AWARD/ OPINION

CASE: TERMINATION OF
ALFRED M. WEEDEN, JR.

IN THE MATTER OF THE ARBITRATION

between

NIAGARA FRONTIER TRANSIT METRO SYSTEM, INC.

and

AMALGAMATED TRANSIT UNION, LOCAL 1342

BEFORE: Edward A. Schmidt, Neutral Arbitrator
William McGee, Company Arbitrator
Vincent G. Crehan, Union Arbitrator

APPEARANCES:

FOR THE EMPLOYER:

Sean P. Beiter, Esq.

FOR THE UNION:

Joseph E. O'Donnell, Esq.

PROCEDURE:

Hearings were held in the above referred to matter before the undersigned on March 28, 2008; May 6, 2008; and July 2, 2008 in the offices of the Employer at 181 Ellicott Street, Buffalo, New York, 14203. The parties were accorded a full and fair hearing, including the right to present oral and written evidence to present their respective positions and to examine and cross-examine witnesses who were duly sworn. The parties were unable to frame the issue and authorized the panel Chairman, Impartial Arbitrator Edward A. Schmidt to frame the issue. Briefs were received on September 4, 2008 and the hearings were declared closed.

ISSUE:

COMPANY ISSUE:
Did the decision of the Bus Accident Reduction Program Accident Review Committee that assessed the Grievant twelve (12) points for a preventable accident that occurred on August 12, 2006 have a rational basis in fact and was it not arbitrary, capricious or discriminatory? If not, what shall the remedy be?

Did the Company 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?

UNION ISSUE:
Was the Grievant, Al Weeden, 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' Collective Bargaining Agreement, what shall the remedy be?

ISSUE AS DETERMINED BY THE ARBITRATOR:

The following basically frames the nature of the dispute:

Did the Authority have just cause to terminate the employment of Alfred Weeden in accordance with the Collective Bargaining Agreement and the Bus Accident Reduction Program? If not, what shall the remedy be?

APPLICABLE DOCUMENTS:

1. Collective Bargaining Agreement dated August 1, 2006 to July 31, 2009.
2. Bus Accident Reduction Program dated September 1, 2000.

EXHIBITS:

JOINT:

1. Collective Bargaining Agreement dated 78-1-06 to 7-31-09.
2. Bus Accident Reduction Program dated 9-1-2000.
3. Weber letter to Weeden dated 7-17-07.
4. NFT Metro System Disciplinary Notice dated 7-26-07.
5. Thomas letter to Weeden dated 7-30-07.
6. NFT Metro System Disciplinary Notice dated 8-2-07.
7. Antholzner letter to Weeden dated 8-3-07.
8. Grievance Report dated 8-3-07.
9. 1st Step Grievance Response dated 8-10-07.
10. Crehan letter to Antholzner dated 8-10-07.
11. Antholzner letter to Crehan dated 8-20-07.
12. Crehan letter to Zmuda dated 9-14-07.
13. Crehan letter to Zmuda dated 9-20-07.
14. Rinaldo Award 10-31-99.
15. Selchick Award dated 5-27-03.

COMPANY:

1. Rules for Bus Transportation and Maintenance Employees dated 6-1-98.
2. Driver Guide Smith System not dated.
3. DVD Smith System (following distance) not dated.
4. Pictures of accident scene and involved vehicles not dated.
5. Transit Police Report dated 8-12-06.
6. Vehicle and Traffic Law, Rules of the Road dated 3-17-08.
7. Fabian letter to Martin dated 12-15-05.
8. Interview with Weeden by Company Representatives dated 8-14-06.
9. Operator's Accident/Incident Report dated 8-12-06.
10. Employee Injury Report dated 8-14-06.
11. Transportation Dept. Report dated 8-12-06.
12. Police Accident Report 8-12-06.
13. Accident Investigation Report dated 8-12-06.
14. Pictures of vehicles involved in the accident of 8-12-06.
15. Notes from Bus Accident Reduction Program Committee dated 1-25-07.
16. McVoy letter to Meckler dated 11-28-07.
17. DMV Safety Hearing Bureau Finding Sheet dated 1-22-07.
18. Administrative Law Judge Rita L. Los report dated 1-22-07.

