In the Matter of an Arbitration between **INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 1245,** Complainant, and **PACIFIC GAS & ELECTRIC COMPANY,** Respondent. RE: Arbitration Case No. 182 Supplemental Benefits.	**Opinion & Decision** **of** **Board of Arbitration** **-oOo-** San Francisco, California

BOARD OF ARBITRATION

Dorothy Fortier	Union Board Member
Roger Stalcup	Union Board Member
Margaret Short	Company Board Member
David Bergman	Company Board Member
Barbara Chvany	Neutral Chairperson

APPEARANCES

On Behalf of the Union:

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On Behalf of the Employer:

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INTRODUCTION

This dispute arises under the Collective Bargaining Agreements between the above-captioned Parties (Jt. Ex. 1A, 1B, 2). Pursuant to the Agreements, the above-referenced Board of Arbitration was appointed, and an arbitration hearing was conducted on February 9, 1990 in San Francisco, California. At the hearing, the Parties had a full opportunity to examine and cross-examine witnesses, and to present relevant exhibits. A verbatim transcript of the proceedings was taken (cited herein as Tr. ___). The Parties stipulated that the prior steps of the grievance procedure have been followed or waived and the matter is properly before the Board of Arbitration (Tr. 6). Post-hearing briefs were filed by the Parties, and the matter was deemed submitted for decision on February 20, 1990.

ISSUE

Did the Company's discontinuing the payment of supplemental benefits to industrially injured employees when their medical condition becomes stationary and rateable violate the parties' Labor Agreement? If so, what is the remedy? (Jt. Ex. 4)

REMEDY REQUESTED

The Union seeks an order that the Company cease and desist from discontinuing supplemental benefits to industrially injured workers whose medical condition has become stationary and whose permanent disability is rateable, but who are still engaged in vocational rehabilitation. Further, the Union requests that all

employees affected by the Company's discontinuation of supplemental benefit payments be made whole (Tr.7-8; Un. Bf. 2).

The Company seeks denial of the grievance in its entirety (Tr. 8; Co. Bf. 9-10).

PERTINENT AGREEMENT PROVISIONS

107.1 ANTI-ABROGATION CLAUSE

Company shall not by reason of the execution of this Agreement (a) abrogate or reduce the scope of any present plan or rule beneficial to employees, such as its vacation and sick leave policies or its retirement plan, or (b) reduce the wage rate of any employee covered hereby, or change the conditions of employment of any such employee to his disadvantage. The foregoing limitation shall not limit Company in making a change in a condition of employment if such change has been negotiated and agreed to by Company and Union.

* * *

TITLE 108. SUPPLEMENTAL BENEFITS FOR INDUSTRIAL INJURY

108.1 BENEFIT DESCRIBED

(a) When an employee is absent by reason of injury arising out of and in the course of the employment with Company which comes within the application of the Worker's Compensation and Insurance Chapters of the State Labor Code, he shall be eligible for supplemental benefits for the duration of temporary disability. Such benefits shall commence with the first workday of absence immediately following the day of the injury. The amount of the supplemental benefit payable for each of the first 182 days of absence shall be 85 percent of an employee's basic weekly wage rate divided by five, less the sum of any payments to which he may be entitled under the Workers' Compensation and Insurance Chapters of the State Labor Code and benefits from the Voluntary Wage Benefit Plan which provides benefits in lieu of unemployment compensation disability benefits provided for in the California Unemployment Insurance Code. On the

183rd day of absence and thereafter, the supplemental benefit described above shall be computed at 75 percent of the employee's basic weekly wage rate divided by five, less the offsets described above. (Amended 1-1-83 to apply to absences due to injuries occurring on or after 1-1-83)

(b) Any supplemental benefits paid during the first week of disability shall be considered as a credit against disability compensation which may be retroactively due under the provisions of the Worker's Compensation and Insurance Chapters of the State Labor Code. Supplemental benefits shall be considered as a credit which may be applied to any permanent disability settlement.

(Jt. Ex. 1A). [1]

BACKGROUND

Events Precipitating Grievance:

This case involves the interpretation and application of two provisions of the Parties' Collective Bargaining Agreement. The facts are substantially undisputed. By letter of November 7, 1989, the Company informed the Union of its intention to discontinue, effective January 1, 1990, the payment of supplemental benefits to a certain class of employees (Jt. Ex. 3, Att. 4). The employees affected are those who:

1) sustained industrial injuries, the effects of which permanently precluded them from returning to work at their regular occupations;

2) were determined to be medically stationary and rateable by a physician;

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[1] The above-referenced language is taken from the Physical Agreement. Identical language appears in Sections 23.1 and 24.3 of the Office and Clerical Agreement (Jt. Ex. 1(a), 2; Tr. 8). For ease of reference, this Opinion will identify the provisions as they are designated in the Physical Agreement.

