In the Matter of Arbitration between PACIFIC GAS AND ELECTRIC COMPANY, Employer, and LOCAL UNION NO. 1245, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, Union.	DECISION AND AWARD Parties' Arbitration Case No. 153

Board of Arbitration:

Employer Arbitrators: I. Wayland Bonbright
Margaret A. Short

Union Arbitrators: Roger Stalcup
Ed Caruso

Chairperson: Harvey Letter

Appearances:

For the Employer:
Kenneth Yang and
Susan L. Rockwell, Esqs.

For the Union:
Tom Dalzell, Esq.

STATEMENT OF THE CASE

As parties to a collective bargaining agreement, which initially took effect September 1, 1952, and, as amended, is effective from January 1, 1984, through December 31, 1987, the Union and the Employer submitted this matter to arbitration. The dispute involves the discharge of the

Grievant. By their actions, the Parties agreed the matter is properly before the Board of Arbitration for resolution. Hearing was held before the Board, and the Parties had full opportunity to present evidence and argument, including the examination and cross-examination of witnesses. The Parties submitted post-hearing briefs to the Chairperson of the Board of Arbitration.

ISSUES

The Parties' Submission Agreement identified the following issues.

1. Whether the Parties' alleged agreement to deny the grievance at the Fact Finding Committee step of their grievance procedures is final and binding on the Company, the Union, and the Grievant?

2. If the answer to Issue 1 is "no," was the discharge of the Grievant in violation of the Parties' Physical Labor Agreement?

   If so, what is the remedy?

FACTS

At the arbitration hearing, there were substantial conflicts between testimony given by the Employer's witnesses and testimony given by the Union's witnesses. In resolving the conflicts in testimony and in making certain fact findings in this case, the Arbitrator has made credibility resolutions based, in part, upon his observation of the witnesses as they testified; in part, upon the witnesses' apparent self-interests; in part, upon the consistency of the witnesses' testimony in the context of the overall evidence of record; and, in part, upon the testimony considered in relation to the behavior that can reasonably be expected to have

> It is your responsibility to report to and attend work on a regular basis. Your failure to do so presents an undue hardship on the Company and your fellow employees. This letter should make it clear that you must take any necessary steps to improve your attendance to a satisfactory level and maintain it as such. Your failure to do so may result in disciplinary action.
>
> This letter and its conditions will be reviewed on a quarterly basis, or when your attendance reaches an unacceptable level, whichever is sooner.

On June 10, 1985, Electric General Foreman Boyce Ted McCarthy issued a document to the Grievant. It included the following:

> On January 15, 1985, you were issued a letter because of your unavailability for work. The letter referred to the fact that in 1984 you were unavailable for work a total of 184 hours due to sick leave and personal business. The letter also explained that this was unacceptable and you would need to take the necessary steps to improve your attendance or disciplinary action would be taken.
>
> Beginning with January 1, 1985, through May 31, 1985, you have been unavailable for work a total of 178.5 hours. . .
>
> . . . it is apparent that you have not taken the necessary steps to improve your attendance. Your failure to attend work on a regular basis creates an undue hardship on the company and your fellow employees and cannot be tolerated. If you are having any problems, the Employee Assistance Program is available to assist you.
>
> This letter will constitute the final notice on your unacceptable attendance record and any future incidents involving unavailability for work will result in termination.

The Union grieved the Employer's issuance of the June 10, 1985, letter.

A Local Investigating Committee ("LIC") subsequently issued the following "Resolution" of that grievance.

> The Committee agreed upon a resolution of this case: based upon the Grievant's record, the letter of June 10, 1985 is justified and the corrections asked for . . . denied. However, the Committee did agree to amend the June 10, 1985 letter to include the tardiness issue and a date to review the Grievant's attendance record in the future.

The record reflects that, under Company policy in June 1985 and thereafter, an Electric Transmission and Distribution Department ("ET&DD") employee "who's going to be absent or tardy" was required to notify the ET&DD "office prior to the start of their regular work hours."

On June 27, 1985, Construction Supervisor R.C. Rumsey issued a letter to the Grievant. It stated,

> On June 24, 1985, you did not report to work at the scheduled 7 a.m. starting time. In addition, you did not notify the Electric T&D Department, prior to 7 a.m., that you would not be at work. At 8:45 a.m. you telephoned the Electric T&D office stating that your alarm clock did not work and that you would report to work within a few minutes. You arrived at work at 9 a.m.
>
> * * *
>
> On June 10, 1985, you were issued a 'Final Notice' letter for your unavailability for work. The intent of the letter, and the conditions regarding unavailability for work, are not limited to sick leave and personal business. Instances involving tardiness, regardless of notification, and/or medical appointments, when advance notification is not given, are also unacceptable and considered as unavailable time.
>
> This letter is issued as a clarification to the letter issued to you on June 10, 1985. Any future instances involving your unavailability for work will result in termination.

