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In the Matter of Arbitration

between

Niagara Frontier Metro System, Inc.

and

Amalgamated Transit Union, Local 1342

Opinion

and

Award

* *

This arbitration was heard on July 20 and August 3, 2006, and on January 31, 2008, at the Company's offices in Buffalo, New York. The parties' Collective Bargaining Agreement provides for a tripartite Board of Arbitration. The Company-appointed arbitrator is William McGee, Consultant. The Union-appointed arbitrator is George R. Bailey, Local 1342 Vice President. Howard G. Foster was appointed to serve as the impartial arbitrator by direct selection of the parties. Upon submission of post-hearing briefs by both sides on May 13, 2008, the record was closed.

APPEARANCES

For the Employer:

Susan Wheatley, Counsel
Howard Scholl, Manager of Bus Maintenance
David Rugg, Superintendent of Bus Maintenance
Gary Tamol, Body Shop Supervisor
David R. Ernst, Building Maintenance Supervisor

For the Union:

Joseph E. O'Donnell, Attorney
Richard J. Chambers, Executive Board Member, Cold Springs Shops

THE ISSUE

Did the Company violate the Memorandum of Agreement dated September 8, 1994 (Agreement for Definition of Utility), as modified by the contract settlement dated

October 30, 2003, by assigning Allen Cordier painting work on or about October 9, 2004? If so, what shall the remedy be?

BACKGROUND

This matter involves two grievances. The initial grievance was filed on October 9, 2004, by Frank Boice, a steward at the Company's Cold Spring Shop, one of several locations where buses are maintained and refurbished. The grievance cites Section 13-3.1(E) of the CBA ("Scheduled Work-Week and Work-Day; Overtime Provisions"), Section 19-1 ("Working Conditions, Practices, Etc. to Continue"), and a 1994 memorandum titled "Agreement for Definition of Utility," which is known by the parties as the Utility Agreement. The grievance asserts that "the Company assigned an employee to a job violating the CBA Utility Agreement. We demand that the Company abide by the CBA and its agreements and we demand Allen Cordier be removed from the painting position that he was placed into." The second grievance, filed on October 12, 2004, by Richard Chambers, protests an alleged statement from the Company to Union representatives that "people would be placed into jobs by the term as assigned, and not utility."

At the Company's shops there are job picks twice a year. The Company sets forth the jobs to be filled on "pick sheets," and employees choose the jobs they desire by seniority within classification. The jobs are described by the nature of the work to be performed and the normal work schedule. It is understood that, to be awarded a preferred pick, the employee must have been in the job before and must be able to perform it immediately. On the pick sheets, some jobs are designated "utility," which are sometimes called "line jobs." The designation "utility" on the pick sheet may stand

alone, or it may be combined with other specific functions, such as certain electrical work, machine work, or painting. Most jobs on the pick sheets also carry the notation "as assigned" in addition to the occupational specifications.

The instant controversy, by agreement of the parties, should be addressed by the panel at both specific and general levels. The specific issue involves the assignment of an employee, Allen Cordier, to painting work. Cordier was hired in August 2004 into a position in the Body Shop designated "Body, Doors-Entrance/Exit W/C Utility and as assigned." He was hired from the outside after that position was posted and received no bids. At that time, the Company was having difficulty filling and maintaining its painting positions. Cordier had had prior painting experience, and he was assigned to do painting work from time to time (along with others in the Body Shop). Frank Boice questioned the Company's right to assign this work to Cordier under the Utility Agreement, on the grounds that the Utility Agreement requires that utility workers assigned to other jobs have held those other jobs before and be formally qualified to perform them. Another Union official, Richard Chambers, suggested that the painting job be posted on a temporary basis so that Cordier could bid on it. That was done, and Cordier was placed in the job. He later left it because of ongoing controversy surrounding the assignment, although he continued to be assigned to painting from time to time.

As noted, the parties explicitly desire that the Company's obligations and limitations under the Utility Agreement be clarified in this arbitration. They do not wish the grievance to be decided on narrow grounds, relating specifically to the Cordier

situation, without addressing the meaning and application of the Utility Agreement more generally. The 1994 Utility Agreement reads as follows:

> In order to use a person in the capacity of Utility, the employee must have been on the job, trained and qualified for the position he/she is to be used in.
>
> A person in the Utility position can only be used in that position for three (3) working days.

A 2003 modification of the Utility Agreement increased the length of time an employee could be used in the utility (*i.e.,* non-picked) position to five days, or seven days if necessary to finish a work assignment.

