STATE OF NEW YORK
CONTRACT GRIEVANCE ARBITRATION

In the Matter of the Arbitration between

AMALGAMATED TRANSIT UNION LOCAL 1342,
Union,
and

NIAGARA FRONTIER TRANSIT METRO SYSTEM, INC.,
Employer.

OPINION

AND

AWARD

Grievance: Linda Goodman-Dismissal

BEFORE: Jeffrey M. Selchick, Esq.
Arbitrator

APPEARANCES:

Amalgamated Transit Union, Local 1342
Reden & O'Donnell, LLP
Joseph E. O'Donnell, Esq., of Counsel

Niagara Frontier Transit Metro System, Inc.
Jaeckle, Fleischmann & Mugel, LLP
Sean P. Beiter, Esq., of Counsel
Elisha J. Burkart, Esq., of Counsel

In accordance with Section 11 ("Discipline, Grievances and Arbitration") of the parties' 2006-2009 Agreement (Joint Exhibit 1) of the parties (hereinafter, "Union" and "Company"), the undersigned was duly designated Arbitrator by mutual agreement. Hearings were held on November 4 and 25, 2008 and March 26, 2009 in Buffalo, New York.

The parties were accorded a full and fair hearing including the opportunity to present evidence, examine witnesses, and make arguments in support of their respective positions. The record was closed upon the Arbitrator's receipt of the post-hearing submissions of the parties on or about June 15, 2009.

ISSUES

The parties were unable to stipulate to an issue to be presented to the Arbitrator. The Union proposed the following:

> Was the Grievant, Linda Goodman, terminated for just cause in accordance with the parties collective bargaining agreement and Bus Accident Reduction Program?
>
> If not, consistent with Section 11-3.9 of the parties' cba, what should the remedy be?

The Company proposed the following issue:

> Did the decision of the Bus Accident Reduction Program Accident Review Committee that assessed the Grievant twelve (12) points for a preventable accident have a rational basis in fact and was it not arbitrary, capricious, or discriminatory? If not, what shall the remedy be?
>
> Did the Company's decision to terminate the Grievant lack justification as required by Section 11-1 of the collective bargaining agreement? If so, what shall the remedy be?

The parties' different statements of proposed issues, upon close examination, do not reflect any substantial disagreement about the questions the Arbitrator needs to address. That is, did the Company act in accordance with its obligation to under

the terms of the Agreement, to establish justification for Grievant's termination, which termination is based on a decision of the Bus Accident Reduction Program Accident Review Committee. The Union's statement of the issue, the Arbitrator finds, can fairly be adopted as the issue to address for decision.

RELEVANT CONTRACT PROVISIONS

Section 11 ("Discipline, Grievances, and Arbitration") of the 2006-2009 Agreement provides in pertinent part as follows:

> 11-1 Power of promotions, and of demotions, discharge, suspension and other discipline, shall be vested in the Company, but the justification therefor may constitute a grievance to be adjusted as hereinafter provided. Any dispute arising out of the interpretation or application of this Agreement shall be subject to the grievance and arbitration procedure. (Joint Exhibit 1, 56).

BACKGROUND FACTS

Grievant entered the company's employ full time as a Bus Operator on March 11, 2002. On March 14, 2008, at approximately 9:00 a.m., Grievant was operating a Company bus which collided with another Company bus that was parked on Lower Terrace Street in the City of Buffalo. It would appear that the collision occurred when Grievant turned the bus she was operating onto Lower Terrace, and, in the process, struck the other bus in the rear while it was stopped. Significant damage resulted to the two buses because of the collision and injuries were suffered by at least one of the passengers.