On September 17, 1985, McCarthy issued an amendment to his June 10, 1985, letter. It included the statement, ". . . during the first quarter of 1986 I will review with you your attendance record so you can better understand your progress or lack of progress regarding your attendance responsibilities." (The Grievant received a copy of that document in December 1985.)

In December, the Grievant completed a work detail in Bakersfield which had lasted some four months. He was scheduled to return to work at the Employer's Belmont facility at 8:00 a.m. on December 16. However,

the Grievant did not report that day until about 2:30 p.m. On January 20, 1986, he did not report for work because of sickness. On January 27, 1986, he was approximately thirty minutes late for work but did not telephone the ET&DD office that he would be late. On January 31, 1986, the Grievant phoned the Employer's office at about 7:50 a.m. and advised he would report from ten to fifteen minutes late. However, the Grievant actually reported about thirty five minutes late. When the Grievant reported, McCarthy suspended him.

On February 5, 1986, the Employer issued the following letter to the Grievant.

> This letter is to inform you that your employment with Pacific Gas and Electric is terminated effective January 31, 1986. This is due to your unavailability for scheduled work based on your attendance and tardiness record.

The Union filed the grievance in this matter on February 7, 1986. The grievance charged, "Grievant was terminated on 2-6-86 without just and sufficient cause."

A Local Investigating Committee was unable to resolve the grievance. On May 16, 1986, the LIC referred the case to a Fact Finding Committee ("FFC").

A Fact Finding Committee met on June 18, 1986. The Company Representatives were Kent Anderson and Margaret Short. The Union Representatives on the FFC were Ed Caruso and Corb Wheeler. As stipulated by the Parties at the arbitration hearing, the Company and Union Members of the FFC entered into "an oral agreement on June 18, 1986, to settle the case."

Afterward, Employer Representative Anderson prepared a Memorandum of Disposition ("MOD"). It read, in part,

> DISCUSSION AND RESOLUTION:
>
> The Committee reviewed the grievant's record of tardiness and unavailability. In addition, the Committee noted the grievant's failure in the latest case to call the Company prior to absences. Taking into consideration all of the above, the Committee concurred that Company's action is justified. The case was closed.

Employer Representatives Anderson and Short signed their concurrences with the "Resolution" shown on the MOD. The Employer sent the MOD to Wheeler for execution by the Union Members of the FFC.

On August 1, 1986, Karen Miller, a secretary employed by the Union, sent Short a handwritten memorandum relative to the MOD. The memorandum read,

> Copy originally signed by Company has disappeared somewhere in the U.S. Mails. Corb asked me to re-send.
>
> Thanks
> Karen
>
> (This was re-typed from scribbled upon copy I keep.)

The record reflects that the "Corb" referenced in Karen Miller's memorandum was Corb Wheeler. The document Miller enclosed with her August 1, 1986, memorandum contained a typewritten resolution identical to that contained in the MOD which Anderson and Short had previously signed and sent to Union Representatives Caruso and Wheeler for signature. Anderson and Short signed their concurrences on the MOD which had been re-typed by the Union. The Company then returned the Union's re-typed MOD to the Union.

In September, during a meeting at the Union's office, Wheeler requested of Short that "FF #3574 be referred to the pre-Review Committee." In doing so, Wheeler failed to identify the request as applicable to the grievance which is involved in the instant case. Upon returning to her office, Short discovered that Wheeler's request involved the grievance in this case. Later, Short asked Wheeler "why he wanted to refer it to pre-review when it was already settled." Wheeler answered "basically that he'd changed his mind."

A pre-Review Committee meeting was held on October 20, 1986. The arbitration hearing record reflects that the Union Representatives wished to refer the matter to arbitration. The Company Representatives opposed the referral to arbitration, asserting the Parties had previously agreed upon a resolution of the case.

