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<b>ARBITRATION IN THE MATTER</b>	*	<b>Grievant: UAW Local 262</b>
	*	
<b>Between</b>	*	<b>Issues: Supervisor Doing Bargaining</b>
	*	<b>Unit Work</b>
<b>United Upholstery and Allied</b>	*	
<b>Workers, Local 262</b>	*	
	*	
<b>and</b>	*	<b>Arbitrator: Judy A. Gust</b>
	*	
<b>New Spectrum Corporation</b>	*	
	*	

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**PRELIMINARY STATEMENT**

The hearing in this matter was held on August 24, 2001, at the Holiday Inn Express, Kenton, Indiana. The parties appeared through their designated representatives and presented evidence through exhibits and testimony of their witnesses who were subject to cross-examination. The parties stipulated that the matter was properly before the Arbitrator for a final and binding decision. The record of this case was closed on October 10, 2001 upon receipt by the Arbitrator of the parties' post hearing briefs.

**APPEARANCES & WITNESSES**

**For the Union**

Tom Henry ..... Spokesperson, Recording Secretary  
Susan Ridge ..... Staff Representative  
Earl Ship. .... Union Representative, Retired  
Mary Davis. .... Chief Steward  
Donald Green ..... Vice President, UAW Local 262  
Jim Davis ..... Former Union Vice President

**For the Company**

Terry London. .... Counsel and Spokesperson, BRIGGS & TATUM  
Carl Rice. .... Counsel, BRIGGS & TATUM  
Meredith Hamm. .... Human Resources Manager  
Mark Sexton. .... Supervisor

**BACKGROUND AND FACTS**

The Company, a component plant, was purchased by Lindstrom and Prosk in 1990 from Lars Smith. At that time, Lindstrom and Prosk assumed the Collective Bargaining Agreement and has negotiated new agreements with the Union in 1991, 1994, 1997 and 2000. (Un. Br. pp.

7) The Company produces different sizes of springs with differing numbers of loops as well as differing grades and gauges of wire. The employees receive a straight wage and are not on an incentive system. The springs are primarily used to produce furniture such as recliners, couches and chairs. At the time of the grievance, the plant was operating with approximately 100 bargaining unit employees on three shifts. (Un. Br. pp. 3)

Department 200, the site of the grievance, has 40 machines of eight different types. Departments 200 and 400 have a Set-up classification with three Set-up positions assigned to the day shift, the shift at issue. Set-up entails preparing the machines to run the various jobs that are required on a given day. A Set-up person is qualified to set-up all the machines in her or his department. A set-up can be a complete changeover where the die, wire, gear and arc are changed on the machine for a completely different job than the one done before. This may take 30 minutes or more depending on the machine and any problems that may be encountered. A restock is performed when the machine needs more wire. In that case, the wire must be fed into the machine and a length taken. A restock can take from five to twenty minutes or more depending on whether the arms need adjusting or problems are encountered. (Un. Br. pps. 3-4)

On the day shift, the three Set-up positions (24 hrs. of set-up work) are assigned to three separate areas and set-ups are performed either at the end of a production run, because of customer demand or as a result of a machine "going down". Short orders are orders for less than 5000 pieces and approximately 60% of all orders are short orders. Approximately 500 to 600 changeovers are completed each month between all Set-up men on all three shifts. The Set-up position is key to the operation and is a bid job receiving higher pay than the machine operators. (Un. Br. pp. 4)

There are two types of machine operators: A and B. Machine Operator As are distinguished from Bs for pay purposes based on their ability to do their own set-ups with little or no help from a Set-up person. At the time of the grievance, there were 15 B Operators and 2 A Operators on the day shift. Production employees fill out a daily production card that notes the department worked in, the account number, the hours worked, what work was done, the operation number, pieces produced and the machine number. (Un. Br. pps. 4-5)

