here — i.e., that the instant rule is vague concerning the requirement of "... in a timely manner ..." — it is directed that this rule be amended so as to specifically state when an employee is to complete a safety report following an accident. Indeed it is basic to reasonableness and fairness that employee rules or standards, in virtually any context, not be vague as to what is expected. Additionally, the fact that worker's compensation law requirements may overlap here, a concern raised by the Union, is not seen by the undersigned as serving to undermine its validity.

General Conduct/Rule 13: It is held that the prohibition against "Engaging in or encouragement of sexual harassment," subject to a written warning/two workdays off first offense penalty and a second offense penalty of discharge cannot be held as facially unreasonable. While circumstances obviously are determinative as to the propriety of a disciplinary penalty imposed in a particular instance, this schedule of disciplinary responses is felt to not be unwarranted as a plant rule guideline of what can be expected should a violation occur. Indeed sexual harassment in the work place, when found to have taken place, is widely felt to be totally unacceptable employee behavior. In summation, it is held that the rules dealt with in the foregoing shall not be altered or modified except as so stated. Accordingly, Grievance 90-58 need not be addressed except to the extent that the rule there at issue has been held as facially reasonable. In addition, it is to be noted that the arbitration decision submitted subsequent to the filing of post-hearing briefs was not read or in anyway considered by the undersigned in deciding the instant case.

AWARD

Grievance 90-30 is sustained in part and denied in part as herein provided.

GAVIN SCHOOL DISTRICT —

Decision of Arbitrator

In re GAVIN SCHOOL DISTRICT NO. 37 [Ill.] and GAVIN EDUCATION ASSOCIATION, AAA Case No. 51-390-0672-90 B, December 17, 1991
Arbitrator: Lamont E. Stallworth

ARBITRABILITY

— Tuition reimbursement — Jurisdiction of arbitrator ▸100.0765 ▸100.51 ▸100.30 ▸24.111

Grievance arising from school district's denial of teacher's request for tuition reimbursement—on ground that college courses involved were not job related—is outside arbitrator's jurisdiction, despite contention that school board's tuition reimbursement policy was incorporated in collective bargaining contract, where contract does not expressly grant right to tuition reimbursement, provision incorporating any rights or benefits accorded teachers under state school code "or under other laws or regulations" does not automatically cover all board policies, and section providing for reimbursement of expenses for attendance at "conventions, conferences, college work, or other training" is limited to persons "sent" for such training.

Appearances: For the employer — Timothy Bridge, attorney; J. Michael Maloney, superintendent of schools; Nicholas Sakellariou, board counsel. For the union — Lisa Moss, attorney.

TUITION REIMBURSEMENT

The Issues

STALLWORTH, Arbitrator: — The Parties submitted the following threshold issue to the Arbitrator:

1. Should the dispute be dismissed for want of substantive and procedural jurisdiction?

Relevant Contract Provisions

Article I
GENERAL POLICIES

* * *

1.5 *Conventions and Conferences*
Personnel attendance at conventions and conferences will be determined by the Superintendent. All expenses for conventions, conferences, college work, or other training will require approval by the Board of Education upon presentation by the Superintendent. All persons sent for said training shall be reimbursed for reasonable and proper expenses providing a written report of such training is submitted to the Superintendent within a reasonable time thereafter.

Article III
TEACHER AND ASSOCIATION RIGHTS

* * *

3.3 *School Code Rights*
Whenever any rights or benefits accorded teachers under the School Code of the State of Illinois, or under other laws and regulations exceed the benefits accorded teachers elsewhere in this Agreement, the rights and benefits shall be incorporated into, and become a part of, this Agreement.

Background

This is a case involving reimbursement of tuition for courses taken by an employee of the school district. The Employer was party to a collective bargaining agreement with the Gavin Teachers' Association in effect from August 31, 1988 through August 30, 1990. Sometime during this period the Gavin Teachers' Association was replaced by the Gavin Education Association as the bargaining representative for the bargaining unit. At the time of the arbitration hearing the Gavin Education Association was involved in negotiating a first contract with the Employer.

Although the 1988-1990 Agreement negotiated by the former bargaining representative is now expired, the Parties have agreed to continue to process grievances under it in accordance with Article IX. By letter dated September 14, 1990 the Grievant, Barbara Foreman, a teacher for the District, informed the Superintendent that she was planning to take two college courses during the semester, and would like to be reimbursed for their cost. The Superintendent replied in a letter dated September 19, 1990 that the Grievant should present a written rationale regarding how these course applied to her work, as required in the Board's tuition reimbursement policy. On September 24, 1990, the Grievant wrote back to the Superintendent describing how the courses related to her work, and asking the superintendent to inform her where in the Board's policy such a written rationale was required.

