November 15, 1999

Ms. Leslie Jenkins
Arbitrator Scheduler
Division of Human Resources
Office of Collective Bargaining
106 N. High Street, 7th Floor
Columbus, OH 43215-3009

Grievance: 35-08-(3-26-98)-04-02-11
Grievant: Ms. Margaret Paxton
Union: District 1199/SEIU
Employer: (ODYS) & TICO

Dear Ms. Jenkins:

This fax contains the Arbitrator's opinion and award in the captioned matter. A *fully edited, notarized*, hard copy shall be forwarded to you by U.S. Mail. Thanks for the opportunity to serve you.

Respectfully,

Robert Brookins

#1404

OPINION AND AWARD

IN THE MATTER OF THE ARBITRATION BETWEEN
Training Institute of Central Ohio (Division of the Ohio Department of Youth Services)
-AND-
District 1199/SEIU

Training Institute of Central Ohio
Bradley E. Rahr. Jr., Labor Relations Officer
Collen Ryan, Labor Relations Officer
Pat Mogan, OCB Team Leader, Second Chair
Mary Tipon, Labor Relations Officer

District 1199/SEIU
Matt Mahoney, Administrative Organizer, District 1199/SEIU
Susan Himburg, Registered Nurse
Margaret Paxton, Registered Nurse

GRIEVANCE #
No. 35-08-(3-26-98)-04-02-11

HEARING HELD
SEPTEMBER 30, 1999

CASE DECIDED
NOVEMBER 14, 1999

ARBITRATOR: ROBERT BROOKINS, J.D., PH.D.
SUBJECT: DENIAL OF OVERTIME

Table of Contents

I. List of Exhibits

Joint Exhibit 1	Collective-Bargaining Agreement
Joint Exhibit 2	Grievance Trail

II. Preliminary Statement

From their permanent panel of labor arbitrators, the parties selected the undersigned to hear and decide this dispute involving the interpretation and application of several provisions in their Collective-Bargaining Agreement. A hearing was held, on September 30, 1999, at the Office of Collective Bargaining in Columbus, Ohio. Both parties were represented and afforded a full and fair opportunity to present testimonial evidence—which was fully available for cross-examination— and documentary evidence—which was fully available to any relevant challenges that the opponents wished to assert. District 1199/SEIU (the Union) had the burden of proof and satisfied that burden by adducing credible testimony to support its allegations,

The Training Institute of Central Ohio (TICO or the Employer) is a division of the Ohio Department of Youth Services (ODYS). During the September 30 arbitral hearing, TICO voluntarily waived its right to make an opening statement as well as its right to cross-examine any of the Union's witnesses. However, the Employer did call the Union's representative (Mr. Matt Mahoney) to testify as a hostile witness. After examining Mr. Mahoney, the Employer rested without adducing any other evidence in support of its contentions or in refutation of the Union's allegations and evidence in this dispute.

Both parties elected to submit closing arguments in lieu of post-hearing briefs. At the end of the hearing, on September 30, 1999, both parties agreed that, during the hearing, this Arbitrator had afforded them a full and fair opportunity to present whatever evidence they had in this dispute.

III. Facts

TICO has employed Ms. Margaret Paxton (the Grievant) as a Registered Nurse for approximately 3.5 years. Presently, the Grievant works on the second shift. From approximately March 1998 to June 1999 (the relevant period or period in question), the Employer subcontracted with registered nurses from without TICO (agency nurses) to work overtime. Meanwhile, the Employer sought to recruit full-time registered nurses to fill full-time vacancies.

The instant dispute arose when the Employer flatly denied the Grievant's request to work some of the

available overtime that the Employer was assigning to agency nurses. On or about May or June of 1998 (the relevant period), the Employer forced the Grievant to sign a memorandum stating that she was overtime-exempt. The memorandum originated from the Superintendent of TICO. Although the Grievant was working overtime before she went on leave, when she returned and requested overtime, her supervisor (Ms. Jackie Carter) informed her that she was overtime-exempt. Meanwhile, at least one agency nurse who worked overtime also worked the second shift with the Grievant.

Furthermore, Ms. Carter also denied the Grievant's request for a copy of the Employer's overtime roster for registered nurses and for other information related to the assignment of overtime during the period in question. However, from March 1998 to the present, neither Mr. Mahoney nor any other Union Official requested any documentation from the Employer.

