#197

# A R B I T R A T I O N

## O P I N I O N  A N D  A W A R D

STATE OF OHIO
DEPARTMENT OF MENTAL RETARDATION
AND DEVELOPMENTAL DISABILITY

(COI-119-MR/DD-OH-3-87-468)

and

July 19, 1988

OHIO HEALTH CARE EMPLOYEES, UNION
DISTRICT 1199, WV/KY/OH
National Union of Hospital and
Health Care Employees, AFL-CIO

ARBITRATOR: DONALD B. LEACH, appointed through the procedures of the Office of Collective Bargaining, Ohio Department of Administrative Services

APPEARANCES: FOR THE UNION:
Mr. Robert J. Callahan, Secretary-Treasurer, District 1199, WV/KY/OH, 1313 East Broad Street, Columbus, Ohio 43205

FOR THE EMPLOYER:
Mr. Ed Ostrowski, Departmental Representative, Suite 1020, 30 East Broad Street, Columbus, Ohio 43215

## I S S U E

Are Grievants entitled to stand-by pay for hours when each alone was in an "on-call" status to assist or replace the nurse in charge.

If the answer is affirmative, two subsidiary issues arise, i. e.:

(a) How large is the class of grievants included, and

(b) What is the period prior to the date of submission of the Grievance within which back pay at stand-by rates may be ordered.

## B A C K G R O U N D

Those involved in this Grievance hold one or the other of the two classifications of Registered Nurses employed at the Department's Columbus Developmental Center, in which the issue arose, i.e., Psychiatric Nurse 2 and Psychiatric Nurse Supervisor 1.

Several years ago and, indeed, a few years before the parties negotiated the first and current collective bargaining Agreement, procedures were changed respecting week-end and holiday nursing coverage. Before that, two RNs had been assigned regularly to the first or daytime shift at the Center on Saturdays, Sundays and holidays. As the result of more than one factor, that procedure was changed in 1983 to reduce the number of RNs to one on that shift on those days.

The one RN then in charge was assisted by an Emergency Medical Technician and several Licensed Practical Nurses. In addition, another RN was assigned to an "on-call" status for the period of the shift. Specific assignment was made each day of the week-end and each holiday for one named RN to cover the Center and a second named RN to be "on call". The "on-call" status was explained to newly employed RNs in their orientation training and was discussed from time to time at the periodic nurses' meetings.

According to Ms. Sandra Valentine, Director of Residential Health Services at the Center, it was decided to end the "on-call" procedure because of general discontent with it by the affected RNs. It was ended by announcement before the week-end of July 25 and 26, 1987 although it was not clear what the actual termination date was.

As to the details of the procedure, she said that the one assigned to "on-call" status could arrange a trade with another RN if she so desired as, for example, if she wanted to go out of town for the week-end. The only condition on that apparently was that those trading were to inform Ms. Valentine or her delegate so that the assignment list could be changed to conform. Throughout the somewhat more than four years in which the procedure was used, the "on-call" nurse was required to come in to work only on two or three occasions. It appeared that no one had failed to respond when so called. Thus, no occasion had arisen to consider whether discipline should be imposed for such failure. It was clear, however, that had such failure occurred, a nurse would have been called from the overtime roster.

Ms. Valentine said that it had been made clear, and the testimony of others confirmed it, that the individual "on-call" need not stay at home for the entire eight hours but, if she left home, she was

to call the nurse on duty to inform her of the telephone number where she could be reached. Moreover, it was assumed, Ms. Valentine and others said, that the "on-call" nurse could and would serve if called on to do so.

Grievance, requesting stand-by pay, was filed on July 30, 1987. It is as follows:

> "CLASS GRIEVANCE--NURSES
> Grievant's Name: Nancy Mitchell; Onilda Price; Sharon Hollar; Stephanie Lawson; Mary Grundy; Cheryl Hill Agency: MR/DD
> Delegate's Name: Cheryl Hill Worksite: Columbus Developmental Center
> Grievant's Classification: PSych.Nurse II Date Grievance Arose: 7/25/87
> Statement of Grievance: On 7/25/87, above named grievants were unjustly denied standby pay, retroactive to 6/12/86
> Contract Article(s) and Section(s): Included, but not limited to Article I and Article 40.09
> Resolution Requested: Above named grievants should be made whole in every way, including back stand-by pay, retroactive to 6/12/86.
>
> | | | |
> |---|---|---|
> | Grievant's Signature: | /s/ Nancy Mitchell | 7/30/87 |
> | | /s/ Mary Grundy | 7/30/87 |
> | | /s/ Sharon Hollar | 7/30/87 |
> | | /s/ Onilda Price | 7/30/87 |
> | | /s/ Stephanie Lawson | 7/30/87 |
> | | /s/ Cheryl Hill | 7/30/87" |

It was denied on August 19, 1987, on the stated ground:

> "Conclusion
>
> Based on the definitions as interpreted by ODMR/DD Labor Relations Directives; this request would inappropriately label Stand-By pay and appropriately label On-Call. Therefore, grievance is denied."