In addition to the Utility Agreement, job assignments are addressed in at least two other provisions of the parties' Agreement, including the following excerpts:

- 13-3.1(e) **Scheduled Work-Week and Work-Day; Overtime Provisions.** . . . Employees who pick jobs designated "As Assigned" are considered first shift (day shift) personnel except when assigned to a second or third shift in accordance with present practice, and when so assigned shall be paid the applicable shift differential for the hours worked during such second or third shift.

- 18-2 **Schedules, Places, Hours and Assignments of Work.** . . . The Company may assign any employee to such work which he or she is reasonably capable of performing, and when so assigned such employee shall be governed during the period thereof by the rules, regulations and working conditions applicable to the department or subdivision to which he or she is so assigned, but shall be paid the regular hourly rates applicable to the position to which he or she is so assigned or to his or her regular position, whichever is greater.

POSITION OF THE UNION

Given the need to address these grievances in both specific and general terms, the Union sees the questions to be resolved in this arbitration as the following:

1. Is the Utility Agreement a valid agreement?

2. When does the Utility Agreement apply?

3. Does the Utility Agreement override the Company's view of its alleged right of assignment under Section 18-2 of the parties' CBA or its view of the term "as assigned" as contained in the shop pick sheets?

4. Was the Utility Agreement violated in the instant case?

The Union notes, by way of background, that the Utility Agreement was negotiated during the 1994 "Cold Spring Shop Reorganization," which reduced staffing in the Cold Spring Shop. At this time the format of pick sheets at the Cold Spring Shop was changed. In 2004, after the instant grievance regarding Allen Cordier was filed, the Company took the position that, by virtue of the term "as assigned" in the pick sheets, it could assign employees to any position they are capable of performing without regard to any restrictions that may be contained in the Utility Agreement. This statement resulted in the second, more general, grievance being filed by Richard Chambers, the Union's representative in the Cold Spring Shop. The latter grievance contends that the term "as assigned" refers strictly to hours of work, while the Utility Agreement governs the nature of the work assigned. On the questions as posited by the Union:

1. The Union argues, first of all, that the Utility Agreement is a valid agreement. It was negotiated and reduced to writing and signed by the parties. It was later modified at the Company's insistence. The parties are clearly bound by its terms.

2. The Union further argues that the Utility Agreement applies when the Company has a need to assign an employee outside the employee's regular picked assignment as defined on the pick sheet. At the time the Utility Agreement was negotiated, the Union was concerned about the scope of the terms "as assigned" and "utility." They sought to make it clear that the term "as assigned" referred strictly to the "hours" designation

on the pick sheet, while "utility" referred strictly to the "nature of work" designation. Thus the Utility Agreement was negotiated to place certain restrictions on the Company's ability to assign "utility" employees outside of their regular picked work. Such assignments were limited to three (later five) consecutive days, and to work that the employee is fully capable of performing proficiently and safely. Whether an employee meets this standard is governed by a Memorandum of Understanding executed by the parties in 1983, which sets forth the "procedure for determining job qualifications with respect to promotions and lateral moves in the Shops." The 1983 MOU was alive and well at the time the Utility Agreement was negotiated, and it remains in effect today. Given the detail of the MOU, it makes little sense to view the qualifying language of the Utility Agreement as referring to anything else. The Company's efforts to complicate and distort this basic application were off point. The Utility Agreement comes into play only if the Company assigns employees outside the scope of their regular picked work.

3. The Union asserts, moreover, that the Utility Agreement does override the Company's alleged right of assignment. That right, contained in Section 18-2 of the CBA, is expressly limited by the "rules, regulations and working conditions applicable to the department or subdivision" of the assignment. Thus assignments in the Cold Spring Shop are governed by the Utility Agreement, and that Agreement does not say that the Company may assign any employee to any job anywhere as long as the employee can perform the work. If the Company's definition of "as assigned" is accepted, then the definition of "Utility" becomes meaningless. In fact, the only contractual definition of "as assigned," in Section 13-3.1(e) of the CBA, says that employees who pick jobs

designated "as assigned" are considered day-shift workers unless assigned to second or third shift "in accordance with present practice." Thus again, "as assigned" applies only to the hours of work, and not the nature of the work.

