AMERICAN ARBITRATION ASSOCIATION

Proceedings before

James M. Paulson, Arbitrator

In the matter of: **Association of Western Pulp and Paper Workers and Local No. 69,** and **Boise Cascade, LLC**	AAA Case No. 75 300 00212 06 Compressed Work Week Grievance

DECISION

PRELIMINARY STATEMENT

Kenneth E. Smith, Southern Washington Area Representative, appeared on behalf of the Association of Western Pulp and Paper Workers and Local No. 69.

Calvin L. Keith, Perkins Coie LLP, appeared on behalf of Boise Cascade, LLC.

Boise Cascade, hereinafter "Boise Cascade" or the "Company", and the Association of Western Pulp and Paper Workers and Local No. 69, hereinafter the "Union", are parties to a collective bargaining agreement[1], hereinafter the "Agreement" or "Master Agreement", which provides for the arbitration of unresolved grievances. The parties agreed that the grievance[2] regarding the compressed work week for Paper Machine No. 3 was properly in arbitration. The parties further agreed that James M. Paulson was selected to arbitrate the matter and his decision would be final and binding as described in the Agreement.

On July 18, 2007, a hearing was held at the Hampton Inn in Richland, Washington. At

[1]Joint Exhibit No. 1.
[2]Joint Exhibit No. 6.

the hearing the parties were each permitted to present testimony and documentary evidence. At the hearing, the Union elected to call no witnesses. The Company called as its witness John Perez, Human Resources Manager at the Wallula Mill.

At the close of the hearing the Arbitrator ruled that briefs were to be postmarked on or before 30 days after the receipt of the transcript. By agreement of the parties, that date was extended to October 8, 2007. The Arbitrator received the briefs of both parties on October 11, 2007 and will issue his Decision and Award by postmark on or before November 10, 2007.

STATEMENT OF THE ISSUES

The parties stipulated to the following statement of the issues:

"Did the Company violate the collective bargaining agreement by placing the No. 3 paper machine on a compressed work week on May 31, 2004? If so, what shall be the appropriate remedy?"[3]

RELEVANT CONTRACT PROVISIONS[4]

SECTION 1 - RIGHTS OF THE PARTIES

The signatory Union has all rights which are specified in the subsequent sections of this Agreement and retains all rights granted by law except as such rights may be limited by provisions of this Agreement.

The Employer retains all rights except as those rights are limited by the subsequent sections of this Agreement. Nothing anywhere in this Agreement (for example, but not limited to the Recognition and/or arbitration sections) shall be construed to impair the rights of the Employer to conduct all its business in all particulars except as modified by the subsequent sections of this Agreement.

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[3] Tr. 4.

[4] The relevant contract provisions referenced in this section of the Decision are those appearing in Joint Exhibit Nos. 1 and 4. While Joint Exhibit No. 4 is an agreement reached between the Standing Committees of the Company and the Union, the parties have effectively agreed that it is of contractual significance and binding on them for purposes of deciding this case. Stapled to and a part of Joint Exhibit No. 4 are two memoranda from John Perez, which are also in evidence as Union Exhibit Nos. 1 & 2. Both of these memoranda are captioned as being an "Addendum" to the Compressed Work Week Agreement.

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SECTION 9 – HOURS OF WORK

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F. The Employer and the Union may agree to experiment with or establish a compressed work week. Any experiment agreed upon by the parties may, after 90 days, be canceled at any time by either party upon 10 days written notice.

Compressed Work Week Agreement
Boise Cascade Wallula & Local 69 AWPPW[5]

For the purpose of implementing a trial compressed workweek schedule the parties, while on the compressed workweek, agree to the following terms and conditions.

The compressed work week is being conducted as a trial on the basis that:

1.) The efficiency of operations as determined by Management will not decrease, including product quality and employee safety. Any experiment agreed upon by the parties may, after 90 days, be canceled at any time by either party upon 10 days written notice to either party. As per Section 9 of the current labor agreement.
2.) There is no labor cost differential for either party between the contract 8 hour work schedule and the compressed 12 hour work schedule (the cost neutral concept).