3) were members of the Company's Group Life Insurance Long Term Disability Plan (LTD); and

4) [were] Qualified Injured Workers participating in [the] vocational rehabilitation process.

(Jt. Ex. 6)[2]

Approximately 84 employees were affected by the discontinuation of supplemental benefits involved in this case (Jt. Ex. 3, Att. 7). Additional employees may have been affected as the policy continued in effect (Jt. Ex. 3).

In a letter of December 6, 1989, the Union protested discontinuation of supplemental benefit payments to the employees at issue (Jt. Ex. 3, Att. 5). On December 15, 1989, the Union filed a grievance on the matter. The grievance was not resolved in the earlier steps of the grievance procedure, leading to this arbitration (Jt. Ex. 3).

Negotiating History

Section 108.1 was negotiated in 1956 to provide an industrially injured employee a payment in addition to Temporary Disability payments under the Workers' Compensation Act. These additional payments are called supplemental benefits. They are a contractual benefit, not a statutory one. Under Section 108.1, a qualifying employee is eligible for supplemental benefits "for the duration of temporary disability" (Jt. Ex. 1).

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[2] The Parties stipulated these criteria define the class of employees referred to in the Issue (Tr. 6; Jt. Ex. 4).

Section 108.1 was amended in 1983 to reduce the amount of supplemental benefits after a designated period. Aside from this amendment, the provision has remained the same since 1956.

Review Committee Decision 1200:

In 1974, Review Committee Decision 1200 (RC 1200) was issued interpreting Section 108.1. RC 1200 states, in part, as follows:

> ...the temporary disability terminates when it is medically determined that the employee has reached the stage where his injury is stationary and rateable and, if such conclusion is affirmed, the employee is no longer entitled to receive supplemental benefits.
>
> (Jt. Ex. 3, Att. 2)

The foregoing decision was signed by the Parties in November 1974, prior to the effective date of the statutory provision for rehabilitation, described below.

Rehabilitation Act:

On January 1, 1975, the Workers' Compensation Rehabilitation Act became effective. This statute obliged the Company to rehabilitate industrially injured workers who were unable to return to their former jobs. The Act further required employers to provide Vocational Rehabilitation Temporary Disability (VRTD) payments to injured workers involved in rehabilitation. The VRTD benefit was payable after the employee's medical condition was stationary and rateable, and he or she was precluded from his or her regular occupation (Jt. Ex. 3).[3]

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[3] Recent changes in the Workers' Compensation Act, effective January 1, 1990, are not relevant to this proceeding and are not relied upon by either party (Tr. 7).

Past Practice:

From 1956 to 1975, an employee's medical status determined eligibility for supplemental benefits; that is, if the employee was temporarily disabled under the Worker's Compensation Act, he or she was eligible for supplemental benefits under Section 108.1.

After the Rehabilitation Act became effective in 1975, an employee who was a member of the Group Life Insurance and Long Term Disability Plan who was medically stationary and rateable, and who was permanently precluded from returning to his or her former job, was entitled by statute to rehabilitation and VRTD payments. It is undisputed that the Company practice from 1975 until 1989 was that such an employee continued to receive supplemental benefits under Section 108.1 while a 60-day search for alternate employment within the Company was undertaken. If that effort was unsuccessful, outside rehabilitation services were offered, or the option to apply for Long Term Disability Plan benefits. In the event the outside rehabilitation services were accepted, the employee was paid statutory VRTD payments and supplemental benefits under Section 108.1 while he or she was engaged in rehabilitation (Jt. Ex. 6; Tr. 18).[4]

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[4] If outside rehabilitation was declined, VRTD and supplemental benefits were terminated, and the employee could apply for Long Term Disability Plan benefits. If an internal position was offered and declined by the employee, he or she was terminated without regard to membership in the Plan (Jt. Ex. 3).