The parties have a negotiated Bus Accident Reduction Program under the collective bargaining agreement. This Program has as an essential element, an Accident Review Committee, which is composed of three operators selected by the Union and two management representatives. In the instant case, the Accident Review Committee reviewed Grievant's accident. Its review included an appearance by Grievant, who was given an opportunity to present her version of the accident to the Committee. The record shows that the Union President was also present and was also able to address the Committee on behalf of Grievant. It is noted that Grievant's Operator's Accident/Incident Report (Employer Exhibit 3) offered the following "description of accident in detail":

> While turning left on to lower terrace from church the steering wheel jerked out [of] my hand making me go toward a light pole so I turned the wheel to the right fast to avoid hitting the 1st bus on my right but it was out of control and I made contact with the second bus 2622 I tried to stop. (Id).

A mechanic who examined the bus, David Lipowski, also was present before the Review Committee and addressed the possibility of a "bind" in the steering. After its consideration, the Committee unanimously found that the collision was preventable and, under the point scale for preventable accidents (See Joint Exhibit 2), the Committee assessed Grievant 12 points. It is noted that the Bus Accident Reduction Program speaks to termination if an Operator's "current points" reach 12. (Id.). The Program provides that "points drop off 12 months after the accident." (Id.).

As noted, Grievant's description of the events of the accident included her contention that the steering wheel "jerked out of my hand." (Employer Exhibit 3). After the accident, Grievant's bus was inspected by the aforesaid Mr. Lipowski. During his inspection, as seen in the work order he prepared subsequent to the inspection, Mr. Lipowski noted under the "remarks" section that "steering binds." (Union Exhibit 1). The record shows that this inspection occurred on March 19, 2008. (Id.). The following day, March 20, 2008, Company Maintenance Coordinator, Gene Fezer, conducted a further investigation of the bus based on the "steering binds" finding made by Lipowski. It would appear that Mr. Fezer's investigation focused on the steering mechanism of the bus from the steering wheel down to the "miter box" (See Union Exhibit 6). Thus, Mr. Fezer did not focus any attention beyond the miter box and thus did not inspect the "steering gear assembly." (Id.). In a March 20, 2008 memo to Company Supervisors, Mr. Fezer, after reporting his findings, offered the following "conclusion":

> It is my determination that the steering components of this vehicle operated in a satisfactory condition prior to the collision and that the binding defect as a subject of this investigation was caused by interference of the deformed floor bulkhead surrounding the base of the steering column shortly after collision impact in this area. (Union Exhibit 5).

The Committee met on April 10, 2008. The Committee was informed of Mr. Lipowski's findings. The day following the Committee's assessment, April 15, 2008, a further investigation of the bus Grievant operated was conducted; this investigation

focused on the steering system of the bus from the "steering shaft" through the "steering knuckle." (See Union Exhibit 6). This investigation saw Company Mechanic David Gross, in the presence of Mr. Fezer and Mr. Dembik, Technical Trainer/Quality Assurance Manager, disassemble the "steering gear assembly" of the bus. This investigation disclosed the presence of a ruptured Teflon 8-ring/seal located in the rack piston housing of the steering gear assembly. (See Union Exhibit 7 and Employer Exhibits 9, 10). Mr. Gross also observed the existence of "foreign material" that was located within various component parts of the steering gear assembly. (See Union Exhibits 12, 13). Mr. Gross apparently was of the opinion that the piece of Teflon ring he found caused a steering problem, which was an opinion not shared by Mr. Dembik. (See Employer Exhibit 13).

In any event, on April 16, 2008, Union President and Business Agent Vincent Crehan, via email, requested a "re-review" of the Accident Review Committee's consideration of Grievant's accident. (Union Exhibit 2). The Company's Director, Health Safety and Environmental Quality, Kimberly Minkel inquired of Mr. Crehan, on April 22, 2008, what his "grounds" were "for the re-review." (Union Exhibit 3). Mr. Crehan responded that "there is a closer inspection of the steering components including the steering box of bus 2501." (Union Exhibit 4). The Company, per Ms. Minkel, determined that no "re-review" would occur. By that point in time, the Company, who had suspended Grievant on April 11, 2008, upon receipt of the Accident Review Committee's point assessment (Joint Exhibit 4), had elected to

terminate Grievant, as set forth in a termination notice of April 16, 2008. (Joint Exhibit 3).