4. On the specific instance involved in this grievance, the Union contends that the Utility Agreement was violated. At the time of his assignment, Mr. Cordier, as a new employee, had not met the qualification requirements set forth in the 1983 MOU for any position. And even if it is assumed he was qualified by virtue of his prior experience, the assignment still violated the Utility Agreement because it lasted longer than the allowed time. Furthermore, no emergency existed, as the record shows that other qualified employees were available, one of whom so testified at the hearing.

Finally, the Union argues that a decision rendered by the impartial arbitrator in an earlier case actually supports its position, despite the Company's assertion to the contrary. In that case, the Union challenged the Company's right to assign two employees to different shifts and work schedules. Although the grievance in that case was denied, the issue there was the time of work, not the nature of work. In any event, the prior award, rendered in 1990, predated the negotiation of the Utility Agreement, and in fact is consistent with the testimony of Union witnesses who said that in 1994 it was the Union's goal to clarify the definitions of "as assigned" and "utility" as they appeared in the pick sheets.

For all of the foregoing reasons, the Union urges that the grievances be upheld and appropriate relief granted.

POSITION OF THE EMPLOYER

The Company contends, first of all, that it did not violate the CBA or the Utility Agreement by assigning Allen Cordier to painting work. The Union has failed to meet its burden of proof in this grievance. It did not prove that the Utility Agreement was utilized, or had to be utilized, to make that assignment, and even if the Utility Agreement did have to be used, the Union did not prove that Cordier was assigned to the painting work for more than five consecutive days during the time period involved.

The Union also failed to meet its burden of proof in the Chambers grievance, argues the Company. That burden required the Union to prove that the Utility Agreement superseded management's right under Section 18-2 of the CBA to assign employees to work that they are capable of performing, or alternatively that Section 13-3.1(e) precluded such assignments, notwithstanding a previous decision that rejected this argument.

The Company states that while the Utility Agreement is not a model of clarity, its terms are not complex, and the Agreement cannot be construed to have a meaning different from what its terms say simply because the Union claims it was intended to accomplish something else. Richard Chambers testified that the phrases "capacity of Utility" and "in the Utility position" have the same meaning in the Utility Agreement, but these different terms are used in the only two operative sentences of this short Agreement. It is more likely that the terms have different meanings, applying differently to employees assigned to utility work exclusively and employees with "utility" as a secondary or tertiary assignment. Persons with utility as a secondary designation are acting "in the capacity of Utility" when temporarily assigned to the Utility position. A

person "in the Utility position" in the Cold Spring Shop work groups is often a "lineman," a mechanic who must be qualified. A time limit for such an assignment ensures that persons with Utility as a non-primary job duty share the inconvenience of reassignment out of their picked positions, rather than having one person reassigned for a lengthy period of time.

However, asserts the Company, the Utility Agreement does not guarantee that an employee will not be required to perform work outside picked work if there is work that needs to be done elsewhere. Mr. Chambers himself conceded that an employee could be recycled in and out of the Utility position. Moreover, the Union did not dispute that there are unusual situations in which anyone may be called on to work out of his or her normal job duties. Beyond these instances, the Utility Agreement does not overcome the Company's right to assign workers as needed under Section 18-2 of the CBA.

The Company further argues that the Union's contention that "as assigned" is limited to a change of hours was rejected in the 1990 arbitration case. There is no evidence that in pursuing the Utility Agreement the Union was seeking to overturn that decision, or that the Company was consenting to surrender its win there. Indeed, there was no discussion of "as assigned" in the negotiations leading up to the Utility Agreement. If the parties had intended to change their history or the meaning of the contract, they could have done that by simply precluding all reassignments of Cold Spring employees for more than five days. If they had intended that work be first filled through the Utility Agreement before using other contractual means, such as Section 18-2, they could have simply said that. But the Utility Agreement addressed only utility assignments, and other means of making assignments were not even on the table.

Finally, the Company says that there were extraordinary circumstances surrounding the assignment in question. It had exhausted other means to address the shortage of painting personnel before assigning Mr. Cordier to do the work. He did not object, and no other worker was harmed.

For all of the foregoing reasons, the Company urges that the grievances be denied.

