

Arbitration Between:

L.B. Foster Company

and

Shopmen's Local 527, International Association of  
Bridge, Structural, Ornamental and Reinforcing Iron  
Workers

re: denial of overtime work opportunities

FMCS Case No. 03-08699

BEFORE: PAUL GREENBERG, Arbitrator

**Appearances:**

*For Shopmen's Local 527*

Stephen A. O'Brien, Esq., *Pittsburgh, Pennsylvania*

*For L.B. Foster Company:*

David Voltz, Esq., *General Counsel, Pittsburgh, Pennsylvania*

## **DECISION AND ORDER**

This is a contract interpretation case involving the overtime provisions in a labor agreement between L.B. Foster Company and Shopmen's Local 527 of the International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers. The labor agreement covers a bargaining unit at L.B. Foster's Bedford, Pennsylvania, manufacturing plant.

Between December 2002 and February 2003, L.B. Foster denied opportunities to work overtime shifts to six employees who missed work during their regular work week: Colby Imler, Daniel Bayer, Fred Grosholz, Denver Nelson, Floyd Beegle, and Bernie Miller. The Union filed timely grievances contesting the denials of overtime. The crux of the dispute involves labor's and management's differing interpretations of language that was added to the collective bargaining agreement's Overtime section in 1999. A hearing into this matter was held on June 10, 2003, and the parties subsequently submitted post-hearing statements.

For the reasons discussed below, the grievances are sustained.

## **BACKGROUND**

The key facts in this case are not significantly disputed.

The collective bargaining agreement (Joint Exhibit (JX) 1, §7) provides two alternative work schedules. Older language in the labor agreement provides for a traditional Monday through Friday work week of five 8-hour days. §7(A), (D). Alternatively, the Company – with the concurrence of the Union – can schedule the workforce to operate on a 4-day work week of 10-hour days, Monday through Thursday. §7(F). All work performed “before or after the regular work hours on any shift and all work done in excess of the regular workday or regular workweek for any shift” shall be paid at 1-1/2 the regular pay rate. §8(A). Based on the testimony of both Company and Union witnesses, it generally appears that the plant has been operating on the latter “4-10s” work schedule for quite a while, and certainly during the period when these grievances arose.

When the plant’s workload is busy, the Company frequently schedules an additional shift on Friday. The decision whether the plant will operate a Friday overtime shift is announced by the Company on Wednesday, with the Company identifying the classifications of employees whose work is needed for the additional day. Such overtime work seems to be fairly common during periods when the plant is busy. It appears that a Friday shift normally is eight hours long. *See* JX 2, 4, 5.

The Union and the Company concluded negotiations for a new labor agreement in March 1999. One issue that was discussed extensively during the negotiations was the Company’s concern with workers taking off time during the regular Monday through Thursday work week, and then working a day at overtime rates on Friday. The Company believed that some members of the bargaining unit were “gaming the system” by choosing to be absent during the regular work week (*i.e.*, straight-time hours) for a variety of reasons (ranging from unexplained personal leave to doctor appointments), only to make up the lost time at the higher overtime rate when the Company scheduled an extra Friday shift. Although it is unclear whether this kind of abuse was widespread, the Company sought language in the agreement that would give management tools to deal with the perceived problem. This new language would be incorporated into the Overtime section of the agreement as Section 8(F).

An initial tentative contract proposal was submitted to the bargaining unit for ratification on or about February 25, 1999, but was rejected. A subsequent proposal was ratified soon afterward with an effective date of March 11, 1999. There is some confusion about variant versions of the new §8(F) contract language (discussed below), but all parties agree that the following text regarding overtime work was included in the March 11 agreement that was signed by the parties:

The Company has the right to withdraw overtime if an employee doesn’t work the full workweek. If abuse is suspected such employee shall receive a verbal warning prior to withholding such overtime. The withholding of overtime may be deferred from the

current workweek to the next scheduled overtime period at the sole discretion of the Plant Manager or his/her designee.

