OPINION AND AWARD

IN THE MATTER OF ARBITRATION BETWEEN:	)	
	)	
KANSAS CITY AREA TRANSPORTATION AUTHORITY	)	
	)	
and	)	Grievance No. 2004-MN-46
	)	
	)	FMCS No. 05-02016
AMALGAMTED TRANSIT UNION LOCAL 1287	)	
	)	
UNION	)	

Hearing in

Kansas City, Missouri
May 19, 2005
at
The Breen Building
Forest and 18th Street
Kansas City, Missouri

Post-Hearing Briefs
July 8, 2005

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APPEARANCES:

For Authority:

Mr. Jeffrey M. Place
Attorney at Law
Spencer Fane Britt & Browne, LLP
Suite 700, 40 Corporate Woods
9401 Indian Creek Parkway
Overland Park, Kansas 66210

For Union:

Mr. Scott A. Raisher
Attorney at Law
Jolley Walsh Hurley & Raisher, P.C.
204 W. Linwood Blvd.
Kansas City, Missouri 64111

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Before

Fern M. Kohler,	For the Authority
John J. Cullinan,	For the Union
Stuart W. Smith,	Arbitrator

INTRODUCTION

Kansas City Area Transportation Authority, hereinafter referred to as the "Authority" and Local Union No. 1287, Amalgamated Transit Union, hereinafter referred to as the "Union," are parties to an agreement, hereinafter referred to as the "Agreement," effective January 1, 2003. This Agreement was in full force and effect when the events giving rise to this grievance occurred.

The parties selected the impartial Arbitrator, Stuart W. Smith as the third hearing Arbitrator, pursuant to the provisions of Section 1.13 of the Agreement, to hear the controversy. The arbitration hearing was held on May 19, 2005 at the Kansas City Area Transportation Authority's Breen Building, in Kansas City, Missouri.

In addition to Mr. Jeffrey M. Place, the following persons were present in behalf of the Authority: Mr. Ted Stone, Director of Maintenance; Ms. E. Ann Warrington, Office Manager – Maintenance; Mr. Bob Kohler, Director of Transportation; Mr. Larry Phillips, Assistant Superintendent of Transportation; and Ms. Fern Kohler, Deputy General Manager and Arbitration Board member.

In addition to Mr. Scott A. Raisher, the following persons were present in behalf of the Union: Mr. Thomas A Hernandez, Steward; and Mr. John J. Culligan, Union Executive Board and Arbitration Board member. The parties stipulated that the grievance was properly before the Arbitration Board. The parties were afforded full opportunity to present evidence and to examine and cross-examine the witness. The parties were given sufficient time, as they requested, to prepare post-hearing briefs. The post-hearing briefs were exchanged between the parties and received by the Arbitrator on July 8, 2005.

During the course of the hearing, the following exhibits were introduced:

JOINT EXHIBITS

1. Collective Bargaining Agreement – Effective January 1, 2003

2. Attendance Policy For Contractual Employees – Effective July 1, 2003

3. Grievance Number 2004-MN-46, dated November 22, 2004

4. Third Step Grievance Answer from the Authority dated December 7, 2004

5. Example of a "Notification of Placement on Attendance Warning" dated October 24, 2003

6. Example of a "Written Attendance Warning" dated October 25, 2003

7A. Letter of January 31, 2003 to Union President/Business Agent advising of meeting to discuss a new attendance policy

7B. Letter of February 4, 2003 to Union President/Business Agent to confirm meeting date

7C. Memorandum to the "File" dated February 24, 2003 regarding the "New Attendance Policy Discussion with Local 1287"

7D. Letter of June 2, 2003 to Union President regarding "Implementation of New Attendance Policy"

7E. Letter of June 10, 2003 to Deputy General Manager regarding "Implementation of New Attendance Policy"

8. Presentation to ATU Local 1287 Executive Board dated February 24, 2003

9A. Memorandum of June 6, 2003 to "All Contractual Employees" regarding "Attendance Policy"

