Creo #1

IN THE MATTER OF ARBITRATION BETWEEN:

Employer

AND

Union

Opinion and Award Issued: September 29, 1994

Statement of the Award: The Grievances are granted for any employee on the payroll when operations passed from the Employer to Company 1. Each employee is to be paid their individual 1993 vacation entitlement without interest. Payment is to be made within forty-five (45) days from the date of this Award. The Arbitrator retains jurisdiction over the implementation of the remedy.

PRELIMINARY STATEMENT

The parties, the Employer and the Union, having failed to resolve two Grievances involving compensation of employees arising out of non-payment of vacation pay for days accrued prior to separation of employment, proceeded to final and binding arbitration pursuant to the terms of their collective bargaining agreement. The Agreement had a term from July 1, 1991 through May 31, 1994. The Employer, however, ceased operations during October, 1993. Robert A. Creo, Esquire was appointed to serve as impartial arbitrator under the case administration of the Federal Mediation and Conciliation Service. An oral hearing was held on July 26, 1994. All witnesses were sworn. Both parties were given full opportunity to present evidence, to cross-examine the witnesses and to argue their respective positions. The parties were advised that the audio tape recording of the hearing was made for the sole use of the Arbitrator and would be

erased upon issuance of the Opinion and Award. Post-hearing briefs were filed and exchanged by August 29, 1994. Neither party objected to publication of the Opinion and Award.

BACKGROUND AND SUMMARY OF EVIDENCE

The Employer is in the business of providing food and related items and service to commercial air carriers. Until October 31, 1993, it was the concessionaire providing airline catering services at Airport 1 when Company 1 took over the operation after being selected through a competitive bid process.

In July 1992, as part of the bid process, Company 1 indicated its intent, if selected, to offer jobs to all bargaining unit employees and recognize the Union at the facility. During the summer of 1992, a concession package was negotiated between the Union officials and the Employer which was rejected by the Union membership.

On October 31, 1993, its last day at the facility, the Employer terminated all the employees and paid any remaining vacation which had been credited to the employees' accounts on January 1, 1993. The employees were not paid for vacation that had accrued in 1993 which would have vested on January 1, 1994. The Union contends that this affects approximately 250 employees. There are also employees who worked less than 2080 who would have their entitlement prorated according to number of actual hours worked during the 1993 year prior to cessation of operations.

After assuming operations, Company 1 commenced bargaining with the Union and executed a collective bargaining agreement effective December 11, 1993. The business continued under a different employer, Company 1, with essentially the same workforce and the same bargaining unit being represented by the same union.

Two grievances were filed seeking vacation pay. The first, dated October 1, 1993, claims that at her retirement on September 30, 1993, Ann Faber should have been paid for accrued vacation earned by working the first nine months of 1993. The second, dated October 14, 1993, claims that the Employer should "pay out 1994 pro- rated vacations," based on work through October 1993. Both grievances are designated "class action," by the Union.

The Employer contends that both the relevant contract language and the Employer's consistent practice is that employees "receive their vacation pay prior to taking a vacation and at no other time." In practice, on January 1 of each year, every eligible employee's leave balance was credited with the amount of vacation earned the previous year. With three exceptions, all in late 1992, no terminated employee has ever received payment for vacation accrued during the calendar year of their termination. However, terminating employees have consistently been paid the remaining prior year's accrued vacation which had been credited to their vacation balance on January 1.

Person 1, Union Committee Chair, testified concerning the 1991 Contract negotiations, especially about the discussions on the "vesting" language proposed by the Employer and the sick days bank. Person 2 was at the 1991 Contract bargaining table and testified about the sick bank proposal and discussions. Person 3, a retired payroll clerk, testified about the vacation pay practices during her 19 years of employment. The Employer only paid at actual time of vacation except if an employee died. Person 4, Director of Human Resources testified about the three employees who were paid vacation for the current year and the contract negotiations for the 1991-94 Agreement. She testified that the use of the words "earned" and "vested" were to have the same meaning and that terminated employees were not to have been paid accrued vacation.