JX 1, §8(F).

Even after the conclusion of the 1999 contract negotiations, it appears that the Company continued its prior practice of liberally allowing employees to work the Friday overtime shifts, even if they had missed work earlier during the week. Union witnesses testified without challenge that prior to December 2002, the Company had never denied overtime shift opportunities to any employee because the worker who had missed a regular workday. However, the Company again became focused on the overtime situation late in 2002 as the 1999 labor agreement came up for renewal. A new Plant Manager was hired in August 2002, Mark Maxwell, who felt that there were problems with job attendance at the Bedford plant. Maxwell testified that poor job attendance by some workers hurts all employees, because a shortage of regularly-worked hours during the normal work week leads to excessive work at overtime rates. Maxwell began compiling summaries of employee job absenteeism records.

On November 11, 2002, Maxwell held a meeting with all the workers at the plant to discuss job attendance issues. According to Maxwell, he informed the gathering that employees had to stop missing work during the regular workweek, or the Company would have to take action.

Brief negotiations for a new labor agreement were held on November 20, 2002, at L.B. Foster's headquarters at Greentree, PA. The Union simply proposed extending the existing 1999 contract, adding only an increase in the Company's benefit contribution. Both Maxwell and two Union witnesses involved in the negotiations (Chief Steward Roger Diehl and Committeeman Michael Baumgardner) testified that the Company raised the issue of overtime abuse. According to Maxwell, the Company proposed changing the overtime language of §8 to give the employer the right to deny overtime work to any employee who missed work time during the regular week, without regard to questions of abuse. Maxwell testified that the Union's Business Manager, Ernie Heinauer, flatly rejected such a change in the contract. However, according to Maxwell, Chief Steward Diehl noted during the negotiations that the Company already had the right to deny workers overtime under §8(F). Ultimately, the 2002 negotiations failed to reach agreement on any contract modifications and the parties simply agreed to extend the 1999 agreement "as is," with the workers picking up the additional cost of benefits.

On Wednesday, December 11, 2002, employees Colby Imler and Daniel Bayer missed their regular work shift, citing poor weather conditions. The next day they were advised by their supervisor that they were not eligible to work an upcoming overtime shift scheduled for Friday, December 20. The employees grieved the denial of the overtime shift. The Company denied the grievance, citing §8(F) of the labor agreement and referencing Maxwell's remarks about excessive absenteeism at the all-employee meeting of November 11, 2002.

Employee Fred Grosholz also missed work on December 11, 2002, citing poor weather conditions. A week later, Grosholz was informed that he would be denied the opportunity to

work the overtime shift scheduled for Friday, December 20. Grosholz's subsequent grievance was denied by the Company, which stated that "[t]he Company was justified in withholding overtime because [Grosholz] missed time during the workweek. Per Section 8 Paragraph F, 'The Company has the right to withdraw overtime if an employee doesn't work the full week.'" The Company's response also stated that all employees in the Bedford plant bargaining unit had been warned of the on-going abuse problem by Maxwell at the all-employee meeting of November 11.

Employee Denver Nelson called the plant on the morning of Tuesday, January 14, 2003, and reported that he would be absent from work for a doctor's appointment. When he returned to work the next day, he was advised that he was not eligible to work the overtime shift scheduled for the following Friday. The Company's "Absentee Report" indicates that Nelson was given a warning on January 15. Nelson grieved the Company's withholding of the overtime work opportunity; the Company denied the grievance.

Employee Floyd Beegle called in sick on the morning of Monday, February 3, 2003. On February 5 he was given a verbal warning and informed that he would be denied the opportunity to work overtime on February 7. Beegle grieved, and the Company denied the grievance.

Employee Bernard Miller missed work on Tuesday, February 11, 2003, citing illness. When he returned to work the next day, he was given a warning and advised that he would be denied overtime work on Friday, February 14. Miller's grievance was denied.

