agreement dated July 1, 1991 through June 30, 1993.

Accordingly, I will order a remedy in the award that follows.

AWARD

The State Compensation Mutual Insurance Fund violated Article 10, Section 3, of the labor contract with the Montana Public Employees Association when its managers denied William DeCou's request for a five-week vacation that would have begun April 3, 1992 and run through May 11, 1992; therefore, the grievance is sustained and the following remedy is ordered:

The State Compensation Mutual Insurance Fund and its managers shall permit William DeCou to use his accrued vacation leave from April 3, 1992 through May 11, 1992:

Pursuant to Article 11, Section 2, C, 3, of the July 1, 1991 through June 30, 1993 agreement between the parties, each party shall share equally the cost of the arbitration.

INLAND EMPLOYEES FED. CREDIT UNION —

Decision of Arbitrator

In re INLAND EMPLOYEES FEDERAL CREDIT UNION [Gary, Ind.] and UNITED STEELWORKERS OF AMERICA, LOCAL 3127-13, Arbitration Case No. 1991-2, Grievance No. 33-91, January 31, 1992

Arbitrator: Lamont E. Stallworth

EMPLOYEE BENEFITS

— Personal leave — 'Minimum interference' — Particularized justification ▸116.203

Employer improperly denied grievant's request for personal leave on Friday and Saturday following Labor Day, despite contentions that denial occurred because two employees were also off during that same time and Fridays and Saturdays were generally busiest work days, where collective-bargaining contract states that "each employee 'shall' have three paid personal business days" and that granting of leave "is subject to causing 'minimum interference' " with employer's operations, grievant gave employer required advance notice, there was no evidence of leave abuse, employer anticipated that three employees would be on vacation in any given week with one employee off on any work day without prior notice, and there was no evidence that its decision was based on particularized justification and that granting of leave for those days would result in more than "minimum interference."

Appearances: For the employer — Thomas C. Granack, attorney. For the union — Michael Mezo, staff representative.

PERSONAL LEAVE

Issue

STALLWORTH, Arbitrator: — The Parties presented the following issue(s) to the Undersigned Arbitrator:

Whether Management violated the collective bargaining agreement when it denied the Grievant's request for personal business days on September 6 and 7, 1991?

If so, what shall the remedy be?

Applicable Provisions of the Collective Bargaining Agreement

ARTICLE 5

HOURS OF WORK

* * *

Section 7. — Each employee shall have three (3) paid personal business days per calendar year. Said personal business days are not to be used as an extension of vacation or holiday and would require advance notice to the employer of at least two (2) working turns in advance except in emergency situations. If all or any part of said personal business days are not used by employee by the end of the calendar year, the employee shall be paid at his/her rate of pay at the end of the calendar year for said personal business days. The granting of personal business days is subject to causing minimum interference with the employer's operations.

ARTICLE 12

VACATIONS

* * *

Section 6 —

* * *

d. Specific period of vacation allotted to the employee will be determined by the Credit Union as to cause minimum interference with office operations.

Background

The instant dispute involves the Employer's decision to deny the request of Monica A. Goshay, the Grievant, to take personal business days on Friday and Saturday, September 6 and 7, 1991. At the time this dispute arose, the Grievant worked as a Level 1

— Savings Teller at the Gary, Indiana branch of the Inland Employees Federal Credit Union. The Credit Union also operates branches in East Chicago and Schereville, Indiana. The bargaining unit contains approximately fifty-nine (59) employees, in those three (3) locations.

Ms. Susan Sullivan was the Supervisor of the Gary Branch on the dates at issue. At that time, eleven (11) bargaining unit employees worked at the Gary Branch e.g. six (6) Level 1 — Savings Tellers and one (1) Head Teller in the Savings Department, and three (3) loan clerks and one (1) IRA clerk in the Loan Department. Four (4) of the six (6) Savings Tellers served customers in the front of the office; two (2) of those Tellers worked in the drive-up windows. The Head Teller was the "leader" of the Savings Tellers, and also substituted for them when they were unavailable or on leave.

Level 1 is the entry-level position group in the Credit Union. The four (4) other levels in the Parties' wage and classification structure contain progressively higher-paying jobs than those in Level 1. For example, Head Teller is a Level 2 position. The Level 1 employees comprise a "pool" used to fill temporary vacancies in the four (4) higher levels, as needed. Employees in Levels 2–5 can also be assigned to Level 1 work as necessary.