The Union, by Mr. Crehan on behalf of Grievant, filed the instant grievance dated April 18, 2008, that challenged the discharge. In setting forth the grounds for the grievance, Mr. Crehan stated that he had "informed Accident Review that all information was not available for their consideration" and that "[t]here is new information obtained while Operator Goodman was out on suspension." (Joint Exhibit 5). The grievance stated a demand for a "re-review at the Accident Review Committee" and also asserted that the "company has ignored that information and terminated her employment." (Id.). It sought Grievant's reinstatement and a "make whole" award. (Id.).

The Company denied the grievance at all steps of the parties' grievance procedure. (Joint Exhibits 6 and 7). The denials focused on the point assessment of the Accident Review Committee and the fact that Grievant had a previous point under the Accident Reduction Program, totaling 13 points, which justified the termination. (Id.). No specific response was made by the Company to the Union's claim that there should have been a "re-review" by the Accident Review Committee.

The Union then duly filed its Demand for Arbitration (Joint Exhibit 8), resulting in the instant arbitration proceeding before this Arbitrator.

POSITION OF THE COMPANY

The Company claims that the Accident Review Committee's decision had a rational basis in fact. Thus, it contends that the Committee considered all evidence presented by Grievant, the Union, and the Company and then reached a fair and reasonable determination that the accident was preventable and that Grievant was grossly negligent. It emphasizes that the Committee's review extended to Grievant's claim that the collision came about because of a mechanical defect in the bus as indicated by her statement that the steering wheel jerked out of her hands as she turned the bus onto Lower Terrace.

The Company identifies three earlier termination arbitrations based on Accident Review Committee point assessments (Rinaldo Award [Joint Exhibit 9]; Selchick Award [Joint Exhibit 10]; and Schmidt Award [Joint Exhibit 11]). An application of these decisions to the instant case, the Company claims, mandates that the Committee's determination must stand.

In setting forth its position on the Accident Review Committee, the Company notes that the Company had before it Grievant's Accident/Incident Report, police accident reports, and a statement from Barbara Hinterberger, a passenger on the bus that Grievant was driving when the accident occurred. The Company notes that in Ms. Hinterberger statement, she indicated that Grievant "gunned" the bus when she was turning onto Lower Terrace and Grievant was thus required to overcompensate for the error, which led to the accident.

The Company maintains that the unanimous decision of the Accident Review Committee found that Grievant did not stop her bus before the collision though she had ample opportunity to do so, that she was traveling at an excessive rate of speed, that she "gunned" the bus on the turn, and then overcompensated for the turn. The Company further indicates that the Committee also reviewed the evidence presented by Grievant to support her claim that the accident was caused by a defect on the bus in the form of representations made by Mr. Lipowski that a "bind" existed in the steering of the bus. The Company claims that, despite the fact that no witnesses or other evidence contradicted Mr. Lipowski's finding about a "bind", the Committee nevertheless found that the collision was preventable.

The Company emphasizes, therefore, that the Accident Review Committee's decision could not be considered arbitrary, capricious, or discriminatory, and the decision passes muster under the standards set forth in the three aforementioned arbitration decisions. It should also be noted, the Company argues, that Grievant has not alleged that she was treated "unfairly" by the Accident Review Committee, but instead claims that a "re-review" should occur to allow the presentation of information about the torn Teflon o-ring that was discovered after the steering box was disassembled. The Company maintains however, that the Bus Accident Reduction Program does not refer to any right to a "re-review" but only states that the Union has the ability to utilize the grievance procedures in all accident cases. Any Committee re-review that has been granted in the past, the Company claims,

was essentially because the operator had not been present for the first review, which is not the case here.