THE EMPLOYER'S POSITION

1. The Procedural Issue

The Employer states that a Fact Finding Committee resolved the grievance in this case on June 18, 1986. Assertedly, that FFC resolution was "final and binding on the Company, Union and the Grievant under Section 102.4 of the Parties' Agreement." In essence, the Company contends the absence of a written accord does not permit the Union to "renege on the oral agreement made by its FFC members and unilaterally rescind the [Fact Finding] Committee's resolution of this case." The Company argues that "oral grievance resolutions by the Parties' FFC are final and binding under their labor agreement and are, therefore,

enforceable. Alternatively . . . even if . . . an oral FFC grievance is non-binding unless an MOD is issued, the FFC in this case constructively issued the requisite MOD. . ."

In the latter regard, the Company notes the Company Members of the FFC sent a written MOD to the Union Members for signature. It contained a written resolution of the FFC Members' prior oral agreement. The Union Members did not sign and return that document. However, the Union Members did send to the Company Members - for their signatures - a written resolution which was identical to the one previously prepared by the Company Members. Further, "no Union official expressed any reservations over the [Fact Finding] Committee's" prior oral accord. As stated by the Employer, "The Arbitration Board must not endorse the Union's obstructionist conduct and must, therefore, find that the FFC here did constructively issue the agreed-to MOD specified in section 102.6 of the parties' Agreement."

2. The Substantive Issue

The Company contends the Grievant's "poor attendance and tardiness record justifies his discharge from Company employment." More specifically, the Employer notes that its September 17, 1985, letter warned the Grievant that his attendance record in the first two years of his employment was "fundamentally unacceptable." Further, the Company warned the Grievant that failure to improve "would lead to his employment termination." Yet, the Grievant did not thereafter improve. Allegedly, the Grievant's overall attendance infractions justified his discharge.

THE UNION'S POSITION

1. The Procedural Issue

The Union notes that Section 102.4 of the Parties' Agreement provides that the resolution of a timely grievance at any step of the grievance procedure "shall be final and binding on the Company, Union, and the grievant." The Union otherwise states there is no "explicit definition" in the Contract of "the resolution of a timely grievance." The Union claims an implicit definition is made "clear" by reference to Sections 102.1 and 102.6 of the Contract. Assertedly, there is an implicit "requirement that the resolution be in writing."

The Union states the Parties should "accept repudiation of an oral agreement in the intermediate steps of the grievance procedure." As support for that view, the Union references a "past practice of the parties;" a "recent ruling" by Arbitrator John Kagel in the Parties' Arbitration Case No. 134; and "controlling contract language."

Should the Board of Arbitration conclude that Arbitrator Kagel's "ruling" is not dispositive of the Company's argument, the Union alternatively contends "the Contract unambiguously supports its position." According to the Union, at each step of the grievance procedure, the Contract "requires that agreements be reduced to writing and executed by the parties." Allegedly, that means, "unless and until the parties execute a written settlement a grievance is not settled." As to an asserted past practice, the Union makes the following claim. "Finally, the opening remarks of Counsel for the Company suggest that with 'proper justification

or reason' a party may repudiate a tentative, oral agreement prior to execution of the formal, written agreement settling the case."

2. The Substantive Issue

Relative to the period from January to June 1985, the Union "concedes that the grievant's attendance was not acceptable." However, improvement in the Grievant's attendance from June 11, 1985, to January 31, 1986, "would appear to be in the order of dramatic." In sum, the Grievant's overall attendance record at the time of his termination was "clearly acceptable."

The Union states that - after the Company issued the June 1985 final warning to the Grievant - it identified four incidents as the reasons for his termination. Of those four incidents, the Union claims the Company did not rely upon one of them (dated January 31, 1986) until the arbitration hearing in this case. As to the second incident (dated January 20, 1986) the Grievant did not report to work because - "as a result of medication taken in conjunction with ongoing dental work" - he was "impaired from performing his job duties." The Union notes the Company had been aware of the Grievant's visits to the dentist. In such light, the Union claims the Grievant's January 20, 1986, absence "leaves no ground for criticism." As for the two remaining incidents (dated December 16, 1985, and January 27, 1986) the Union concedes that "the Company may properly be concerned" about the prior one but claims that the other "may not be held against" the Grievant.

The Union argues, "While minor discipline may have been justified to remind the grievant of Company procedures, discharge was clearly not."

By way of remedy, the Union seeks "full seniority, back pay and benefits, representing the amount he would have earned from the effective date of discharge to the date he is reinstated to employment, less outside earnings, if any."