During the relevant period, TICO worked approximately eight overtime shifts and approximately three full-time registered nurses of TICO could have worked some of that overtime. Indeed, the Grievant could have worked approximately 40 hours of overtime during the relevant period. During that period, agency nurses worked eight shifts, including three overtime shifts per week.

Despite the signed memorandum, which purportedly exempted the Grievant from working overtime, on or about June 1999, the Employer informed its full-time registered nurses that overtime funds had become available and, hence, they were no longer overtime-exempt. Thereafter, the Grievant and other registered nurses resumed working overtime. Since June 1999, the Grievant has continued to work overtime.

Ms. Himburg's experiences at TICO paralleled the Grievant's. Although Ms. Himburg is currently employed with the Ohio State Department of Mental Health, she worked as a registered nurse for TICO from approximately April 1998 to August 1999 and, like the Grievant, was supervised by Ms. Carter. The Employer also forced Ms. Himburg to sign the memorandum which declared her to be overtime-exempt. However, on March 3, 1999, Ms. Himburg worked overtime to cover for an absent coworker. During the relevant period, Ms. Himburg worked beyond the end of her shift approximately five days per week. And, like

the Grievant, Ms. Himburg began working overtime again in June 1999.

The Union filed Grievance No. 35-08-(3-26-98)-04-02-11 (the Grievance), challenging TICO's decision to subcontract overtime to agency nurses while denying the Grievant an opportunity to work the same overtime. In response to the Grievance, Ms. Carter admitted that she used agency nurses to cover shifts available due to a lack of staffing on the second shift. Finally, she paraphrased Article 41.01[1]

IV. The Issue

Whether TICO violated Articles 24.03 or 41.05, or both by assigning overtime to agency nurses while denying available overtime to the Grievant? If so, what should the remedy be?

V. Relevant Contract Language

Article 24.03 (Overtime Assignment)

A. In institutional settings when the agency *determines* that overtime is necessary, overtime *shall be offered on a rotating basis, at least to the first **five** (5) qualified employees with the most state seniority who usually work the shift where the opportunity occurs.* If no qualified employees on the shift desire to work the overtime, it will be offered on a rotating basis first to the qualified employee with the most state seniority at the work site. When there are no volunteers to work the overtime as outlined above, and or where an emergency exists, reasonable *overtime hours may be required by the Agency.*[2]

Such overtime shall be assigned, on a rotating basis, first to the qualified employee with the least state seniority at the work site. This policy shall not apply to overtime work which is specific to a particular employee's claim load or specialized work assignment or when the incumbent is required to finish a work assignment.

B. In non-institutional settings, the agency reserves the right to schedule and approve overtime. In emergency situations overtime may be approved after the fact. Required overtime that can be worked by more than one (1) employee at the work site (that which is not specific to the particular employee's case load or specialized work assignment) will be offered on a rotating, state seniority basis. If no qualified employee volunteers for the work, or where an emergency exists, then the qualified employee with the least state seniority at the work site will be assigned on a rotating basis.

C. The parties recognize that in both institutional and non-institutional settings, that the *Employer has the right to require mandatory overtime where necessary;* however, the Employer will not abuse the utilization of mandatory overtime.

Article 41.01 Contracting Out

The Employer intends to utilize bargaining unit employees to perform work which they

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[1] Joint Exhibit 2.

[2] (Emphasis added).

normally perform. However, the Employer reserves the right to *contract out any work it deems necessary or desirable because of greater efficiency, economy, or programmatic benefits or other related factors.*[3] Changes in State policy or methodology for delivering services may result in the discontinuation of services or programs directly operated by the State. Every reasonable effort will be made to avoid the layoff of an employee as a consequence of the exercise by the State of its right to contract out.

Article 41.05 Contracting-In

The Union will be granted a reasonable opportunity to demonstrate that bargaining-unit employees can competitively perform work which has been previously contracted out, including access to available information regarding costs and performance audits. In considering, the granting, renewal or continuation of competitively bid contracts for work normally performed by bargaining unit employees, to the extent feasible the Employer will examine information provided by the Union regarding whether or not such work can be performed with greater efficiency, economy, programmatic benefit or other related factors through the use of bargaining unit employees rather than through renewal or continuation of the contract or initial contracting out of work.