FINDINGS AND OPINION

Although the stipulated issue in this arbitration is whether the Utility Agreement was violated by the assignment of Allen Cordier to painting work (and more generally what restrictions the Utility Agreement places on the Company's ability to make job assignments in the shop), it is clear that the panel's task must include harmonizing the various vehicles the parties have used to address the rules and processes surrounding the assignment of work. These vehicles include the Utility Agreement itself, provisions of the CBA that speak to assignments (particularly Section 18-2), and the pick sheets that not only establish regular assignments but, through the use of the terms "as assigned" and "utility," make it clear that under some circumstances employees may be assigned to work that was not, strictly speaking, "picked." The terms "Utility" and "as assigned," it must be stressed, are not explicitly defined in the parties' written bargain, even though they have been used in practice for many years, and in particular there is nothing to say just how they should interact. Indeed, some jobs on the pick sheets are denoted as both "Utility" and "as assigned," but no witness could offer a clear judgment as to what that combination means. In this arbitration, therefore, the panel must engage in a major exercise of gap-filling.

The task is complicated by various arguments and considerations advanced by both sides that are ultimately diverting from the resolution of the mixed signals that the written documents project. Let us address these tangential matters before homing in on the central objective of reconciling the conflicting messages.

1. Contrary to the Company's contention, the 1990 arbitration award does not materially help us to understand the nature and reach of the Utility Agreement. Indeed, the bare fact that the Utility Agreement did not exist at the time that arbitration was decided, along with the absence of any evidence that the decision was in the minds of the people who negotiated the Utility Agreement, casts doubt on its relevance to the present dispute. Perhaps even more to the point, apart from the fact that the 1990 case involved the assignment of workers to positions other than the ones they picked, the issue there was entirely different from the one we are dealing with now. In the earlier case, the claim of the grievance was that certain employees could not be temporarily assigned to second- and third-shift jobs that were permanently open, as opposed to jobs that were temporarily open because of illness or vacation, because that was allegedly not the "present practice." Indeed, it is not clear from the decision whether the assignments in those grievances involved different kinds of work from that which the employees involved had picked. The key issue that was presented to the arbitrator was the meaning of the provision in Section 13-3.1(e) of the CBA that "as assigned" workers could be assigned to the second or third shift *in accordance with present practice.* The holding that the Company could in fact assign an "as assigned" employee to a permanently open job on the second or third shift does not say that there are no other limits on assigning workers to jobs that they did not pick. It certainly could not

have that effect after such other limits were actually negotiated four years later in the Utility Agreement.

2. The reference to "trained and qualified" in the Utility Agreement is not, as the Union contends, necessarily linked implicitly to the qualification procedures set forth in the 1983 Memorandum of Understanding (MOU). One reason that it is not *implicitly* linked is that it so easily could have been *explicitly* linked. The Utility Agreement came after the MOU and originated in the shops. If what the parties had in mind when they negotiated the Utility Agreement was that *any* employee being used "in the capacity of Utility" must have gone through the formal trial periods and tests outlined in great detail in the MOU, it is difficult to understand why they would not have said just that in the Utility Agreement. In addition, it must be noted that the MOU refers to determining qualifications "with respect to promotions and lateral moves," not job assignments. It makes specific references to the posting of and applications for open jobs, promotions to a new classification, and an employee on trial for a job category for which he or she has applied. What seems to be clearly contemplated in this document is a permanent job move by an employee, not an *ad hoc* assignment to a job outside the employee's picked job. [It should be noted that the analysis in this paragraph applies only to the shops, which are covered by the Utility Agreement, and not the garages.]

However, notwithstanding the foregoing, there is an intuitively appealing construction of the Utility Agreement in conjunction with the pick sheets, which we will discuss further below, that may logically implicate the MOU as a guide for assessing qualifications.

3. Contrary to the Union's argument, we do not believe that the Utility Agreement can be said to "override" Section 18-2 of the CBA. A basic rule of contract construction is that the parties are assumed to have meant what they said; hence language may not be treated by the contract's readers as surplusage. The panel may not construe the Utility Agreement as though Section 18-2 did not exist, any more than it may construe "as assigned" as though there were no Utility Agreement. The "override" argument implies that in negotiating the Utility Agreement the parties not only failed to mention in it an intent to supersede 18-2, but also neglected to make adjustments in the CBA to allow for this change – not only at the time, but in the several contract negotiations that have taken place since 1994 as well. This is not a premise from which the panel may proceed. Rather, the premise that must inform our analysis is that the parties intended to give effect to *all* of their agreement, however obscure that effect may be on the surface.

This conclusion is not shaken by the Union's argument that, under Section 18-2 of the CBA, an assignment is expressly limited by the "rules, regulations and working conditions applicable to the department or subdivision" to which the employee is assigned, including the Utility Agreement. This language, however, provides that the employee is governed by rules of the new workplace *when so assigned*. It is clear that the reference is to the rules that apply once the assignment is made, and not to the assignment itself.