DISCUSSION AND CONCLUSIONS

The Employer contends that the FFC's oral resolution of the grievance in this case was final and binding and that there is no warrant for Board of Arbitration consideration of the Parties' substantive dispute. In contrast, the Union asserts that the FFC oral resolution of the grievance had to be reduced to writing before it could be final and binding and that the Board of Arbitration should decide the substantive merits of this case. For the purpose of deciding that difference between the Parties, the Company claims the Arbitration Board should consider initially the words of the material provisions of the Parties' Title 102 Grievance Procedure. For its part, the Union asserts, "The single most important consideration" for interpreting the Agreement in this dispute "is . . . Arbitrator Kagel's ruling in Arbitration Case No. 134." However, the Union alternatively argues that the language of the Contract is a basis for interpreting the Agreement.

It requires no citation of authority to support a statement that the terms of a collective contract are to be applied as written. In that light, the Board of Arbitration gives initial consideration to the language of the Parties' Contract.

The Parties' Collective Bargaining Agreement contains the following provisions.

TITLE 102. GRIEVANCE PROCEDURE

102.1 STATEMENT OF INTENT - NOTICE

* * *

The Parties are in agreement with the policy expressed in the body of our nation's labor laws that the mutual resolution of disputes through a collectively bargained grievance procedure is the hallmark of competent industrial self-government. Therefore, apart from those matters that the parties have specifically excluded by way of Section 102.2, all disagreements shall be resolved within the scope of the grievance procedure.

* * *

102.4 FINALITY

The resolution of a timely grievance at any of the steps provided herein shall be final and binding on the Company, Union and the grievant. A resolution at a step below Step Five, while final and binding, is without prejudice to the position of either party, unless mutually agreed to otherwise.

* * *

STEP TWO

LOCAL INVESTIGATING COMMITTEE

Immediately following the filing of a timely grievance, a Local Investigating Committee will be established. The Committee will be composed of the Personnel Manager, the Business Representative, the exempt supervisor whose decision is involved in the grievance, and the shop steward representing the department involved.

* * *

(2) The Committee shall meet as soon as reasonably possible and shall make a full and complete investigation of all of the factors pertinent to the grievance. . .

* * *

(3) . . .

(a) the Local Investigating Committee shall prepare a report of its findings, which shall include: (i) a mutually agreed-to brief narration of all the events and factors involved in the dispute, and (ii) the Committee's mutually agreed-to findings with respect thereto. . .

* * *

(b) Within 15 calendar days following the filing of a grievance which does concern an employee's qualifications for promotion or transfer (except as provided above for inter-division postbids or transfer applications), or an employee's demotion, suspension or termination of employment, the Local Investigating Committee shall prepare a report of its findings as set forth in Subsection (a) above.

If such grievance is not resolved in 15 calendar days following its being timely filed, the grievance must be referred to and accepted by the Fact Finding Committee. . .

* * *

STEP THREE

FACT FINDING COMMITTEE

The Fact Finding Committee shall be composed of the Chairman of the Review Committee or his designee, the Secretary of the Review Committee or his designee, and the Personnel Manager and the Business Representative involved in the preceding step.

The Fact Finding Committee shall hold hearings or meet at such places and times as it deems necessary to resolve the grievance. If the grievance is resolved by the Fact Finding Committee before the expiration of the 30 calendar days following the date of referral from the preceding step, the Committee shall issue an agreed-to 'Memorandum of Disposition,' copies of which shall be distributed to each member of the Committee and to the grievant, and such others as the Committee determines.

If the Fact Finding Committee has not settled the grievance within 30 calendar days following receipt of or acceptance of certification, it may, by mutual agreement of the Secretary and Chairman, be:

(1) referred to arbitration; or

(2) referred to the Division or Department Joint Grievant Committee; or

(3) referred back to the Local Investigating Committee for further information and/or instructions as to the grounds for settlement; or

If none of the foregoing can be mutually agreed to, the complete grievance file shall be referred to the Review Committee.

On its face, Section 102.4 provides that the resolution of a grievance at any step of the Title 102 Grievance Procedure "shall be final and binding." As pointed out by the Employer, the Parties "knew exactly how to impose a written requirement for grievance committee resolutions to have final and binding effect under section 102.4" where that was their mutual intent. Particularly, the Employer references Step Five B (iv) of the Grievance Procedure. That provision states that a Review Committee compromise or settlement "must be disposed of by mutual agreement, in writing . . ." in one of three alternate ways. Review of the entirety of the Parties' Grievance Procedure shows there is no specific requirement in Title 102 that every resolution of a grievance by the Parties is to be reduced to writing in order to be "final and binding." More specifically, there is no requirement that a grievance settlement reached in the Step Three Fact Finding Committee process must be written in order to be final and binding. Indeed, where a Fact Finding Committee resolves a grievance within thirty days "of referral from the preceding step," the FFC is mandated to "issue an agreed-to 'Memorandum of Disposition.'" To state the obvious, the MOD is in written form.