Article 7.06
Grievance Steps

The parties intend that *every effort shall be made to share all relevant and pertinent records, papers, data and names of witnesses to facilitate the resolution of grievances at the lowest possible level.*[4] The following are the implementation steps and procedures for handling a member's grievance:

Preliminary Step

A member having a complaint *is encouraged to first attempt to resolve it informally with his/her immediate supervisor* at the time the incident giving rise to the complaint occurs or as soon thereafter as is convenient. At this meeting there may be a delegate present. If the member is not satisfied with the result of the informal meeting, if any, the member may pursue the formal steps which follow:

Step I—Immediate Supervisor or Agency Designee

In the event the complaint is not resolved at the Preliminary Step of this procedure, or if it is the employee's decision not to discuss the complaint at the Preliminary Step, the grievance shall be reduced to writing and presented to *the immediate supervisor or agency designee* within fifteen (15) days of the date on which the grievant knew or reasonably should have had knowledge of the event. Grievances submitted beyond the fifteen (15) day limit will not be honored. The grievance at this step shall be submitted to *the immediate supervisor or designee* on the grievance form. The immediate supervisor or designee shall indicate the date and time of receipt of the form. Within seven (7) days of the receipt of the form the immediate supervisor or designee shall hold a meeting with the Grievant to discuss the grievance. At such meeting, the Grievant may bring with him/her the appropriate delegate. The immediate supervisor or designee shall respond to this grievance by writing the answer on the form or attaching it thereto, and by returning a copy to the Grievant and delegate within seven (7) days of the meeting. The answer shall be consistent with the terms of this Agreement. Once the grievance has been submitted at Step One (1) of the grievance procedure, the grievance form may not

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[3] (Emphasis added).

[4] (Emphasis added).

be altered except by mutual written agreement of the parties. Meetings will ordinarily be held at the work site in as far as practical.

VI. The Parties' Arguments

A. TICO's Arguments

1. The Union's case consists of mere empty allegations, without documentary support.
2. Ms. Himburg's testimony is irrelevant to the Grievant's case.
3. Article 41.01 gives TICO the right to subcontract overtime assignments.
4. Article 24.01 simply guarantees employees a 40-hour week; there is no contractual guarantee of overtime for employees.
5. The availability of overtime is solely within the Employer's discretion.
6. The Grievance is 1.5 years ago.

B. The Union's Arguments

1. Article 24.03 controls overtime assignments.
2. The Employer's denial of overtime assignments to the Grievant, during the relevant period, violates Article 24.03.

VII. Discussion

A. Establishment of the Union's Factual Allegations

Although the Union has the burden of proof in this dispute, the Arbitrator's discussion focuses on the Employer's arguments because this approach automatically addresses the Union's arguments. The Employer first contends that the Union adduced neither documentary nor testimonial evidence to establish its factual contentions that during the relevant period: (1) overtime was available; (2) overtime was worked by agency nurses; or (3) that the Grievant was available to work it, assuming arguendo overtime was available.

At least four reasons render these contentions unpersuasive. First, although mere allegations cannot establish a disputed fact, a hard and fast distinction exists between mere allegations on the one hand and probative evidence on the other. "[A]llegations or assertions are not proof, and mere *allegations unsupported by evidence* are ordinarily given no weight by arbitrators."[5] Similarly, Arbitrator Hooper stated, "All of these allegations were *supported by credible testimony* and convince the Arbitrator that, unless the Union can

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[5] FRANK ELKOURI AND EDNA ASPER ELKOURI, HOW ARBITRATION WORKS, 449 (5th ed. 1997) (emphasis added) [Hereinafter Elkouri]..

provide convincing contrary proof, there is just cause for Mr. P's discharge."[6] Credible testimony is evidence and, other matters equal, unchallenged testimony is credible testimony.

The record in this case contains preponderant testimonial and documentary evidence to support the Union's contentions that overtime existed, agency nurses worked it, the Grievant was available to work it, and the Grievant was denied an opportunity to work it. The Grievant credibly testified to the availability of overtime, during the relevant period, to the use of agency nurses to work that overtime, and to the Grievant's availability to work that overtime.

Second, the record does not support the Employer's contention that Ms. Himburg's testimony is irrelevant to the Grievant's case. To the contrary, Ms. Himburg's testimonial account of her experiences regarding the assignment of overtime at TICO corroborates the Grievant's account, further enhancing the distinct ring of truth therein. Essentially, Ms. Himburg credibly testified that, like the Grievant, she also was denied overtime during the relevant period, that agency nurses received the overtime for which she applied, and, on or about June 1999, the Employer resumed assigning her overtime, as it had done with the Grievant.