PERTINENT AGREEMENT PROVISIONS AND STATUTES:

Article I Status of Agreement

It is expressly understood and agreed that when this Agreement is accepted by the parties and signed by their authorized representatives, it will supersede any and all agreements existing or previously executed between the Employer and any Union or individual affecting the crafts or classes of employees covered by this Agreement.
The Employer will issue a single copy of this Agreement to all employees during the life of the Agreement. Each employee will sign an acknowledgement for said Agreement.
It is understood and agreed that this Agreement will be binding upon any new successors (by merger, consolidation, or sale). In any event, the Employer and the Union will meet prior to any change to discuss all possible protection for the employees hereunder. The Employer will notify the Union of any changes instrumented by Allegheny County.

Article 11 Vacations

Section 11.1
Pro rata vacations will be paid as follows:

a) In the first (1st) year of employment, a pro rata vacation will be paid to an employee having at least six (6) months of continuous service but less than one (1) year of continuous service of the employee's anniversary date of employment.

b) After the first (1st) year of employment, a pro rata vacation will be paid to regular employees who work less than 2080 hours in a year. Employees will accrue vacation time based on hours paid.

c) The rate of accruals will be in accordance with Section 11.2. Section 11.2
A full vacation will be paid as follows for employees who received earnings for 2080 hours in the previous anniversary year:

COMPLETED YEARS OF SERVICE AS OF EMPLOYEE'S ANNIVERSARY DATE	**VACATION ALLOWANCE IN WORK DAYS**
1 Year	5 Days
2 Years	10 Days
5 Years	15 Days
10 Years	20 Days
20 Years	25 Days
30 Years	30 Days

Section 11.3
Employees qualifying for a vacation under this Article will receive all earned vacation at the employee's regular straight-time rate, including applicable shift differentials.

Section 11.4
The vacation year shall be from January 1 through December 31 each year. The Employer will allow one employee off for every forty weeks accrued vacation. For

example: One to forty weeks, one employee will be off; forty-one to eighty weeks, two employees will be off, etc. Vacation periods designated for day at a time will not be included for the purpose of establishing the allowable number of employees off under the one (1) to forty (40) week ratio. It is further agreed that the Employer will make every effort to allow the total number of employees off on day at a time, and personal days, to return to the initially established ratio.

Vacation selections shall be made in order of Employer seniority (hiring date). Vacation lists showing the vacation time entitlement of each employee and the schedule of vacation periods for the coming calendar year shall be posted on the bulletin boards by the Employer no later than November 15 of each year. Such lists shall also include a specific selection time for employees. Employees not on duty will be allowed to make their vacation selection by telephone at their scheduled time. If an employee expects to be unavailable to make a vacation selection at the scheduled time, he/she will be allowed to leave a written selection preference with the Employer. If the listed preference left by the employee is not available at the scheduled time, the employee will be assigned to a period as close as possible to his first preference.

Employees who fail to make a selection at the scheduled time may be by-passed to the next senior employee and no employee so by-passed will be allowed to displace a junior employee who made his selection during his scheduled time. However, employees who have been by-passed, which has not been previously selected by another employee. Vacation schedules shall be completed no later than one (1) week prior to the first vacation week of the coming vacation year and the completed schedule shall be posted on the bulletin boards by the Employer at that time. An employee failing to make a vacation selection at all may be assigned to a vacation at this time.

Employees with three (3) or more week's accrued vacation may at the time of selection reserve five (5) days of earned vacation to be taken one or more days at a time. This election must be made at the time of vacation selection. An employee wishing to use day at a time vacation must submit a written request at least seven (7) days but more than thirty (30) days prior to the day requested and it must be approved by the manager. When more than one employee requests a day at a time vacation or a personal day at the same time, plant seniority within the classification will govern. If an employee gives less than the seven (7) days notice, the Employer may at its sole option grant the day at a time vacation request. An employee will not be granted day at a time vacation on regular day off or during their bid vacation period. Employees will be permitted to request day at a time vacation on a holiday. If granted by the Employer they will be paid eight (8) hours at the straight time rate, and they will have their day at a time vacation reduced by one day. Any day at a time vacation which has not been used by the end of the calendar year, will be paid to the employee no later than the fourth week of the following year.

Vacation periods that are vacated, or which become available during the year will be made available for a seventy-two (72) hour period to the employees and the senior employee requesting the open vacation will be awarded that opening. Such vacated

periods will be noted on a master vacation schedule posted on an Employer bulletin board that is enclosed with glass or plexiglass and locked. A copy of employees' requests will be furnished to the Local Union Committee upon request.