Pre-Review Committee Decision 471:

In May 1981, a grievance involving the denial of supplemental benefits was decided at Step Five of the grievance procedure, in the Pre-Review Committee Procedure.[5] Pre-Review Committee Decision 471 (P-RC 471) involved an employee who had rejected the offer of an alternate position within the Company, a recognized exception under the Parties' practice described above. Under the circumstances, it was found that the grievant was entitled to receive supplemental benefits under Section 108.1 only until she was medically determined to be permanent and stationary; and, on the basis of her rejection of the Company's offer of internal rehabilitation, termination was found to be appropriate (ibid.).

The following portion of P-RC 471 is pertinent here:

> In cases like this in the past, the parties have agreed that when an employee's medical condition becomes "permanent and stationary" and the employee is precluded from performing the duties of his/her regular classification, then the Company proceeds with its obligation to rehabilitate the employee into another position either within the Company or without. In this regard, this Committee recognizes that:
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> * * *
>
> (2) an employee shall be eligible for supplemental benefits for the duration of temporary disability whether involved in a rehabilitation program within the Company or without;

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[5] In the Physical Agreement, Section 102.4 "FINALITY" provides: "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" (Jt. Ex. 1A). Identical language is found at Section 9.4 of the Clerical Agreement (Jt. Ex. 2).

> (3) the duration of entitlement to supplemental benefits shall continue to be as defined in Review Committee File No. 1200 -- that is, until the employee becomes stationary and rateable;
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> (Jt. Ex. 3, Att. 3) (emphasis added)

P-RC 471 also includes the "Company's stated policy for industrially-injured employees [as] contained in the Employee Handbook and Summary of Benefits" (ibid.). That excerpt includes the following:

> If, under California Law, you are eligible for a rehabilitation plan and elect employment outside of PG&E or its subsidiaries, Supplemental Benefits will be terminated at the start of permanent disability payments.
>
> (Jt. Ex. 3, Att. 3)

Company Practice Currently:

As described hereinabove, in 1989 the Company announced its intent to discontinue paying supplemental benefits to employees while they were participating in outside rehabilitation. This was contrary to the above-cited policy and the practice followed at the Company since 1975. It is this "administrative change" which led to the grievance in this case (Jt. Ex. 6).

The Company's practice after the announced change is to continue the employee on supplemental benefits during the 60-day internal search for alternate employment (Jt. Ex. 3, Att. 3; Tr. 17). If that search is unsuccessful, supplemental benefits are discontinued because the employee's medical condition is stationary and rateable. The employee then has the option of accepting outside rehabilitation services or applying for Long

Term Disability Plan benefits. If outside rehabilitation services are accepted, the employee is not paid supplemental benefits while participating in rehabilitation. The employee receives the statutory VRTD payments and may apply for Long Term Disability Plan benefits while in rehabilitation.[6]

Offset for Supplemental Benefits Paid:

Under Section 108.1(b), supplemental benefits are credited against any permanent disability settlement (Jt. Ex. 1A, 2; Tr. 18-19). This offset applies whether the supplemental benefits are paid before or after the employee is medically stationary and rateable (Tr. 19). The offset exists only to the extent of the employee's permanent residual disability (Tr. 20). Supplemental benefits paid often exceed any permanent disability award. The testimony establishes the Company receives credit for approximately 20 percent of the supplemental benefits paid (Tr. 21).

Company's Reason for Change:

The Company's decision to effectuate the change in supplemental benefit payments was motivated by a desire to control costs. Increased competition, lessened ability to recover expenses from ratepayers, and a poor economic year in 1988, among other factors, are cited by the Company to support its need to cut

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[6] If outside rehabilitation services are refused, VRTD payments are terminated, the employee receives no supplemental benefits, and he or she may apply for Long Term Disability Plan benefits. Also, the practice regarding employees who refuse the offer of an internal position continues in effect, that is, such employees are terminated without regard to membership in the Group Life Insurance Plan, after notice of the consequences of such a decision.

costs. Further, the testimony establishes that the Company's Workers' Compensation costs are rapidly rising. Compared with other utilities and private industry, the Company's Workers' Compensation costs are very high, and the supplemental benefit program is a primary factor. Finally, the Company presented testimony that the generous supplemental benefit provides a reverse incentive for employees to return to work.

POSITIONS OF THE PARTIES

The Union:

The effect of this "administrative change" on employees in outside rehabilitation is dramatic in terms of the reduction in the benefit payments they receive. According to the Union, the economic justifications offered by the Company for its action are not dispositive of the issue. Rather, such arguments are properly raised in bargaining, not following the unilateral implementation of such a change.