Sullivan testified without contradiction that some of the Level 1 — Savings Tellers at the Gary Branch substituted for the loan clerks in that office. However, she further testified that the Grievant and certain other Level 1 — Savings Tellers were not trained to serve as loan clerks, and that those Level 1 employees substituted for other Savings Tellers.

On September 3, 1991, the Grievant wrote the following memorandum to Debbie Gabrysiak, her immediate supervisor:

> I would like to notify you in advance that I will need to take 2 Paid Personal days on September 6th and 7th 1991. This is necessary in order to attend an out-of-town funeral of a (great aunt) family member.

Sullivan denied the request on that same date. She wrote the following statement on the memorandum requesting the personal business days:

> On 8-29-91 Rosalinda Lopez was denied a personal day on 9-5-91 because [Lupita Klemensiewicz] was on vacation and Monica Vitela will be gone for union business. I have to deny this [request by the Grievant] for the same reason.

Id.

September 6 and 7 were the Friday and Saturday following Labor Day in 1991. The Grievant worked on both days, as scheduled.

The instant grievance was filed at Step 1 on September 5, 1991. The grievance sought the following relief: "The Union demands that the Company follow the written language of the C.B.A. regarding Personal Days; the Union further demands that the Company grant Monica Goshay any 2 Personal Days of her choice, including full payment of wages (16 hrs. paid)."

The Parties have stipulated that there are no issues of procedural or substantive arbitrability before the Arbitrator. It is within this factual context that the instant grievance arises.

Position of the Company

The Credit Union agreed to present its case first at the hearing in this matter. The Employer further agreed that, under the particular contract provisions at issue, the burden had shifted to the Credit Union to demonstrate that it acted in accordance with the contract in denying the Grievant's personal business day request.

The Credit Union asserts that Management did not violate the collective bargaining agreement in the instant case. The Employer contends that it properly informed the Grievant of the reasons that it denied her request. According to the Employer, it properly implemented the contractual provision that "[t]he granting of personal business days is subject to causing minimum interference with the employer's operations." The Employer contends that the requested leave fell during a potentially busy work period (the Friday and Saturday after a holiday). It further argues that it properly denied the leave request because two (2) Gary branch employees were already approved to be on leave on September 6 and 7, 1991. In addition, the Employer emphasizes that it had earlier denied another employee's request for personal business day leave for September 5, 1991 on that same basis.

The Employer maintains that Management acted reasonably in determining that, during such potentially busy periods, it would allow employees to take personal business days only in "dire emergencies." According to the Credit Union, it is therefore entitled to ask employees the reason for requests for personal business leave during such potentially busy periods. The Employer argues that its interpretation of the contract is supported by the Parties' letter of agreement providing that the Credit Union's facilities are to be fully staffed on the Saturday after a holiday, and not partially staffed as on other Saturdays.

The Employer emphasizes that it does not ask for such explanations for leave requested during non "potentially busy" periods. Management further contends that it has not implemented a "blanket" policy denying personal leave requests for Mondays and Fridays, and stresses that it has approved certain leave requests for such days.

The Credit Union, therefore, requests the Arbitrator to find that Management did not violate the contract, and to deny the instant grievance in its entirety.

Position of the Union

The Union contends that the Credit Union violated Article 5, Section 7 of the collective bargaining agreement by denying the Grievant's request for personal business days on September 6 and 7, 1991. According to the Union, while this provision of the contract was first implemented in 1991, it uses the operative standard governing the Employer's authority to grant or deny vacation leave requests e.g. that such decisions will be made so as to "cause minimum interference with office operations." The Union emphasizes that this standard has been interpreted in many steel industry awards, and that both Parties were aware of these interpretations when they adopted the "minimum interference" criterion for personal business days. In particular, the Union relies on an August, 1989 award by Arbitrator McDermott holding that management must demonstrate "that its vacation-scheduling decision was reasonable on the basis of all facts specifically relevant to it and not on some general theory of what would be convenient."

The Union argues that the Employer did not meet this "particularized justification" test in the instant case. According to the Union, Management was or should have been aware that sufficient Tellers would be available on September 6 and 7, 1991 even if the Grievant were absent. In the Union's view, the Employer should have approved the Grievant's request because it could reasonably have assigned the Gary branch Head Teller to the Grievant's assigned work on those days, and could reasonably have transferred an employee from another branch.