Addendum to Compressed Workweek Agreement
#3 Paper & Shipping[6]

* * *

3. #3 Paper Machine: If Shipping votes in a compressed workweek and #3 Paper Machine does not the machine utility will adhere to the paper machine schedule.

[5] This document is dated January 29, 1996.

[6] This document is dated June 10, 2003; drafted by John Perez, Labor Relations Coordinator for the Company; and sent to Dave Glessner, Union Standing Committee Chairman.

STATEMENT OF FACTS

Background Facts

Boise Cascade operates a pulp and paper mill in support of its White Paper Division in Wallula, Washington. It operates the production and certain maintenance portions of the Mill twenty-four hours a day, seven days a week. Traditionally, employees in the bargaining unit worked eight hour shifts within a forty hour week.

Compressed Work Week Negotiations

In negotiations resulting in the 1993 Agreement, the parties[7] agreed to language which provides:

> "The Employer and Union may agree to experiment with or establish a compressed work week. Any experiment agreed upon by the parties may, after 90 days, be cancelled at any time by either party upon 10 days' written notice."[8]

Between 1993 and 1996 the parties, through the Standing Committee[9], negotiated a Compressed Work Week Agreement with "a trial compressed workweek schedule". The two main qualifications to the trial agreement were that the "efficiency of operations as determined by Management will not decrease" and there "is no labor cost differential" for either the Company or the employees under the experimental schedule in which employees would work twelve hour shifts instead of the traditional eight hour shifts.[10] The equalization of labor cost was generally accomplished by multiplying the book rate (the normal hourly rate for working eight hour shifts) by .88235 and paying employees time and one half for hours after eight in a day and forty in a week based on the compressed rate. After a period of eight weeks, employees on the compressed work week would earn essentially the same as if they were on the traditional eight hour shift.

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[7] The general Agreement is applicable to other locations than just the Wallula Mill. The Standing Committee, within the constraints of the general Agreement, can negotiate agreements specifically applicable to the Wallula Mill. Tr. 22-23. While there was no sworn testimony to this effect, the explanation of Union Representative Smith in his opening statement was not challenged by the Company in its opening, in the testimony of its witness or in its post hearing Brief.

[8] Tr. 55. This language has continued to remain in the Agreements between the parties to the present Agreement. Joint Exhibit No. 2, p. 17.

[9] The composition of the Standing Committee is specified in the Agreement—three managerial employees representing management and three bargaining unit employees representing the Union. Joint Exhibit No. 1, pp. 40-41.

[10] Joint Exhibit No. 4, Compressed Work Week Agreement, ¶¶'s 1.) and 2.)

Compressed Work Week Implementation

The Compressed Work Week Agreement did not specify how it was to be implemented—whether on a department by department bases or a plant wide basis. Under the Agreement, the Company has eight departments in the Wallula Mill.[11] The Union, without objection from the Company, decided to hold votes on a department by department basis. In essence, prior to 2004 the Company did not implement a compressed work week in a particular department unless the Union agreed. Whether the union agreed to implement a compressed work week in a particular department turned on whether a majority of the employees in that department voted in favor of doing so. The Company was aware of the Union decision being based on employee votes.[12] From 1996 into 2004, the Company acquiesced to a situation where part of the Mill was on a compressed work week and part was not.