4. Section 13-3.1(e) of the CBA does not support that contention that "as assigned" work refers exclusively to working hours. The import of that provision is that "as assigned" workers are normally first-shift personnel, although they may be assigned

to the second or third shift "in accordance with present practice," as long as they receive the shift differential. Section 13-3.1(e) deals generally with hours of work, and it is the logical place to set forth the shifts associated with "as assigned." It does not follow, however, that the entire meaning of "as assigned" is limited to working hours. Indeed, the record contains a number of pick sheets for various periods, and almost everywhere the "as assigned" designation is shown in a column headed "Nature of Work." Only rarely is "as assigned" contained in the columns showing the days and hours of work. If "as assigned" has nothing to do with the nature of the work that may be assigned, this is a decidedly strange way to describe the jobs in the pick sheets, which have been used, apparently without objection or controversy, every six months in the decade between the Utility Agreement and the grievance. It is not a construction that the panel may adopt without evidence.

* * * * *

The foregoing discussion addresses what we think does *not* aid us in harmonizing the Utility Agreement, the CBA, and the practices of the pick sheets. We must now address what *does* have to drive such a reconciliation. First, there is the basic principle, enunciated above, that we must strive to give mean to *all* elements of the parties' bargain. We cannot construe one as to nullify another. Moreover, we must appreciate that the Utility Agreement was negotiated for specific reasons, and by all accounts the primary reason was to honor the employees' job picks to the extent possible by placing limits on the ability of the Company to assign them outside the jobs they picked. If, as the Company may be suggesting, the designation "as assigned" allows it to assign an employee outside his picked job without limit, then the Utility Agreement is effectively

swallowed up. In this regard, it must also be noted that the Utility Agreement is not an obscure document that the parties negotiated in 1994 and then paid little attention. The Company obviously understood that the Utility Agreement placed certain limits on its ability to make work assignments, as it sought in 2003 to relax those limits. There were in fact changes executed in the Utility Agreement less than one year before the filing of the instant grievances.

While it is clearly beyond the ability of the panel to anticipate every issue or combination of circumstances that might involve the interactions of the Utility Agreement, the CBA (especially Section 18-2), and the practices of the pick sheets, our reading of the record leads us to five specific conclusions about the proper application of the Utility Agreement and the CBA. Some of these conclusions are informed by the Company's persuasive suggestion that the Utility Agreement actually contemplates a different application for jobs in which the "Utility" designation is primary and those in which it is secondary, although we do not necessarily embrace the argument that the parties meant different things by the terms "in the capacity of Utility" and "in the Utility position." On the whole, these conclusions represent our best judgment as to how the Utility Agreement and the CBA combine to establish rules by which the Company may assign an employee to a job outside the one that he or she has picked.

1. Any employee may be *voluntarily* reassigned without limit to a temporary opening, or to one which the Company has been unable to fill, subject only to the requirement in Section 18-2 that he or she is "reasonably capable of performing" the work. That the CBA contemplates the ability of the Company to make such assignments is seen in the language (in 18-2) setting forth the terms of such an assignment, including

the pay. If the Company could not make these assignments, there would be no point in addressing their terms, and there would no clear application of the provision that "the Company may assign any employee to such work which he or she is reasonably capable of performing." The inference that the Utility Agreement does not limit voluntary assignments flows from the fact that the Utility Agreement was sought by the Union to protect employees from being assigned out of the jobs they had picked. An employee who is willing to accept an assignment different from the job he picked, or even seeks it out, obviously does not need this protection.

2. An employee who picks or bids into a job in which "Utility" is the *sole* designation (what the Company has termed "primary") may be assigned without time limit to any job in his department for which he or she is qualified. In this case the required qualification must be formal, in conformance with the standards and procedures of the 1983 MOU, and not simply a supervisory judgment that the employee is "reasonably capable of performing the job." Moreover, the employee "must have been on the job" to which he is being assigned, as stated in the Utility Agreement. The reasoning here lies in the nature of the Utility label. If this is the only designation of the picked job, the picker knows that he may be directed to any one of a variety of assignments within the meaning of "Utility," and there is no "normal" assignment that he may be diverted from. Thus the rationale for protecting him against being assigned outside of the specific kind of work he picked is not applicable, since he did not pick any specific kind of work. However, since this employee may receive a specific assignment at the beginning of the pick and hold it throughout the pick, he should be subject to the

same "walk-in" qualification requirements of another employee who picked that specific job.