In addition, the Union argues that the prior denial of a personal leave day for employee Lopez is not dispositive, since that employee requested leave on September 5, 1991 and not on September 6 and 7, 1991 as the Grievant did. As a result, the Union maintains that the Credit Union did not meet its burden of proof under the "minimum interference" standard.

The Union contends that the previously-approved absences of two (2) other Gary branch employees on September 6 and 7, 1991 is not controlling, since those employees were not Savings Tellers. In addition, the Union argues that such vacations and union leaves of absence are part of the "normal" schedule for which the Employer must plan. As a result, the Union maintains that such absences are not proper grounds, in and of themselves, on which to deny personal business day requests. A contrary ruling, according to the Union, would effectively negate the Parties' agreement that employees "shall have three (3) paid personal business days per calendar year."

The Union further argues that the Employer's interpretation of Article 5, Section 7 is based on restrictions that the Parties did not negotiate. The Union thus maintains that the contract does not contain a special rule for personal business day requests for Fridays or Saturdays after holidays, and that the reason for the employees' request is similarly not listed as a restriction in the contract. The Union argues that the Employer's "potentially busy period" test is not acceptable under the longstanding rules governing "minimum interference" with business operations, since it is a generality that is not based on the specific workforce needs for the leave days requested by the Grievant.

The Union, therefore, requests the Arbitrator to find that the Credit Union violated the contract, and to order an appropriate remedy.

Opinion

This dispute involves the Employer's decision to deny the Grievant's request for personal business leave on September 6 and 7, 1991.

The Parties submitted the following issue(s) to the Arbitrator:

> Whether Management violated the collective bargaining agreement when it denied the Grievant's request for personal business days on September 6 and 7, 1991?
>
> If so, what shall the remedy be?

The Arbitrator has carefully considered the facts, evidence and arguments related to the issue(s) presented. The Arbitrator concludes that the Credit Union violated Article 5, Section 7 in the instant case, and that the instant grievance must be sustained. The Arbitrator's reasoning, findings and conclusions are set forth below.

This case presents the same contract interpretation issues as in Arbitration Case No. 1991-1 Grievance 11-91, involving employee Mary Johnson. The Arbitrator has, therefore, used the

same reasoning in resolving both disputes.

Article 5, Section 7 provides as follows:

> Each employee shall have three (3) paid personal business days per calendar year. Said personal business days are not to be used as an extension of vacation or holiday and would require advance notice to the employer of at least two (2) working turns in advance except in emergency situations. If all or any part of said personal business days are not used by employee by the end of the calendar year, the employee shall be paid at his/her rate of pay at the end of the calendar year for said personal business days. The granting of personal business days is subject to causing minimum interference with the employer's operations.

The Parties do not dispute that the Grievant met the contractual requirements for advance notice, and that the requested leave was not "an extension of vacation or holiday." As a result, the Arbitrator has concluded that the Union has established its *prima facie* case, and that the burden has therefore shifted to the Employer to demonstrate, by a preponderance of the evidence, that it properly implemented the final condition for such leaves e.g., that the "granting of personal business days is subject to causing minimum interference with the employer's operations." The Arbitrator notes that Arbitrator McDermott utilized this burden of proof in Arbitration Award No. 801 (*Inland Steel Company, Indiana Harbor Works and United Steelworkers of America, Local Union No. 1010*, June 8, 1989, page 18), which applied similar provisions governing vacation scheduling.

The Arbitrator is keenly aware that his authority is expressly limited under the contract. Article 9, Section 4 of the agreement provides that the Arbitrator "will have jurisdiction and authority only to interpret, apply or determine compliance with the provisions of this agreement. The Arbitrator shall not have jurisdiction to add to, detract from or alter in anyway the provisions of this agreement."

It is generally accepted that "[s]ome gap-filling is a natural part of the interpretative process. ... However, an arbitrator may refuse to fill "gaps" where he is convinced that to do so "would constitute contract-making" rather than contract interpretation or application." Elkouri and Elkouri, *How Arbitration Works* (4th Ed. 1985), pages 345, 347 (citation omitted). In the instant case, the Arbitrator concludes that such "gap-filling" is an appropriate extension of the Arbitrator's interpretative role under the contract, and that the Arbitrator is, in fact, "decid[ing] what the parties would have agreed upon if they had thought about it or had the time to deal with it." *Firestone Synthetic Rubber & Latex Co.*, 76 LA 968, 974 (J.E. Williams 1981). *See also*, *Denman Rubber Mfg. Co.*, 72 LA 337, 339-40 (H. Dworkin 1979), and cases cited in *Elkouri and Elkouri*.