The Company also contends that the facts do not support the Union's claim that the accident was caused by the presence of a torn Teflon seal ring. The Company claims that the actions of the bus Grievant operated were totally inconsistent with any kind of a steering bind; Grievant made no mention of the steering bind after the collision; no testimony was offered that if the Teflon seal was torn before the collision, it could have caused a steering bind; the testimony of Fezer and Dembik, the "most qualified experts", made it "clear that the Teflon seal ring was most likely torn during "disassembly"; and Fezer and Dembik also testified that if the ring had been torn before the collision, "the effect would be a reduction in the amount of power steering assist which is inconsistent with the over-steering of bus 2622 that is observed on the videos." Additionally, the Company claims that the Union seeks more than what it bargained for when it asserts a right to a re-review by the Committee.

The Company also argues that even if mechanical defect existed, Grievant could have prevented the collision. It notes the testimony of Committee Member Augustyniak that the Committee found the collision was preventable even if there had been a defect because Grievant could have prevented the accident by applying the brakes, driving slower, or not over correcting her left hand turn. The Committee was also correct, the Company argues, in finding that Grievant was grossly negligent

since "all of the evidence (including the grievant's own admission), indicates that the Grievant, after making "too wide" of a turn onto lower terrace, then turned sharply to the right to avoid the "collision with a pole and that the steering mechanism of the bus operated properly in response to the effort by immediately veering to the right." The Company notes the testimony of Augustyniak that though a mechanical defect could have affected steering onto Lower Terrace Street, it could not cause the bus to then veer to the right and strike a parked bus.

Grievant's failure to stop the bus, the Company emphasizes, was the cause of the collision and this came about because of "the deliberate actions of the grievant in turning the steering wheel sharply to the right." The Company argues that any alleged defect in the steering column cannot be considered a proximate cause of the accident. No need existed to reconsider the Accident Review Committee's decision, the Company maintains, because no "new evidence" was discovered. It claims that no defect was discovered in the steering mechanism, given the evidence that the tear on the Teflon seal was the result of the collision or the disassembly of the gear box. The Company again stresses that even if the defect existed, it would not have been the cause of the accident and that the Committee already considered a possible steering defect and determined that, even if there was a defect, Grievant's excessive carelessness caused the accident.

The Company also claims that the penalty of discharge, particularly in view of the Accident Committee's decision, must be considered appropriate. Even in the

absence of the Accident Review Policy, the Company contends, just cause would still exist to terminate Grievant. The Company maintains that it "cannot be compelled to put Grievant back on the road: she had demonstrated that she cannot safely operate a bus."

Accordingly, the Company strongly argues that the dismissal of Grievant was not in violation of the Agreement and that the instant grievance must be denied.

POSITION OF THE UNION

According to the Union, the Company's decision to deny the Union's request for a "re-review" of the Accident Review Committee's determination "resulted in the withholding of newly discovered evidence" from the Committee and was a "violation of both the parties' negotiated Bus Accident Reduction Program and the just cause protections contained within the parties' CBA." It is clear, the Union maintains, that the ruptured Teflon o-ring/seal was not discovered until the "steering gear assembly" was disassembled on April 15, 2008, which was subsequent to the Review Committee's determination involving Grievant. Nevertheless, it is also clear that the steering condition existed at the time of the accident. Supervisor Dembik, according to the Union, gave testimony that the rupture of the Teflon o-ring seal during the bus operation could have caused a "lack of assist" such that there could have been "a momentary pause in direction." This testimony, the Union posits, is consistent with the record evidence that when Mechanic Gross discovered the ruptured Teflon seal,

Dembik told him that such a defect "could have" caused the steering problem or "bind."

