993 announcement by the United States Environmental Protection Agency that "passive" tobacco smoke is a human lung carcinogen.

In implementing this policy, the Employer has designated smoking areas at or around all maintenance facilities, unless the designation of such smoking areas was prohibited by law or mandate of an agency or governing body having jurisdiction over such facilities.

In several Employer facilities, maintenance employees who smoked believed that the new policy unfairly restricted their ability to smoke and was a violation of Article 5 (B) of the Agreement. They have, according to their grievances, historically smoked in the workplace and Section 5 (B) of the Agreement gave them the right to continue to do so. Several grievances were filed. The Employer's response was that section 16 (A) of the Agreement required the parties to provide a safe and healthful work environment, and that the policy was designed to protect non-smokers from second-hand smoke.

The parties have stipulated that no additional factual record is necessary to resolve this dispute.

DISCUSSION AND OPINION

The concern expressed by both parties regarding the exposure of employees to second-hand smoke is a serious one. As evidenced by the EPA announcement in January, 1993, there is no longer any credible doubt that second-hand, or passive, inhalation of tobacco smoke is a serious health risk. To require non-smoking employees to work in the presence of employees who are smoking tobacco would, therefore, clearly violate Article 16 (A), which places an obligation on the Employer, the Union and the employees to maintain safe and healthful working conditions.

The contractual requirement to maintain a safe and healthful workplace could not be met if the Employer were required by the contract to continue to allow employees to smoke in working areas where they have historically smoked, because they would be in the presence of other, non-smoking employees. The Employer has stated that unless prohibited by law or regulation it would designate smoking areas at or around all maintenance areas. This would enable those employees who smoke an opportunity to do so while not jeopardizing the health of non-smokers. There can be no doubt that the health and safety of employees is an overriding concern expressed in the contract at Article 16 (A) which, given the specific facts and circumstances described above, must supersede Article 5 (B), the provision regarding the allowance of smoking in the workplace.

AWARD

The grievances are denied.