The Arbitrator further agrees with the Union that the interpretation of these conditions cannot negate the parties expressed intent that "[e]ach employee *shall have* three (3) paid personal business days per calendar year," (emphasis added). The Arbitrator therefore determines that, in formulating Article 5, Section 7, the Parties implicitly recognized that scheduling personal business days will inevitably cause some interference with business operations. However, the Arbitrator agrees with the Union that the Employer also agreed to accept such impact as long as it "caus[es] minimum interference with the employer's operations."

In this regard, the Arbitrator emphasizes that the Parties did *not* provide that there must be "no interference with the employer's operations." Rather, they agreed that "minimum interference" was the proper means by which to balance to employees' contractual right to "have three (3) paid personal business days per calendar year" and the Employer's contractual right to efficiently manage its operations. The Arbitrator may not amend or alter that explicit contractual balance.

In addition, the Arbitrator concludes that such "minimum interference" is not created by the mere fact that other employees have already been scheduled for contractual leave, or by the prospect, however reasonable, that additional employees may be absent due to illnesses or emergencies that were not anticipated when the Employer evaluated the request for personal business leave. The Arbitrator notes that the contract annually provides between one (1) and five (5) weeks of vacation to each of the fifty-nine (59) bargaining unit members with more than six (6) months of continuous service. In addition, as many as three (3) unit members can take vacation in any given vacation week.

As a result, East Chicago Office Manager Richard Fielder acknowledged at the hearing that it is expected and anticipated that three (3) bargaining unit employees can be on vacation in any work week. Fielder also testified that normal absenteeism includes one (1) bargaining unit employee reporting off on any given day without prior notice, due to illness or other unforeseen emergency.

The Arbitrator agrees with the Union that such absences must be treated as part of the Employer's normal operations in considering whether any given request for personal leave creates more than the allowable "minimum interference with the employer's operations." The Arbitrator concludes that a contrary ruling would negate the Parties' agreement that "[e]ach employee shall have three (3) paid personal business days per calendar year," given the contractual entitlements to vacation and sick leave.

The Arbitrator further determines that the Parties intended to incorporate the standards governing vacation scheduling when they added Article 5, Section 7 to the agreement effective February 1, 1991. Article 12, Section 5(d) of the contract states as follows: "Specific period of vacation allotted to the employee will be determined by the Credit Union *as to cause minimum interference with office operations.*" Since the operative standard in both clauses is identical, the Arbitrator agrees with the Union that arbitral authority interpreting the vacation scheduling provisions will be highly relevant to the instant case.

The Arbitrator further agrees with the Union that Arbitrator McDermott's recent award in Inland Steel Case No. 801 is dispositive. In that case, Arbitrator McDermott was applying contractual language stating that "[t]he vacation time allotted to each employee for his vacation shall be determined by the Company so that it *will cause the minimum interference with plant operations,* with consideration being given the wishes of individuals in accordance with their relative length of continuous service." *Award No. 801,* page 7 (emphasis added).

Arbitrator McDermott concluded as follows regarding the "minimum interference" provision:

> ... [T]hese vacation-scheduling problems cannot be resolved on a rational basis at large, as it were. The more senior employees' right to take vacations when they want them must be decided on the basis of *details specifically* applicable to their skills and Management's showing of reasonable need for them at the particular time, in order to cause minimum interference with plant operations. When challenged, Management must establish by a preponderance of the evidence that the grieving employee could not be spared then. On the other hand, it need not demonstrate that the grievant's presence would be indispensable. *It must show, however, that its vacation-scheduling decision was reasonable on the basis of all facts specifically relevant to it and not on some general theory of what would be convenient.*"

Id., at page 18 (initial emphasis in original; additional emphasis added).