The Union and the Employer agree that their mutual objective is to afford the maximum opportunity to all employees to select and take their vacations while still maintaining the Employer's operation.

POSITIONS OF THE PARTIES

Summary of the Employer's Brief

The final paragraph of Section 11.4 of the agreement states that "eligible employees will receive their vacation pay prior to taking a vacation and at no other time with the exception where there is a disability in the employee's immediate family." Consistent with this language, the Employer's uniform practice has not to pay current year accrued vacation on termination. The Union can point to only two exceptions to this practice. First, sometime in the late 1980's, the Employer paid current year vacation to a deceased employee's family, thus observing perhaps the ultimate "disability in the employee's immediate family."

The second exception to the practice involves payments to three terminated employees, Employee 1, Employee 2 and Employee 3, in late 1992 while the Employer was researching the Union's claim that state wage payment law required payment of current year accrued vacation on termination. Therefore, any consideration of past practice must weigh in the Employer's favor in this case.

The Union presents an unfocused challenge to the Employer's consistent practice giving effect to unambiguous contract language. The closest the Union comes to an argument is that some Employer contract proposals in 1991 apparently sought to change the language with respect to vacation pay. This is simply not sufficient. The relevant contract language and the consistent

practice, before and after the negotiations for the 1991 agreement, did not require payment of current year accrued vacation pay on termination.

Similarly, the Union's suggestion of the applicability of the Section 11.1 dealing with pro-rata vacations is without merit. Section 11.1 by its terms deals with situations in which a current working employee has worked less than a year or 2080 hours. It has no applicability to terminations.

In vacation pay cases, the general rule is that, "unless otherwise provided in the contract, vacation benefits constitute a form of deferred compensation which, like wages, survive the closing or sale of the business." Pacific Coast Services, 92 LA 116, 120 (Nelson, 1988) However, a "contrary result occurs when the contract provides for a forfeiture by employees terminated before the date when vacation pay would be payable."

The contract language in this case requires such forfeiture, providing for receipt of vacation pay "prior to taking a vacation and at no other time."

To be sure, a line of cases holds that while past practice may require active employment on a certain date for entitlement to vacation pay, a plant closure which precludes employees from attaining that date will not prevent payment of accrued vacation. See, eg. Ward Component Systems, 96 LA 730, 735 (DiLauro, 1990). This line of cases may be distinguished in two grounds.

First, as discussed above, the requirement that employees receive vacation pay prior to taking a vacation and at no other time is specifically grounded in the contract as well as past practice.

Second this is a successorship case, not a plant closure case. As part of the bid process, Company 1 agreed to hire the employees and recognize the Union. Thus, upon winning the bid, Company 1 was a full successor obligated to observe the existing employment terms, including vacation pay,

and bargain with the Union before making any changes. See, eg. NLRB v. Burns International Security Services, 406 US 272, 294-5, 80 LRRM 2225, 2233 (1972); Kinaswood Services, 302 NLRB 247, 138 LRRM 1059 (1991) This duty to observe existing employment terms and bargain applies even though Company 1 may have indicated prior to hiring that it intended to change the terms. U.S. Marine Corp. v. NLRB, 944 F.2d 1305, 1321, 138 LRRM 2361 (7th Cir. 1991)

It was through no action of the Employer's that the employees did not receive their 1993 vacation pay when it became payable in 1994. Company 1, by operation of law, was required to observe vacation pay requirements and all other employment terms and bargain with the Union over any changes. If the Union bargained away the employees' right to vacation pay in negotiations with Company 1, it hardly falls to the Employer, as predecessor, to remedy its failure. The Employer had nothing to do with the fact the employees did not receive their vacation pay when it became due in 1994. This failure was solely a product of the negotiations between Company 1 and the Union.

Nor can the contract language or practice be stretched to require payment of 1994 vacation pay when the Employer surrendered the operation to Company 1 on October 31, 1993. The contract language plainly rejects such a requirement. Moreover, since the contract between the Union and Company 1 was not settled until December 11, 1993, vacation pay was clearly Company 1's responsibility on the takeover date. Any requirement of an October 31, 1993, lump sum payment by the Employer would have resulted in a double payment, had the Union not allowed Company 1 to escape its obligation.