Requests for vacation time off are submitted by employees to the Company. The Company has the right to approve or deny a vacation request based on its operational needs. Vacation requested prior to April 1st is granted based on seniority. Vacation requested after April 1st of a given year is granted on a "first come-first serve" basis and may be requested with as little as one working day's notice. (Un. Br. pp. 5)

The Company also has the right to assign overtime work and may temporarily transfer employees between departments as needed. Mark Sexton is the day shift supervisor in Department 200 and has been since November of 2000. He worked as a Set-up person for six to seven months prior to becoming a supervisor. (Un. Br. pp. 5)

On all of the dates at issue in this grievance, January 9, 10, 11, 16 and 17, 2000, one regular day shift Set-up person (Porter) was on light-duty due to a work related injury. On

January 8, 2000, Supervisor Sexton approved vacation for another day shift Set-up person, Kevin Gross, to take off on January 9 and 10, 2000. Absences by other Machine Operators, both foreseen and unforeseen, occurred on January 11, 16 and 17, 2000. Supervisor Sexton performed Set-up work on each of those days although the amount of the time he spent in performing that work is in dispute, ranging from the Company's estimate of no more than five hours total to the Union's claim of 18 hours total. (Un. Br. pps. 7-9)

## **ISSUE**

The parties stipulated at the hearing to the following issue: Did the Company violate Article 10, 10.04 of the Collective Bargaining Agreement, by permitting a supervisor to perform set-up work on September 9, 10, 11, 16, and 17, 2000? If so, what shall be the remedy?<sup>1</sup>

## **RELEVANT CONTRACT PROVISIONS**

### *ARTICLE 1 – RECOGNITION*

*1.01 Recognition. The Company recognizes the Union as the sole and exclusive collective bargaining agency for all employees, with the exception of executives, supervisors, office and clerical employees and plant guards, with reference to wages, hours of employment and working conditions.*

### *ARTICLE 2 – MANAGEMENT RIGHTS*

*2.01 Except to the extent expressly limited by the specific language of this Agreement, the Company shall retain the right to manage the facility and its business including, but not limited to, the right to determine days worked, hours worked, shifts worked, and hours of shifts; the length of the work day and work week and if an when overtime shall be worked, to determine the starting and quitting time and the number of hours and shifts to be worked; to hire, promote, demote, layoff, discharge for just cause, suspend for just cause, and transfer employees; to determine the knowledge, skill, qualifications and other abilities of employees; to determine the work load, work assignments and job duties of employees; to establish acceptable performance levels by employees and to modify those levels; to establish a new department; discontinue existing departments; to develop all manner of work, safety and drug testing rules; to establish disciplinary actions for violations of those rules; to determine the number of employees in each of the Company's job classifications;*

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<sup>1</sup> In the Union's post-hearing brief, the proposed issue was expanded to include: "More specifically, does the language "production difficulties" refer specifically to problems within the actual manufacturing process or to more general issues such as absenteeism, and did the work of Sexton encroach upon the bargaining unit?" The analysis portion of this award will touch upon those issues; however, the award itself will not specifically address these additional issues because they were not specifically stipulated to by both parties at the hearing..

*and otherwise to generally manage the operation and to direct the work force.*

*2.02 The Company shall also have the sole right to decide the process of manufacture, to introduce new or improved production methods or equipment, to determine types of machinery to be used, hours of work, types and quantities of products to be made, quality of material and workmanship required, time standards to apply, and to develop and modify incentive pay plans.*

*2.03 The Company may discontinue the business in whole or in part, sell or dispose of any part or all of its assets; move any or all of the business; subcontract all or part of the business for economic reasons; and determine the number and location of its operations and the services and product handled.*

*2.04. The Company's exercise of its management rights shall not be subject to grievance or arbitration except to the extent that it can be established that these rights were exercised to avoid other specific provisions of this Agreement.*