Arbitrator McDermott then applied this fact-specific standard, which requires "particularized justification" for each employee request, to the employer's "blanket prohibition" of all vacations in certain time periods. *Id.*

Other steel-industry arbitrators have reached similar conclusions concerning clauses with identical, or extremely similar, operative language. *See, United States Steel Corp., Sheet and Tin Operations,* Steelworkers Arbitration Awards, Report 240 (S. Garrett, Chairman 1968) at 11,366, 11368 (applicable contract provided that management would schedule vacations "in order to insure the orderly operation of the Plants"; Board of Arbitration held that "each individual employee's request must be treated on the basis of the facts which are relevant to it"; it further determined that a "flat limitation . . . cannot be reconciled with the right of each employee to have his request for a vacation period considered objectively on the basis of the specific facts which reasonably appear relevant to that specific request."); *Pittsburgh Steel Co.,* Steelworkers Arbitration Awards, Report 185 (T.J. McDermott 1964) at 8687, 8691 (applying contract clause provided that the "final right in all cases to schedule [extended vacations] for the orderly operations of the plants, remains with the Company"; arbitrator held that "denials of particular vacation requests must be made on an individual basis and the reason therefore must be related to the maintenance of the Plant's operations.")

As a result, the Arbitrator concludes that personal business days must be granted under the terms of Article 5, Section 7 where: (1) the employee has given the Company advance due notice of the request, as defined in the contract; (2) there is no evidence of abuse e.g., that the employee is using the personal business day to extend a vacation or holiday; and (3) the Employer does not demonstrate a "particularized justification" that granting the personal business leave request would cause more than "minimum interference with the employer's operations."

In addition, Management's decision must be judged by the facts available to the Employer, and on which Management relies, at the time it evaluated the particular personal business day request at issue. Thus, while Management's *reasonable* decisions in this regard will not be overturned even if they are ultimately erroneous, the Employer will also not be able to justify *unreasonable* decisions on the basis of information which it did not have or

utilize when it made the challenged decision.

The Arbitrator further concludes that Management is obligated to inform the employee of the "particularized basis" for that decision at the time it is made. Such a requirement creates an important evidentiary record for the basis of the decision, and implements the Parties' mutual obligations to act responsibly and in good faith.

The Credit Union asserted at the hearing that it did not have a "blanket policy" of denying employee requests for personal business day leave for Mondays and Fridays. In fact, the evidence indicates that the Employer approved six (6) such requests for Mondays, thirteen (13) requests for leave on Fridays and one (1) request for Saturday personal business day leave. In addition, the Employer had approved fifty-nine (59) of the sixty-nine (69) leave requests submitted as of October 8, 1991.

However, the evidence in the record does demonstrate that Management *did* require employees to supply the reason for the personal business day request *if* the employee requested such leave on a day which Management determined to be a "potentially busy day." Fielder explained at the hearing that, if the reason is valid, he approves such requests depending on the time of the month for which leave was asked. He further explained that he does not require employees to supply the reason if the request is not made for a "potentially busy time."

Such a "blanket response" to individual requests for personal business days is not permitted under the "particularized justification" test which the Parties incorporated into Article 5, Section 7 of their contract. As Arbitrator McDermott held, the Employer must show "that its [personal business day]-scheduling decision was reasonable *on the basis of all facts specifically relevant to it and not on some general theory of what would be convenient.*" *Inland Steel Award No. 801, supra* at page 18 (emphasis added).

The evidence further demonstrates that the Employer utilized this blanket test, even though the denial of the Grievant's leave request seems to be based on the contractual "minimum interference" test. In four (4) instances prior to the denial of the instant request, including the companion case to the instant dispute, the Employer based its denial of the resulting grievance on the following, identical statement:

COMPANY DECISION AND SUPPORTING FACTS

The company is in the business of providing financial services to its members—The future of the company is dependent upon how well our members are serviced. Therefore our objective is to assure that our members are provided with prompt service, highest quality with maximum efficiency—from our employees.

Each case for personal days off should, and is decided on its own merit as to the detriment, to efficient service of our members.

It is managements right to grant or deny a request for a personal day off. Management has the right to inquire into the general nature of employees' absence for personal reasons.

If management feels that it cannot, because of the time-off requested, service our membership, it then, at its discretion, deny the employee's request for a day off.

The fact that the Employer used a "canned" recitation of its "potentially busy day" policy in these other, similar cases is additional evidence that its denial of the request in the instant case was not, in fact, based on a sufficiently particularized justification related to the "minimum interference" standard in the contract. Rather, this statement is a "general theory of what would be convenient" (*Inland Steel Award No. 801, supra*), and is therefore insufficient on its face.