Facts Giving Rise to the Grievance

By 2003, all departments but the Paper Machine No. 3 Department and the Shipping Department had voted to implement a compressed work week.[13] The Union then notified the Company that those two departments were interested in considering a compressed work week. Prior to the vote, the Union had several questions of the Company as to how a compressed work week would be implemented in those departments. More particularly, the Union wanted to know what would happen if Shipping Department employees voted for a compressed work week and the Paper Machine No. 3 employees did not. In response to this question from the Union, the Company informed the Union that if the Shipping Department voted for a compressed work week and #3 Paper Machine did not "machine utility will adhere to the paper machine schedule."[14]

In response to reports of inappropriate behavior between employees in the Paper Machine No. 3 Department from the debate over whether to change to a compressed work week, in the March 19, 2003 Company newsletter to employees (the "Digester"), Company spokesman, John Perez, wrote: "The day staff of W3 will support the outcome of a majority vote presented by the AWPPW to Boise."[15] Union Local 69 President Bob Dawson wrote a letter appearing in the May 10, 2004 edition of the Digester, announcing that the vote in the Paper Machine No. 3 Department resulted in a tie. He further stated that a tie vote meant that a majority of the employees had not voted to go on a compressed work week.[16]

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[11] Joint Exhibit No. 1, pp. 50-51.

[12] Tr. 69.

[13] Tr. 71-73.

[14] Joint Exhibit No. 4., Addendum to Compressed Workweek Agreement #3 Paper & Shipping, ¶ 3.

[15] Union Exhibit No. 3, p. 1.

[16] Union Exhibit No. 4, p. 2.

On May 21, 2004, at a meeting of the Standing Committee, the Company announced:

> "The Company is going to implement a compressed workweek for #3 Paper Machine. This decision was not made lightly but over time we have had issues with two different work schedules. * * * The Company believes it maintains a management's right to preserve a consistent shift through out the production departments. The Company and the Union already have an agreed compressed workweek language that other departments work under so language and pay are not an issue with implementation."[17]

At the same meeting, the Union responded:

> "We do not agree with the Company's action to implement a compressed workweek for this department. This is a violation of the Labor Agreement. * * * The Company has been managing the two different schedules for quite some time now so why the hurry to put them on 12's? * * * We acknowledge that you will not be paying any department different that any other under the compressed schedule."[18]

On June 1, 2004 the Company implemented a compressed workweek in the No. 3 Paper Machine Department.[19]

The Grievance and Grievance Response

On June 3, 2004 the Shop Steward Espinoza filed a grievance protesting the Company's unilateral action in implementing the compressed workweek.[20] Effectively, the Union asked as a remedy that the Company pay the bargaining unit employees in the No. 3 Paper Machine Department at book rate and not the compressed rate.

On June 25, 2004 Company official Todd Pierce communicated the Company's third step answer to the grievance. After first reciting what he understood the position of the Union to be, he stated, in part:

> "The Company stated that they had good reasons for

[17] Joint Exhibit No. 5., p. 2.

[18] *Ibid*, p. 3.

[19] Although the stipulated issue indicates that the compressed workweek began May 31, 2004, the dialogue between the parties at the hearing indicated that it, in fact, began June 1, 2004. Tr. 28.

[20] Joint Exhibit No. 6.

making the changes. It has long been recognized that having W3 on a schedule different than the majority of the operating departments was a problem. * * * What the Company needs now is for all departments to work the same schedule. The Company chose to change W3 instead of all other departments because it was much less disruptive to the entire mill.

* * *

"Regarding section 9 F, the Company and union have already completed the experimental period of the compressed workweek. This was done when the first departments went to that schedule back in 1996. * * * Since we are well past the 90-day trial period either party can cancel the compressed work schedule with 10 days notice. * * *

* * *

"I also agree with Local 69 that the Company's action in changing the work schedule for W3 crews was a departure from past practice. The Company has consistently recognized a majority vote by the work group as an acceptable means of adopting the compressed work schedule in each department or work group. Implementing the compressed schedule in the W3 area was clearly a departure from past practice. However, I do not believe the company has relinquished its right to establish the work schedule for any and all groups. * * *

"The Company has decided that all operating areas must be on the same schedule. Either party has the right to cancel the compressed work schedule with 10 days notice per the terms of the agreement. If Local 69 is satisfied with the compressed schedule their recourse is to cancel it."[21]

The Union did not accept the Company answer and subsequently filed for arbitration of the grievance.

