IN THE MATTER OF AN ARBITRATION

BETWEEN: **GREATER VANCOUVER REGIONAL DISTRICT**
(the "Employer")

AND: **GREATER VANCOUVER REGIONAL DISTRICT EMPLOYEES' UNION**
(the "Union")

(Cancellation and Reposting of Competition No. 53/93 Grievance)

ARBITRATION BOARD: David C. McPhillips, Chair
Tom McGrath, Union Nominee
Tom Roper, Employer Nominee

COUNSEL FOR THE EMPLOYER: Alan J. Hamilton

COUNSEL FOR THE UNION: David B. Fairey

DATE AND PLACE OF HEARING: March 30 and 31, 1995
Vancouver, B.C.

DATE OF AWARD: June 12, 1995

The parties agree that this board is properly constituted and has the jurisdiction to decide this matter. The Union claims the Employer improperly cancelled a job posting and then reposted it contrary to the provisions of the Collective Agreement. Ron Caldwell, who was the successful candidate in the reposting, attended at the hearing and participated. Additionally, there is an issue of 'mileage' payments in dispute between the parties in this grievance.

FACTS

The facts are essentially not in dispute. In the fall of 1993, a vacancy occurred for the position of chlorine truck driver at the Greater Vancouver Regional District. At that time, the truck driver operated from the Lake City Operations Centre ("Lake City") but prior to 1991 had been situated at Beach Yards. The driver drove the chlorine truck five days a week for the five months from May to October when the truck was in heavy use. During the rest of the year, the truck was used only two or three days a week and on the other days the driver would help around the yard.

When the position became vacant in the fall of 1993, the Employer decided that it would make more sense to have the chlorine truck driver help the chlorine mechanic on days when the truck was not being driven. To that end, the Employer decided to amend the job description for the position and include helping the chlorine mechanic as part of the chlorine truck driver's duties. This decision was made in September of 1993. As well as oral evidence on the point, Tom Heath, the Administrator of the Water and Construction Department, wrote the following memo to Johnstone Hardie in the Personnel Department on September 30:

> In discussions with Dan Donnelly and Dennis Beattie, we have concluded that it would make better sense to have the chlorine truck driver report to the Supervisor - Disinfection Operations. Time not spent driving the truck could then be devoted to assisting the chlorination crew. Since we intend to post the position shortly, it is an opportune time to make this and other revisions to the job description and posting.
>
> Copies of both documents with proposed changes are attached for your action.
> Please discuss any concerns regarding the details of the position with Doug Neden.

The matter was discussed with the Union in the fall, and with Union approval, the job description for the chlorine truck driver was amended.

As the chlorine mechanic worked out of the Chlorination Plant at the Coquitlam Watershed ("Coquitlam") the Employer decided that the chlorine truck driver position would have two reporting sites, Lake City and Coquitlam. This decision was not discussed with the Union. On December 20, 1993, the Employer put up the following job posting with a closing date of January 6, 1994:

	Competition No.:	**Closing Date:**
	G53/93	January 6, 1994

Position Title: Chlorine Truck Driver	**Salary Range/Wage Rate:** $1,571.75 b/w plus 6 1/4% deferred compensation
Department: Water Operations & Maintenance	**Employee Group:** G.V.R.D.E.U.
Location: Lake City Operations Centre	**Position Status:** Regular Full-Time
Hours of Work: 40 hours, 5 days per week	**Anticipated Start Date:** A.S.A.P.

DUTIES:

Drives specially equipped tandem truck to pick up, load and deliver and unload large chlorine cylinders from suppliers, and a variety of user areas in water and sewer facilities such as dams and wastewater treatment plants; operates overhead crane to load and unload cylinders. Returns empty cylinders to suppliers.

Picks up and delivers various materials, supplies and equipment to and from a variety of GVRD facilities. Maintains records of cylinder inventories at various locations.

Keeps up to date and adheres to related safety regulations and procedures, including training in Self Contained Breathing Apparatus (SCBA), chlorine repair kits, emergency response, disinfection, dechlorination and transportation of dangerous goods.

Performs routine vehicle safety inspection checks for safe operating condition and performs regular light servicing maintenance of vehicle on a daily basis. Alerts control center in the event of and performs emergency enroute repairs to cylinders in the event of leaks.

Alerts supervisors, plant personnel in the event of leaks at water and wastewater facilities and assists in repairing same.

Relieves other truck drivers as required. Assists within water disinfection department as required.

Performs related duties as required.

REQUIREMENTS:

Grade 12. Valid Class 3 with Air, B.C. Driver's licence and demonstrated skills in driving large vehicles. Permit for watershed entry. Self Contained Breathing Apparatus training and training with chlorine repair kit. Transportation of dangerous goods certificate.

Knowledge of the proper methods used in loading, transporting and unloading of supplies, equipment and materials. Knowledge of safety policies, procedures and practices relating to work performed and ability to react efficiently and calmly in emergency situations.

Harold Clark, a Personnel Officer with the Employer, testified that immediately after the posting was circulated, he was phoned by Dennis Beattie who pointed out there was a clerical error in the "location" section of the posting. Mr. Clark testified that in drawing up the new posting he had amended an old posting for the chlorine truck driver position. He had made some grammatical corrections to the old posting and had included the new duties of "assists within water disinfection department as required". However, he had not included both Lake City and Coquitlam under "location" in the upper left hand corner but inadvertently had identified only the Lake City Operations Centre. Mr. Clark testified that after Mr. Beattie's call he discussed the matter with his own boss and it was decided that rather than remove and repost the position, the applicants for the job would simply be informed at the interviews that the job had two locations.