The six grievances were processed by the Union pursuant to the grievance procedure in the contract. Because all revolve around the same contract interpretation issue, the grievances were consolidated for arbitration.

## **ISSUES PRESENTED**

Although the parties did not reach a formal stipulation of the issues before the Arbitrator, it is clear from the record that the issues are:

1. Did the Employer violate the labor agreement when it denied overtime work opportunities to the six grievants?
2. If so, what shall be the appropriate remedy?

## **DISCUSSION**

### **A. Positions of the Parties**

At its core, this dispute involves differing interpretations of the meaning of the collective bargaining agreement, particularly the text of §8(F) that was added to the labor agreement as part of the 1999 contract negotiations.

***Union position*** – The Union contends that under §8(F), the Company can deny an employee overtime work opportunities only if an employee has a history of substituting overtime work for regular work. In addition, before denying overtime work to an employee, the Company first must warn the employee that the Company is concerned about suspected overtime abuse and thereby place the employee on notice that a further absence from work during the regular work week will result in the denial of overtime. The Union contends that this interpretation is consistent with the language of §8(F) when read in its entirety, and also is supported by the bargaining history of the provision and the employer’s past practice subsequent to the 1999 contract negotiations of allowing all workers who missed regular work shifts to work overtime shifts, until (in the Union’s view) the Company reinterpreted the provision in late 2002.

***Employer’s position*** – The Company contends that the first sentence of §8(F) (“The Company has the right to withdraw overtime if an employee doesn’t work the full workweek”) is a “bright line” test that gives management the right to withhold overtime opportunities whenever an employee misses work during the regular work week, even in the absence of overtime abuse. If overtime abuse (*i.e.*, being absent from work during the regular work week, yet expecting to work Friday at overtime rates) is suspected, the Company can issue a warning concerning the absence; this warning is a first link in the chain of progressive discipline. The Company argues that this interpretation is clear from the language of §8(F) itself, and that there is no need to refer to extrinsic evidence to interpret the contract provision; alternatively, the Company argues that its interpretation also is supported by bargaining history. The Company asserts that it should not be required to prove that an employee is abusing the overtime shift system before denying overtime opportunities.

Although the Company acknowledges that, between 1999 and December 2002, it did not deny overtime opportunities to employees who were absent for a regular work shift, this practice does not override the language of §8(F) and the “bright line” test found in the section’s first sentence.

The Company makes two additional subordinate arguments. First, with regard to the six grievants who were denied overtime opportunities because of unexcused absences, the Company notes that it had at least a suspicion of abuse in each instance. Second, referring to §§8(A) and 7(F) of the labor agreement (described below), the Company argues that work performed on Friday by an employee who has not already performed 40 hours of work, Monday through Thursday, does not qualify for overtime pay.

## **B. Analysis**

### **1. Interpretation of §8(F).**

An arbitrator faced with a question of contract interpretation must focus first on the text of the labor agreement itself to determine whether the language used by the parties is clear and resolves the issue in dispute. Contract language is to be construed in its totality, recognizing

that the “primary rule in construing a written instrument is to determine, not alone from a single word or phrase, but from the instrument as a whole, the true intent of the parties, and to interpret the meaning of a questioned word, or part, with regard to the connection in which it is used, the subject matter and its relation to all other parts or provisions.”

ELKOURI AND ELKOURI, *HOW ARBITRATION WORKS* (5th Ed. 1997) at 492, quoting *Riley Stoker Corp.*, 7 Lab. Arb. (BNA) 764, 767 (Platt, 1947). Unambiguous contract language must be applied. *FAIRWEATHER’S PRACTICE AND PROCEDURE IN LABOR ARBITRATION* (R. Schoonhoven ed., 4th Ed. 1999) at 243-44. As a general proposition, an arbitrator should turn to extrinsic sources such as bargaining history, past practice or industry practice only if the intent of a contract provision cannot be determined from the text itself.