The Union advances two theories of contract violation based upon the Company's discontinuation of supplemental benefits to the employees at issue. First, the Union contends the Company's action violates the contractual provisions for supplemental benefits, as those provisions have been interpreted and applied by the Parties (Section 108.1, Jt. Ex. 1A; Section 23.1, Jt. Ex. 2). The Company attempts to rely upon RC 1200, but the Union points out that decision did not address the issue of payment of supplemental benefits while in outside rehabilitation. The only dispute at

that time involved when and how a determination would be made that an employee had become medically permanent and stationary.

According to the Union, after the statutory provision for vocational rehabilitation came into effect in 1975, the Parties, without any apparent dispute, immediately adopted the interpretation that employees were eligible for supplemental benefits under Section 108.1 while they were engaged in vocational rehabilitation. This interpretation was continued consistently for 15 years.

The Parties further defined the interpretation of Section 108.1 in P-RC 471, in which decision the Committee expressly recognizes an employee's eligibility "for supplemental benefits for the duration of temporary disability whether involved in a rehabilitation program within the Company or without" (Jt. Ex. 3, Att. 3). In referring to RC 1200, the Parties pointedly omitted reference to "medical" and simply stated the Company's obligation to pay supplemental benefits continues "until the employee becomes stationary and rateable" (ibid.), meaning vocationally as well as medically.

The Union asserts that its position is supported not only by the consistent, longstanding practice of the Parties and the interpretation contained in P-RC 471, but also by the interpretation of the phrase "temporary disability" by both the Workers Compensation Appeals Board (WCAB) and the California Supreme Court. Ponce de Leon v. Glaser Brothers, 42 Cal.Comp.Cases 962, 968 (1977); Tangye v. Henry C. Beck and Co., 43 Cal.Comp.Cases 3,

7 (1978); Webb v. Workers Compensation Appeals Board, 28 Cal.3d 621, 627 (1980); LeBoeuf v. Workers Compensation Appeals Board, 34 Cal.3d 234, 242-243 (1983). Further, in Pre-Review Committee Case No. 583 (P-RC 583), attached to the Union's brief, the Parties agreed to be bound by the administrative/judicial definition of "temporary disability" for purposes of determining eligibility for supplemental benefits.

Based upon Section 108.1 as interpreted in P-RC 471, the unbroken 15-year Company practice since 1975, and the interpretation of "temporary disability" by the WCAB and the Court, the Union concludes that employees are eligible for supplemental benefits under Section 108.1 for the duration of both their medical temporary disability and their vocational rehabilitation, either within the Company or without.

The Union's second theory alleges a violation of Section 107.1, the Anti-Abrogation clause (Section 24.3 of the Clerical Agreement). The Union cites several past arbitration awards and decisions from lower steps of the grievance procedure interpreting this provision. Applying the principles articulated in these earlier decisions, the Union argues the plan, rule or condition at issue here was firmly established by system-wide practice; the Union may not be deemed to have waived or acquiesced in the Company's change in payment of supplemental benefits in this case because it protested immediately upon notification of the intended change; the payment of supplemental benefits is a condition of employment as opposed to a method of operation; and the practice

the Union seeks to enforce by means of Section 107.1, if not expressly mandated by the Agreement, certainly does not conflict with specific Agreement language. For all these reasons, the Union submits the discontinuation of supplemental benefits for employees participating in vocational rehabilitation violates the Anti-Abrogation clause.

The Company:

The Company emphasizes that this case involves the discontinuance of contractual, not statutory, supplemental benefits to certain industrially-injured employees. Although it has paid these benefits for approximately 15 years, the Company contends it has the right under Section 108.1 to discontinue paying supplemental benefits after notice to the Union.

The Company relies upon RC 1200 to support its view that the Company is not obliged to pay the supplemental benefits at issue. That decision held that "temporary disability terminates when it is medically determined that the employee has reached the stage where his injury is 'stationary and rateable' and, if such conclusion is affirmed, the employee is no longer entitled to receive supplemental benefits" (Jt. Ex. 3, Att. 2) (emphasis added).

In the Company's view, the foregoing decision fails to support the Union's contention that Section 108.1 benefits must continue until the employee is vocationally stationary and rateable. This decision was reaffirmed by the Parties in P-RC 471 (Jt. Ex. 3, Att. 3). That decision, issued after the 1975 Rehabilitation Act, establishes the Parties intended to end

contractual supplemental benefits once the employee's condition becomes medically stationary and rateable.