9B. Weekly Publication dated June 5, 2003 regarding the "Attendance Policy"

10A Notification of Placement on Attendance Warning dated September 30, 2003

10B. Notification of Placement on Attendance Warning dated November 28, 2003 without the previously cited "Late" of August 11, 2003

10C. Written Attendance Warning dated November 28, 2003

10D. Grievance Number 2003-MN-33, dated October 9, 2003

11. Arbitration Decision of Stephen B. Goldberg dated March 11, 1983

12. Arbitration Decision of Geoffrey L. Pratte dated October 12, 2004

ISSUES

The issue to be determined by the Arbitrator may be phrased:

"Does the fact that employees do not receive written notice of each 'occurrence' under the Attendance Policy violate the Collective Bargaining Agreement? if so, what is the appropriate remedy?"

PERTINENT CONTRACT PROVISIONS

Joint Exhibit No. 1

COLLECTIVE BARGAINING AGREEMENT

Section 1.4. Past Practices:

A past practice is an agreement either oral or written, to handle a particular factual situation in a given manner. In order for such past practice to exist it must be (1) unequivocal; (2) clearly enunciated and acted upon; (3) readily ascertainable over a reasonable period of time.

All past practice agreements between the parties that have not been reduced to writing and signed by the parties shall be considered void as of July 1, 1979.

No past practices may be established after the execution of this contract unless reduced to writing at the time of the establishment of the practice.

Section 1.12.(b) Management – Discipline:

The Union further recognizes that the power of discipline is vested exclusively in the Authority, and it will not attempt to interfere with or limit the Authority in the discharge or discipline of its employees for just cause; subject, however, to the right of any employee to whom this Agreement is applicable and who may be discharged or disciplined, to present as a grievance, for action in accordance with the grievance procedure hereinafter in Section 1.13 set forth, the question whether he has been discharged or disciplined for just cause;

Section 1.12.(f) Management – Discipline:

Employees shall cooperate with the Management upon call in all matters of mutual interest, but no employee to whom this Agreement is applicable shall be called before an official in connection with the investigation of a matter which may involve his discharge, suspension or other discipline unless so called within four (4) weeks (Saturdays, Sundays, and holidays excepted) in cases of alleged misappropriation of fares or other property, and within ten (10) working days, Monday through Friday, except holidays, in other cases, after notice of the alleged offense has come to the attention of management; and if the employee is discharged, suspended or otherwise disciplined as a result of such investigation and believes himself to be aggrieved thereby, he shall have the right to proceed before his Superintendent, Lead Foreman, Manager or Director when none of the others exist, under the grievance procedure set forth in Section 1.13, by presenting the matter to the appropriate official within seven (7) days (Saturdays, Sundays and holidays excepted) after such disciplinary action.

Section 1.12.(g) Management – Discipline:

If, after discussion with the employee, it is evident disciplinary action is indicated, the employee will be told to contact a Union representative before finalization of the disciplinary action. It is understood that the employee has the right to waive Union representation if he so desires.

Section 1.12.(h) Management – Discipline:

Employees shall be called in and notified in writing of any disciplinary actions placed in the employee's record. Customer complaints that have not been investigated and verified shall not be used as a basis for disciplinary action.

Section 1.13. 1. Grievances:

The Employee, or his accredited Union representative, shall personally and informally present the alleged grievance to the Dispatcher, Foreman or other official immediately superior to him in rank, within seven (7) days after same has come to his attention, otherwise it shall not be considered; and, in presenting such alleged grievance, the Employee may be accompanied by a duly accredited representative of the Union if he so desires; and if such alleged grievance is presented in time and is not adjusted to his satisfaction within two (2) days thereafter; then

PERTINENT PROVISIONS OF THE ATTENDANCE POLICY

Joint Exhibit No. 2

II. Applicability

The Attendance Policy applies: (1) to full-time and part-time non-probationary employees of the Transportation, Maintenance and Office-Clerical seniority units, unless otherwise stipulated in specific sections; and (2) includes all absences and incidents of tardiness for any work assignments, including agreed to RDO and other overtime assignments.