UNION:

1. Notification of the findings of the Bus Accident Reduction Committee.
2. Medical Report 8-12-06.
3. Dr. Sinatra report to NFTA Medical Department dated 10-30-06.
4. Weeden Employee History dated 8-14-06.
5. Transportation Dept Report re: Viewing Video dated 5-14-07.
6. Weber memo to Weeden dated 11-20-06.
7. Wheatfield Justice Court Waiver dated 2-6-07.
8. Grand Island Town Court convictions dated 4-23-07.

9. Traffic Conviction dated 5-28-07.
10. Disciplinary Notice dated 5-14-07.
11. Disciplinary Notice dated 5-31-07.
12. . Transportation Dept. Report of violation dated 6-12-07.
13. DMV report dated 7-12-07.
14. August 15, 2006 interview with Weeden.
15. Notes from 8-16-06 meeting.
16. Accident Review Appointments dated 8-24-06.
17. Internal memos re: scheduling Accident Review of Weeden matter.
18. Dattilo letter to Cathleen Donner re: Weeden waiver dated 2-22-07.

POSITION OF THE AUTHORITY:

It is the contention of the Authority that the decision of the Accident Review Committee had a rational basis in fact. On two prior occasions, Arbitrators have had the opportunity to rule upon terminations based upon the assessments of points under the Bus Accident Reduction Program. The Authority refers to Arbitrator Rinaldo's findings in the Rodney Henry discharge in which Arbitrator Rinaldo states:

> The Bus Accident Reduction Program sets forth a procedure that the parties have agreed upon to assess whether discipline should be imposed on a driver due to responsibility for an accident. Moreover, the Program sets forth a substantive basis for the administration of discipline through its point assessment table and accompanying discipline.

Further, Arbitrator Rinaldo articulated the standard to be utilized by an Arbitrator in reviewing the determinations of the Accident Review Committee stating that:

> An Arbitrator should defer to decisions made by the Accident Reduction Program Accident Review Committee provided such decisions have a rational basis in fact and are not otherwise arbitrary, capricious or discriminatory.

The Authority contends that the decision of the Accident Review Committee finding that that the collision on August 12, 2006 was preventable and that the decision was not unreasonable, arbitrary, capricious or discriminatory. The Committee had the Grievant's

accident report and the Niagara County Sheriff's Department accident investigation report in which it was concluded that the Grievant was following too closely and also a statement from Bradley Gwizdowski, a witness to the accident who stated that the Grievant tried to avoid the "red car" but struck it anyhow.

If the Grievant had followed section 1129 of the Vehicle and Traffic Law and Authority's Rule 4.3 concerning safe operation, plus the techniques he was trained in safe vehicle operation, he would have avoided he accident; the resulting death and property damage.

The Committee did consider the report of the Grievant's low blood sugar and sought the advice of Metro's Medical Director Dr. Donald Jacob. Dr. Jacob testified that the first dextrose stick reading was incorrect, a common occurrence at the time. Follow up tests at the hospital showed that the Grievant did not have low blood pressure. Subsequently, specialists found that the Grievant did not have any medical conditions that would cause hypoglycemia.

The Committee considered the Grievant's own statements. He recalls following the red Escort for a considerable distance. He recalls the vehicle stopped before him. He recalls braking hard. He recalls his vehicle pulling to the left and his steering hard to the right. Finally, he recalls striking the stopped vehicle. He never claimed to be disoriented or unable to focus properly prior to striking the Escort. His glucose was normal at the hospital.

The Committee's (three union members and two management representatives) unanimous decision to assess twelve points was not unreasonable, arbitrary, capricious or discriminatory. The Grievant was following too closely causing him to not have a way out. The Niagara County Sheriff's Department, the Passenger Transportation Safety Board and the Department of Motor Vehicles all concluded that the accident was caused by the Grievant's following too closely. Eyewitness Gwizdowski's statement contradicts the Grievant's claim that the Escort stopped suddenly.

The determination of the New York State Department of Motor Vehicles that the collision on August 12, 2006 was caused by the Grievant's Violation of Section 1129 of the Vehicle and Traffic Law is binding on the Grievant in this proceeding. That finding

establishes the point that the determination of the Accident Review Committee assessing twelve points was rational and not arbitrary or capricious.

The DMV's findings were rendered after a fully adversarial hearing presided over by an administrative law judge, during which both testimonial and documentary evidence was adduced.