In sum, the Contract language concerning Fact Finding Committee resolutions of grievances by the Parties is precise. It is clear. It is unambiguous. Where an FFC resolves a grievance, the Committee "shall

issue" written memorialization of the resolution. Further, it is rudimentary that the applicable clear and unambiguous terms of a collectively bargained agreement are to be applied literally.

In the instant case, the Parties' representatives both reduced to writing - at their respective offices - the same "agreed-to" resolution of the substantive dispute, but the Union Representatives of the FFC refused to sign it. Step Three of the Grievance Procedure does not countenance such a refusal, where - as in this case - Union Representative Wheeler "basically . . . changed his mind" about the settlement which all of the FFC Representatives had previously reached on June 18, 1986. Otherwise stated, the Contract establishes that the Union Representatives were not privileged by the terms of the Parties' Agreement to renege on their oral understanding "to settle the case." In that light, under Section 102.4, the substantive merits of the Employer's termination of the Grievant in this case are not subject to the arbitration process - absent other controlling evidence or special circumstances.

There is the Union's contention that a ruling made by Arbitrator John Kagel in Arbitration Case No. 134 is the "single most important consideration" for the purpose of resolving the procedural issue in this matter. That contention suggests that Arbitrator Kagel's ruling supersedes the clear language of the Parties' Agreement. For that reason, it is proper to review Arbitrator Kagel's ruling in some detail.

The evidentiary record in the instant case includes an exhibit consisting of fourteen pages of the transcript of hearing in Arbitration Case No. 134. At that hearing, Union Witness Roger Stalcup testified con-

cerning a discussion by Union and Company representatives at a pre-Review Committee meeting. In doing so, Stalcup referred to "a recap . . . [of his] notes from that meeting." According to Witness Stalcup - at the pre-Review Committee meeting, the Union representatives asserted that Company representative Tyburski had prepared a draft decision which did not reflect a "tentative agreement" the Committee had previously reached. Employer's Counsel objected to that Stalcup testimony on grounds of "hearsay" and "relevancy." Employer's Counsel took "strong exception to [the Union's] line of questioning and the elicited responses." According to Employer's Counsel, "[Stalcup] is asked questions pertaining to a formal document which has not been presented to the board [of arbitration], which I think is terribly irrelevant anyway." Arbitrator Kagel commented as follows:

> I'm concerned about why is the Board hearing this for the first time.
>
> * * *
>
> It seems to me if you had a settlement of this beef at a lower level, that should have been preclusive on the Board ever having to reach a decision on the merits of this matter - specifically if you had an agreement on the remedy. Is that what you're offering us?

Union's Counsel responded, in part,

> I'm arguing [the Company's] obdurate behavior, . . . their delay in the grievance procedure should enter in the Board's weighing equities.

Arbitrator Kagel then stated,

> Except you seem to be going further.
>
> You are also saying that at least Tyburski and Roger [Stalcup] reached agreement, and they were authorized to do so, that the remedy that the Union is now seeking would in fact be paid.

> If they did that, first of all this Board should never have had the merits because it was already settled. . . it's just plain settlement.

After additional comment by Counsel, Arbitrator Kagel said,

> As I understand, [Union Counsel] is presenting this only for the fact that the Company waited 8 months to get back to say Tyburski's oral agreement wasn't going to fly. Is that what you're saying?"

Union Counsel answered, "Yes. . ." and added,

> If I thought the case was settled, I would have said it was settled, but I would not use that against the Company on the merits, but as an equity for the remedy I think it's relevant.

Arbitrator Kagel then made an evidentiary ruling concerning Witness Stalcup's testimony on the pre-Review Committee meeting. He ruled,

> I'm going to strike all of it except for the fact that there was an oral discussion. The Company said they would get back at some point and it took them 8 months to get back.

Arbitrator Kagel then made the following general comments.

> I have had numerous cases - not necessarily with these Parties - where what is argued about and agreed to orally in the grievance procedure is binding on the parties.
>
> If the Parties here have a practice that nothing is binding on them until it is in fact put into writing and then signed, then it can't be [in] bad faith.
>
> If it in fact was agreed to by the Company there might be bad faith, but more importantly the matter was settled. We'll simply say the Company has to follow what they agreed to.