### *ARTICLE 3 – GRIEVANCE PROCEDURE*

*3.06 In rendering a decision, the arbitrator shall be governed and limited by the express provisions of this Agreement, applicable law and the express intent of the parties as set forth in this Agreement. The arbitrator shall have no right to amend, modify, nullify, ignore, add to or subtract from the provisions of this Agreement. The decision and remedy of the arbitrator shall be final and binding to both parties.*

*3.07 In any grievance proceeding which proceeds beyond Step 3, the grieving party must submit in writing all known evidence bearing on the grievance (i.e., description of the practice, custom, or dispute; relevant dates; material witnesses; etc.) along with the specific contract clause that is allegedly being violated. Failure to do so will serve as a bar to the introduction of any such evidence or theory of recovery by the grieving party at arbitration.*

### *ARTICLE 4 – HOURS OF WORK AND OVERTIME (excerpt)*

*4.03 When overtime is required, it will be allocated according to department seniority, and to the individual qualified, in management's judgement, to perform the operation.*

*4.03 (b) When individual operations are run overtime after the regular*

*shift, the assigned operator who has been performing the job will continue on the job.*

*4.09 Employees who are recalled to work after their shift has ended or who are called in during a period other than their regularly scheduled shift shall be paid a minimum of two (2) hours pay at a rate of time and one-half (1 ½).*

#### *ARTICLE 6 – SENIORITY*

*10.04 The Company reserves the right to disregard the seniority list in selecting employees for supervisory positions. It is agreed that supervisors shall have the right to instruct or train, test or try out new machines and straighten out production difficulties, providing that such activities of the supervisor do not encroach upon bargaining unit work. Further, injuries will be reported to designated supervisors, or, if they are unavailable, another supervisor in the facility.*

*10.09 The Company reserves the right to make temporary transfers as necessitated by absenteeism, job fill-in, or lack of work. Whenever possible, the lowest qualified seniority employee will be transferred. If an employee other than the lowest qualified seniority employee is transferred the transfer shall not exceed fifteen (15) working days in any thirty (30) working day period without the employee's consent.*

#### *Article 10 - SENIORITY*

*10.04 The Company reserves the right to disregard the seniority list in selecting employees for supervisory positions. It is agreed that supervisors shall have the right to instruct or train, test or try out new machines and straighten out production difficulties, providing that such activities of the supervisor do not encroach upon bargaining unit work. Further, injuries will be reported to designated supervisors or, if they are unavailable, another supervisor in the facility.*

### **POSITION OF THE UNION**

The Union believes that the Company considered absenteeism as a "production difficulty" that then permitted Supervisor Sexton to "straighten out" those difficulties by working as a Set-up person doing bargaining unit work on January 9, 10, 11, 16 and 17, 2001. The Union denies the Company's position and asserts that the term production difficulties refers to problems in the actual manufacturing process and that absenteeism, foreseeable or not, is a separate issue. Further, the collective bargaining agreement provides a number of methods to address

absenteeism without using supervisors to perform bargaining unit work. Those methods include moves within a department, temporary transfers between departments, daily overtime or the call-in or call back of off-shift bargaining unit employees. (Un. Br. pp. 10)

The Union acknowledges that the phrase "production difficulties" may be ambiguous. The Union believes it to be a problem within the manufacturing process itself and the Company believes it to be any problem encountered by management. With nothing more, either interpretation is plausible. The Union argues that "straighten out" modifies "production difficulties" which calls for a realignment of the production process to what is normal or expected. It is logical to assume that something has to happen that disorders the production process for a need to arise to straighten it out. No problem arises where there is foreseeable absenteeism such as vacations, FMLA or other leaves. With foreseeable absenteeism, the supervisor knows at least one day in advance of the production needs and whether there will be a shortage of manpower for the next day's tasks. Barring a customer call or break-downs, the supervisor can estimate machine operating hours and the set-up time needed. Where a shortage is anticipated, the supervisor can offer or mandate overtime, temporarily transfer employees between or within departments, or call in employees from other shifts. The Company also controls the approval of leave and vacation requests based on production needs. With unforeseeable absenteeism, the supervisor still knows at the beginning of the shift if there is a need for more manpower and can utilize the same staffing methods as noted above. (Un. Br. pps. 12-13)