The Grievant argues that the accident was not preventable, that there was nothing he could do to avoid it. The DMV determined that the Grievant caused the crash by following too closely. In challenging the Committee's assigning the Grievant twelve points, the Grievant offers evidence that his traffic ticket was pled down to a parking ticket. That issue was squarely confronted by the DMV hearing when it decided against the Grievant.

The Grievant was afforded a full and fair opportunity to litigate the issues of causation and his traffic violation at the DMV hearing. He did not appeal the decision of the Safety Hearing Bureau.

The decision of the Accident Review Committee was not arbitrary, capricious or discriminatory. The Grievant was allowed to appear before the Committee to present his case before the Committee made a determination. The Committee's determination was based upon uncontroverted facts and medical opinions in the record before them. The Union's contention that the Committee considered facts that occurred after the accident is untrue. Although the State of New York encourages employers to consider the employee's entire work history, the Accident Review Committee only considers the facts of each accident on its own. There is no evidence to the contrary.

The Union argues that the Grievant never had twelve points is not supported by facts. As of October 5, 2006, the Grievant had two points for accidents. On October 28, 2006, the Grievant completed a New York State Point and Insurance Reduction Program course; therefore, the Grievant's current point total of two points was reduced by two points to zero. On July 24, 2007, the Committee assessed the Grievant twelve points for the August 12, 2006 accident, thus calling for termination. He had no points from October 28, 2006 until July 24, 2007. The Union's argument that there is a difference between negligence and gross negligence and that the notes of the Committee shows the Committee found the Grievant guilty of negligence requiring only one point not two has

no merit. In both the Henry and Smith arbitrations, the Union argued there was no gross negligence. In both cases the Arbitrators disagreed finding no reason to disturb the Committee's finding. The Grievant violated Section 1129 of the Vehicle and Traffic Law. As a matter of law the Grievant caused the collision that resulted in the death of Kristin Sansone by following too closely. On that ground alone, the Grievant was properly assessed twelve points for this collision. The final decision as to the number of points to be assessed is determined by a majority vote. As to Mr. Martin's notes showing negligence and not gross negligence, his notes are not a transcript or an official report of the Accident Review Committee, nor are they an official opinion of the Committee. He is just one member of the Committee and does not try to sway it according to the testimony of Mr. Augustyniak. The Committee has had eight years of experience serving on the Accident Review Committee. In the Henry Award Arbitrator states in part:

> In view of the manner in which the accident occurred, this accident is not disturbed by the Committee's finding that the Grievant's driving amounted to gross negligence.

That statement fits the instant case before the Arbitration Panel. Mr. Augustyniak, Lead Supervisor/Controller for Metro, and a Committee member testified that the Accident Review Committee has the ability to differentiate between negligence and gross negligence and has done so in the past. The Accident Review Committee did not do so in the instant case; it unanimously voted to access twelve points.

In previous arbitrations cited earlier, Arbitrators found that it was not unreasonable for the Accident Review Committee to conclude that the accident was preventable, and finding no basis to upset the Accident Review Committee's determination to access twelve points, the Arbitrators denied the grievances. Metro cannot be compelled to put the Grievant back on the road. He has demonstrated he cannot safely operate a bus.

The grievance must be denied and the Grievant's termination must be upheld.

POSITION OF THE UNION:

It is the contention of the Union that the Arbitration Board should adopt the Union's proposed issue in its entirety using the guideline established in the Selchick award in the Lydia Smith case.

Given the Accident Review Committee's finding of "negligence," it was inappropriate for the Committee to assess two additional points against Mr. Weeden. Hence, his termination was not justified. As discussed in the Rodney Henry case decided by Arbitrator Thomas N Rinaldo on 10/31/99, there is a significant difference between the terms "negligence" and "gross negligence." He further states, "While both concepts, particularly gross negligence, might be difficult to define with any precision, neither concept, from a common sense point of view, can be viewed as falling outside the ability of a layperson to grasp. Negligence essentially equates to carelessness and gross negligence essentially equates to excessive carelessness." In the instant case the Committee made a finding of negligence as opposed to a finding of gross negligence. It overstepped its authority by assessing two points for negligence.

When there is a need to assess a termination decision based on a decision of the Accident Review Committee following the concept established by Rinaldo and Selchick, two questions are central to the analysis:

> First, does the disciplinary decision pass muster under the criteria of the Bus Accident Reduction Program? Secondly, if the decision does pass muster under the program, is there any other basis to conclude that the disciplinary decision is lacking in just cause.