Arbitrator Kagel then asked the reason for the Union's offer of Witness Stalcup's disputed testimony. Union Counsel responded,

> For our delay argument, that between August 30, 1984 and February 19, 1985, after which the matter was almost immediately referred to arbitration, the case was delayed in the grievance procedure because of the Company twice reversing its position, having agreed with the Union, and secondly because the Company failed to prepare drafts in a timely manner as they had agreed to.

Union Counsel then limited Witness Stalcup's testimony, "To our delay argument as an equity."

It is seen that Arbitrator Kagel was fundamentally concerned with ruling on the admissibility of particular evidence. It is not perceived from the evidence submitted in the instant case that Arbitrator Kagel decided the contractual question whether an oral resolution of a grievance by a Fact Finding Committee under the Parties' Grievance Procedure is final and binding. Nor does it appear that he was asked to decide that question. Indeed, to the extent that Arbitrator Kagel generally commented about the effect of contracting parties' oral resolutions of grievances, it might reasonably be said that he indicated such arrangements have binding effect. Further, review of the board of arbitration's May 6, 1986, Opinion and Decision in Parties' Arbitration Case No. 134 has not clearly demonstrated that the board therein passed upon the effect of an oral resolution of a grievance by a Fact Finding Committee under the Parties' Grievance Procedure.

There is the Union's contention that, under the Parties' past practice, there is a "requirement that the resolution [by a FCC] be in writing." There are limited circumstances where a past practice may have the effect of altering the clear terms of a collective agreement. However, before considering whether the terms of Title 102 of the Parties' Agreement were changed, it is appropriate to determine whether there actually existed a past practice.

A number of circumstances determine whether a past practice has existed. For one thing, there has to be a showing that both contract-

ing parties have mutually understood the practice. The understanding may be implied as well as express. For example, a failure by one party to object to a course of conduct that is open and repeated demonstrates implied mutuality of acceptance. Second, the mutuality of acceptance of an asserted past practice should be clear. If there is a lack of clarity as to the nature of the past practice, there is a demonstrated lack of understanding that the conduct was the expected response to a particular situation. Third, the asserted past practice should be consistent. If there is a lack of consistency, there demonstrably was not an established past practice. Fourth, it must be shown that the practice occurred with some frequency over a period of time in order to be effective. Concisely put, past practice may be described as an action which the contracting parties have regarded as the normal, proper and exclusive response to a particular situation. It remains to consider the instant case facts in the context of the above past practice circumstances.

As noted above, the Union's assertion of a past practice is based upon a comment made by Company Counsel in his opening remarks before the Board of Arbitration in the instant case. Particularly, the Union notes a statement "that with 'proper justification or reason' a party may repudiate a tentative, oral agreement prior to execution of the formal, written agreement setting the case." That remark by Company Counsel is not found to be an Employer admission that grievance resolutions by a FFC must be written in order to be final and binding. Suffice to say, the Union's contention does not constitute probative evidence which clearly establishes conformity with the above past practice circumstances. More

particularly, the facts of this case fail to show the Parties have established a past practice of not enforcing the terms of Title 102 of their Agreement.

Upon the above and the overall record, it is concluded that, under Title 102 of the Parties' Collective Contract, the June 18, 1986, grievance resolution reached by the Fact Finding Committee was final and binding upon the Company, the Union, and the Grievant. Moreover, no circumstance exists in the instant case which warrants alteration of the clear language of the Parties' Agreement.

In closing, it is noted that the Parties stipulated that the Fact Finding Committee reached an oral resolution of the grievance in this matter. There was no dispute in this case as to the terms of that oral agreement. Further, the determination of the Board of Arbitration in this matter is not intended to constitute a conclusion that an oral understanding by any other type of "committee" operating under the Parties' Title 102 Grievance Procedure is, or is not, final and binding.

AWARD

The Parties reached a final and binding resolution of the dispute in this case. For that reason, the grievance in this case is not arbitrable on its substantive merits.

Harvey Letter

Harvey Letter, Arbitrator
Chairperson of Arbitration Board

We concur/~~dissent~~.

/s/ I. Wayland Bonbright

/s/ Margaret A. Short

Employer Members of Arbitration Board

We ~~concur~~/dissent.

/s/ Roger Stalcup

/s/ EdCaruso

Union Members of Arbitration Board

Dated: December 7, 1987