The Union also argues that an interpretation of language giving a reasonable meaning to an ambiguous term is preferable to an interpretation that produces a harsh, unreasonable, absurd or nonsensical result, and good faith is an element of reasonableness. Allowing the Company to use absenteeism as an excuse to use salaried employees to do bargaining unit work under 10.04 is a harsh result that may be anything from loss of overtime opportunities to stagnated growth of the bargaining unit. Such an interpretation evades the spirit of the Agreement and is not a good faith interpretation of the language by the Company. (Un. Br. pp. 13)

Bargaining history is another method used to interpret ambiguous language. (Un. Br. pp. 14) Production difficulties and the procedure to straighten out those difficulties under Section 10.04 of the Agreement were last discussed in the 1987 negotiations, prior to Lindstrom and Prosk's purchase of the facility in 1990. There were no significant problems with this language until Sexton became a supervisor. (Un. Br. pp. 10) Union witnesses testified that "production difficulties" had always been interpreted to mean problems with the machines or product flow. The procedure for dealing with a production difficulty was to have a Set-up person fix the problem or, if unable to fix the problem alone, to at least assist the supervisor with fixing the problem. If neither could fix the problem, it was considered a "break-down" that required the maintenance or tooling people to fix. (Un. Br. pp. 14)

During the 1987 negotiations, the issue arose because a supervisor was not following the language but fixing problems himself. Ship testified that the plant manager at the time, Larry Hedge, agreed that the supervisor's behavior was not compliant with the collective bargaining agreement. Based upon this "gentlemen's agreement", there was no need for any new language or revisions to the current language of 10.04. (Un. Br. pp. 14)

Following Lindstrom and Prosk's purchase of the plant in 1990, the only time that Section 10.04 was discussed in negotiations was when the Company proposed deletion of the phrase "provided that such activities do not encroach upon bargaining unit work". That proposal was made in 1997 and was not adopted. (Un. Br. pp. 14)

The Union also refuted the Company's assertion of a past practice between the parties that "production difficulties" are general issues that include absenteeism. Sexton's testimony that bargaining unit employees had asked him on occasion to assist them with problems with machines or to perform set-up duties when other Set-up people were not available does not, in the Union's opinion, meet the tests of consistency, longevity and repetition for a past practice to be found. In spite of individual employee requests, the Union did not acquiesce to the Company's interpretation of "production difficulties" to include absenteeism or to management performing set-up work. (Un. Br. pp. 15)

The Union also argues that Sexton performed at least 18 hours of bargaining unit work (11 hours documented) in a seven working-day span of time and that this is not de minimis either in time spent or in the seriousness of the violation. The Union points out Arbitrator Wallen's comments in a 1947 case:

"Job security is an inherent element of the labor contract, a part of its very being.  
If wages is the heart of the labor agreement, job security may be considered its soul."

The Union cites a number of other cases addressing what might be considered de minimis. Those cases range from 5 minutes and 25 minutes being viewed as de minimis to 40 minutes in a day not being de minimis.

The Union also refutes the Company's argument that encroachment did not take place because no one was laid off at the time or displaced by the supervisor's work. (Un. Br. pp. 17) Encroachment is an infringement of another's rights and exists whether or not a layoff within the bargaining unit occurs. (Un. Br. pp. 10) There are no recognized degrees of encroachment. Davis testified that Sexton had been a constant source of problems since he became a supervisor in terms of his doing bargaining unit work. Complaints had been made, he would stop for a short time, and then return to doing set-up work as he saw fit. Unchecked, Sexton and others like him have the ability to impact the rights of the bargaining unit. The loss of overtime and stagnation of the bargaining unit are two possible impacts. (Un. Br. pp. 17)