Both the applicable contract language and past practice restrict the employees' receipt of vacation pay to the time when they take vacation. Company 1, as a successor employer, was required to

pay 1994 vacation pay by operation of law. That the Union bargained away this requirement cannot be twisted to impose liability on Employer. The Grievance must be denied.

Summary of Union's Brief

The Employer argued that their past practice was not to compensate employees that left the service of the Employer for any reason. Unrefuted direct testimony from Person 1 that, every time she questioned the Employer about vacation pay, for employees that the Employer's service, they were compensated in full. She also testified that there was never a grievance filed for the issue we are arbitrating, because the Employer did compensate the affected employee. Employer General Manager Person 5 and Person 6 told the Union committee in weekly meetings that corporate was writing a letter to pay the vacation but they were not sure about the sick leave pay off. Person 1 was told to post a letter on the bulletin board advising the employees of the Employer's position. A few days later the Employer asked her to remove the letter because that was not what they meant; even though the Employer had been discussing this issue with the union for weeks. The Employer did not make a decision, to not pay the employees that were going to be furloughed on October 31, 1993, until October 14, 1993. If this had been past practice and the Employer's interpretation of the agreement, why did it take them weeks to make a decision? Furthermore, clear and concise language in the Labor Agreement is not negotiated by past practice.

Person 4, also employed by the Employer, stated that the language on Page 24, of Joint #1 is why they did not compensate the employees. Person 3 and Person 1 both testified that the language's intent and application was for vacation requests for pay in the current year.

Prior to negotiations in 1991, the Employer sent the union their proposals dated April 23, 1991. In Article 11.1, Page 12 the Employer proposed to have vacation pay vest on the employees' anniversary date, also in Article 11.3 the Employer proposed to add: "Vacation will be paid only for actual time off from work"

During the course of negotiations Person 4, the Employer's Regional Human Resource Director and member of their negotiating committee, modified their proposals and gave me a copy of the 1991 contract with the Employer's modifications and changes hand written in by Person 4. Under Section 11.3 the Employer proposed to change the existing language to read: Employees qualifying for a vacation under this Article will receive (all vested vacation) pay at the employee's regular straight-time rate, including applicable shift differentials, for (any) vacation (time used). Person 4 explained her reason for inserting (all vested vacation) during negotiations. She said the vacation employees earned during the year, to be taken the following year, would not vest (belong to them) until January 1 of the following year. Had the union agreed to this modification the Employer would not have been required to pay the employees their 1994 vacation earnings that they accrued in 1993. The modification to change (for any vacation time used) would have permitted the Employer to withhold employees' vacation earnings for vacations scheduled in November and December 1993, and their earned 1994 vacation.

The Employer went out of business in on October 31, 1993, and since the Employer was not successful in modifying the vacation language, the employees that had scheduled vacation the last two months of the year were paid for the 1993 vacation they could not use. The Employer refused to pay the employees for their 1994 earned vacation, and is now trying to win in arbitration what it failed to negotiate at the bargaining table.

Due to the Employer's proposals in negotiations, and the Union's concern that the Employer would attempt to do what they had proposed under the language in the June 1, 1988 to May 31, 1991 contract, the union modified the language that appears in the 1991 to 1994 contract to read:

> Employees qualifying for a vacation under this Article will receive all earned vacation at the employee's regular straight-time rate, including applicable shift differentials. The 1991 contract was ratified by the membership and in affect when the grievance was filed.

In July of 1992, I received a letter dated July 24, 1992, from Person 7, requesting the union meet to discuss modifications to the existing labor agreement. The union eventually agreed to meet and discuss modifications to the contract with the understanding that if the membership did not ratify the proposed changes that the existing contract would remain in effect. During these talks, the Employer again attempted to modify the vacation language. On December 10, 1992, the Employer proposed the following language under Article 11, Paragraph (M):

> An employee who has provided the Employer with two (2) weeks advance notice of resignation, enters the Armed forces, or is laid off will be paid for any vested vacation that is unused as of the date of termination. An employee with ten (10) or more years of credited service, who retires at age fifty-five or later, will be paid for vested and unvested vacation earned to the date of retirement. In the event of an employee's death, vested and unvested vacation will be paid to his estate.

Again Person 4 explained in negotiations that an employee’s vacation earned in that year would not vest until January 1 of the following year. The Union finally agreed to vote the language in Article 11 (L and M) of union exhibit #7, page 13, with the hand written notes of Person 4. This concession package was rejected by the membership, therefore, the 1991 to 1994 Contract was still in effect.