The WCAB and Court cases cited by the Union involve industrially injured employees' statutory rights, not their entitlement to contractual benefits under Section 108.1. Therefore, according to the Company, the Union's reliance upon those cases is misplaced. Further, even if the cases are found to have marginal relevance, they involve different facts and issues than those presented here.

The Employer argues that the Union is precluded from relying upon the Anti-Abrogation clause in this case. Well-established arbitral authority holds that an employer's lengthy past practice cannot negate a clear and unambiguous provision of the collective bargaining agreement, even where there is an anti-abrogation clause, see, e.g., the award of Arbitrator Sam Kagel in Arbitration case No. 130. According to the Company, precedential grievance decisions involving these Parties have found that supplemental benefits under Section 108.1 are mandated only until an employee's condition is medically stationary and rateable. Under the circumstances, the Union may not be permitted to rely upon the Anti-Abrogation clause to support a finding in conflict with those terms.

Finally, the Company maintains that there are sound business reasons for the discontinuance of supplemental benefits in these circumstances. The economic justification is compelling, and the payment of supplemental benefits after an injured worker is medically stationary and rateable lengthens the time in rehabilitation.

In sum, the Company contends that, under the precedential grievances decisions in RC 1200 and P-RC 471, the Company is not required by the contract to pay Section 108.1 supplemental benefits to injured workers who are medically stationary and rateable. Therefore, after giving appropriate notice as it asserts it did in this case, the Company is not obligated to continue such payments.

DISCUSSION

Provision for Supplemental Benefits:

Under Section 108.1, an employee "shall be eligible for supplemental benefits for the duration of temporary disability" (Jt. Ex. 1A). The primary issue in this case is whether "temporary disability," as used in the provision, encompasses the period during which an employee is engaged in vocational rehabilitation. This specific issue is not directly addressed in the provision. Therefore, it is necessary to ascertain the Parties' intent from the negotiating history, grievance decisions and past practices.

At the time Section 108.1 was adopted, the statutory provision for vocational rehabilitation did not yet exist. The record

is clear that, prior to 1975, the factor determining eligibility under Section 108.1 was whether the employee was medically stationary and rateable. RC 1200, which adopts this standard for determining eligibility under Section 108.1, was issued before the statutory provisions for vocational rehabilitation became effective. That decision does not address the issue of the impact of rehabilitation on the payment of supplemental benefits.

In 1975, the statutory provisions for rehabilitation became applicable. The Court in Webb, supra, notes, as follows:

> The Legislature did not in fact create a new type of benefit in Section 139.5, but merely authorized the continuation of temporary disability indemnity during rehabilitation.
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> (footnote 2, at p. 625) (emphasis added).

The Court cites Ponce de Leon, supra, as follows:

> The legislature spoke in terms of the applicant "continuing to receive" temporary disability benefits ... It seems clear that they intended a worker's disability should not be permanent and stationary until he was both vocationally and medically rehabilitated.
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> (Webb, supra, at p. 627, citing Ponce De Leon, supra, at p. 968)(emphasis added)[7]

In the context of the Workers Compensation statutes, therefore, the period of rehabilitation was regarded as a continuation of "temporary disability," and an employee's disability

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[7] The foregoing principles are cited with approval in Tangye, supra, at p. 7, and LeBoeuf, supra, at pp. 243-244.

would not become permanent and rateable until he or she was both vocationally and medically rehabilitated. These cases support the Union's interpretation of the words "temporary disability" in Section 108.1.

The Company contends that the case law referred to above is inapplicable here because the supplemental benefits at issue involve contractual, not statutory, rights. However, the contract provision in question makes express reference to the "Workers Compensation and Insurance Chapters of the State Labor Code," in the same sentence which provides for supplemental benefits. The phrase "temporary disability," which appears in the same sentence, is a term with a particular meaning in the Workers' Compensation context. Indeed, the supplemental benefits under discussion in this case are clearly intended to be supplemental to the Workers Compensation benefits provided for temporary disability. Thus, in interpreting and applying this contract language, the Board may not ignore the meaning of "temporary disability" and its relationship to rehabilitation in the Workers Compensation context.