Finally, the Union argues that the Company failed to adequately man the Set-up classification in Department 200 on the various days in question even though it had knowledge of its own production needs and notice of the absences of Set-up people on the various days in question. Rather than use the multiple methods in the contract to obtain additional personnel, the Supervisor opted to simply do the bargaining unit work under the guise of straightening out production difficulties. Straightening out production difficulties does not include doing bargaining unit work to cover foreseeable absences and reduce manning costs, as the bargaining history and other language in the collective bargaining agreement demonstrate. (Un. Br. pp. 18)

The work done by Sexton encroached upon the bargaining unit as it was not de minimis and it affected the contractual rights of the Union regarding recognition, seniority, manning and overtime. The Union asks that the grievance be sustained in full and all aggrieved parties be made whole. (Un. Br. pp. 19)

### **POSITION OF THE COMPANY**

The Company asserts two positions; the first that Sexton properly straightened out a production difficulty and secondly that the amount of work performed by Sexton was de minimis.

As to the first position, the Company argues that the language of the Collective Bargaining Agreement permits supervisors to "straighten out production difficulties" and cites other arbitrators who have consistently held that similar language permits supervisors to provide assistance during periods of increased production and/or employee absences, as well as to repair machinery. In this case, Sexton assisted sinuous set-up personnel for insignificant amounts of time when several of the regular set-up employees were absent and all remaining individuals trained on sinuous set-up were being utilized. According to the Company, the Collective Bargaining Agreement authorizes this type of assistance. (Co. Br. pp. 8)

Further, the Company exhausted all available options in order to satisfy its production needs. One quarter of the workforce was unavailable on the dates in question. The Company again cites another case, *Induron Protective Coatings*, which held that when analyzing a supervisor's right to perform bargaining unit work, the question is whether the employer's actions represented a sound exercise of business judgment or were taken arbitrarily or in a discriminatory fashion. That arbitrator applied the following: (1) the temporary nature of the work; (2) the de minimis or minor nature of the work; (3) whether an emergency situation existed; (4) the technological complexity of the work; (5) the lack of other, qualified or trained bargaining unit personnel who are able to perform work; (6) economic factors that would make it unwise to transfer existing workers or hire additional workers to be trained to fill in for the position in question; and (7) the parties' past practice.

Sexton's actions in no way diminished or deprived bargaining unit employees of work opportunities. He performed sinuous set-up work for insignificant intervals and only performed such duties when the remaining workforce was utilized. No available workers were deprived of the opportunity to perform the set-up work. According to Sexton, he transferred every available individual from other departments and from different positions within Department 200 to cover for the reduced workforce. Consequently, this situation constituted a true "production difficulty" and Sexton was justified in assisting bargaining unit employees for insignificant amounts of time.

The Company denies that its actions created a shortage of qualified set-up personnel on the dates in question. It cited a 1993 Hughes Aircraft case where the arbitrator found the employer at fault for failing to recruit enough qualified employees. The evidence also established that the employer's actions were motivated by a desire to reduce costs and increase the employer's profit margin. In contrast, the Company argues that the shortage of set-up

personnel resulted from circumstances beyond the Company's control. It argues that Sexton exhausted every available option before stepping in to assist with the set-up work and only did so for mere minutes throughout the work day. His efforts were neither routine or regular. (Co. Br. pp. 10) His actions did not deprive bargaining unit employees of any work and in no way "encroached" upon bargaining unit work.