Moreover, the "potentially busy day" test is, in fact, an impermissible attempt to amend or alter the Parties' contractual bargain. As emphasized earlier, the Arbitrator may not "add to, detract from or alter in anyway the provisions of this agreement." However, the Employer's decision criterion for personal business days does just that, since it attempts to restrict the use of personal business leave beyond the specific conditions to which the parties agreed in Article 5, Section 7. The Parties specifically listed three (3) conditions for granting personal business days: (1) that it "not be used as an extension of vacation or holiday"; (2) that it "would require advance notice of at least two (2) working turns in advance except in emergency situations"; and (3) that "[t]he granting of personal business days is subject to causing minimum interference with the employer's operations."

It is a maxim of contract interpretation that "to expressly include one or more of a class in a written instrument must be taken as an exclusion of all others. *To expressly state certain exceptions indicates that there are no other exceptions.* To expressly include some guarantees in an agreement is to exclude other guarantees." *Elkouri and Elkouri,* page 355 (emphasis added). This lists of restrictions on the use of personal business days does *not* include the validity of the employee's reason for the request, except in cases where Management reasonably suspects that the employee is attempting

to impermissibly extend a holiday or vacation. As a result, the Arbitrator agrees with the Union that the Employer violates Article 5, Section 7 by requesting employees to provide such reasons, even when such requests are for personal business leave during "potentially" or "actually" busy days.

In addition, the Parties did not specify that the Employer could apply a more stringent standard to requests on days which it determined were "potentially busy days" for its operations. Since the Parties have expressly identified three (3) conditions for the use of personal business leave in Article 5, Section 7, the Arbitrator will not imply additional restrictions. Such action would impermissibly amend the Parties' specific contractual agreement on personal business days.

The Arbitrator further concludes that the Employer's "potentially busy days" policy is not supported by the Parties' "Scheduling" Memorandum of Understanding. That agreement states, in part, that the normal practice of scheduling half-staffing on Saturdays will not be utilized on "[a]ny Saturday that follows a holiday . . ." To begin with, that agreement does not support a denial of Grievant's request to use a personal business day on Friday, September 6, 1991. In addition, the increased workload on such Saturdays is part of the Employer's "normal operations", for which the Employer and Union have planned by providing a full complement of employees on such days. Further, the Arbitrator notes that Management did not rely on this reason at the time of the denial. This latter rationale also applies to the Arbitrator's determination that the "split shift" schedule on Friday, September 6, 1991 does not justify the Employer's denial of the Grievant's request.

The record also makes clear, however, that the September 3, 1991 denial in the instant case did not satisfy the contractual test in any event, even though it did purport to be based on operational needs. Sullivan's denial stated as follows:

> On 8-29-91 Rosalinda Lopez was denied a personal day on 9-5-91 because [Lupita Klemensiewicz] was on vacation and Monica Vitela will be gone for union business. I have to deny this [request by the Grievant] for the same reason.

However, the denial did not meet the standards articulated above for the "minimum interference" test. Sullivan testified at the hearing that Fridays and Saturdays are "generally" the busiest days of the week, and that Saturday, September 5, 1991 was the pay day for Inland Steel salaried employees. However, the former statement is not a "particularized justification" for denying the Grievant's request for this *specific* Friday and Saturday. The Arbitrator has also determined that the latter justification, while related to September 7, 1991 is not supported by sufficient evidence demonstrating that granting the Grievant's request would have resulted in more than "minimum interference" with Employer's operations.

The Arbitrator agrees with the Union that the Employer's denial was not reasonable when judged by the information available on September 3, 1991 on which the Employer relied. The Employer did not prove that it could not have assigned the Gary Branch Head Teller, or transferred an employee from another branch, on those particular dates. As a result, the Employer violated Article 5, Section 7 by not availing itself of those opportunities, and instead denying the Grievant's request for leave.

The Employer does not cure this defect by adding that September 6 and 7, 1991 were the Friday and Saturday following the Labor Day weekend, since that assertion is similarly not based on the "facts specifically relevant" to the employer's operations on those days. In addition, the contract did not explicitly restrict the use of personal business days on such Fridays and Saturdays. As stated above, the Arbitrator may not imply such restrictions in the face of the explicit restrictions which the Parties adopted.