In light of the foregoing in the record, the most plausible and reasonable interpretation of Section 108.1, as written, is that the supplemental benefits are to continue while the employee continues to receive temporary disability payments for the period of vocational rehabilitation. For approximately 15 years, the Parties applied this interpretation to Section 108.1. The consistent, system-wide practice followed from 1975 until 1989 was to

pay supplemental benefits under this provision while an injured worker was engaged in outside rehabilitation, whether or not he or she had become medically stationary and rateable. During this period, the pertinent agreement language in Section 108.1 remained the same.

Therefore, the Parties' own conduct demonstrates an intent to apply Section 108.1 in the manner advanced by the Union in this case. The established practice under this provision resolves any ambiguity that may have arisen in 1975 when the rehabilitation statute came into being. The longstanding practice is found to be a more reliable indicator of the Parties' intent on this particular issue than the decision in RC 1200. This is because RC 1200 was decided in 1974 before the rehabilitation statute became effective. On the other hand, the practice in effect from 1975 through 1989 specifically pertained to the payment of supplemental benefits to employees while in rehabilitation. During the period the practice was in effect, the Parties did not rely upon RC 1200 to find employees ineligible under Section 108.1. Under the circumstances, the Employer is not justified in attempting to rely on RC 1200 to support its unilateral decision to discontinue payment of supplemental benefits in this case.

A reading of P-RC 471, on its face, fails to provide grounds for the Company to initiate this change. The case involved an employee who declined an internal position, a category historically treated differently under the provision and the practices of the Parties. The Company is correct that P-RC 471, decided in

1981, endorses the fundamental finding of RC 1200 that entitlement to supplemental benefits shall continue "until the employee becomes stationary and rateable." Significantly, P-RC 471 does not specify "medically" stationary and rateable.[8] Further, the Company ignores the following precedential finding in that decision: "an employee shall be eligible for supplemental benefits for the duration of temporary disability whether involved in a rehabilitation program within the Company or without" (Jt. Ex. 3, Att. 3) (emphasis added). That finding was also consistent with the practice of paying supplemental benefits to employees in rehabilitation, which practice had been in existence for approximately 6 years at the time P-RC 471 was issued.

In this case, the Company argues that any entitlement to supplemental benefits necessarily ceases when an injured worker enters vocational rehabilitation, because an employee can be eligible for rehabilitation only after his or her condition is medically stationary and rateable (Co. Bf. 2-3). This assertion appears to directly conflict the above-cited finding of P-RC 471.

For all the foregoing reasons, the record supports a finding that Section 108.1 requires the payment of supplemental benefits to an employee for the duration of temporary disability; and, that "temporary disability" as used in this context is intended by the Parties to include the time an employee is engaged in vocational

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[8] As noted above, an employee's disability is not permanent under the Statute until he or she is medically and vocationally stationary and rateable.

rehabilitation, even if the employee is medically stationary and rateable. Accordingly, it constitutes a violation of Section 108.1 for the Company to unilaterally discontinue payment of supplemental benefits to the class of employees at issue. The Company has advanced legitimate reasons for its desire to curtail supplemental benefits in this situation. However, in light of the finding reached above, it is found that these concerns are properly raised at the bargaining table, not in arbitration. Finally, given the above conclusion, it is unnecessary to rely upon the Anti-Abrogation clause to sustain the Union's position in this case.

For all the foregoing reasons, the following decision is rendered:

DECISION

1. The Company's discontinuing the payment of supplemental benefits to the class of industrially injured employees defined in the foregoing Opinion, when their medical condition becomes stationary and rateable, violates the Parties' Labor Agreement. The grievance is sustained.

2. As a remedy, the Company is hereby ordered to:

(a) cease and desist from discontinuing the payment of supplemental benefits to the class of industrially injured employees defined in this Opinion, whose medical condition has become stationary and rateable, but who are still engaged in vocational rehabilitation;

(b) make whole all those employees affected by the Company's discontinuation of supplemental benefit payments in the circumstances of this case.

3. The matter of ascertaining the individual employees to whom a remedy is due and computing the exact amounts due them is hereby remanded to the Parties. The Board retains jurisdiction over the implementation of this Decision, in the event a dispute arises.

Roger Stalcup
Union Board Member — 3/2/90 Date — Concur/~~Dissent~~

Dorothy Fortier
Union Board Member — 3-2-90 Date — Concur/[redacted]

Company Board Member — 3-5-90 Date — ~~Concur~~/Dissent

Margaret Short
Company Board Member — 3-6-90 Date — ~~Concur~~/Dissent

Ballard Abramson
Neutral Chairperson — March 1, 1990 Date — Concur/~~Dissent~~