Post Grievance Conduct

The Standing Committee minutes of October 8, 2004 reflect that the "Union submitted an official 10-day notice request to remove #3 PM off of 12 hours shifts."[22] The same minutes state that the Company's response is attached to the minutes. The Company's response stated, in part:

[21] Joint Exhibit No. 7, pp. 1-2.
[22] Joint Exhibit No. 8, p. 1.

> "The company will . . . honor the [Union's] cancellation notice.
>
> * * *
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> "Effective December 15, 2004, #3 Paper Machine will be put back on the 7-day Southern Swing Rotation.
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> "This letter is also our 10-day notice to Local # 69 that we are giving notice to cancel the compressed workweek for the Pulp Mill, Power & Recovery, and Shipping departments at the Wallula Mill. All departments will in effect be put back on the 7-day swing rotation effective December 15th."[23]

On November 10th and 11th, 2004 a vote was held in all production departments at the Mill. The "outcome [was] strongly in favor of the Compressed Work Week."[24] Subsequently, both the Company and the Union rescinded their previous10-day notices to revert to the 8 hour schedule.[25]

CONTENTIONS OF THE PARTIES

Union Contentions

Alleged Violation of the Collective Bargaining Agreement

The Union's first argument is that the plain language in the Agreement requires agreement with the Union in order for a compressed work week to be implemented in any department. The Union made it clear that its agreement to a compressed work week was that it could only be implemented on a department by department basis. The Union's agreement was contingent on a majority vote by each department. Accordingly, since Paper Machine No. 3 never voted to accept the compressed work week, the Company had no authority to unilaterally implement it.

The Union's further contention is that the Addendum to the Compressed Work Week Agreement, as written by John Perez, together with the written statement of Mr. Perez in the Digester constitute a binding written agreement with the Company that the vote of the employees in Paper Machine No. 3 Department would determine whether or not that department went on a compressed work week. In support of this argument, the Union points out that the "Standing Committee" of the parties has authority under the contract to reach binding agreements that are not inconsistent with the terms of the general Agreement. For the Company to fail to honor the vote in Paper Machine No. 3 was a violation of the Standing Committee Agreement.

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[23] Joint Exhibit No. 9.
[24] Joint Exhibit No. 16.
[25] *Ibid*. Joint Exhibit No. 11., p. 2.

Finally, the Union argues that past practice from 1996 to 2003 establish that the parties have agreed that departments will go on a compressed work week subject to a majority vote of the employees in each department. In support of this argument, the Union points to the answer of the Company in the third step of the grievance procedure in which it was admitted that the Company violated past practice.

Remedy

As a remedy, the Union urges that the Company pay all bargaining unit employees in the No. 3 Paper Machine Department book rate for all hours worked from the time of the implementation of the compressed work week on June 1, 2004 through the vote of the bargaining unit employees on November 11th, 2004. The basis for the Union's argument is that once the Company improperly implemented the compressed work week, it was compelled by the general Agreement to pay book rate as no other rate was permitted by that Agreement. Regardless of whether the Company could schedule employees to work twelve hour shifts, the Company was only permitted to pay employees a compressed rate if the Union agreed—and it did not agree.

Company Contentions

Alleged Violation of the Collective Bargaining Agreement

The Company's first argument is to point out that the Union bears the burden of proof in a contract interpretation case. This burden is to show by a preponderance of the evidence that action of the Company was in violation of the Agreement.

The Company's next argument is that the Agreement, by virtue of the "retained rights" management clause, unequivocally gives the Company the right to schedule the work force. Nothing in the Agreement limits the right of the Company to schedule the work force. Once the parties negotiated the Compressed Work Week Agreement, the Company had the option of scheduling and paying employees under the terms of that agreement. The Compressed Work Week Agreement simply gave the Company another choice in how to schedule bargaining unit employees.