As to the Company's claim, as set forth in the testimony of Mr. Dembik, that damage to the Teflon ring was caused by the manner in which Mr. Gross removed the rack piston from the steering gear assembly housing, the Union contends that this claim is not consistent with the TSA Steering Gear Service Manual or the acknowledgment by Mr. Gross in his testimony that on other occasions he did not follow step 19A of the Manual and yet the Teflon o-ring/seal remained intact. The Union opines that "it cannot be said with 100% certainty that the Teflon o-ring/seal from Ms. Goodman's bus did not rupture during operation." If it did, the Union asserts, the failure would have had a negative impact on the steering, which is consistent with Grievant's description of the accident. At the very least, the Union maintains, the Accident Review Committee should have had an opportunity to consider the factors when assessing the preventability of the accident and the appropriate number of points to be assigned.

As to the just cause component of its position, the Union identifies language in Arbitrator Rinaldo's Award that an employee "may be in a position to challenge a disciplinary decision as lacking in just cause even if the decision reflects conformance with the procedures and substance of the Bus Accident Reduction Program." The Union notes that its challenge is not so much directed at the Accident Review Committee but at the Company because of its failure to grant the

Union's request for a re-review, which, the Union claims, "resulted in the suppression of the newly discovered evidence from the preview of the Accident Review Committee." It is the position of the Union that just cause includes procedural obligations, which were cited in the Rinaldo Award. It notes the testimony of Mr. Martin, the Chairman of the Accident Review Committee, that he would bring information of "faulty equipment" that "may have contributed to the accident" to the Review Committee. The Company, via Ms. Minkel, the Union asserts, "prevented that from happening."

The Union emphasizes that it is for the Committee and not the Arbitrator to consider what significance should be attached to the discovery of the ruptured Teflon o-ring/seal. As for a remedy, the Union contends that the Company must be considered "at fault" because it blocked the re-review and thus it urges the Arbitrator to reinstate Grievant will full back pay and benefits back to April 10, 2008, when the Union made its first request for a re-review. In the alternative, the Union seeks a directive that immediately reinstates Grievant with a minimum of back pay and benefits from March 14, 2009, which was one year after the accident date, to the effective date of her reinstatement. For the period of March 14, 2008 through March 14, 2009, the Arbitrator could direct a re-review of the Committee with the outcome being limited to the issue of back pay and benefits "only" because the Committee's decision would have "no effect whatsoever on Ms. Goodman's continued employment status since, technically, the Committee lacks the requisite jurisdiction to review an accident which is over one (1) year old."

OPINION

The Arbitrator first must focus his analysis on the Bus Accident Reduction Program that has been negotiated by the Parties. (Joint Exhibit 2). The Program calls for a "system-wide Accident Review Committee" to meet and assess whether an accident is preventable, and if so, what "points" should be assessed the operator. The Committee itself consists of two management employees and three Union operators who are "jointly selected by the Company and Metro." (Id.). Every member of the Committee "has one vote." (Id.). The Program also explicitly provides that "[a] Union representative may attend and participate in Committee meetings, but does not vote, nor is in attendance during the vote." (Id.). It is also noted that the Committee makes its decision by "majority vote." (Id.). As to Grievant's accident, it is clear that the Committee assessed her ten points on the ground that there was a preventable accident that resulted in "[p]roperty damage over $10,000." (Id.). An "[a]dditional 2 points" were assessed based on "gross negligence ... by operator." (Id.).

The Arbitrator's review of the negotiated Bus Accident Reduction Program, including the language related to the Accident Review Committee, discloses that the parties have not reduced to writing the procedural components of the Accident Review Committee except to the extent indicated in the above description of the Program. Thus, a central question in this proceeding can be identified. That is, did the decision by the Company that the Accident Review Committee would not be

allowed to determine if it wished to conduct a "re-review" of Grievant's accident, under the circumstances surrounding the Union's request for a re-review, violate the parties' negotiated agreements?