On September 26, 1990, the Association filed a grievance over the Board's requirement that the Grievant and another employee, Judy Cormany, were required to file written rationales for the courses they wished to take, in order to be reimbursed by the Employer. The Association contended that there was no such requirement in the Board's policy. The other employee was eventually reimbursed for the tuition and she was dropped from the grievance.

On December 7, 1990, the Superintendent officially denied the Grievant's application for reimbursement, contending that the courses she wanted to take did not apply for instructional personnel. On the same date the Superintendent wrote a letter to the Association stating that the grievance was denied because the Board policy under consideration was not part of the labor agreement between the Parties.

On December 10, 1990, during a mediation session regarding the negotiation of the new collective bargaining agreement, there was a brief discussion regarding this grievance between Mr. Mark Reinstein, Illinois Education Association Uniserv Director, and Mr. Nicholas Sakellariou, Attorney for the Employer. According to an affidavit from Mr. Reinstein, the Parties agreed to proceed to arbitration on the grievance, and to use the American Arbitration Association's (AAA) services rather than those of the Federal Mediation and Conciliation Service (FMCS). Mr. Sakellariou testified that he did not agree to waive any steps of the grievance procedure in regard to this grievance, and only agreed in general to use the AAA rather than FMCS.

On December 17, 1990, Mr. Reinstein sent a letter of demand for arbitration to the AAA. On January 9, 1991, Mr. Timothy Bridge, Attorney, also representing the District, wrote to Mr. Reinstein, contending that the instant grievance was inarbitrable, for a number of reasons. The Association responded on January 15, 1991 with a letter contending that the instant grievance was arbitrable and the Association would continue to proceed to arbitration.

On approximately July 16, 1991, the Employer filed a motion to dismiss the dispute on the grounds that the Arbitrator was without subject matter jurisdiction to hear and decide the claim. The Association responded to the motion about two weeks later, just before the arbitration hearing.

At the arbitration hearing on July 31, 1991, the Parties agreed to allow the Undersigned Arbitrator to consider the arbitrability question only. The Parties presented arguments and witnesses. On October 22, 1991, the Arbitrator ruled that he had concluded that the dispute was inarbitrable and therefore, he had no jurisdiction to hear the merits of the instant grievance. The Arbitrator stated at that time that he would follow up this brief ruling with a full opinion, and this is that opinion.

The Employer's Position

The Employer contends that the instant dispute is inarbitrable, on several grounds. First, the Employer notes that Illinois Supreme Court has held that disputes concerning the administration and interpretation of collective bargaining agreements must be submitted to bind arbitration. However, the Employer asserts that not all disputes between educational employees and employers must be subjected to arbitration. According to the District, the Parties to a labor agreement in the

education field may limit the scope of the negotiated grievance procedure and/or exclude certain issues from review.

The Employer contends that the instant case involves such an exclusion. According to the Employer, the grievance procedure is limited to an alleged "violation, misinterpretation or inequitable application" of an express provision of the collective bargaining agreement. In support of its position, the Employer cites cases from the courts and the Illinois Education Labor Relations Board permitting such limitations.

The District contends that the instant dispute involves a School Board policy which has not been incorporated into the labor agreement and which is not the subject of a separately-negotiated side letter. Therefore, the District argues that there is no substantive arbitrability regarding this issue, and the instant grievance should be dismissed. To do otherwise the District suggests, would vitiate the express provisions of the labor agreement and interfere with the Parties rights to negotiate their own bargain.

The District contends further that the instant grievance is not arbitrable because the Association has failed to exhaust the pre-arbitrable steps called for in the collective bargaining agreement. In particular, the Employer contends that the Association failed to submit the instant grievance to the Board of Education before filing a demand for arbitration, as required by the grievance procedure. In addition, the Employer contends that the Association failed to even submit a grievance regarding the denial of the Grievant's request for tuition reimbursement prior to proceeding to arbitration on this issue.

In regards to the first issue, the District agrees that the Parties agreed to use AAA rather than FMCS during the contractual hiatus. However, the District argues strongly that the there was no agreement to waive the pre-arbitral steps of the grievance procedure. The District contends that dismissal is the proper action when a party neglects to observe a mandatory step in the grievance procedure.

In addition, the District argues that the issue of the Employer's denial of the tuition reimbursement was never raised in a grievance prior to the arbitration. Therefore, the District contends that evidence concerning this issue cannot be considered by the Arbitrator.