Unlike the awards by Selchick and Rinaldo wherein the Committee made a specific finding of "gross negligence" as opposed to a finding of mere "negligence," justifying an assignment of two additional points. In the instant case Mr. Weeden was charged with negligence. The express wording of the Bus Accident Reduction Program does not provide for the assessment of "an additional two points" for a finding of "negligence." An additional two points can only be assessed for a finding of "gross negligence or traffic violation by the operator." Neither finding was made in the instant case. Mr. Weeden was never found guilty of a traffic violation. He pled to illegal parking. Mr. Weeden should

have been assessed only ten points, calling for no more than a one week suspension and final warning before termination, rather than termination.
The Accident Review Committee's finding of negligence is consistent with the underlying facts associated with the accident.

The Committee has the ability to consider various mitigating or contributing factors outside the operator's control that may have contributed to the accident.

The Union contends that a number of circumstances mitigate against a charge of gross negligence. First, a number of factors were in play justifying the Committee's decision to charge negligence rather than gross negligence. EMTs at the scene of the accident tested Mr. Weeden and found through the D-stick reading that he had a blood sugar level below 20. They administered IV's of dextrose hoping to elevate his blood sugar level. It worked because the next D-stick reading equaled 236. Based upon the first D-stick reading and Mr. Weeden's confused and incoherent behavior at the scene, the EMTs concluded that Mr. Weeden's role in the accident was potentially "Diabetic Related." Dr. Jacob testified that he could not say with 100% certainty that the first D-stick reading was in error. Sufficient weight must be given to the EMTs assessment that the accident was potentially "Diabetic Related." It was reasonable for the Committee to find that Mr. Weeden's actions called for a finding of negligence rather than gross negligence.

Secondly, Mr. Weeden's undisputed rendition of the facts that the Trowbridge vehicle stopped suddenly in front of the trolley is crucial. Mr. Weeden's claims that the trolley pulled hard left as he applied the brakes preventing him from clearing the rear of the stopped vehicle. Officer Michael Dunn testified that the trolley's reaction to the hard braking (pulling left) was at least a contributing factor to the accident. This pulling left reaction of the trolley is a mitigating factor in the accident and thus justifies a Committee's finding of negligence rather than gross negligence.

Thirdly, the unfortunate occurrence of a fatality does not automatically equate to a finding of gross negligence. Other mitigating factors are taken into consideration thereby

justifying a finding of negligence rather than gross negligence. The Niagara County Sheriff's Department viewed the fact that the decedent was not wearing a seat belt a factor in the fatal motor vehicle accident.

The Company should not be allowed to buttress its case after the fact. It was improper for the Company to introduce documentary evidence which was not reviewed or considered by the Accident Review Committee. Therefore, that evidence should not be part of the record. The Company has attempted to distort the record by falsely stating that the Committee unanimously agreed to assess an additional two points for gross negligence/traffic violation by the operator. The record clearly shows that the Committee assessed two points for negligence not gross negligence or traffic infraction. Committee Chairman Martin and Committee member Rich Augustyniak (management representatives on the Committee) both testified that the comments found on the bottom of Company Exhibit 15 were accurate and properly reflect the finding of the Committee. The comments on this exhibit show that the Committee assessed two points for "negligence."

Mr. Weeden was assessed one point of a 1-23-06 accident and one point for a 7-7-06 accident. Effective 10-28-06, Mr. Weeden successfully completed a defensive driving course effective 10-28-06 and was given a two point reduction credit. By 7-24-07, both accident points were automatically eliminated since one year had passed. Hence, when the Accident Review Committee reviewed Mr.Weeden's 8-12-06 accident on 7-24-07, he not only had zero points for prior accidents, he had a two point credit coming for completing the defensive driving course. The Company never applied Mr. Weeden's two point credit at any time during the twelve month period subsequent to completing his defensive driving course on 10-28-06. Hence, when the Accident Review Committee assessed him twelve points, they should have reduced this total by two points, thus giving him ten points not twelve. Applying the correct total, Mr. Weeden should have received no more than a one week suspension and a final warning before termination. "Given the magnitude of the consequences (Mr. Weeden's termination), coupled with the just cause protections contained in the parties' cba and fundamental principles of due process, the Union respectfully submits that said argument must stand."

The Union does not anticipate mutually agreeing to waive back pay through its arbitrator or otherwise.