III. Responsibilities

Each employee is responsible for understanding and monitoring personal standing with respect to the Attendance Policy. Employees may inquire as to individual standing when appropriate. Employees will report to supervisors in a timely manner for counseling and discipline when notified to do so.

IV. Effective Date

This Attendance Policy is effective, July 1, 2003 and supercedes all previous attendance-related bulletins, memos and policies. Tracking and monitoring of attendance will commence with the effective date of the revised policy.

V. Attendance Policy Overview

The Attendance Policy focuses on an employee's attendance for any rolling six-month period. When an employee's attendance during a rolling six-month period reaches the specified limit in one or more of the following three categories:

- Number of absence **occurrences,**
- Number of total **days absent,** or
- Number of **patterned absences,**

the employee is placed on **Warning.** Employees will be notified in writing upon being placed on **Warning.** When on **Warning,** subsequent absences and/or occurrences will subject affected employees to progressive disciplinary action. Once placed on **Warning,** employees will remain on **Warning** until the number of absence occurrences, number of total days absent, and/or number of patterned absences is less than the specified limits established for the three categories for the current rolling six-month period **(refer to "Attendance Policy and Disciplinary Actions for Contractual Employees" summary chart).**

Those absences and occurrences, which are designated as eligible under the Family Medical Leave Act (FMLA), will not be considered (will not be counted) for the purpose of applying the provisions of the Attendance Policy.

GRIEVANCE

The Grievance, identified as 2004-MN-46, reads as follows:

"November 22, 2004

The members of the ATU are grieved by the attendance policy. It is a violation of section 1.12 (f) of our current contract. The remedy we seek is to have all members who received discipline as a result of this violation be made whole for any lost time and that any discipline received, including occurrences, be removed from their record. We also requested to have this practice immediately stopped."

FACTS

The Kansas City Area Transportation Authority, hereinafter referred to as "Authority," provides public transportation in the greater Kansas City area. The Authority employees more than 450 full-time and part-time bus operators.

The Authority identified a need to revise the no-fault attendance policy that had been in effect since 1982. The Authority developed a new no-fault attendance policy and provided the Union a copy of the draft policy during January of 2003. The Authority subsequently met with the Union leadership on February 4, 2003 to introduce and discuss the new policy to be implemented July 1, 2003. Prior to implementation of the new attendance policy, multiple informational sessions were made available to bargaining unit employees to introduce the new policy and answer questions regarding the new policy. The policy was implemented July 1, 2003. A grievance was filed by the Union on November 22, 2004 alleging the attendance policy violates Section 1.12(f) of the Agreement. The parties were unable to resolve the grievance and the arbitration hearing was held on May 19, 2005.

POSITION OF THE UNION

The position of the Union was summarized in a post-hearing brief submitted by Mr. Scott A. Raisher, counsel for ATU Local 1287. Excerpts from this brief were as follows:

* * * * *

The Issue

> The parties agree that Section 1.12(f) provides that written notice of an alleged offense must be given within ten working days that the offense becomes known to the Authority. In the event such notice is not given, the offense cannot be relied upon to support discipline or discharge. Under the 1982 attendance policy, which was in effect for over twenty years, there is no question that written notice of each incident or absence was given within ten days of the "offense" – otherwise it would not be relied upon to support discipline or discharge under the 1982 attendance policy. The Union submits that this twenty year practice provides compelling evidence of the parties' interpretation of Section 1.12(f) and its application to the current attendance policy.

Indeed, the Authority has acknowledged that Section 1.12(f) does apply to the current policy. During the hearing, the Authority acknowledged that, in accordance with Section 1.12(f), it must give the required 10-day notice for all "occurrences" that take place after the formal Notice of Placement on Attendance Warning. The Union maintains that the 10-day written notice set out in Section 1.12(f) applies to all occurrences under the policy, including the first six occurrences that may occur prior to the issuance of the notice.