For all of the above reasons, the District contends that the instant grievance should be dismissed for want of substantive and procedural jurisdiction.

The Association's Position

The Association contends that the District's motion to dismiss the instant dispute should be denied, and the matter should be arbitrated. In support of this contention, the Association contends first that the instant grievance is arbitrable because it involves an alleged violation, misinterpretation or inequitable application of the provisions of the labor agreement.

The Association relies particularly upon three provisions of the Agreement. Section 1.1 requires employees to know and observe all the rules and regulations of the Board pertinent to employees. Section 1.5 of the Agreement requires reimbursement for certain training activities. The Association contends that the Board's policy permitting reimbursement for tuition for college or workshop courses goes beyond the assistance provided in Section 1.5. According to the Association, under the clear and unambiguous language of Article 3.3, the Board's policy is incorporated into the labor agreement because it involves a benefit which goes beyond that provided by the labor agreement. The Association argues that its contention that Policy 31.45 has been violated is therefore clearly a grievance within the meaning of the Parties' Agreement.

In addition, the Association argues that the District has ignored its contention that the District violated Section 1.5 of the Agreement by failing to reimburse the Grievant for her course work. The District's failure to reimburse the Grievant in itself constitutes a violation of the Agreement and renders the dispute substantively arbitrable.

The Association contends further that the District's procedural objections to arbitrability are not warranted. According to the Association, the Arbitrator should credit the affidavit of Mr. Mark Reinstein over that of Mr. Sakellariou regarding whether the Parties agreed to waive further steps of the procedure. The Association notes, in support of this view, that Mr. Reinstein's actions shortly after this discussion, i.e. demanding arbitration from AAA on this grievance, support his view of the conversation.

The Association also argued at the arbitration hearing that there are no time limits in the Agreement for pursuing each step of the grievance procedure. Therefore, the Association contends that it was willing, even at this point, to proceed to the bypassed step(s) of the grievance procedure,

rather than have the dispute declared inarbitrable on these grounds.

The Association also argues that the dispute is not inarbitrable on the grounds that no grievance was filed regarding the District's denial of the Grievant's request for reimbursement. The Association contends that the District concedes that it was placed on notice when it received the demand for arbitration dated December 12, 1990, that this issue would be covered. The Association relies on several arbitral awards in which the arbitrator has held that where a Party is well aware of the nature of the dispute, no usefulness is serviced by referring the matter back to the Parties.

For all of the above reasons the Association contends that the issues raised in the Demand for Arbitration are arbitrable. The Association argues that the District's Motion to Dismiss should be denied and this matter should be set for a hearing on the merits of the grievance.

Opinion

This case involves the issue of reimbursement for expenses related to additional education for the Grievant. The Parties have asked the Arbitrator to answer the threshold question of whether the issues are arbitrable before proceeding to the merits of the case. In particular, the Parties have asked the Arbitrator to address the following issue:

1. Should the dispute be dismissed for want of of substantive and procedural jurisdiction?

The Arbitrator has considered the testimony, other evidence and arguments presented by the Parties and concludes that the dispute should be dismissed for want of jurisdiction. The Arbitrator's findings, conclusions and reasoning are set forth below.

The factual history of this case is somewhat complicated, and is discussed in detail in the *Background* section. One of the most complicating factors is the fact that the current grievance arises under the 1988-1990 Agreement, which the Association did not negotiate because it was not the bargaining representative at that time. That Agreement has expired, but as of the time of the arbitration hearing there was no new contract negotiated, and Parties, at least through a tacit agreement, decided to continue to operate under the old grievance procedure.

The Employer in this case has challenged the grievance on both procedural and substantive grounds through its motion to dismiss. In regards to the substantive issue, the Employer contends that the instant grievance is not covered by the collective bargaining agreement. The District notes that the Illinois Education Labor Relations Act has not been interpreted to require education employers and their employees to resolve all their disputes through the grievance and arbitration mechanism. Disputes concerning the administration and interpretation of collective bargaining agreements must be submitted to arbitration, the Illinois Supreme Court has held in *Board of Education of Community School District No. 1, Coles County v. Compton*, 123 Ill.2d 116 [131 LRRM 2313] (1988). However, the Parties are permitted to limit the scope of the grievance procedure.

In the instant case, the Agreement does not specifically limit the scope of the grievance procedure to exclude disputes about tuition reimbursement. Rather the District argues that the policy of tuition reimbursement is simply not incorporated into the Agreement. Furthermore, the District argues that the grievance procedure is limited by its definition to alleged violations, misinterpretations or inequitable application *of the Agreement*. Therefore, the District contends that the tuition reimbursement policy, by not being part of the Agreement, is not subject to the grievance procedure.