That was reiterated in later steps but was further amplified at the Step 4 Review level, as follows:

> "Your grievance is denied for the reasons cited at Step 3. The on-call rotation which gave rise to your grievance does not meet the criteria for stand-by. The criteria are as follows: 1) the employee is restricted to one physical location; 2) the employee must remain in a work ready condition, e.g., well rested and sober, and 3) if the two conditions above are not met, the

employee will be disciplined. The on-call rotation at your facility does not meet this criteria, therefore, you are not eligible for stand-by."

The two subsidiary issues arise from the above language of the Grievance.

The Union submitted copies of two earlier grievances to support its contentions on them.. Both had to do with payment for shift differential. The first was filed by an individual grievant. The second, dated about June 26, 1987, was filed as a class grievance with six individuals listed by name, requesting pay retroactively to the effective date of the Agreement. In May, 1987, the first was granted and the second was granted on July 23, 1987. In both, the resolution of the Employer was to pay the shift differential retroactively to the date requested, the effective date of the Agreement, June 12, 1986. Payment was made to the RNs employed at the Center, including those not named in the second grievance.

Ms. Cheryl Hill, a Union organizer and the individual who wrote the current Grievance, as well as the two shift differential ones, testified that she intended the current one to follow the same course as the other class grievances of including the entire group of RNs and of having equally retroactive effect. That was demonstrable, she said, in that it was written just as the others had been. All witnesses who handled the matter agreed that no point of timeliness or of the size of the class had been dealt with during the grievance steps, the Employer's answers having been confined to denial of the Grievance on the merits.

David Norris, Labor Relations Specialist in the Office of Collective Bargaining of the Department of Administrative Services, testified that the issue in the two earlier grievances had been the subject of discussions with the Union covering several months prior to its resolution. The resolution reflected the conclusion that the Union's position was the correct interpretation of the Agreement. Thus, the retroactive effectiveness, he said, reflected the result of those discussions and not the grievances.

## C O N T R A C T  P R O V I S I O N S

ARTICLE 7 - GRIEVANCE PROCEDURE
§7.04 Grievant
A grievance under this procedure may be brought by any bargaining unit member who believes himself/herself to be aggrieved by a specific violation of this agreement. When a group of bargaining unit employees desires to file a

grievance involving an alleged violation that affects more than one (1) employee in the same way, the grievance may be filed by the union. A grievance so initiated shall be called a class grievance. Class grievances shall be filed by the union within ten (10) days of the date on which the grievant(s) knew or reasonably could have known of the event giving rise to the class grievance. Class grievances shall be initiated directly at Step 2 of the grievance procedure if the entire class is under the jurisdiction of the Step 2 management representative, or at Step 3 of the grievance procedure if the class is under the jurisdiction of more than one (1) Step 2 management representative. The union shall identify the class involved, including the names if necessary, if requested by the agency head or designee.***

§7.05 Termination of the Issue
When a decision has been accepted by the agency and the union at any step of this grievance procedure, or the agency has granted the grievance, it shall be final and no further use of this grievance procedure in regard to that issue shall take place. It is understood that settlements below Step 3 are not precedent setting.

§7.06 Grievance Steps
***
Step 1 - Immediate Supervisor or Agency Designee
A member having a grievance shall present it to the immediate supervisor or agency designee within ten (10) days of the date on which the grievant knew or reasonably should have had knowledge of the event.

Grievances submitted beyond the ten (10) day limit will not be honored.***

§7.07 Arbitration
E. Arbitration Limitations
1. Only disputes involving the interpretation application, or alleged violation of a provision of this agreement shall be subject to arbitration. The arbitrator shall have no power to add to, subtract from, or modify any of the terms of this agreement, or shall he/she impose on either party a limitation or obligation not specifically required by the express language of this agreement.