DISCUSSION/ANALYSIS/OPINION:

At the onset let it be noted that this Arbitrator did not consider any evidence which occurred after the decision reached by the Accident Review Committee or evidence not before them in their deliberations. Although entered into evidence over the objection of the Union, all such material in my deliberations was considered irrelevant to the issue before this panel.

The Union contends that the fact that the notes of Mr. Martin show negligence and not gross negligence proves that the Grievant should not have been charged with two points. A past arbitration shows an attempt to differentiate between negligence and gross negligence. Negligence was described as carelessness and gross negligence was described as extreme carelessness.
Section E shows "Gross negligence or traffic violation by the operator." Sections A through D assess points for property damage for preventable accidents which inherently infer negligence. If some level of negligence does not cause the damage, it would follow that points would not be assessed. The Company points out that Marin's notes are not official, nor are they a transcript of the proceedings. However, the Union elicited testimony that showed that the notes reflect the Accident Review Committee's intent of charging Mr. Weeden with negligence. It is compelling to note that the Accident Review Committee made up of three Union members and two Management members voted unanimously to assign two additional points knowing full well that this would lead to the Grievant's termination. At any time the Union's three members could out vote the Management's two members and control the outcome. Their action in the instant case would appear to show that they considered the Grievant's action more than simple negligence (carelessness) by their unanimously assessing the Grievant an extra two points. The record indicates that the Committee had lengthy experience in reviewing accidents, assessing point distribution and has charged one point in past cases.

Considering this experience one has to wonder whether or not Mr. Martin's notation of negligence in his notes was a part of his "shorthand method" of keeping things simple such as all his abbreviations and that it was a note taking laxity. However, as shown above, testimony indicated it reflected the committee's finding that the accident was the result of Mr. Weeden's negligence. Considering the consequences of Mr. Weeden's actions, one would be loathe to deem them simple carelessness. Mr. Weedens's own report of the accident shows he had just checked his mirrors and the first thing he remembers after that is seeing the top of the car he struck. His own testimony would indicate he was following too closely. Mr. Weeden was trained in the Smith System of driving a motor vehicle and was aware of the consequences of following too closely and the caveat to make sure you always leave yourself an out in the event something happens like what occurred in the instant case. Mr. Weeden tried to avoid the car in front of him, but did not have time to do so due to his being too close to the vehicle in front of him. An eyewitness to the accident testified he was following too closely. The Public Transportation Safety Board concluded he was following too closely and that "had he utilized his skills and training he should have avoided the collision."

Administrative Law Judge Rita Los found as a result of a hearing held on January 22, 2007 that Mr. Weeden had violated VTL Section 1129(a), following too closely and suspended his driving privileges for a period of 120 days.

An inspection of the trolley operated by Mr. Weeden showed no mechanical defect that may have caused the collision.

Whether or not the Committee meant Gross Negligence and not just Negligence is not indicated. It defies logic to assume that due to the extensive material damage and the nature of the injuries sustained (including the death of a passenger) by the occupants of the vehicles struck that the Committee would have considered the actions of Mr. Weeden to be mere carelessness and not excessive carelessness. The record indicates that the Committee deliberated for a considerable time over the question of preventability and then had lengthy deliberations over the number of points to be assessed. The record shows that this experienced Committee in the past has charged one point in Section E. Compelling is the fact that after considering the accident preventable, the Committee discussed the episode and then voted unanimously to access not just one point but two

points, again, fully cognizant of the fact that the consequences of a twelve point total assessment would lead to termination. Testimony indicates that the Committee felt badly about the dire consequences of their assessing twelve points but voted unanimously to do so in light of all the evidence.

The Committee solicited the advice of Dr. Jacob in considering the claim of a "Diabetic Incident" as a mitigating factor in the accident. Although Dr. Jacob admitted that he could not say with 100% accuracy that the stick testing apparatus used at the accident scene that showed the Grievant had a very low sugar count was defective. He did indicate there were problems of accuracy with the sticks at the time. However, he did indicate that at that level of blood sugar the Grievant would have been practically comatose. That level would have been dangerous health-wise. Further testing showed no reason for that level at the time or that there were any underlying medical conditions which would have caused that low reading. The Grievant never claimed to have been ill or confused prior to the collision. It was only after he regained consciousness that he appeared confused and ill to the paramedics.