A third factor that helped to establish the Union's case is the following statement by Ms. Carter: "*I have utilized agency nurses to cover shifts available due to lack of staffing on the 2nd shift.*"[7] Also, Ms Carter interpreted Article 41.01 as stating that: "[T]he employer reserves the right to contract out due to necessity/desirability because of efficiency, economy or programmatic benefits."[8] Manifestly, Ms. Carter's statement corroborates the Grievant's and Ms. Himburg's testimonies regarding the availability of overtime

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6 In the Matter of Arbitration between Mindis Metals, Inc. Gadsden, Alabama and the United Steelworkers of America Local 2176-A, 1997 WL 878294 (Hooper Arb.). Federal courts also recognize the distinction between mere allegations and credible evidence *See,* Mulholland v. Kerns and Kerns and Klimek, P.C., 822 F. Supp. 1161 E.D. Penn. April 30, 1993) (stating, ."[W]e have not found *sufficient credible testimony* to substantiate defendants' allegations regarding plaintiff's misconduct").

7 Joint Exhibit 2 (emphasis added).

8 *Id.*

and the assignment of that overtime to agency nurses. What is missing from Ms. Carter's statement is the period within which the overtime assignments occurred and the Grievant's availability for overtime during the relevant period. Still, these factual gaps affect neither the credibility, the relevance, nor the materiality of Ms. Carter's statement. For example, although Ms. Carter's statement does not explicitly declare the period in which she used agency nurses to work overtime on the second shift, the Grievant's and Ms. Himburg's testimonies establish that agency nurses were assigned overtime during the relevant period.

Fourth, the virtual absence of any rebuttal evidence in the record indirectly strengthens the Union's evidence. TICO introduced no evidence whatsoever during the hearing—to even weaken (not to mention rebut) either the Grievant's or Ms. Himburg's testimonies, or Ms. Carter's statement. Nor did the Employer introduce an opening statement or cross-examine either of the Union's witnesses. Thus, to establish its factual allegations, the Union had only to adduce admissible, credible evidence into a record that contained no contrary evidence. Under these circumstances, the Arbitrator is obliged to hold that the Union established its factual contentions by a preponderance of the evidence in the record as a whole.

B. The Subject-Matter Relationship Between Articles 24.03 and 41.01

Neither Article 24.03 nor Article 41.01 suffers from internal ambiguity. Rather, the issue, here revolves around their subject-matter jurisdiction. Specifically, which Article controls the contracting out of overtime assignments?

The parties offer several arguments in this respect. First, the Employer points out that, under Article 41.01, it has the explicit right to contract out bargaining-unit work whenever it is deemed "necessary or desirable because of greater efficiency, economy, or programmatic benefits or other related factors." The Union argues, in contrast, that Article 24.03 controls all overtime assignments, regardless of whether they are the subject of subcontracting.

Scrutiny supports the Union's position. There is no real ambiguity here. First, the problem with fixating on Article 41.01 is the existence of Article 24.03, which provides: In institutional settings when the

agency *determines* that overtime is necessary, overtime *shall be offered* on a rotating basis, *at least* to the first **five** (5) qualified employees with the most state seniority who *usually* work the shift where the opportunity occurs.[9] In effect, the Employer argues that, on its face, Article 41.01 covers all decisions involving subcontracting, irrespective of either the accompanying circumstances or the subject matter in question. The Arbitrator agrees that, on its face, Article 41.01 reflects the parties' clear intent to afford the Employer carte blanche to "*contract out*" for reasons of efficiency, economy, or programmatic benefits. Still, Article 24.03 reflects the unmistakable intent to carve an exception out of (or limit) the Employer's broad discretion under Article 41.01. In short, just as the parties' clearly intended for Article 41.01 to focus on and generally to control subcontracting, they also clearly intended for Article 24.03 to focus on and to control the assignment of overtime. However, once the Employer decides that overtime is required, Article 41.01 drops out of the decisional mix, giving way to Article 24.03, which determines to whom and the manner in which overtime is assigned.

Assuming, arguendo, that either or both Articles were ambiguous as to the proper scope of their subject matter (and they are not), several common, well-accepted canons of contractual construction support the foregoing interpretation of the scopes of Articles 24.03 and 41.01. First, one must interpret the Collective-Bargaining Agreement as a whole, rather than focus on particular provisions therein.[10] This canon militates against interpretations of one provision in a Collective-Bargaining Agreement that effectively read other provisions out of that Agreement. A noted arbitral authority puts it well:

> This construction principle requires the arbitrator to avoid an interpretation which tends to nullify or render meaningless *any provision of the contract* because of the general presumption that the parties do not carefully write into a solemnly negotiated agreement words intended to have no effect. Thus, if an arbitrator finds that two provisions in an agreement conflict, he will seek a meaning, if possible, that will give some substantial effect to each of

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9 Joint Exhibit 1(emphasis added).