The parties are in agreement that §8(F) was added to the labor agreement in 1999 in order to address the Company’s concern that some employees were taking advantage of the overtime system. What is disputed, however, is what process or standard (if any) must be met under §8(F) in order for the Company to deny overtime work opportunities to an employee in the bargaining unit.

Section 8(F) was a completely new provision in the collective bargaining when it was added as the result of the 1999 negotiations, and consists of three sentences which must be read as a whole. The Company justifies its action denying overtime to the six grievants who missed regular work days by focusing on the first sentence of §8(F) (“The Company has the right to withdraw overtime if an employee doesn’t work the full workweek”), arguing that this establishes a “bright line” test that allows overtime to be denied whenever an employee misses work during the regular work week. But in this Arbitrator’s view, a key question is how or whether the *second* sentence of the contract clause – which specifically introduces the concept of overtime “abuse” – relates to management’s right to deny overtime under the first sentence:

The Company has the right to withdraw overtime if an employee doesn’t work the full workweek. If abuse is suspected **such employee shall receive a verbal warning prior to withholding such overtime.** The withholding of overtime may be deferred from the current workweek to the next scheduled overtime period at the sole discretion of the Plant Manager or his/her designee.

§8(F) (emphasis added).

The Company construes the section to mean that any employee who misses a regular work day can be denied overtime, without need for explanation, even if there is no suspicion of overtime abuse. In the Company’s view, the second sentence simply stands for the proposition that employees who are suspected of overtime abuse are to be given a warning before the overtime is withheld, as the first step of a progressive discipline process.

In contrast, the Union contends that only employees who are suspected of overtime abuse are subject to being denied overtime work opportunities. Moreover, the Union argues that an employee first must be warned by the Company that the Company suspects an abuse problem, and that overtime subsequently will be withheld in the event that the employee misses regular work time. Both parties characterize this approach as giving an abusing employee “one bite at the apple” – that is, the denial of overtime under this interpretation would not kick-in until an employee has first missed work under circumstances that the Company suspects abuse the overtime system, and the worker is then put on notice that future missed work days during the regular work week may result in loss of overtime shifts.

Depending upon how Section 8(F) is parsed, it is possible to reach either of the competing interpretations offered by the Company and the Union. Arguably, then, the clause is ambiguous and requires investigation into extra-contractual sources in order to be interpreted. It is this Arbitrator’s view, however, that the Union’s interpretation of §8(F) is more plausible, keeping in mind that when interpreting contract language an arbitrator must try to give meaning to all the contract’s words, and must presume that the ordering of the words and sentences in the agreement has some logic.

First, it is noteworthy that Sentence 2 of §8(F) uses the phrases “*such* employee” and “*such* overtime.” Although the syntax of the section is awkward under any interpretation, the repeated use of the word “such” strongly suggests that the second sentence relates back to and modifies the “employee” and “overtime” that are being addressed in the initial sentence, *i.e.*, the employee who may be denied overtime is the employee who is suspected of abusing the overtime system. Otherwise, Sentence 2 of §8(F) seems to be unnecessary surplusage.

Second, under the Company’s interpretation of §8(F), Sentence 1, management claims the unfettered right to withdraw overtime opportunities to any employee who misses a regular work day – presumably, without any need for an explanation or warning. Yet §8(F), Sentence 2 requires the Company to give a warning to suspected overtime abusers prior to withholding overtime work. This interpretation of the section produces an illogical result: employees who are suspected of abusing the system must be given a warning before being denied overtime work (if they have missed a regular work shift), while employees who are not suspected of abusing the system receive no notice, but may be denied overtime work just the same (if they have missed a regular work shift). It makes no sense to guarantee a form of “due process” for employees who are suspected of bad behavior, when the identical consequence (denial of overtime) may be meted out to other employees on a no-fault, no-notice basis.

Third, it is difficult to accept the Company’s argument that the warning in Sentence 2 is merely the first step in a progressive discipline process when the primary discipline – denial of overtime work – is imposed concurrent with the warning.