The Company then argues that a past practice should not be found to limit the Company's right to schedule employees simply because the Company has not exercised its right to schedule employees. It is further contended that, in any event, past practice can not over come clear contract language which gives the Company the right to schedule employees. The Company also argues that the alleged practice is too vague and disputed to be determinative; lacking in "mutuality;" and inconsistent.

Remedy

The Company argues that, in the event the Arbitrator finds a violation of the Agreement,

no remedy is warranted. The Company first notes that the very language of the Compressed Work Week Agreement says that it is to be cost neutral. Accordingly, no additional pay is warranted and would be a windfall to the employees. Secondly, the Company contends that the basic purpose of a remedy for a contract violation is to place the injured party in the position financially that they would have been in but for the violation. Here, the employees received the same pay as if they were on eight hour shifts. Further, the Company states that any damages remedy is too speculative.

Finally, the Company argues that the Union had a duty to mitigate damages and it failed to do so. By simply exercising its right under the Agreement to invoke the 10-day termination rule, the Union could have eliminated the potential damages completely or at least limited them to ten days.

FINDINGS

Analysis of Collective Bargaining Agreement Violation Issue

Language of the Master Agreement

Since this Arbitrator finds that there are no material factual disputes in this case, the determination of whether or not a violation of the collective bargaining agreement has occurred turns on what the agreement was between the parties. The Master Agreement provides language which controls the initial analysis of this question. There are two key provisions in that regard. The first is the management rights clause.

The management rights clause is one in which "the rights of the Employer to conduct all of its business in all particulars" are retained by the Company.[26] Clearly, one of these rights is the right to set work schedules. The Company argument to that effect is correct and well accepted by Arbitrators.[27]

On the other hand, the right of the Company to manage its business, including the scheduling of the workforce, is limited by the phrase in the management rights clause: "except as modified by the subsequent sections of this Agreement". Accordingly, an analysis needs to be made of subsequent sections.

The second key provision of the Master Agreement controlling this case is the language in the Hours of Work Section; more particularly, Section 9 F.[28] This section provides that the parties "may agree to experiment with or establish a compressed work week." The next sentence

[26] Joint Exhibit No. 1, p. 1.

[27] "Most arbitrators have recognized that, except as restricted by the agreement, the right to schedule work remains with management." Elkouri & Elkouri, *How Arbitration Works,* (6th Ed. 2005), pp. 722-723.

[28] Joint Exhibit No. 1, p. 16.

deals with how the parties may terminate a compressed work week agreement once it is in place. However, the primary dispute in this case turns on the implementation of a compressed work week, not terminating it once it is in place.

The critical question under this language is: whether the parties were merely to come up with a compressed work week plan and then leave it up to *the Company* under the management rights clause to determine whether to implement it *or* whether *the parties* were to also agree on the implementation of the compressed work week. The Arbitrator finds that the language "to experiment with or establish" includes granting the authority to the parties to reach agreement on the implementation of a compressed work week as well as the substantive provisions of a compressed work week. More particularly, the word "experiment" implies a broad grant of authority to the parties in dealing with a compressed work week.[29] Such an implementation agreement would constitute a binding modification of the Company's right to schedule work under the management rights clause.

Agreements of the Standing Committee

Validity of the Compressed Work Week Agreement

The Master Agreement provides:

> "The Employer Standing Committee and the Union Standing Committee have the authority to make the final decision consistent with terms of this Agreement on matters properly before them. Either party may express reservation that it desires to refer the question under consideration to higher authority."[30]

While this provision comes under SECTION 30 – ADJUSTMENT OF GRIEVNCES, the parties have agreed that Joint Standing Committee[31] can make binding agreements during the term of a Master Agreement so long as those agreements are not inconsistent with provisions of the Master Agreement. Indeed, consistent with this understanding, the parties dealt with the compressed work week matter (from the negotiation of the initial agreement to the vote in each department)

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[29] While not dispositive of this question, it is also significant that once the Compressed Work Week Agreement was drafted, the Company did not simply implement it where or how it chose to do so under the management rights clause. Additionally, the Company did not assert, in writing or verbally, that it could do so under the management rights clause. In other words, for the first six years of the Compressed Work Week Agreement, the Company never stepped forward and asserted the right it now claims. Indeed, its conduct was consistent with the concept that the parties were to agree with the implementation of the compressed work week as well as its substantive provisions.