The Company's next position is that Sexton's performance of bargaining unit work was de minimis. His assistance on the five dates in question was for insignificant amounts of time. Ms. Davis testified that Sexton performed approximately 18 hours of set-up work yet her own documentation suggests something significantly less. Sexton merely provided minimal assistance in order to compensate for unavailable workers and to meet product demand. The Company cited other arbitral decisions that adopted the de minimis rule where work ranged from 10 minutes to 25 minutes. (Co. Br. pp. 11) The Company asserts that Sexton provided assistance for no more than one hour per day performing the contested job duties. He did not displace or reduce any available bargaining unit member's ability to perform set-up work. Consequently, Sexton's assistance for insignificant periods of time should be deemed de minimis and not violative of the collective bargaining agreement. (Co. Br. pp. 12)

In summary, the Employer utilized all available trained sinuous set-up personnel to compensate for the unavailable workforce in Department 200. Sexton merely performed set-up work for insignificant amounts of time to assist the high consumer demand for the Employer's product. There were no qualified bargaining unit employees available to perform the disputed work. Therefore, in accordance with the express provisions of the collective bargaining agreement, and prior arbitral rulings, Sexton's actions in no way encroached upon bargaining unit work. The Company asks that the grievance be denied. (Co. Br. pp. 12)

## **DISCUSSION**

As a contract interpretation case, the Union has the burden of proof. There is no dispute that Supervisor Sexton performed bargaining unit work on the dates in question. What is in dispute is whether such work was necessitated by production difficulties and the amount of time that he spent performing such work.

The Company argues that staffing shortages caused by absenteeism constitute a production difficulty as identified in Article 10, Section 10.04 and that the language of 10.04 permits the supervisor, under that condition, to perform bargaining unit work. On the other hand, the Union argues a long history of interpreting the term "production difficulty" to be one of an actual problem in the manufacturing process exclusive of absenteeism. Earl Ship, a former Union negotiator, testified that the Union's interpretation of production difficulty had been affirmed by a management representative of the former owners of the company, Lars Smith, when the Union experienced a problem with a former supervisor performing bargaining unit work. While this evidence is admittedly serving the interests of the Union, no evidence was presented to refute this testimony nor to cast doubt upon Mr. Ship's credibility. The mere assertion by Company witness Meredith Hamm that she understood the term production difficulty to include a shortage of manpower, for whatever reason, is not persuasive. As noted by the Union, the term is ambiguous and capable of differing plausible interpretations.

Accordingly, one must look beyond the mere words of the Agreement to ascertain the intentions of the parties at the time the language was adopted.

The current owners of the Company, Lindstrom and Prosk, were not involved in the negotiations for the original Section 10.04 language. Consequently, they cannot offer evidence of what management's understanding was of the intent of the language at the time it was bargained. The phrase "providing that such activities of the supervisor do not encroach upon bargaining unit work" is a conditional statement that limits a supervisor's ability to straighten out production difficulties. The phrase evidences the traditional concern of any union to protect the security of employees' jobs by protecting bargaining unit work. The only evidence of the intent of the current management with regard to Section 10.04 is found in its proposal during the 1997 negotiations where it attempted to remove that encroachment restriction in Section 10.04. The Company was unsuccessful in removing that language. What the proposal suggests is that the current management was aware of the restriction and was attempting to broaden the circumstances under which supervisors could perform bargaining unit work. It is a well recognized principle in labor relations that a party should not be able to gain rights in arbitration that the party was unsuccessful gaining in negotiations.

To accept the Company's interpretation of production difficulties that include absenteeism would be to grant supervisors the ability to perform bargaining unit work whenever there was a shortage of qualified and trained staff for whatever reason. If the Company decided not to fill vacant positions, it could then assign supervisors to perform bargaining unit work and cite a personnel shortage as the justification. Manpower shortages arise for other reasons as well. The Company has some control over foreseen shortages such as vacation requests and, in some cases, family medical leave. It can deny vacation requests or request a delay of a requested leave until manpower shortages can be covered by other means. For shortages due to unforeseen absences, other mechanisms such as transfer, call-in, call back, and mandatory overtime may be utilized to cover critical positions. Given that protection of job security is a primary goal of most Unions, and that management has other means to cover staff shortages, it is unlikely that the Union agreed to "production difficulty" language that contemplated inclusion of routine manpower shortages such as existed on January 9, 10, 11, 16 and 17, 2000, particularly in view of the "encroachment" limitation. While Sexton's work on those days did not displace anyone by layoff, it did eliminate overtime opportunities for set-up people from other shifts. If allowed to continue unchecked, such work by supervisors could result in reductions of set-up staff. Accordingly, it cannot be found that personnel shortages due to absenteeism, foreseen or unforeseen, such as were present on January 9, 10, 11, 16 and 17, are a type of production difficulty that justifies supervisors performing bargaining unit work.