The more reasonable interpretation of the contract provision is that the Company has the right to deny overtime work opportunities to workers who have missed a regular shift during the week, if the Company believes (“suspects”) that the worker is abusing the overtime system. Workers who fall into the “suspected abuse” category are entitled to notice that overtime may be denied if future regular work days are missed; to the extent that the worker *wants* to work

overtime, this notice that overtime may be cut-off presumably will provide a strong incentive to the employee to improve his or her job attendance, thereby achieving management's ultimate goal of more-complete staffing during *both* the regular work shifts *and* overtime shifts.

From an operational standpoint, it is this Arbitrator's view that §8(F) does not require that the Company "prove" that an employee is abusing the overtime system in order to place the worker on notice that overtime shifts may be denied when the employee does not work a full regular work week. The language used in the labor agreement refers to abuse being "suspected." All that is required, therefore, is that the Company have a rational basis for its attendance concern. This concern may come from any of a variety of sources, including notably the employee's overall past work attendance pattern. However, the "suspected abuse" warning contemplated under §8(F) must be particularized and based on an examination of an employee's individual job attendance history, rather than a general assessment that there is a collective attendance problem within the shop.

This interpretation harmonizes and gives meaning to all the text found in §8(F). In addition, further support for this interpretation is found in the bargaining history between the parties.

As noted above, the Company and the Union reached initial agreement on a new contract in late February, 1999. A comprehensive summary of all the proposed changes to the contract was prepared by the Company's then-Vice President for Human Resources, Linda Terpenning, acting on behalf of both labor and management representatives to the negotiations. Terpenning (who no longer works for L.B. Foster) testified that she served as the chief spokesperson for the Company during the 1999 negotiations. Her compilation of the agreed-upon contract changes, entitled "FINAL OFFER DATED February 25, 1999" (Union Ex. 1), identifies a variety of contract changes that were agreed-to by the parties, including the addition of the following language for the newly-created §8(F) (which varies slightly from the language in the signed collective bargaining agreement, JX1):

If abuse is suspected due to an absence during a work week in which overtime is scheduled, the Company has the right to withdraw overtime if an employee doesn't work the full work week. Such employee shall receive a verbal warning prior to withholding such overtime and the withholding of overtime may be deferred from the current work week to the next scheduled overtime period at the sole discretion of the Plant Manager or his/her designee.

The February 25 "FINAL OFFER" was rejected by the bargaining unit, which prompted additional bargaining between the parties, including notably discussions between Terpenning and L. 527 Business Manager Heinauer. As the result of these negotiations, the wage and benefit package was slightly modified in favor of the employees. With these financial modifications to the package, the contract package was ratified by the membership – apparently without anyone preparing a new comprehensive summary of the agreed-to changes. Following

the ratification, the Union took responsibility for preparing the full-text version of the labor agreement, which was signed on or about March 10, 2003.

Of course, the agreed-upon §8(F) language in the Management-prepared February 25 “FINAL OFFER” differs slightly from the text that is found in the March 11 signed collective bargaining agreement. Ordinarily, one would assume that such a change was made purposefully, and presume that the changed language in the March 11 contract was intended to achieve some result *different* from the earlier text that was submitted to the bargaining unit on February 25. Based on the record developed at the hearing, however, that does not appear to be the case in this instance.

When confronted with the two different texts, Union Chief Steward Diehl (who participated in the 1999 negotiations) testified that he was not concerned with the differences between the two texts because, in his view, they were substantially the same in their meaning. More interestingly, Business Manager Heinauer – whose office was responsible for preparing the full March 11 contract – testified that the language of §8(F) currently found in the signed labor agreement was an early draft of language dealing with the “overtime abuse” issue that had been proposed and considered during the contract negotiations; this early language had been rejected by the Union, but through negotiation evolved into the agreed-upon language found in the “FINAL OFFER” memo. In other words, according to Heinauer, the “FINAL OFFER” language really reflected the parties’ agreement, but the Union mistakenly incorporated earlier, non-agreed to §8(F) language into the finished March 11 contract.