[30] Joint Exhibit No. 1, p. 41.

[31] The Arbitrator uses the title "Joint Standing Committee" to mean action taken or agreements made jointly by both the Union and the Company Standing Committees.

through the Joint Standing Committee.

The Union contends that in order for the compressed work week agreement to be binding they needed to take it back to the membership for a vote. Instead of doing the more normal plant wide vote, the Union, in effect, claims that each department had to vote for the agreement to be valid in order to be applied in a particular department.[32] The Company claims that the Compressed Work Week Agreement was a complete and final document by virtue of its being executed by the Joint Standing Committee and no further action was necessary by the union in that regard.[33]

The Arbitrator agrees with the Company on this matter. The department by department vote did not affect the overall validity of the Compressed Work Week Agreement. While some adjustments were made, the Compressed Work Week Agreement was not a separate agreement for each department. Implementation is different from establishing the basic document. Were the Union position correct, one would have expected a "reservation" by the Union Standing Committee as provided in the above quoted language of the Master Agreement. There is no evidence that any such reservation was made. Here, the Union fails to meet its burden of proof.

Implementation of the Compressed Work Week Agreement

As explained in the earlier Statement of Facts section of this Decision, the compressed work week concept was implemented on a department by department basis when both the Union and the Company agreed to do so. There is no history of implementing a compressed work week in any department without the concurrence of both parties. Simply stated, the Union would not give its concurrence unless a majority of the employees in a given department voted in favor of implementation. Indeed, the Union would solicit a "proposal" from the Company for a specific plan for the implementation of a compressed work week in a given department before setting up a vote.

The Arbitrator finds that the minutes of the May 30, 2003 Standing Committee meeting memorializing the dialogue between the parties[34] together with the June 10, 2003 and July 9, 2003 memoranda[35] (each described as an "Addendum to Compressed Workweek Agreement #3 Paper & Shipping") constitute a binding agreement between the parties to implement the compressed work week in the No. 3 Paper Machine Department if a majority of the employees therein voted in favor of doing so.[36] Any potential ambiguity as to the intention of the parties is

[32] Tr. 56-61.

[33] Tr. 62-63.

[34] Joint Exhibit No. 3, p. 1, ¶1.

[35] Joint Exhibit No. 4 and Union Exhibits Nos. 1 and 2.

[36] Due to this finding by the Arbitrator, an analysis of whether or not a binding past practice had developed is unnecessary. Additionally, while not argued by the Company, the language in SECTION 33 - ARBITRATION states that "the arbitrator shall not have the authority to * * * impose any obligation on the . . . Employer not expressly agreed to by the

put to rest in the March 19, 2004 issue of the Digester in which Company spokesman and Standing Committee member John Perez wrote:

> "The day staff of W3 will support the outcome of a majority vote presented by the AWPPW to Boise. In doing so, we will be supporting the voice of the union."[37]

The Company makes no claim that it represented anything other than it would support the vote before it occurred. The Union has met its burden of proving by a preponderance of the evidence that there was a binding agreement to implement the compressed work week in No. 3 Paper Machine only if a majority vote occurred.

Violation of the Collective Bargaining Agreement

It is undisputed that the Company implemented the compressed work week in No. 3 Paper Machine on or about May 31, 2004 notwithstanding the failure of a majority of the employees in the department voting to do so. This unilateral action violated the collective bargaining agreement as stated in the first agreed upon issue.[38] It should be noted that the stipulated issue did not limit the inquiry as to whether or not the "Agreement" or "Master Agreement" was violated. Here the Arbitrator finds that the phrase "collective bargaining agreement" in the stipulated issue encompasses all binding agreements between the parties[39]-- including those made by the Joint Standing Committee.