10 Elkouri, *supra* note 3, at 493 (emphasis added).

them.[11]

Others have offered different articulations of this canon: "Arbitrators apply a presumption that parties intended their words to have effect and not to be interpreted in a way that causes a provision to perish or to be superfluous."[12]

In the instant case, adoption of the Employer's interpretation of Article 41.01 regarding overtime effectively reads Article 24.03 out of the Collective-Bargaining Agreement. Although subcontracting of work has many facets, it usually has one rationale: lowering production costs. If the Employer were free to subcontract any and all work under any and all circumstances simply to effect economic savings, Article 24.03 would stand eviscerated and meaningless. Yet, by including Article 24.03 in their Collective-Bargaining Agreement, the parties could not have intended such a result. Within the Collective-Bargaining Agreement, Article 24.03 has to have some meaning and to exert some impact.

Another applicable interpretative canon states that where general and specific provisions clash, the former must yield to the latter. In this respect, Elkouri observes: "Where there is conflict between specific language and general language in an agreement, the specific language will govern. . . . when an exception is stated to a general principle, the exception should prevail where it is applicable."[13] The most commonly cited reason for this canon is that the parties are deemed to have poured more thought into specific provisions than

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[11] *Id.* at 176-177.

[12] NATIONAL ACADEMY OF ARBITRATORS, THE COMMON LAW OF THE WORKPLACE, THE VIEWS OF ARBITRATORS 71 (THEODORE J. ST. ANTOINE, ED.1998). *See also*, Dayton Pepsi Cola Bottling Co. v. Intl. Brotherhood of Teamsters, Local 957, 75 LA (BNA) 154 (Kennan, Arb. June 18, 1980) (stating, "In this regard, a basic principle of contract interpretation provides that every provision or phrase of a contract is to be given meaning if at all possible in order to avoid a construction which results in having to declare a provision or phrase as mere surplusage or a nullity"); and Muchnick v. Secretary of Health and Human Services, 1998 WL 1012801*8 (Fed Cl)."[A]s a general rule a court interpreting regulatory language should avoid an interpretation which would cause part of the language to be a nullity in all situations").

[13] Elkouri, *supra* note 3, at 356. *See also*, S.D. Warren Co. V. United Plant Guard Workers of America, Local 40, 113 Lab. Arb. (BNA) 272 (Daniel, Arb. June 1, 1999) (stating, "In interpreting contract language and moving from the more general to the more specific, arbitrators regularly find that the general provision must give some way to more specific provisions").

into general ones. Therefore, specific provisions are more reliable predictors of the parties' intent. In the instant case, Article 41.01 broadly sets forth the Employer's right to subcontract, while Article 24.03 specifies how and to whom the overtime must be assigned. This relatively meticulous account, in Article 24.03, strongly reflects the parties' concern that employees are treated fairly regarding overtime assignments.

Furthermore, as a general proposition, where a Collective-Bargaining Agreement is silent with respect to subcontracting, employers are free to subcontract work, provided they do it in good faith. The same standard of good faith and reasonableness applies where, as in the instant case, the issue is the degree of control that two contractual provisions exert over the scope of the Employer's right to subcontract overtime. It would be manifestly unreasonable and unfair to wholly ignore the concerns reflected in Article 24.03 by adopting an over-broad interpretation of Article 41.01, especially where the parties obviously intended for the two provisions to coexist within the boundaries of the same Collective-Bargaining Agreement. This analysis convinces the Arbitrator that while Article 41.01 generally controls subcontracting, Article 24.03 specifically addresses and controls overtime assignments, and, hence, any issues dealing with the subcontracting of overtime assignments. Any other interpretation divests Article 24.03 of its explicit subject matter.

C. The Guarantees of Articles 24.01 and 24.03

Next, the Employer argues that Article 24.01 guarantee employees a 40-hour week. The point is well founded but does not further the analysis of the respective scopes of Articles 24.03 and 41.01.