3. An employee who picks or bids into a job in which "Utility" is the sole designation may be assigned to a job *outside his department* that he is "reasonably capable of performing." In this case, the five-consecutive-day limitation set forth in the Utility Agreement applies. The rationale here is that an employee who picks a job in one department has an expectation that his work will generally be in that department, and the idea of the Utility Agreement is to place limits on the extent to which such expectations go unmet. However, since the job outside the department is more distant in content from the work that both the Company and the employee expected him to be doing most of the time, the qualification standard must be less stringent than the one required of the person in the primary assignment.

4. An employee who picks or bids into a job in which there is a specific type-of-work designation (say, "engines") *along with Utility* (what the Company has termed a "secondary" Utility designation) may be temporarily assigned to a job other than engines that he is "reasonably capable of performing." The rationale here is that the employee with a primary designation may be assumed to be formally qualified in that assignment ("engines") but will not necessarily have the same proficiency in the Utility assignment as an employee whose primary job is there. He therefore should not be expected to qualify at the same level. Moreover, this employee picks the job with the knowledge that he may be moved out of it from time to time, but his expectation is that he will normally be assigned work in the primary designation of the picked job. Thus when this employee is assigned to a different job by virtue of his secondary designation as

"Utility," he may reasonably expect that the assignment will be limited. This assignment is thus subject to the five-consecutive-day limitation provided in the Utility Agreement.

5. An employee who picks or bids into a job that does not have a "Utility" designation, either primary or secondary, and thus may not have the expectation that he or she will be assigned out of it that the Utility designation would impart, may be assigned under Section 18-2 to a different job only under pressing circumstances and for only as long as there is no other employee who can be assigned. Such an employee must be "reasonably capable of performing" the work as contemplated by Section 18-2. In these circumstances, moreover, the Company must make every effort to ameliorate the condition that necessitated the assignment in the first place.

* * * * *

It remains then to apply the foregoing principles to the facts of the grievance involving Allen Cordier. At one level, that grievance may be considered moot, as after it was filed the Company actually rescinded the assignment and posted the position pursuant to the suggestion of Mr. Chambers. Although the Union subsequently took the position that assigning Mr. Cordier to the painting work after he was the only bidder on the temporary posting was still improper, it now appears that the Union was mistaken in that regard.

In any case, under the standards we have enunciated above, even the initial assignment of Mr. Cordier to painting work was within the Company's rights for several reasons. First, the assignment was by all accounts voluntary; there was no contrary evidence to the testimony of Company witnesses that Mr. Cordier had no problem with

it. Second, as the Union acknowledges, the record is unclear that Mr. Cordier was ever assigned to the painting work for more than five consecutive days. Third, there seems to be little doubt that Mr. Cordier met the test of being able to "reasonably perform" the painting work. And finally, the record shows that there were "pressing circumstances" in that the Company was unable to identify other employees who met all the painting requirements and could be reassigned without leaving a hole somewhere else. We find, therefore, that the Company did not violate the Utility Agreement in this instance.

AWARD

The Company did not violate the Memorandum of Agreement dated September 8, 1994 (Agreement for Definition of Utility), as modified by the contract settlement dated October 30, 2003, by assigning Allen Cordier painting work on or about October 9, 2004. This grievance is denied.

The determination of the subsequent grievance filed by Richard Chambers is resolved according to the standards set forth above for the meaning and application of the Utility Agreement, the Collective Bargaining Agreement, and the terms of the pick sheets.

July 17, 2008
(dated)

Howard S. Foster
(signature)

Panel Member William McGee concurs with the opinion and award set forth above. Panel Member George Bailey dissents for the reasons given in his attached communication.

Howard Foster

From: William McGee [William_McGee@NFTA.COM]
Sent: Wednesday, July 09, 2008 12:27 PM
To: Howard Foster
Cc: Bill McGee; 'GEORGE BAILEY'; 'Howard Foster'
Subject: RE: draft award

I have reviewed the revised Opinion and Award and concur with the decision.

"Howard Foster" <hfoster@buffalo.edu>

07/08/2008 10:55 AM

To "'Howard Foster'" <hfoster@buffalo.edu>, "'William McGee'" <William_McGee@NFTA.COM>
cc "'GEORGE BAILEY'" <grbailey717@yahoo.com>, "Bill McGee" <BFLcom@aol.com>
Subject RE: draft award