By way of an appropriate remedy, the Union would request that the Authority be required – prospectively – to provide to employees the 10-day written notice required by Section 1.12(f) for each and every "occurrence" that may be relied upon to support disciplinary action or discharge under the policy, including each of the first six occurrences that take place prior to the issuance of the formal Notice of Placement on Attendance Warning. The Union would also request that the Arbitrator direct the parties to meet to discuss appropriate procedures that would facilitate the Authority's providing written notice in an efficient manner, and would further request that the Arbitrator retain jurisdiction to address any questions that might arise regarding implementation of any award.

* * * * *

Statement of Facts

With respect to its implementation, it is undisputed that, for the entire time the 1982 policy was in effect, that being over twenty years, absence slips were not only given to employees for each incident or absence, but were given to the employee within ten working days of the incident or absence as is required by section 1.12(f) of the Agreement. See, Jt. Ex. 1 at 14. If written notice of the incident or absence was not given within the contractual 10-day time frame, neither the incident nor the points were counted or relied upon for disciplinary purposes.

It should be noted that, in July 1982, a grievance was filed by the Union, challenging the 1982 policy "on its face". Arbitrator Stephen Goldberg denied the grievance and upheld the policy because the 1982 policy "permits the imposition of discipline only if, under the circumstances, there exists just cause for the discipline imposed." Goldberg Decision at 18. Nothing in Goldberg's decision can be read to stand for the proposition that the 10-day notice provision of Section 1.12(f) did not apply to the attendance policy or that the required written notice was not required for each and every incident or absence. Indeed, it should be remembered that the Authority was, in fact, applying the 10-day notice provision to each and every absence. That was part of the policy and practice that was upheld by Arbitrator Goldberg.

* * * * *

Legal Argument

In this case, The Union does not seek an entitlement that is not already committed to writing; it seeks only to clarify a right or corresponding obligation that is, in fact, in writing. Quite clearly, the Union relies upon the written language set out in the Agreement. In this case, the manner in which the Authority has applied Section 1.12(f) to the 1982 attendance policy is used by the Union as a means by which to give meaning to the provision and its application to the current policy. No evidence whatsoever has been presented that would suggest that in negotiating Section 1.4, the parties intended that it was to be used in a situation such as this-

- where a practice is offered to support an interpretation of an ambiguous provision of the Agreement. In the absence of compelling evidence having been presented, the Arbitrator should not conclude that Section 1.4 was intended to deny to the arbitrator a well established and universally recognized standard for interpreting ambiguous contract language.

* * * * *

In this case, the evidence suggests that certain members of the Union's Executive Board attended a meeting with Authority representatives who indicated that there would be "no attendance slips" under the new policy. See, Exhibit 8. What specific discussions may have taken place or how much attention was focused upon this specific change remains unclear. Certainly, no evidence was presented that compelled the conclusion that Authority representatives told the Union or that the Union understood that no evidence whatsoever would be provided. Again it is one thing to eliminate the absence slips and what Mr. Kohler describes as the cumbersome and inefficient procedures related to their distribution. It is quite another thing to totally eliminate all written notification to the employee. The fact that the Union may not have objected to the elimination of the absence slips and related procedures regarding there (sic) distribution during these early discussions should not preclude the Union from challenging the Authority's total failure of providing some form of written notice. Indeed, there is no reason to assume that some form of written notice could not be provided to employees in a more efficient manner than under the old system.

* * * * *

Conclusion

For the foregoing reasons, the Union submits that its grievance be sustained and requested relief awarded by the Arbitrator.

POSITION OF THE AUTHORITY

The position of the Authority was summarized in a post-hearing brief submitted by Jeffrey M. Place, counsel for the Kansas City Area Transportation Authority. Excerpts from this brief were as follows:

* * * * *

Argument and Analysis

KCATA promulgated its new attendance policy in an attempt to better address a significant problem in its workplace. The Union has never disputed that KCATA has the authority to implement reasonable work rules, including attendance rules. Having the authority to implement and to periodically revise the 1982 attendance policy, there cannot be any question that KCATA had the right to replace it with an entirely new policy. Rather, the Union argues that the failure to provide a separate "attendance slip" to employees each time KCATA records an "occurrence" on an employee's attendance record violates the express terms of the collective bargaining agreement between the parties, and is consistent with concepts of industrial due process and just cause. Both of these arguments are without merit, and the grievance should be denied.