The Arbitrator also concludes that the September 3 denial cannot be reasonably based on the fact that the Employer had earlier denied another employee's request for personal business leave for September 5, 1991 for the same reasons stated in Joint Exhibit No. 3 e.g. that two (2) Gary branch employees were already scheduled to be off work in that period. The Arbitrator notes that those employees were not Savings Tellers, and that, as a result, the Grievant's absence on September 6 and 7, 1991 would not directly affect the Employer's efforts to replace those employees. In addition, the Employer did not make a particularized showing in the September 3 denial that the Grievant's requested absence would have caused more than "minimum interference" with its use of the Level 1 — Savings Tellers at the Gary Branch as a "pool" to fill those higher-rated positions on those days.

In sustaining the instant grievance, the Arbitrator emphasizes that the instant Opinion and Award does not address any situations not presented by the facts of this particular dispute. Despite the Union's invitation that the

Arbitrator issue an all-encompassing ruling, the Arbitrator concludes that such issues are best saved as grist for another mill so that they can be evaluated against the backdrop of a record developed for those incidents. For example, this Opinion and Award does not address whether the Parties intended that employees provide reasons for "emergency" requests for personal business days, which the contract exempts from the two (2) advance notice requirement in Article 5, Section 7.

AWARD

The instant grievance is sustained. The Arbitrator shall afford the Parties thirty (30) days to agree upon the appropriate remedy. Any such agreement shall be precedent setting. Absent a resolution within thirty (30) days, the Undersigned Arbitrator shall determine the appropriate remedy. The Arbitrator shall retain jurisdiction over the remedial aspects of this dispute. The Employer shall grant the Grievant two (2) additional personal business days, with full payment of wages, to be scheduled in accordance with the requirements of Article 5, Section 7 of the collective bargaining agreement.

DISPATCH PRINTING CO. —

Decision of Arbitrator

In re DISPATCH PRINTING COMPANY and INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 473, November 21, 1991
Arbitrator: Timothy J. Heinsz

EMPLOYEE STATUS

— Refusing severance pay ▸112.10 ▸123.111 ▸117.42

Employer improperly denied utility workers who were terminated when it moved to new facility option of refusing severance pay and thus becoming eligible for employment as journeymen substitutes, where collective-bargaining contract identifies classes of mailroom employees eligible for severance pay and states that otherwise eligible employee "may decline to accept" severance pay and "shall" be eligible for employment as priority substitute.

— Eligibility for vacancies — Bargaining history ▸112.10 ▸24.37 ▸119.126 ▸117.42

Employer properly denied grievants who were terminated when it moved to new facility, right to remain eligible for filling journeymen vacancies as they occurred, where both bargaining history and contract language show that specific employees who are listed will, upon termination, retain right of first refusal to fill journeymen vacancies, grievants' names were not listed, and contract provision protects company's economic interest by allowing it to meet its labor needs through utility workers instead of more costly journeymen.

Appearances: For the employer — Sandra P. Zemm, attorney; Michael J. Rybicki, attorney and employer negotiator; Robert J. Brown, assistant director of production; Floyd V. Jones, employee and labor relations director; Dave Callahan, mailroom manager; Patrick Elgin, personnel manager. For the union — Susannah Muskovitz, attorney; Donald Barnes, chief steward; Craig A. Taylor, assistant chief steward.

EMPLOYEE STATUS

I. Issue

HEINSZ, Arbitrator: — The Arbitrator determines the issue in this case to be whether the Company violated the collective bargaining agreement when it failed to provide to the Grievants, when their employment as utility workers was terminated in March, 1990, the option of declining to accept severance pay and of thereby becoming immediately eligible for employment as priority substitutes and for eventual employment as journeymen whenever vacancies occur in existing journeymen positions; and if so, what shall be the remedy.

II. Applicable Contract Provisions

SETTLEMENT OF DISPUTES, GRIEVANCES, AND DIFFERENCES

SECTION 7.

* * *

The Arbitrator shall have no power to change, modify, add to or detract from any terms of this Agreement. . . .

* * *

INVOLUNTARY SEVERANCE PAY

SECTION 26.

(a) In the event of consolidation, merger or permanent suspension of publication of the Dispatch, employees as defined in subparagraph (b) with one year's service or more who, within six (6) months lose their situation because of such consolidation, merger or permanent suspension, or other reason for a reduction in the work force of the Mailroom shall receive severance pay of