This Arbitrator normally would view such a claim of mistake with skepticism, given the tremendous importance of language in collective bargaining agreements and the fact that both the Company and the Union had ample opportunity to review the full-text agreement before signing it. Moreover, in this instance the claim of mistake by the Union is patently self-serving, since the February 25 “FINAL OFFER” text clearly supports the Union’s current interpretation of what §8(F) is intended to mean. However, Company V.P. Terpenning’s testimony implicitly lends support to the Union’s claim. According to Terpenning, she personally engaged in one-on-one discussions with Business Manager Heinauer to modify the contract proposal after the bargaining unit rejected the February 25 “FINAL OFFER.” The record shows that it was Terpenning’s practice to maintain detailed personal notes of contract negotiations (*see, e.g.*, Company Exhibit 3), and Terpenning specifically recalled the changes to wages and benefits that were made between February 25 and March 10. Significantly, however, Terpenning had no recollection of any discussions with Heinauer after February 25 that might have prompted a change to the language of §8(F) from the text that she had recorded in the “FINAL OFFER” memo.

It is not this Arbitrator’s role to re-write the party’s collective bargaining agreement – particularly here, where the Union itself assembled the signed agreement which it now suggests is erroneous; where there was ample evidence to review and correct the text; and where there is no suggestion of fraud by either party. The governing language in this case is the text in the signed collective bargaining agreement of March 11. Still, to the extent that the March 11 language might be viewed as ambiguous, under the unusual facts in this case it is my view that

the language of the joint February 25 “FINAL PROPOSAL” memo is nonetheless instructive in understanding the parties’ intent in adding §8(F), and tends to support the Union’s interpretation.

Also relevant in this regard is testimony concerning the parties’ November 20, 2002, contract negotiations. Plant Manager Maxwell testified that in 2002 the Company proposed modifying the labor agreement to give management the right to deny overtime work opportunities to any employee who missed regular work time during a work week. According to Maxwell, the Union rejected this proposal, even indicating that it was a strike issue. Management did not pursue this proposal further, and the 1999 agreement – including the language of §8(F) at issue in this proceeding – was extended.

This testimony about the 2002 negotiations is significant. Based on the record in this case, as of November 2002 Management had never denied overtime work opportunities to any of the employees in the shop because of absences during the regular work week, even in the suspected overtime abuse situations that unquestionably were allowed under §8(F). If management was confident in November 2002 that §8(F), Sentence 1, established a “bright line” test giving management the right to deny overtime work opportunities to any employee who had missed regular work time during the week, regardless of abuse, it is unclear why the Company felt it necessary to propose modifying the text.

In conclusion, I find that the text of §8(F), supplemented by the bargaining history surrounding the provision, establishes that the contract clause allows the Company to deny overtime work opportunities only if an employee is suspected of abusing the overtime system and has missed regular work time during the week, so long as the employee previously has been notified that the Company suspects that abuse is occurring. I find that the Company’s denial of overtime work opportunities to the six grievants in this case did not meet this standard, and therefore violated the collective bargaining agreement.

## **2. The Company’s suspicion of overtime abuse by the grievants.**

In addition to the Company’s core “bright line” test argument, which argues that the denial of overtime does not need to be tied to suspected abuse, the Company also asserts that its decision to deny overtime work opportunities to the grievants was justified because the Company *in fact* suspected abuse in these instances. Furthermore, the Company claims that all employees were warned of suspected overtime abuse by Plant Manager Maxwell at the all-employee meeting of November 11, 2002.

Based on the language of §8(F), I find that the general concerns that the Company expressed at the all-employee meeting of November 2002 do not meet the verbal warning requirement of §8(F), which states that “[i]f abuse is suspected *such employee* shall receive a verbal warning prior to withholding such overtime.” In this Arbitrator’s view, as discussed above, this text requires a particularized examination of an employee’s work attendance, a conclusion by the Company that there is a reasonable suspicion of overtime abuse, and a subsequent warning directed to the affected employee. With regard to the six grievants involved in this case, it is undisputed that they did not first receive a personal warning that the Company

questioned their attendance patterns and might deny them overtime opportunities if they missed future regular work time. I therefore conclude that even if the Company may have been suspicious of the grievants' absences, the Company did not comply with the warning requirements of §8(F) and that the Company's denial of overtime work to the grievants therefore violated the labor agreement.