At this juncture, the Arbitrator would observe, but for the "re-review" question identified above, the record clearly establishes that the Company acted with just cause in terminating Grievant in accordance with the parties' Agreement and Bus Accident Reduction Program. That is to say, the decision of the Accident Review Committee, based on the evidence before it, cannot be considered arbitrary, capricious or discriminatory, which is the standard adopted by this Arbitrator and Arbitrator Rinaldo in earlier awards. (See, Joint Exhibits 9 and 10). The record reflects that the Committee could have reasonably found that Grievant's accident was preventable and that she exhibited "gross negligence" by the manner and speed in which she turned onto Lower Terrace, which, based on the facts before the Accident Review Committee, was a proximate cause of the accident. In turn, the Company's decision to terminate Grievant based on the number of points that she accumulated clearly squares with the notion of just cause, as required by the two earlier Awards. (Id.).

As to whether the Company should have permitted the Accident Review Committee as a whole to determine if it would conduct a "re-review", the Arbitrator finds, in the final analysis, that the standard to be employed under the circumstances of the instant case is one of fundamental fairness. A reading of Arbitrator Rinaldo's

Award and this Arbitrator's Award (Id.) support the conclusion that the Bus Accident Reduction Program and the Accident Review Committee process is cloaked with the parties' basic agreement that the Company must establish a justification (or "just cause") for imposing discipline. This observation is particularly apt when, as here, the Company seeks to terminate an employee's services.

Hence, the Arbitrator views the inquiry to be whether or not the concept of fundamental fairness requires the Company to, at the very least, permit the Accident Review Committee as a whole to consider the Union's request for a "re-review." The Arbitrator finds that the law's approach to "newly discovered evidence" provides some glimpse into the standard to be employed in the instant case. In a civil lawsuit in New York, New York CPLR 4404, and judicial interpretations thereof, provide that relief from a judgment on the grounds of "newly discovered evidence" requires: "the evidence must have been in existence but have been undiscoverable with due diligence at the time of the original order or judgment"; "the evidence must be of such nature that 'in all probability' it would have produced a different result if a new trial is had"; "the evidence is material and not merely cumulative"; and the evidence "is not of such nature as would merely impeach the credibility of an adverse witness." [See NYJUR Judgments § 203].

The Arbitrator finds that an application of the above synopsis of New York law to the fact pattern of the instant case produces the following observations: the broken Teflon seal, which was not discovered until the "steering gear assembly" of

the bus was disassembled, could not have been discovered with due diligence prior to the disassembly and its discovery was material and not cumulative of other information before the Committee. As to the requirement that "newly discovered evidence" carry with it the "probability" of a different result, the Arbitrator finds that the requirement cannot be fairly applied to the instant case because of the special expertise, which the parties have mutually agreed resides in the Accident Review Committee, to apprise such evidence. The Arbitrator finds it sufficient to observe that the ruptured Teflon seal ring was clearly relevant to Grievant's assertion that the steering wheel "jerked" out of her hand, and the existence of the ruptured ring could possibly have caused some members of the Accident Review Committee to consider whether the ruptured Teflon seal contributed to the accident to the extent that Grievant's conduct either could not be seen as the cause of the accident or that her conduct would not rise to the level of gross negligence."

Given the very technical nature of the "newly discovered evidence", the Arbitrator finds that it is beyond his competency to offer any more comments about its possible utility for the Committee's determination. Thus, while he cannot conclude that it is "probable" that the Committee would have found the "newly discovered evidence" significant enough to even conduct a "re-review", no less reach a different conclusion regarding the causation of the accident, he is unable to find it "not probable" that the Committee would have conducted a "re-review" and reached a different result.

Under the circumstances presented in the record, the Arbitrator finds the Committee should have been presented with the "newly discovered evidence" and to have been permitted to make its own determination as to whether a "re-review" was required and, if so, what the result would be.

Accordingly, the Arbitrator finds that the Company's termination decision was a flawed one because of the unilateral determination by the Company to withhold the "newly discovered evidence" from the Accident Review Committee's consideration. As a joint Committee, it was not for the Company to unilaterally determine that a re-review was not warranted. That was a decision that should have been more properly made by the Committee itself.