* * * * *

Simply put, the challenged aspect of the new attendance policy does not violate the terms of the parties' collective bargaining agreement. The Union's related argument, that the old attendance policy created a binding past practice requiring KCATA to issue separate written notices for each occurrence, is without merit. The Union pointed out at the hearing that the old attendance policy was not a product of collective bargaining. Rather, KCATA unilaterally implemented the policy under its management rights after consultation with the Union. *See* Joint Exhibit 11 (Goldberg Decision) at 2. The mere fact that separate written notices were an aspect of the old policy does not require that the new policy continue that approach. Were that not the case, no employer would ever be able to amend any aspect of any work rule. All written work rules would immediately become binding past practices.

Furthermore, "past practices" are binding under the terms of the collective bargaining agreement between the parties only if they are "reduced to writing and signed by the parties." Joint Exhibit 1, Section 1.4. The Union never "signed on" to the provisions of the old attendance policy, and cannot now claim that KCATA surrendered the authority to change any of its provisions.

* * * * *

KCATA took reasonable steps to inform all of the employees covered under the new attendance policy of its provisions before it went into effect, and offered any employee who wished to obtain more information the opportunity to do so. *See* Joint Exhibit 9a & 9b. Any employee who has taken time to read the Attendance Policy or attend any of the orientation sessions knows that all absences other than excused absences – as defined under the policy – will be charged as occurrences. If an employee is absent during an assigned working shift for any reason other than those reasons listed as "excused absences" under the policy, the employee should be aware that he or she will be charged with an occurrence. Knowing this, any employee who believes a particular unexcused absence should not be counted as an occurrence is free to raise the issue with management immediately, without waiting until the Authority determines whether the employee's absenteeism frequency will become a problem.

* * * * *

Furthermore, requiring formal notice for each occurrence sends the wrong message to the workforce. Issuing a formal "attendance notice" for each occurrence has a disciplinary feel. Yet, the basic concept behind a no-fault attendance policy is to acknowledge that nearly all employees will miss some work. Employees who control the frequency of their absences have not done anything wrong by being absent, nor have they created any unacceptable inconvenience or burden for their employer. Under the old attendance policy, excellent employees were sometimes offended when they received written documentation informing them that KCATA had assessed points against them for unavoidable and entirely legitimate absences. KCATA wants employees to understand that there is nothing wrong with an occasional absence from work, so long as the employee gives appropriate notice to KCATA, in light of the particular circumstances. The Union's proposed approach for notifying employees of the occurrences charged against them runs counter to this view of employee work attendance, and should be rejected.

* * * * *

Aside from all of the substantive reasons for denying the grievance, which are set out above, the Arbitrator should deny the grievance in this case because it is untimely. The Authority expressly notified the Union during a meeting on February 4, 2003, that there would be "no attendance slips" issued under the new policy, and that this would be a "change" from the then current practice. *See* Joint Exhibit 8 at 3. The Union conceded at the hearing that it had the opportunity to provide input into the drafting of the new attendance policy. The Union excuses its decision not to file any grievance when KCATA announced the implementation of the new policy by stating it wanted to see how the new policy would be enforced before taking any action.

Assuming this reasoning excused any obligation to file a grievance promptly after July 1, 2003, Union Steward Sharon Bradford received a Notification of Placement on Attendance Warning on October 3, 2003. *See* Joint Exhibit 10. The Union also received a copy of the Notification. *Id.* By September 30, 2003, at the latest, the Union was on notice both of the terms of the new attendance policy and of the fact that the Authority would not issue "attendance slips" for each occurrence, and would instead list all charged occurrences on the Notification of Placement on Attendance Warning. Yet, the Union did not file the current grievance until more than a year later, on November 22, 2004. *See* Joint Exhibit 3. Under the express provisions of Sections 1.12(f) and 1.13, grievances filed more than seven days after coming to the attention of the affected employee "shall not be considered."