The final argument of the Employer was that Company 1 was a successor and should have assumed the existing Contract. Article 1 of the 1991 to 1994 contract does contain the following successor language. (It is understood and agreed that this agreement will be binding upon any

new successors by merger, consolidation, or sale.) Company 1 did not merge with the Employer. Company 1 did not consolidate with the Employer, and finally the Employer did not sell the business in Pittsburgh to Company 1. County 1 rebid all the concessions at the new Mid-Field terminal and Company 1 won the bid. When Company 1 started operating the catering business on November 1, 1993 they instituted new work rules, reduced benefits and deducted a co-payment for health insurance. The Employer's attorney Person 7 is acutely aware of the fact that Company 1 would not be a successor by his letter to Person 8. (July 24, 1992 letter from Person 7)

While reviewing How Arbitration Works 1985-89 Supplement, the Fourth Circuit, U.S. Court of appeals in particular, uses the "essence" standard of Enterprise Wheel to set aside awards that do not draw there essence from the agreement, which is in conflict with the Employer's argument. While also asserting that the arbitrator's award violates the clear language of the agreement remains one of the most often cited explanation's for a court's refusal to uphold an award. As stated in the courts agree that an arbitrator's decision must be based on the "essence" of the agreement, but I will also site NLRB case law pertaining to successors. Successors generally do not arrive on the scene of their predecessor's employment site with an obligation to absorb the predecessor's contract. The exceptions to this rule are where the "successor" is not truly new entity, but rather an "alter ego", or disguised continuance of the former employer; or where the successor actually voluntarily accepts the predecessor's agreement. The facts established in this case indicate that neither of those two exceptions applies.

Thus, the Employer's contention that the Union somehow waived accrued vacation by not gaining a commitment from Company 1 to pay it is wrong. Another way to put it is that vacation pay obligation accumulated because of an obligation that the Employer agreed to; it accumulated

this obligation during the time when the union had a contractual relationship with the Employer, and none with Company 1. Therefore, it makes no sense to claim that the Employer is relieved of that obligation simply because they left the scene (through no fault of the Union) and a new entity replaced it. If contractual responsibility somehow shifted away from the Employer and onto Company 1, it should be the Employer's burden to show that the Employer assigned that responsibility onto Company 1 which, of course, it cannot do.

The Union would also request that the Employer provide the Arbitrator with a copy of the hours each employee worked for Employer in 1993, and the classification they held on October 31, 1993, to determine the vacation monies owed to them. The Union would also request the Employer be required to pay interest on these monies from April 28, 1994, due to the Employer canceling the arbitration hearings scheduled for April 28 and May 3, 1994.

Therefore, for all the reasons stated, the union requests the grievance be sustained.

ISSUES

Did the Employer violate the Agreement by not paying employees vacation following voluntary retirement?

Did the Employer violate the Agreement by not paying accrued 1993 vacation when it terminated its operations prior to January 1, 1994?

If yes, what shall the remedy be?

ANALYSIS AND FINDINGS

Vacation is time off from work with pay. It can either be a benefit granted to an employee prospectively as part of a compensation package and grant or entitlement. For example,

entitlement or grants are those benefits employees obtain by mere virtue of being on the active payroll. Compensable holidays are one such example. Under these inherent entitlements, an employee is granted vacation to compliment wages, medical benefits sick leave and other aspects of a compensation package.

Vacations, however, can also be deemed a form of deferred compensation, that is, employees earn a portion of future paid vacation based upon each hour, week, or month of actual work. One test to distinguish between the two is a determination if an employee obtains vacation upon the hire date or must actual services be performed before paid vacation may be taken by the individual. For example, an employer may have a policy that everyone on the employment roster each January 1st receives two weeks vacation (or additional weeks based upon seniority) regardless of their own actual hire date or actual hours worked in the past calendar year. This is a prospective entitlement. But if entitlement is based upon past work activities, this is a retroactive entitlement and is a form of deferred compensation.

The weight of arbitral authority is that the obligation of vacation pay, when composed as a form of deferred compensation, survives the closing or sale of a business. The Employer acknowledges this by citation to the Pacific Coast Services case in its brief.