Remedy

In a non-discipline case such as the instant one, the Master Agreement does not specify any directions, qualifications or limitations on the remedy appropriate for a violation of the collective bargaining agreement. Accordingly, it is appropriate to examine general arbitral

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terms of this Agreement." Joint Exhibit No. 1, p. 44. The finding in this Decision, however, is that the authority given by the Agreement to the parties to "experiment" regarding a compressed work week is such an "express" term.

[37] Union Exhibit No. 3, p. 1.

[38] The Arbitrator is not unsympathetic with the Company's difficulties in managing a plant with all but one department on a compressed work week. On the other hand, the Company had other options in dealing with this problem. Indeed, by utilizing the 10 day notice provision in the Master Agreement, it ultimately forced the plant wide vote which resulted in the entire plant going on the compressed work week. Joint Exhibit Nos. 11 and 16.

[39] Even if the stipulated issue were limited to an inquiry as to whether the Master Agreement was violated, an examination of whether a past practice outside of the Master Agreement was violated or whether the conduct of the Company by its statements (including the promise of Company Spokesman John Perez in the Digester to honor the vote) estopped it from refusing to follow the majority vote would have to be made. This Arbitrator makes no finding as to these questions.

principles used to determine what remedy, if any, is appropriate.

An early arbitration decision[40] is quoted in the leading text on labor arbitration[41] as articulating the general rule:

> "The ordinary rule at common law and in the developing law of labor relations is that an award of damages should be limited to the amount necessary to make the injured whole. Unless the agreement provides some other rule should be followed, this rule must apply."

The parties, by the language in the Compressed Workweek Agreement, have determined that a compressed work week schedule is "cost neutral" relative to an employee assigned normal eight hours shifts at book rate. At least this is so at the end of an eight week interval.[42] Under this analysis, the employees in the No. 3 Paper Machine Department suffered no economic damages. Therefore, no economic remedy appears to be appropriate.[43]

The Union contends that the Agreement controls the determination of the remedy in that while the Company can order employees to work a twelve hour shift, it can not pay less than book rate when it does so unless an agreement has been reached to do otherwise.[44] Accordingly, the Union asks that all affected employees be paid book rate rather than the compressed rate until such time as the plant wide vote required those employees to go on a compressed work week.

The problem with the Union analysis is that it would put the employees in a much better position than they would have been had the Company not unilaterally imposed the compressed work week. This would amount to a windfall for the employees and a harsh punishment for the Company.

> "Even though a party is found to have violated the agreement, the arbitrator may be expected to refuse to award any relief that would, in essence, be an award of punitive damages, unless there is evidence of such bad faith as to shock the conscience of the arbitrator."[45]

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[40] *International Harvester Co.*, 15 LA 1, 1 (Seward, 1950).

[41] Elkouri & Elkouri, *supra*, p. 1201.

[42] Tr. 37.

[43] "Arbitrators generally require a party to prove its claim for damage, and, where no grievant suffers any monetary loss as a result of the employer's violation, no damages will be awarded." Elkouri & Elkouri, *supra*, p. 1209 (citations omitted).

[44] The Union makes no claim for injunctive relief. Nor would any appear to be appropriate. The employees are now, by agreement, on a compressed work week.

[45] *Ibid*, p. 1216 (citations omitted).

There is insufficient evidence of bad faith in the Company's violation of the collective bargaining agreement so as to shock the conscience of the arbitrator. While the Company failed to use other permissible means to solve its management problems with only one department on a compressed work week, it appeared to take the action it did with the best of intentions and in good faith. Accordingly, there is not sufficient reason for this arbitrator to award any monetary damages.

CONCLUSION

Based on the foregoing analysis, this arbitrator finds that the Company violated the collective bargaining agreement by placing employees in the No. 3 Paper Machine Department on a compressed work week on or about May 31, 2004. It is also found that no monetary or other remedy is appropriate.

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James M. Paulson, Arbitrator

November 6, 2007