It would appear to defy logic or common sense if one were to use the term negligence or simple carelessness to describe the actions of the Grievant on August 12, 2006, that resulted in a vast amount of property damage, personal injury and the death of one of the passengers.

While it is true the Grievant pled to a parking violation (a rather common practice) rather than face the original charge of following too closely, the fact remains that according to an eyewitness, the Grievant was following the vehicle in front of him too closely and was not able to stop in time. The eyewitness did not indicate that the vehicle which was struck stopped suddenly. The Grievant's own account of what occurred on that fateful day shows that he was checking his mirrors and that the last thing he recalls prior to striking the vehicle was seeing its roof. At that point he had "no way out" and in spite of braking hard and turning right, he struck the stopped vehicle. The Company indicated that when a driver is trained, he is taught to always leave "a way out" in the event he comes upon a stopped vehicle. Further, Company policy states that rear end collisions are inexcusable.

The Union contends that the Grievant was never accorded two reduction points he earned for taking a point reduction class. The Company argues that there is no such thing in the system as achieving reduction points to hold in abeyance so that they may be applied in the event they are needed somewhere along the line to reduce points that may be assessed for accidents. One can have zero points and not points in the bank if and when needed according to Company testimony.

It is common in the field of labor-management relations to consider termination as the death penalty of labor-management relations, and as such, most arbitrators search long and hard for mitigating circumstances before sustaining a penalty of termination. On the question of whether or not the Grievant had a diabetic episode mitigating his actions, the record is inconclusive. The Grievant's own testimony indicates no confusion or illness prior to the collision. It was only after the collision that the Grievant appeared confused and somewhat incoherent which would be logical considering the severity of the accident. The Grievant is not a long time employee, having started full time only since May of 2001. He was recertified in the Standard Smith System just sixty days prior to the accident. The Grievant's record is not unblemished. It shows violations of Company driving policy in the past on several occasions all before the accident of August 12, 2006.

This Arbitrator, try as he might, could not find any mitigating circumstances which would call for a lesser penalty than termination.

The Company's contention that the Grievant should not be allowed to drive a public bus again for the Niagara Frontier Transportation Authority is compelling.

As Arbitrator Thomas Rinaldo stated in the Henry Discharge case (a view also held by Arbitrator Selchick in a May 2003 award):

> "An Arbitrator should defer to the decisions made by the Bus Accident Review Committee provided such decisions have a rational basis in fact and are not otherwise arbitrary, capricious or discriminatory."

This Arbitrator finds that the Company's action terminating the employment of Alfred Weeden was not arbitrary, capricious or discriminatory. The Company had just cause to do so.

AWARD:

Upon a careful consideration of all the evidence and arguments in accordance with the foregoing views, it is the decision of the Arbitrator that:

The Grievance is denied in its entirety. The Company had just cause to terminate the Grievant in accordance of the Collective Bargaining Agreement and the Bus Accident Reduction Program

E A Schmidt

Edward A. Schmidt, Chairman, Impartial Arbitrator

William McGee, Company Arbitrator

I do not agree with this ruling.
Refuse to Sign

Vincent G. Crehan, Union Arbitrator

AFFIRMATION:

STATE OF NEW YORK
COUNTY OF ERIE

I, Edward A. Schmidt do hereby affirm upon my oath of Arbitrator that I am the individual described herein and who executed this document, which is my award.

Date: 10-10-08

E A Schmidt

This Arbitrator finds that the Company's action terminating the employment of Alfred Weeden was not arbitrary, capricious or discriminatory. The Company had just cause to do so.

AWARD:

Upon a careful consideration of all the evidence and arguments in accordance with the foregoing views, it is the decision of the Arbitrator that:

The Grievance is denied in its entirety. The Company had just cause to terminate the Grievant in accordance of the Collective Bargaining Agreement and the Bus Accident Reduction Program

E A Schmidt

Edward A. Schmidt, Chairman, Impartial Arbitrator

Will R McGee

William McGee, Company Arbitrator

DO NOT AGREE
REFUSE TO SIGN

Vincent G. Crehan, Union Arbitrator

AFFIRMATION:

STATE OF NEW YORK
COUNTY OF ERIE

I, Edward A. Schmidt do hereby affirm upon my oath of Arbitrator that I am the individual described herein and who executed this document, which is my award.

Date: 10-10-09

E A Schmidt