**Becker #3**

# ARBITRATION

UNION

-And-

EMPLOYER

## DECISION OF UMPIRE

## ISSUE AND STIPULATION OF THE PARTIES

In the submission of this grievance, the parties have filed a written stipulation which, in effect, determines the issue presented. The written stipulation reads as follows:

> "It is stipulated by the parties that the Umpire has the authority to decide the grievance under the contract. If the Umpire concludes that there was no agreement between the parties with respect to Paragraph 4 of the June 29, 1976 letter of agreement, then the grievance is denied. If the Umpire concludes that there was an agreement between the parties with respect to Paragraph 4 of the June 29, 1976 letter of agreement, then the grievance is allowed and the Umpire will pro rate the additional vacation for employees having 20 years or more of service."

## FACTS

The essential facts in this matter are largely undisputed and consist primarily of written documents. In addition to the grievance itself and the Employer's formal reply thereto, these documents consist of a letter dated June 29, 1976 from C. Person 1 representing the Employer to Person 2, representing the Union (the offer); a letter dated June 30, 1976 from Person 2 representing the Union to Person 3 and Person 1 representing the Employer; a letter dated July 14, 1976 from Person 4 representing the Union to Person 1 representing the Employer; and a "Supplemental Agreement" prepared by the Union and transmitted to the Employer in Person 4's letter dated July 14, 1976. The "Supplemental Agreement" has never been executed. Additional

facts based upon oral testimony are referred to in the following discussion.

**DISCUSSION**

The parties are in agreement that the Employer's letter of June 29, 1976 was intended as a contractual offer and that the Union's reply dated June 30, 1976 was intended as a contractual acceptance. While it might be questioned as to whether or not these documents represent a sufficient meeting of the minds to constitute an enforceable contract, both parties contend that such is the case. Their only dispute is as to the terms of the contract and it is this dispute which has been submitted pursuant to the grievance procedure and the written stipulation recited above.

As indicated at the hearing, the Umpire has concluded that the Employer's offer of June 29, 1976 when read in its entirety, is ambiguous as it is applied to the existing contract language. In view of the ambiguity it is necessary to attempt to determine what each of the parties construed the offer to mean. If the parties construed it in the same manner the ambiguity is eliminated and there was a meeting of the minds so as to create a contract obligation. If the parties construed it differently and the differing constructions are each logical, then there was no meeting of the minds and no contract obligation would be created.

Person 1 testified that in discussing the offer with Person 2, the Union President, at a meeting on June 29, 1976, he told Person 2 that the offer meant a return to the 24-hour language of the contract. In his testimony, Person 2 agreed that Person 1's statement was correct. Person 1 further testified that he told Person 2 that there would be "less vacations." Person 2 testified that he did not recall this statement about less vacations, but in the view of the Umpire whether or not this vacation statement was made is unimportant because the statement itself would have been ambiguous. Would it mean less vacations for all employees or only for 20 year employees? Would it mean less vacations in comparison with what the employees were receiving prior to

July 1, 1976 or would it mean less vacations than they were expecting to receive after July 1, 1976? The one thing and the only thing that is clear is that both Person 1 and Person 2 who were representing the Employer and the Union respectively, understood that the offer intended a return to the 24-hour language of the contract. Beyond this the parties differ.

So far as the Employer is concerned, the testimony of Person 5 was to the effect that after reverting to the 24-hour provisions of the contract it was the Employer's understanding of the offer that the various benefits would be proportionately amended downward by approximately 10%. He further testified, however, that the Employer abandoned the idea of such a further reduction because it would have resulted in fractional days which would have been difficult to administer. The Employer thus treated the 4th paragraph of the offer as requiring no additional proration over and above a simple reversion to the 24-hour provisions.

So far as the Union is concerned it is claimed that after reverting to the 24-hour provisions it understood the offer to mean that benefits would be amended upwards in proportion to the increase from 40 hours per week to 50.4 hours per week. While such an interpretation is completely possible and logical, it is not supported in fact either by what the parties actually did or by what the Union itself says in its written "Supplemental Agreement" which was presented to the Employer for the purpose of incorporating the terms of the offer into the contract.

The Umpire believes that the best evidence of the Union's understanding of the offer is set forth in the "Supplemental Agreement." In its brief, the Union argues very persuasively that the only provision that was to be "deleted" by the offer was Article XIV, Section 3, paragraph 3 and that all other pertinent provisions were to be "proportionately amended." However, the Union's own "Supplemental Agreement" does not support this argument. With the exception of its proposed revision of the article concerning vacations, all other proposed revisions of

applicable articles indicate that the Union proposed to "delete" all contract provisions relating to the 10/14 hour shifts and then either revert to the 24-hour shift provisions or repeat those 24-hour provisions without any proportionate amendment. Even as to the vacation article in question, the Union's proposed "Supplemental Agreement" provides for a reversion to the 24-hour language without any proportionate amendment whatsoever except in the single case of the paragraph relating to 20-year employees. The Umpire believes it to be illogical for the Union to contend that the words "proportionately amended" were intended to mean something for 20-year vacation benefits, but absolutely nothing for all other vacation benefits and for all other contract benefits related to the 10/14 hour shifts.

The Umpire concludes from an examination of the "Supplemental Agreement" that either (i) the Union understood the Employer's offer in the same manner that the Employer understood it, namely, calling for a simple reversion to the 24-hour contract language without additional proration being required by the 4th paragraph of the offer, or (ii) the Union understood the offer to mean something else. In either situation, for the purposes of this grievance, the result is the same. If the Union understood the offer as meaning a simple reversion to the 24-hour contract language, without any further proration, there was a meeting of the minds and a contract obligation was created. If the Union understood the offer to mean something else then there was no meeting of the minds and no contract obligation was created. If the Union understood the offer as the Employer understood it the grievance must be denied because the Employer is fully complying with the vacation provisions of the contract relating to the 24-hour employees. If the Union understood the offer to mean something else, the Umpire must dismiss the grievance pursuant to the stipulation of the parties because there would then be no agreement with respect to paragraph 4 of the June 29, 1976 offer.

The Umpire recognizes that the conclusions reached do not fit the precise terms of the stipulation in that there has been no finding made as to whether there was or was not an agreement with respect to paragraph 4 of the June 29, 1976 offer. Instead, it has been concluded that no such finding is necessary.

If there was no agreement as to paragraph 4 the grievance must be denied. If there was an agreement then that agreement was that paragraph 4 did not provide for any additional proration over and above the simple reversion to the 24-hour provisions of the contract.

**AWARD**

Grievance is denied.

The Umpire's fees will be billed to the Union pursuant to the provisions of Article VIII, Section 5.

Lawson E. Becker

Dated: November 8, 1976