ARTICLE 40 - WAGES
§40.09 Standy-by Pay
If the agency requires an employee to be on stand-by, the employee shall be paid twenty-five percent (25%) of his/her regular rate of pay for all hours required to be on stand-by. Stand-by status is defined as the requirement that the employee leave with the agency where he/she can be reached and stay available to report to work.

ODMR/DD Labor Relations Policy Directive No. 86:5.01

Subject: On Call

Policy: It shall be the policy of ODMR/DD that the bargaining unit employee may be placed in an "On Call" status.

Purpose: To insure that unscheduled, unforeseen and emergency situations are attended to immediately.

Definition: "On Call": An employee who is not required to remain on the employers premises but merely required to carry a beeper or to leave word at his home or with institution officials where he may be reached is on call and not on working status.

Example: In a situation where an employee is in an "On Call" status and is free to come and go freely and use his time effectively for his own purposes, such employee is not considered to be in a "working" status. Since the employee is considered waiting to be engaged this time is not compensible (sic) (On Call)

On the other hand, where restrictions are placed on an employee and the restrictions modify his lifestyle to the extent that he is not free to exercise a reasonable free schedule of personal activities, that employee is considered to be in "Working" status and his time is compensible (sic) at 25% rate. (Stand-By)

REF: FLSA GUIDELINES

*NOTE: This policy applies to <u>all</u> Bargaining Units
Call Back Pay provisions may apply in some cases

ODMR/DD Labor Relations Policy Directive No. 86:5.02

Subject: Stand-By

Policy: To Define Stand-By Status

Purpose: To Define Stand-By Status

An employee who is required to remain on stand-by on the employer's premises or so close thereto that he cannot use the time effectively for his own purposes, is in a working status ("Stand-By".)

Example: Camping Trips

An employee who has to stay at the job site (camping area) in the event he is needed and required to care for a number of residents is considered to be working "Stand-By". In this case the employee is engaged to wait. Waiting is an integral part of the job. (Compensible) (sic)
On the other hand, not all cases of special activities involving over-night service result in generation of stand-by status.

Example: Special Olympics

If the employee is sent to Columbus "Special Olympics" and upon arriving at Columbus he is completely and specifically relieved from duty until 8:00 a.m. the next day. This employee is not on working time during the idle period and is not considered to be on stand-by. From the time he was relieved from duty until reporting time (8:00 a.m. the next day) he is waiting to be engaged and not compensated for the idle time. (Not compensible) (sic)
REF: FSLA Guidelines
OCSEA/AFSCME Agreement
OHCEU 1199 Agreement

## C O N T E N T I O N S  O F  T H E  P A R T I E S

### UNION POSITION

"On-call" duty falls within the contractual definition of stand-by duty and, pursuant to the Agreement, is compensable at the rate of 25% of the employee's base rate of pay. The Agreement is different in its definition from the definition contained in the OCSEA/AFSCME contract and arbitral rulings under that contract do not apply here. Nor does the Fair Labor Standards Act, its regulations or the Departmental policies take precedence over the language of the Agreement.

The elements set out in the Agreement number only two: (1) The employee must leave with the employing agency the place where he or she can be reached, which was the clear requirement here; and (2) The employee must stay available for work, which has been shown to have been the case by testimony of both sides.

As to the first subsidiary issue, the Grievance itself says it is a class grievance. The signers only reflected their concurrent sponsorship of it and not that they were the only ones in the class. It was in the same format as the second of the two earlier grievances and that was considered and disposed of as a class grievance.

As to the second subsidiary issue, the Grievance requested the remedy be made retroactive to the effective date of the Agreement. The timeliness of that request was never questioned by the Employer in the grievance steps and if it did not agree with that request, it should have so noted earlier on in the procedure, rather than waiting, as it has done, till the last step, arbitration, before doing so.

The two earlier grievances were settled retroactively, pursuant to the same request as that contained in this one. That created a precedent under paragraph 7.05 of the Agreement since one of the earlier two proceeded to Step 4 of the grievance procedure.

### EMPLOYER POSITION

The call-in policy was no burden on the employees. Few were ever actually called in and no discipline ever resulted because of it. The tests for determining compensability as developed by Mr. Norris meet the contractual requirements. Those tests for compensability are:

1. The employee is restricted to one location;
2. The employee must remain ready to work, i. e., be sober and well rested, and
3. Failure by the employee is a disciplinable offense.

Here the employees were not restricted to one place and could fail to respond to a call.

(The Employer submitted copies of two arbitral decisions bearing on this issue which will be reviewed hereafter.)

As to the first subsidiary issue, only those listed should be included in the class. The Agreement makes clear that it is the Union that must make clear the coverage of the class and those within it.