**3. Whether the grievants would have been entitled to overtime rates for work on Friday.**

The Company argues that even if the employees had been allowed to work on the Friday shift, the workers would not have been entitled to pay at overtime (1-1/2) rates:

Section 8(A) of the collective bargaining agreement . . . provides the general criteria for overtime pay:

All work done by an employee before or after the regular work hours on any shift and all work done in excess of the regular workday or regular workweek for any shift, shall be paid at the rate of one and one-half times such employee's current regular straight time hourly rate. (emphasis added)

Sections 7(F)(1) and (2) define the regular workweek as "forty (40) hours" and "Monday through Thursday."

Working Friday, alone, is not sufficient for overtime pay since, although Sections 8(B), (C) and (D) specifically make working Saturdays, Sundays or holidays sufficient for overtime pay (regardless of the actual hours worked), there is no such provision for Fridays. In addition, although an employee who (without working more than 40 hours) works on Friday may have worked "outside of" the regular workweek, he has not worked "in excess of the . . . regular workweek."

This makes perfect sense since working Friday imposes no special burden; it is neither Sabbath (Saturday or Sunday) nor a day when most of the western world's population is off work. Applying the rule of construction known as "*expressio unius est exclusio alterius*," . . . [t]he omission of Friday from the list of "overtime days" necessarily means that working Friday does not provide an independent basis for recovering overtime pay.

Company brief at 2-3.

This argument is unpersuasive, based on the language of the labor agreement. While §7(D) states that the "standard" workweek is Monday through Friday, §7(F) allows for the

Company (with Union concurrence) to shift to a Monday through Thursday work week. When this occurs, “Monday through Thursday shall constitute the *regular workdays and the regular workweek*.” §7(F)(2)(emphasis added). The parties have adopted this alternate schedule at the Bedford plant, therefore converting the “regular workweek” to Monday through Thursday. When this text is coupled with the Overtime provisions of the contract, §8(A) (“All work done by an employee before or after the regular work hours on any shift and *all work done in excess of the regular work or regular workweek* for any shift, shall be paid for” at 1-1/2 OT rates), it is clear that work performed on Friday is to be compensated at overtime rates under the collective bargaining agreement, even if the employee has not worked a full 40 hours of straight time. There is nothing inconsistent between this provision and the other contract language of the Overtime section calling for payment of premium rates for Saturday or Sunday work.

### **REMEDY**

The Union argues that the proper remedy in this case is to award back pay to each of the grievants and to direct the Company to issue a verbal warning (pursuant to §8(F)) in the event that the Company suspects that the employees have been abusing the overtime system. The Company, citing *ELKOURI* at 746, notes that no overtime work was diverted outside the bargaining unit as the result of its actions with regard to the grievants, and that make-up overtime should be the proper remedy if a contract violation is found.

Under the facts of this case, the Company’s proposed remedy is appropriate. Union witnesses stipulated that the overtime work was performed by bargaining unit members, and the Company’s actions denying overtime were taken in a good-faith belief that it was complying with the terms of the collective bargaining agreement. In order to make the grievants whole, it is sufficient that they be given the opportunity to work the overtime that they were denied. Accordingly, the Company is directed to provide each of the grievants an opportunity to work an 8-hour Friday work shift at overtime rates, it being understood that such make-up overtime shifts shall be in addition to, and not in lieu of, overtime work opportunities to which the grievants are otherwise entitled under the collective bargaining agreement.

**SO ORDERED.**

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Paul Greenberg, Arbitrator  
Washington, D.C.

August 29, 2003