D. Scope of the Employer's Discretion Regarding the Availability of Overtime

Here, the Employer maintains that the availability of overtime is wholly within its discretion. Again, this point is undeniable, as evidenced by the language in Article 24.03: "[T]he agency *determines* that overtime is necessary. . . ."[14] Nevertheless, this manifestly valid point does nothing to determine whether overtime assignments, are governed by Article 24.03 or Article 41.01, once the Employer determines that there is a need

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[14] (Emphasis added).

for overtime.

E. Timeliness of the Grievance

The Employer correctly points out that the instant Grievance is 1.5 years old. Although the Employer did not develop this point, it presumably is an argument of procedural-defectiveness, which, if established, would show that the instant Grievance is not properly before the Arbitrator. Having raised this procedural issue, the Employer, of course, has the burden of persuasion. That is, the Employer must adduce preponderant evidence, in the record as a whole, to show that the 1.5-year-old Grievance was sufficiently tardy to warrant its denial on that basis.

The Employer's argument fails for several reasons. First, although the instant Grievance is more than a year old, the record does not reveal it to be tardy. Ms. Paxton submitted the Grievance on March 12, 1998, and Ms. Carter offered a Step-1 response, on March 24, 1998.[15] The Union appealed that response on March 26, 1998. In a second-step hearing, on April 1, 1998, Labor Relations Officer Mary Tipton heard the Grievance and ultimately denied it, on April 3, 1998. Up to this point, nothing suggests that the Grievance was tardy. Then the Union apparently appealed the Grievance to the third step; however, the arbitral record is silent regarding the events surrounding this step.

On May 29, 1998, the Union had not received the Employer's Step-3 response and, consequently, exercised its contractual right (under Article 7.06, Step-4) to notify the Employer of its intent to arbitrate the instant Grievance. Article 7.06, Step-4 states: "If the grievance is not resolved at Step Three (3) or not answered timely the Union may demand arbitration by serving written notice of its desire to do so by U.S. mail . . . within fifteen (15) days after receipt of the decision at Step Three (3) or date such answer was due." [16] From May 29, 1998, when the Union evinced an intent to arbitrate, to September 30, 1999, when the the

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[15] Joint Exhibit 2.

[16] Joint Exhibit 1.

Arbitrator heard this dispute, the Grievance presumably was being processed through mediation, en route to arbitration. Nothing in the record suggests that the Grievance became defective during this period.

The Second reason the Employer's procedural argument fails is that, assuming arguendo that the Grievance was untimely, the Employer effectively waived its right to challenge that defect in arbitration. Nothing in the record suggests that the Employer ever objected to the untimeliness of the Grievance while the parties processed it through their negotiated grievance procedure. Nor is there any evidence that the Union was ever notified that the Employer intended to raise such a objection. Such silence effectively waives the right subsequently to challenge the procedural vitality of the Grievance in an arbitration hearing. Basic procedural fairness requires that the criterion of timeliness be applied both to the duty to file a timely grievance and to the duty to object to an untimely one.

Finally, the record shows that, until approximately June 1999, the Employer continued to deny the Grievant overtime. Consequently, until that date, the denial of overtime to the Grievant constituted a continuing violation of Article 24.03 of the Collective-Bargaining Agreement. Therefore, as a practical matter, the Grievant could have waited up to 15 days after the Employer ceased denying her overtime to file her Grievance. Ultimately, then the Employer did not show that the 1.5-year-old Grievance was actually tardy or otherwise procedurally defective.

VIII. The Award

For all the foregoing reasons, the Grievance is hereby **SUSTAINED**. Consequently, the Employer shall compensate the Grievant for all overtime that she would have received from approximately March 1998 to June 1999 but for the Employer's subcontracting overtime to agency nurses in violation of Article 24.03. Because the record reveals only a bottom-line sum of $12,000 but no clearly defined calculations to support the accuracy of that amount, the Arbitrator retains jurisdiction over this case, until the parties agree on a sum certain that is rightfully owed to the Grievant in this dispute.

Notary Certificate

State of Indiana)

)SS:

County of Marion

Before me the undersigned, Notary Public for Hendricks County, State of Indiana, personally appeared Robert Brookins, and acknowledged the execution of this instrument this 22nd day of November, 1999

Signature of Notary Public: Susan K. Agnew

Printed Name of Notary Public: SUSAN K. AGNEW

Notary Public, State of Indiana
County of Hendricks
My Commission Expires 11/13/2006

My commission expires: _____

County of Residency: _____

Robert Brookins

Robert Brookins