As to timeliness, the Agreement forbids retroactivity of more than ten days. Here, the practice complained of was known since the Agreement went into effect but, notwithstanding, no grievance was filed concerning it for more than a year afterward. In this case, the issue was not one that has involved ongoing discussions for several months, as was the case in the two earlier grievances. There, an equitable problem arose, due to the ongoing discussions, and the retroactivity was necessary for equitable treatment of the employees. It was not a precedent making decision but was one of a kind.

## D I S C U S S I O N

A borderline problem is presented in these facts and borderlines never exist in clearly definable forms.

One of the sources of the issue is the Fair Labor Standards Act, as it has been interpreted by the courts and covered in administrative regulations and interpretations. The essential question arising there is the nature of "working time", i. e., what limits may be put on an employee's use of his time by the employer without being entitled to wages for it. Thus, a thirty minute break for lunch when the employee is free of all duties is not compensable work time, but a ten minute rest break is, the different being length of free time involved. On lunch break, theoretically, one can leave the employer's place of business and that may be a feasible alternative for a city office worker but really isn't feasible for the employee in a rurally

located manufacturing plant. Notwithstanding feasibility, however, the lunch period, when not interruptible, is considered to be non-work time.

That example, not directly pertinent here, is discussed at some length in order to highlight the fine factual distinctions made in borderline situations, distinctions that are not always easy to define logically.

The Employer has tried to define the dividing line in this type situation in accordance with those under the Fair Labor Standards Act. That approach has been endorsed in general terms under collective bargaining agreements covering other employees, one having to do with other employees in this same department and the other, employees in a different department. Both grievances resulting in those decisions arose under contractual provisions different from those here. The pertinent sentence in each is:

> "An employee is entitled to stand-by pay if he/she is required by the Agency to be on stand-by, that is, to be available for possible call to work."

The first case involved a roster of maintenance employees, which changed weekly, to receive emergency call-back to work. Those in the weekly rotation group received "beepers" to alert them should one or more be needed. One employee failed to respond to a "beeper" call, relating that he was a few miles out of town on a visit and it did not sound at the time. In a case of that sort, or where the employee was unavailable for a number of possible reasons, another was called in.

The arbitrator observed that an employee was not "required" to be on stand-by by direct communication to him or her. Such communication would require a "certain readiness" and would not involve mere availability. In that case, the evidence was said not to show such express requirement. Stated differently, the mere scheduling on a rotating basis did not equal "requirement". That conclusion was argued to be supported by the admitted fact that one called could refuse to report.

The other case really dealt with the effective date of a side agreement under which traffic light repairmen were paid stand-by pay, the issue involved in this case not being involved there in any direct manner.

In this case, as noted, the contractual language is different from the maintenance roster case. The facts are also different. There a roster existed, a rather common industrial practice where machinery must be maintained in running order to permit productive operation of the plant. If one on the roster could not report, another

was called. (To some extend, that method facilitates equalization of overtime opportunity.) Here one person was named in the assignment sheet to be "on call" on a particular day, Saturday, Sunday or both, or on a specific holiday. It was admitted by the Director of Residential Health Services and supported by the Grievant witnesses that the "on call" nurse was "expected to respond" to call and to be willing and able to perform her work.

It is appropriate to observe that, as a general rule, nurses on duty and those subject to it feel a duty to those in their care to discharge that duty conscientiously. It is a part of the deeply felt responsibility of those in the health care field. The testimony, then, of those who said they remained ready to respond to call when assigned "on-call" duty may be taken as valid and not exaggerated in the least.

It follows that there was some limitation on a nurse's freedom of action when she was on call. If she had to report when called, she couldn't go far from home. Since she had to be available for calls, she couldn't go where there was no telephone or where a telephone call would not effectively reach her, as in a large super-market, department store, movie, etc. On the other hand, it must be recognized that a nurse on call has about as much actual freedom of movement as an employee on lunch break in a rurally located manufacturing plant, the only esssential difference being that the nurse must be close to a telephone and the one on lunch break not.

The Department's analysis, therefore, is not an unreasonable one. The status of the "on-call" nurse can easily be placed in the non-working time category as the Fair Labor Standards Act has been interpreted.

In this case, the contractual provision is different from the standards of the statute as well as the contracts noted above.

Parenthetically, it is noteworthy, too, that the statute and regulations deal with work time and its nature for which full wages must be paid. In this case, however, stand-by pay is less than the regular rate and may be argued to be broader in coverage than working time, so that pay here can be due even though the time paid for is not working time in the stricter sense of the Fair Labor Standards Act.