* * * * *

Conclusion

For each of the reasons stated above, the grievance should be denied.

DISCUSSION AND OPINION

The Arbitrator has carefully examined all of the testimony and evidence presented in the arbitration hearing and the post-hearing summary positions of the parties. There was little dispute in the arbitration hearing concerning the basic factual elements in this case.

The Authority argued this grievance was not "timely" and should not be considered because the grievance was not filed until November of 2004. The Authority maintained the revised administrative procedures of the new Attendance Policy were reviewed with the Union during a meeting in February of 2003, and the Union knew in advance of what to expect regarding the subsequent administration of the new Attendance Policy. The Authority did acknowledge the fact that the Union wanted to see how the new Attendance Policy would be administered upon implementation. The new Attendance Policy was implemented effective July 1, 2003.

However, the Authority believed there was ample time to protest the administration of the new Attendance Policy during the initial month of July, and subsequent months of August and September of 2003 and again through the following year prior to the grievance's filing in November of 2004. The Authority claimed the November 2004 filing of the grievance was "too late."

The Arbitrator believes the Authority was not prejudiced by the delay in the filing of the grievance. A very narrow interpretation of Section 1.13., Paragraph 1., would have required the presentation of a grievance within the first seven (7) days after the Authority failed to provide written notice to the first employee who obtained an "occurrence" under the new Attendance Policy of July 1, 2003. The Arbitrator further believes the meaning of the language within Section 1.13., Paragraph 1, of the Agreement is ambiguous when applied to the long-term, continuing nature concerning the implementation and subsequent administration of a new and comprehensive attendance policy.

Additionally, after carefully examining the evidentiary record on this particular aspect of the dispute between the parties, I have concluded the Authority failed to make the timeliness objection prior to the arbitration hearing (Crestline Exempted Village Sch., 111 LA 114, [Goldberg, 1998]). Specifically, the Third Level Grievance answer (Jt. Ex. 4) dated December 7, 2004 does not raise any timeliness issues regarding an alleged "late" or "untimely" filing on the Union's part. Also, there was not any other evidence presented which demonstrated the Authority raised a timeliness issue at earlier steps of the grievance procedure.

Thus, the Authority's claim that the grievance was not "timely" cannot be sustained.

In the Union's opening statement, the Union did not challenge the July 1, 2003 attendance policy as invalid "on its face", but rather, protested one aspect of the administration of the policy. The Union challenged the fact that there was no requirement of the new policy to provide "absence slips" to employees each time there was an "occurrence" or attendance

infraction. The Union is seeking to "carve out" one aspect of the old attendance policy which it claims had established a twenty year "practice" of providing written notice for each occurrence. The Union argues the manner in which the old attendance policy was applied in relation to Section 1.12(f) gives meaning and application to the ten (10) day notification under the new policy.

The issuance of "absence slips" within a ten (10) day time frame may have been one of the controlling features of the 1982 attendance policy. However, there was no evidence presented which would have suggested to the Arbitrator that the parties intended the interpretation and application of Section 1.12(f) to the issuance of "absence slips" would be controlling for any subsequent modifications to the attendance policy. Accordingly, the Arbitrator rejects the argument that the manner in which the old attendance policy was applied gives meaning and application under the new policy.

The Union did not challenge or contest other changes the Authority made to the old policy as violating "past practice", only the notification requirement. The Union did not take the position that the 1982 attendance policy itself was a binding written "past practice" which could not be changed or modified unless by mutual agreement. If the old attendance policy itself was a binding "past practice" recognized by both parties, the Authority would not have been able to make unilateral changes and promulgate the new policy without going through the bargaining process.