The Association argues, however, that the policy has been incorporated into the Agreement, and, in the alternative, that the Agreement itself provides for reimbursement for this type of activity. In regards to the former argument, the Association cities Section 3.3 of the Agreement as incorporating the Board's policies. That section states,

> 3.3. *School Code Rights*
> Whenever any rights or benefits accorded teachers under the School Code of the State of Illinois, or under other laws and regulations exceed the benefits accorded teachers elsewhere in this Agreement, the rights and benefits shall be incorporated into, and become a part of, this Agreement.

The Arbitrator does not conclude that this section incorporates into the Agreement all Board policies which provide greater benefits than the Agreement itself. The section is entitled "School Code Rights" and refers to rights or benefits arising under the School Code, and "other laws and regulations." There are any number of rights and benefits granted to teachers by state law in the School Code which may or may not be included in a collective bargaining agreement or in a particular school board's policies. Although the term "regulations" could in some circumstances be construed to refer to school board policies, there is

no mention of such policies in this provision. The Arbitrator concludes that if the Parties to the 1988 Agreement had intended this section to incorporate certain Board policies into the collective bargaining agreement, they would have done so explicitly, and would not have done so in a section entitled "School Code Rights."

In its post-hearing brief the Association also briefly mentioned Section 1.1 as further method by which the Agreement incorporates the school board's policies. That section holds employees to knowing and observing the Board's rules and regulations, but does not explicitly incorporate all Board policies into the Agreement.

The Association argues further that the Agreement itself provides for the reimbursement of tuition in the situation at issue here. Therefore, even if the Agreement did not incorporate the Board's policy regarding tuition reimbursement, the Association argues, the Agreement itself provides a substantive basis for the grievance. The Association in particular relies upon Section 1.5 of the Agreement in this respect, which states,

> 1.5 *Conventions and Conferences*
> Personnel attendance at conventions and conferences will be determined by the Superintendent. All expenses for conventions, conferences, college work, or other training will require approval by the Board of Education upon presentation by the Superintendent. All persons sent for said training shall be reimbursed for reasonable and proper expenses providing a written report of such training is submitted to the Superintendent within a reasonable time thereafter.

This section generally relates to conventions and conferences or other types of training to which employees have been sent. The section does mention "college work," which apparently was at issue in the grievance before the Arbitrator today. However, the section only provides for reimbursement to "(a)ll persons *sent* for said training." (Emphasis added). There is no indication here that the Grievant was sent for any kind of training by the Superintendent or anyone else in a position of authority with the District.

If the Parties to this Agreement had intended this section to include any teacher who pursues additional college work, they would have stated so directly, and there would have been no need for the language referring to persons "sent" for such training. In addition, in the grievance itself and the letters which precipitated it, the Association did not mention this provision of the collective bargaining agreement. Rather, the Association relied upon the Board's Policy 31.45, and referred to it throughout the handling of this grievance. This course of action suggests that the Association itself did not consider Section 1.5 of the Agreement as the source of a right to reimbursement. For the reasons discussed above, the Arbitrator concludes that that section of the Agreement does not provide a right to reimbursement.

Therefore, the Arbitrator further concludes that the Association has not established that the instant grievance relates to an issue legitimately arising under the collective bargaining agreement. The right to tuition reimbursement does not appear in this collective bargaining agreement. There was some evidence at the arbitration hearing that the right had been present in a previous agreement, and had been bargained out. The Association has provided evidence that it is also seeking such a provision in the current agreement. But there is no such provision in the Agreement under which the instant grievance was brought. Therefore, the Arbitrator concludes that there is no subject matter jurisdiction for the instant grievance and it must be dismissed.

The District also has moved to dismiss the grievance on the grounds that it is procedurally defective in two respects. First, the District argues that the grievance was not progressed through all the stages of the grievance process before being brought to arbitration. Second, the District argues further that the issue of whether the Grievant should have been denied reimbursement was never raised in the grievance procedure. According to the District, only the issue of whether she was required to provide certain information about the reimbursement was grieved.

The Arbitrator concludes, however, that he need not reach these issues, because he already has concluded that the issue is not substantively arbitrable. On this ground alone, the instant grievance must be dismissed.

AWARD

The instant grievance must be dismissed as inarbitrable.

U.S. ARMY MISSILE COMMAND —

Decision of Arbitrator

In re DEPARTMENT OF THE ARMY, UNITED STATES ARMY MISSILE COMMAND AT REDSTONE ARSENAL [Ala.] and AMERI-