The language here defines the term "stand-by" as containing two elements:

1. The employee "leave with the agency where he/she can be reached", and
2. The employee "must stay available to report to work".

The evidence was clear and was agreed that the "on-call" nurse was required to notify the on-duty nurse of the telephone number where she could be reached when she left home. As noted above, that involved a restriction by implication to go only where she could be reached by telephone within a small enough geographical area to make report to work feasible. Thus, it is self-evident that the first element of the definition is satisfied.

As to the second element, the evidence showed, as has been discussed above, that the Grievants remained available to respond to calls to duty as they were expected to do. Thus, as a practical matter, the second element is also satisfied.

The other cases, as is true of the legal regulations and interpretations under the Fair Labor Standards Act, have dealt with rather general language designed to cover a wide variety of factual situations. In them, the word "available" has appeared in a complex light as is reasonable where it is of such broad application.

The question here, then, is whether the word "available" should be interpreted in this Agreement with the same complexity of possible connotation.

In this fact situation, there is no reason to apply the complex categories of the statutory interpretation. The language is simple, straightforward and clearly intended to cover a relatively few types of activities, i. e., those affecting the employees in the unit, i. e., those who are health care employees.

The factual situation is also uncomplicated. One person, and one alone, was in an "on-call" status at a time; her identity was established on the work schedule and the requirement made clear that she was expected to appear and be ready for work in response to a call. All that is different from the roster of employees denoting the order in which they would be called, with each having a right to refuse.

It follows that there is no implied criticism of the other arbitration decisions referred to, while at the same time, it is necessary to arrive at the opposite conclusion here and to hold that those "on-call" were in "stand-by" status under Section 40.9 of the Agreement and, thus, are entitled on the merits to pay for the hours so spent, at the rate of 25% of the individual's regular rate of pay.

That ruling on the merits brings into focus the two subsidiary issues, (1) the class of Grievants and (2) the retro-activity effect of the ruling.

The Union's position is based on the wording of one of the preceding grievances, having to do with pay for shift differential.

There is no question but that the initiating Grievant, Ms. Hill, intended to cover the entire group of RNs at the Center in the class of this Grievance and no question but that she believed from the preceding grievances that she was phrasing the document broadly enough to cover the entire class and also to warrant her request for extended retroactivity.

The class grievance in the shift differential case and the request for extended retroactivity in it are comparable in phrasing to that used here. The entire class was also paid with that retroactivity.

The argument is that the prior case has created a precedent here in the legal nature of an estoppel. (Even though there were two grievances given similar effect, the number is not sufficient to create a past practice and, thus, there can be no issue on that point.)

The Employer counters that that situation was completely different factually in that the issue on the merits there had been the subject of ongoing discussions with the Union covering an extended period of time and, when the general issue was resolved by agreement in the Union's favor, it was only fair that the proper interpretation be made to apply back to the beginning of the Agreement. Thus, its view is that no precedent or estoppel could have been created.

The facts support the Employer on the argument of precedent or estoppel.

The case of the single grievant, Ms. Polaski, was filed about January 23, 1987. It asked only that she be made whole. The general agreement on the issue between the Employer and the Union was dated April 9, 1987. The policy directive reflecting it contains the following conclusion:

> "Now that these issues are settled, it is necessary to pay shift differential for overtime and holidays retroactive to June 12, 1986 to those employees who qualify per the above guidelines."

The grievance answer dated May 8, 1987 stated that the grievant "may be entitled to shift differential retroactive to June 12, 1987". (sic)

The class grievance on the same subject was filed about June 22, 1987 and was granted appropriately on July 29, 1987.

Thus, the first grievance wasn't a class type and didn't specifically request retroactivity to any particular date, but was granted in connection with a generally applicable policy for all the RNs and it was made retroactive for all. That is far more than was asked.

The class grievance was not filed until after the general policy had been set and retroactivity agreed to. Its function may have speeded execution of that agreement but had no causative effect on the substance, the class or the retroactivity.

The facts thus demonstrate that the prior grievance handling had no real effect on that matter and, so, can have no precedential character whatsoever. As such, there also can be no estoppel.

Ms. Hill had reason for her belief, it is true, but the Union was aware of the above facts. Her misunderstanding was innocent but that cannot remedy the situation since, in fact, there was no precedent.