The Arbitrator finds that the proper classification of the vacation at issue here fits in to the latter category of additional earning of an employee. It is clear that the employees here had to be actively working in order to accrue vacation. The fact that vacation is prorated for less than 2080 hours supports the classification that it is additional compensation for services rendered in the past. It is also clear that vacation was a compensation for past services and not a prospective benefit. Section 11.1 of the Agreement confirms that employees do not receive paid vacation merely by being hired and they must complete at least six months of continuous service.

Furthermore, vacation is tied to each individual's own anniversary date and is not an across-the-board entitlement which is granted on a calendar year basis.

Under the circumstances where vacation is deferred compensation, there is a rebuttal presumption that employees are entitled to payment for accrued vacation upon separation from the employer due to no fault of the employee.

The Arbitrator will first address the argument raised by the Employer that the Union voluntarily gave up its entitlement in its negotiations with Company 1 as the successor. The Employer contends that Company 1 was obligated to not only recognize the Union, but to also assume the entire terms and conditions of the 1991 collective bargaining agreement as part of the bid process. The letter from Company 1 dated July 1993 does not offer to assume the Agreement; it offers to hire current employees and recognize the Union. Furthermore, the letter from Person 9 does not ask Company 1 to assume the current collective bargaining agreement but only requires hiring of employees and recognition of the Union. The Arbitrator, however, agrees with the Union that Company 1 was not a true successor since they did not purchase the business from the Employer, did not merge or consolidate, were not an "alter ego" nor did they have an identity of interest with the Employer. In fact, by letter dated July 24, 1992, counsel for the Employer acknowledged that Company 1 was not a successor but was a competitor and that employees risked losing their compensation package should Company 1 get the bid.

The Arbitrator agrees with the Employer that if Company 1 was a true successor, then any obligation to pay vacation commencing on January 1, 1994 would have been assumed by Company 1. If the Union then bargained away those rights, then the prior Employer is not obligated to compensate the employees since their rights would not be affected by actions of the successor.

The Arbitrator finds that past practice is not controlling in the situation here where the Employer ceases its operations. The fact that some employees may or may not have received payments upon termination of the employment relationship is not dispositive of the case where there is a total cessation of operations. The language of the Agreement must control the outcome of the class action Grievance for employees on the payroll the last day Employer was in business. The Employer places great reliance upon the phrase in the Agreement limiting payment to a time "prior to taking a vacation and at no other time" with limited exceptions which do not apply here. The Arbitrator rejects the employer's contention that the term "no other time" shows a clear intent to operate as a forfeiture of all accrued vacation for all employees in the event of a total cessation of operations. It is obvious that the intent of this language goes to the timing of payments, not the ultimate entitlement to compensation. The Arbitrator agrees with the rationale of the Ward case cited by the Employer that holds while past practice may require active employment on a certain date for entitlement to vacation pay, a plant closing which precludes attaining that date will not prevent payment of already accrued vacation entitlement. The Arbitrator finds for the Union, and the Employer must pay all 1993 accrued vacation entitlement that would have been due as deferred compensation on January 1, 1994 had the Employer not ceased its operations. If Company 1 was a true successor, this obligation would have passed to them, but as discussed above, since this is not the case, the earned but deferred compensation is due the employees from Employer based upon the number of hours paid the employees while working for Employer in 1993. Section 11.1 of the Agreement states that employees do not receive vacation entitlement until they have earned it by hours paid in the previous anniversary year and the years of service are calculated to the particular anniversary

date of each individual employee. The employees meeting these conditions in 1993 are entitled to their deferred compensation of vacation pay.

The vesting language of the January 1st should not be interpreted and applied to preclude payment of past obligations since that language contemplated an on-going operation and relationship between the parties. Indeed, the Collective Bargaining Agreement itself has a term extending beyond January 1, 1994. But-for the cessation of operations by Employer, each employee on the active payroll as of the last day of business is deemed to be an active employee as of the beginning of 1994.

The Arbitrator finds that the Employer denied the Grievances in good faith and that there was a genuine issue of contract interpretation, so no interest will be awarded on the sums due employees.

AWARD

The Grievances are granted for any employee on the payroll when operations passed from Employer to Company 1. Each employee is to be paid their individual 1993 vacation entitlement without interest. Payment is to be made within forty-five (45) days from the date of this Award. The Arbitrator retains jurisdiction over the implementation of the remedy.