The Company next argues that the amount of work was de minimis and therefore should be inconsequential. Because there is no clear standard of what constitutes de minimis or substantial, each case must be viewed in light of its own circumstances. The Company acknowledges that Sexton performed work that may have totaled an hour on each of the complained of dates. (Co. Br. pp. 7) Of the cases cited in both parties' briefs to the arbitrator, work for 25 minutes in a day was considered de minimis and work for 40 minutes in a day was considered to be greater than de minimis. Following that reasoning, one hour a day for five days would be considered significant enough for the Union to raise the issue. In fact, Ms. Davis

testified that she was waiting to file the grievance to see if Sexton continued to perform bargaining unit work after she complained and until there was sufficient time worked to file a grievance. Had this been a one-time occurrence or had it stopped after her complaint, a grievance may never have been filed. However, given that Sexton was a relatively new supervisor, perhaps unfamiliar with the intricacies and implications of the collective bargaining agreement, and the Company's interpretation that a manpower shortage is a production difficulty that justifies the supervisor doing bargaining unit work, the issue appears to need clarification without regard to the amount of time that the supervisor spent doing such work.

The next issue to address is the amount of time actually spent by Sexton performing set-up duties. The Company asserts that no more than five hours were spent while the Union asks for 18 hours. Because no accurate records were kept of the time spent, and Ms. Davis admittedly could not observe Sexton's actions continuously due to her own job duties, some adjustment to the Union's claim is in order. Even Ms. Davis's notes are not a reliable record because she testified that she was not watching Sexton all the time, only made estimates and wrote notes some time later while she was on her break. Accordingly, the hours claimed by the Union will be reduced.

The Company also argued that bargaining unit employees, specifically Sabrina Sharp, a Union officer, had asked Sexton numerous times to perform set-up work when the regular set-up staff was unavailable. Ms. Sharp did not testify. However, Ms. Davis testified that she was aware that some employees had asked supervisors for assistance. She explained that that was consistent with her understanding of the contract language that supervisors may instruct or train employees. Her objection on the dates at issue here was that Sexton was not assisting or showing anyone else how to do the set-up work but was performing the work independently himself. Thus, it appears Ms. Davis's understanding is consistent with the plain meaning of the Section 10.04 language: "It is agreed that supervisors shall have the right to instruct or train, test or try out new machines. . ." and does not waive the Union's right to question Sexton's performance of bargaining unit work when not instructing, training, testing or trying out new machines.

In summary, the term "production difficulty", when considered along with its companion language limitation -- "providing that such activities of the supervisor do not encroach upon bargaining unit work" and other language that provides the Company with a variety of ways to deal with manpower shortages, is found not to include absenteeism as a reason that permits supervisors to perform bargaining unit work. Further, the amount of time spent by Supervisor Sexton is found substantial enough to warrant reimbursement to those employees who should have been either called in or reassigned to perform the work.

### **AWARD**

Based upon the above facts and reasoning, the Company is found to have violated Article 10, Section 10.04, when Supervisor Sexton performed bargaining unit work on five dates, January 9, 10, 11, 16 and 17, 2000 amounting to a total of eleven (11) hours. The Company shall cease and desist permitting supervisors to perform bargaining unit work except for the reasons noted in Section 10.04. The Company is ordered to provide payment for a total of eleven (11)

hours of set-up work to the employee or employees who should have been assigned to perform the bargaining unit set-up work on the dates at issue. That employee or those employees eligible for payment shall be identified by the Union.

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Judy A. Gust, Arbitrator  
Ramona, California  
November 3, 2001