This conclusion requires a careful analysis of the appropriate remedy to be issued by this Arbitrator. The parties' Agreement is silent on this point. When one turns to "guidelines" for the formulation of remedies, one finds four essential principles:

> 1. In form the remedy should be one that would appear to most directly effectuate the intent and purposes of that provision in the labor agreement in connection with which the right was contracted.
>
> 2. The party called upon to give [the] remedy should not be subjected to a well-founded surprise by the form, nature, extent and degree of the remedy. What is awarded should be within the realm of conceivable and reasonable remedial expectation by the party in error or by other parties were they to be similarly circumstanced.

3. Remedies that are punitive in monetary or exemplary nature should be avoided ...

4. Remedies that are novel in form should be avoided, again for reasons of unexpectedness or possible well-based surprise. ... Elkouri & Elkouri: How Arbitration Works, 1192 (6th ed. A. Ruben, 2003).

The Arbitrator derives from the above "guidelines" the essential rule that the remedy should be tailored to fit the violation and should not exceed the scope of the violation. In the instant case, the Arbitrator finds that to conclude, as the Union urges, that Grievant should be restored to her position with full back pay would be a remedy that would far exceed the scope of the violation. In other words, upon its "re-review", the Accident Review Committee might well adhere to its earlier decision. It is a "re-review", of course, that would best effectuate the parties' mutual intent based on the Arbitrator's analysis herein. Nor is the Arbitrator persuaded by the Union's argument, that because more than a year has elapsed since the date of the accident, the Accident Review Committee can no longer issue a new decision based on the accident and that its decision should be limited only to whether back pay for the year after the Accident Review Committee's decision should be awarded. Presumably, this argument is based on the fact that "[p]oints drop off 12 months after the accident as set forth in the Bus Accident Reduction Program." This rule, the Arbitrator finds, really has nothing to do with the fact pattern of the instant case, which, after all, now results in a "re-review" of the Committee's initial determination.

Therefore, the Arbitrator finds that an appropriate remedy is one that simply remands to the Accident Review Committee the following two inquiries:

> (1) should the Accident Review Committee engage in a re-review based on the "newly discovered evidence" in the form of the ruptured Teflon o-seal ring?
>
> (2) if the Accident Review Committee determines by majority vote to conduct a re-review, what is the result of the re-review?

To insure that all parties understand what this Arbitrator is ordering, I offer the following examples: If the Accident Review Committee determines that no re-review is warranted, than the initial determination of termination must stand and cannot be further reviewed by arbitration or in any other forum. If the Committee does find a re-review to be warranted, and the re-review does not produce a different decision, then the matter is also closed and the Company's termination decision should stand. If the re-review produces a different decision from the initial determination by the Accident Review Committee, as to causation or as to assessment of points, resulting in less points than sustain termination of employment, then the Company must in turn reconsider its termination decision. If the Accident Review Committee reaches a new point determination, then the Union, if it wishes, may return to the Arbitrator and renew its just cause contentions as to the penalty imposed by the Company based on the different point assessment by the Committee. In that event, this Arbitrator retains jurisdiction to resolve any further disputes regarding this matter.

AWARD

For the reasons stated in the Opinion *supra*, the Arbitrator finds that the Company's decision to terminate Grievant, without allowing the Accident Review Committee to determine for itself if the Union requested re-review was warranted, is not supported by just cause. As Remedy, the Accident Review Committee, pursuant to the decision herein, must determine if a re-review is warranted, and if so, it shall conduct such re-review. The Arbitrator retains jurisdiction, if needed, as more fully discussed in the Opinion.

STATE OF NEW YORK)
COUNTY OF ALBANY) ss:

I, Jeffrey M. Selchick, do hereby affirm upon my oath as Arbitrator that I am the individual described herein and who executed this Instrument, which is my Opinion and Award.

JEFFREY M. SELCHICK, ESQ.
ARBITRATOR

Dated: July 22, 2009
Albany, New York