As to the issue of the size of the class of Grievants here, the matter must be approached from the standpoint of the Agreement alone, since no incident of precedent making nature had preceded this filing. The express language of the Grievance document does not refer to classifications but to individuals who are named and who signed it. The resolution requested, indeed, is that the "above named grievants" should be made whole. Only six grievants were named. The six constitute a class in that their complaint is the same legally for each, the only possible difference among them being the "on-call" hours each might have served.

Paragraph 7.04 provides that a group may file a grievance involving an alleged violation that affects more than one employee in the same way. Thus, the individuals named constituted a class under the contractual description. The Employer was thoroughly justified, thus, in concluding that the Grievance affected only those named and not the entire group of RNs.

Indeed, a fair reading of the document requires that same conclusion. It is phrased and processed for the six only and no broader implication can be deduced from the language used.

Certainly, an Employer is entitled to reasonably complete information of the details of a grievance by the language used in it. That was not the case here and there is no reasonable alternative to a finding that the class was confined to the six named Grievants.

The language of the Grievance is clear that extended retroactivity was being requested.

The matter of precedent has been disposed of. The argument is also made, however, that no adverse ruling was made on that issue in the course of this Grievance procedure, and that it is too late for the Employer to raise it now.

The language of the Agreement requires that a grievance be filed within ten days of the time when the grievant or one of a class of grievants "knew or reasonably could have known of the event" (Paragraphs 7.04 and 7.06 Step 1). Paragraph 7.06 provides further that a grievance submitted beyond the ten days is not to be honored.

This Grievance is obviously an ongoing one. The event can be said to arise every day of a week-end and every holiday. As to any of those that occurred within the ten day period prior to filing the Grievance, the filing was valid, as both parties agree.

It follows that the Grievance had to be honored in its substance and for the contractual period. That fact, however, does not constitute an admission that the request for extended retroactivity was valid.

There being a Grievance, valid on its face, to deal with, the matter could proceed without implication that the excessive retroactivity requested had to be dealt with separately. That would have come into focus only if the merits of the request had been granted. There is no inherent reason in grievance handling that extraneous matters be dealt with, i. e., extraneous in light of the clear contractual language.

Fair reading of the Agreement itself requires the view that nothing earlier than ten days before the date of grievance filing is required to be paid under the terms of the document. Thus, one who waits eleven days after becoming aware of it before filing cannot receive redress for the event complained of. By the same token, where an event recurs that is known to the Grievants, as was the case here, anything earlier than the ten days before filing is barred, although, of course, the grievance itself is not barred for any event within the ten day period and any subsequent repetitions.

This Grievance was valid on its face in that the procedure complained of continued in existence up until at least the approximate date the Grievance was filed. Otherwise, it could not even be honored except by a reasonably express waiver of the contractual requirement. No such waiver occurred.

The language of the Agreement makes clear that the only period covered before the date of filing is the ten days prior thereto.

Similarly, Paragraph 7.07 E makes clear that an arbitrator has no power to alter or amend the Agreement. Thus, extended retroactivity cannot be granted here.

Under these circumstances, it must be held that the only remedy for the Employer's violation of Paragraph 40.07 is the back pay for any "on-call" hours served by any of the six named Grievants within ten days preceding the date the Grievance was filed and for any served after the Grievance was filed.

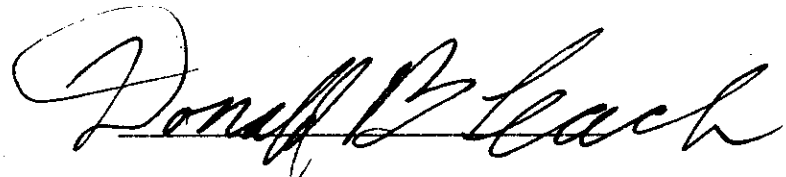
It is recognized that the Union's recovery in this case is small at best. No other alternative is available to remedy the phrasing of the Grievance and the delay in filing it.

## A W A R D

1. The Employer violated the Agreement by failing to pay the six named Grievants, Nancy Mitchell, Mary Grundy, Sharon Hollar, Onilda Price, Stephanie Lawson and Cheryl Hill, stand-by pay for the hours they spent in an "on-call" state.

2. The Employer shall pay any of said named Grievants stand-by pay for hours any of them spent in such "on-call" status on and after the date the Grievance, dated July 30, 1987, was filed and, likewise, shall pay, similarly, any of them who were in such status within the ten days prior to said filing date.

3. Jurisdiction is retained to the extent necessary to carry paragraph 2 of this Award into effect.



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