The party alleging the existence of a binding past practice bears the burden of proof of establishing the existence of the practice and each of the elements necessary to render that practice enforceable against the other party. Section 1.4 of the Agreement clearly outlines the requirements for such a "past practice" to be recognized by the parties. Specifically, Section 1.4 provides "no past practices may be established after the execution of this contract unless reduced

to writing at the time of the establishment of the practice". No evidence was presented by the Union which would support a "past practice" of notifying employees for each "occurrence" of attendance infractions was applicable or a requirement of the new Attendance Policy.

Also supportive of the position that there was not a recognized binding "past practice" by both parties is the fact that the Authority presented various changes of the new policy to the ATU Executive Board (Jt. Ex. 8). The record reflects one of the "Changes" to the new Attendance Policy outlined by the Authority cited "No Attendance Slips." Such clearly outlined the changes from the previous Attendance Policy, whereby, employees received an "absence slip" for each infraction of the Policy. The Authority maintained this aspect of the former Attendance Policy was rather burdensome, and accordingly eliminated this from the administrative procedures of the new Attendance Policy.

The Arbitrator rejects the argument that the imposition of "points" or tracking of attendance infractions (P.H. Glatfelter Co., 103 LA 16, [Jonathan Dworkin, 1993]) under the new Attendance Policy constitutes a form of discipline within the meaning of Section 1.12 of the Agreement. Under the new Attendance Policy, not until an employee reaches one or more of the three (3) "Category" thresholds would an employee be placed on "Warning" and progressively disciplined thereafter. However, I believe that once an employee has reached one or more of the thresholds, the "Warning" notification constitutes a form of discipline and should conform with the provisions of Section 1.12 (f) and be issued "within ten (10) days" from the event which triggers the "Warning." Accordingly, any subsequent written warning, final warning, suspension, discharge or other disciplinary action under the Attendance Policy must conform to the requirements of Section 1.12 of the Agreement.

The Union argued the failure of the Authority to provide written notice for each "occurrence" under the new Attendance Policy violates the principle of just cause. I do not believe the failure to provide an "absence slip" to an employee each time an attendance infraction occurs violates

the principles of just cause. It is incumbent upon an employee to be responsible for their individual attendance performance. If an employee is in doubt as to the recording of a specific occurrence, the challenge of a noted occurrence based upon particular circumstances surrounding the matter or his or her overall accumulation under the various categories, the new Attendance Policy provides that an "Employee may inquire as to individual standing when appropriate."

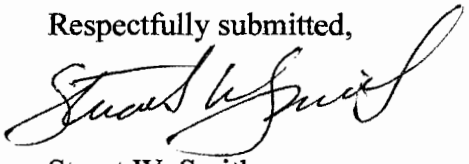
The Authority was not obligated to negotiate changes or modifications to the new attendance policy because it had not been subject to negotiations and it did not become a term of the parties contract. Among the rights contemplated in management's prerogatives to direct the working force is management's right to promulgate reasonable work rules and regulations and the right to modify, amend and change those rules and regulations from time to time to respond to changing conditions and requirements of the business. There was nothing in the record that permits the conclusion that the Authority gave up the right to modify the 1982 attendance policy.

An employer does not have the unbridled authority to implement and enforce any attendance program it desires. No such program shall be valid if it violates or contradicts the collective bargaining agreement. Attendance policies promulgated by an employer must be of a reasonable nature, published and even handedly applied. Additionally, the program shall not be over burdensome upon the employees. No showing exists in the record that the Authority's new Attendance Policy violates the collective bargaining agreement, is unreasonable, was not published, is not even handedly applied or is over burdensome upon the employees. Based upon the foregoing, this grievance must be denied.

AWARD

1. The grievance filed November 22, 2004 is not considered untimely based upon the particular circumstances surrounding this issue.
2. Such grievance is denied on the grounds that under the circumstances of the case, the Authority did not violate 1.12 (f) or any other material provisions of the Agreement.

Respectfully submitted,



Stuart W. Smith
Arbitrator

August 2, 2005