The evidence is that each of the six candidates on the short list was so informed at the interview. Jay Coleman, who had extensive experience driving the chlorine truck in a relief capacity, was

one of those interviewed. At the time of the posting, he was operating as the driver in a relief capacity for the third time. Mr. Coleman testified that he was informed at the interview that a mistake had been made and that there were two “start points”. He indicated he was very “surprised” and in an effort “not to be negative”, he “reluctantly agreed” in the sense that he indicated to management that he understood that there were two locations. Mr. Coleman testified there was no discussion of whether reporting to the two locations would vary on a daily, weekly, monthly or any other basis. Although Mr. Coleman indicated in his direct evidence that “mileage” payments may have been discussed at this interview, in cross- examination he agreed it was more likely they were discussed at a subsequent meeting. The evidence of Mr. Clark was that the issue of mileage payments was not raised at the initial interviews.

After the interview, Mr. Coleman contacted his local Union representative, Ron Long, who in turn contacted Bill Eastwood, the Union President. Mr. Coleman was told by Mr. Eastwood to “accept the job as posted” if it was offered. Mr. Coleman and the Union also agreed that mileage should be paid on any days Mr. Coleman would have to use his personal car to travel to Coquitlam for work. Mr. Coleman was told to avoid making any agreement to forgo the mileage payments and it was indicated to him that he did not have any personal bargaining authority to alter the terms of the Collective Agreement.

Mr. Beattie contacted Mr. Coleman a couple of weeks later and the two met at Lake City. Mr. Beattie offered Mr. Coleman the chlorine truck driver position and indicated that there were dual start points and indicated that there was “no mileage”. Mr. Coleman informed Mr. Beattie that he “accepted the job as posted”. Mr. Beanie indicated that there had been a mistake by the personnel department and that, if he had to, he would cancel and repost the competition. Mr. Coleman testified that following this interview he continued to drive the chlorine truck until May, 1994, operating out of the Lake City Operations Center.

Mr. Coleman informed the Union of the results of the meeting with Mr. Beattie. Mr. Eastwood met with management and took the position that although management had the right to have dual

locations, this did not waive the right to mileage when the employee reported to other than his/her primary location. Management then indicated they would repost the position with the two locations. The Union indicated this would still not resolve the issue of mileage.

Following these discussions, the Employer reposted the position on February 14 with the location and closing date amended from the first posting. It now stated:

	Competition No.:	**Closing Date:**
	G05/94	February 28, 1994
Position Title:	**Salary Range/Wage Rate:**	
Chlorine Truck Driver	$1,571.75 b/w plus 6 1/4% deferred compensation	
Department:	**Employee Group:**	
Water Operations & Maintenance	G.V.R.D.E.U.	
Location:	**Position Status:**	
Lake City Operations Centre AND Coquitlam Chlorination Plant	Regular Full-Time	
Hours of Work:	**Anticipated Start Date:**	
40 hours, 5 days per week	A.S.A.P.	

. . .

Mr. Coleman testified that the did not apply for this February 14 posting because there would be no mileage payments. On February 18, Bill Eastwood, the President of the Union, filed the following grievance with B.E. Marr, the Regional Director:

> **Re: Grievance - Cancellation and Reposting of Competition G53/93**
>
> The Union is grieving the cancellation and reposting of Job Competition #G53/93 and its subsequent replacement with a posting identified as #G05/94.
>
> This posting for Chlorine Truck Driver was posted with the location listed as Lake City Operations Center. Following the interviews, Jay Coleman was offered the position, but with conditions attached that were not reflected in the job posting. Mr. Coleman was informed that in order to fulfill one of the duties in the description, that of relief help on the water disinfection crew, he would be required to begin his work day at the Coquitlam watershed on certain days identified by the Supervisor. Associated with this request, he was informed that he would be obliged to waive his rights to reimbursement of mileage expenses to and from Lake City and the Coquitlam Watershed.

Mr. Coleman wisely chose to defer his acceptance of the position with the attached surprise conditions until he had time to confer with his Union Representative. In turn the Union advised Mr. Coleman that he was not authorized to act as a Bargaining Agent for the Union and he should inform Personnel that he will accept the position as posted and that Personnel should seek agreement for changes through the appropriate channels.

Not having achieved the concessions required from the chosen candidate during the interview nor from the Union at a subsequent meeting, Mr. Harold Clark informed me of his intent to retract the posting and reissue it with a dual start location.

The Union views this action as a clear attempt by the GVRD to avoid its obligation to pay mileage under Clause 3.16(a) and (b) of the current Collective Agreement.

The inclusion of the relief assistance "within the Water Disinfection Department" as a new duty under this job description in no way infers the waiving of Clause 3.16(a) and (b). We suggest that if this employee is required at locations other than the posted one from time to time that he is properly reimbursed for use of his personal vehicle. Either that or a corporate vehicle may be provided for this travel.

The Union is seeking the retraction of competition #G05/94 and the reinstatement of competitions G53/93 as offered to Mr. Jay Coleman and that the GVRD will honor their obligation to compensate for mileage as laid out in the 1991 April 01 - March 31 GVRD - GVRDEU Collective Agreement.

. . .

The official response of the Employer to the grievance is contained in a March 25 letter to the Union from J.R. Morse, the Manager, Water and Construction. It states:

Re: Grievance - Cancellation of Competition 053/93
<u>and Re-posting as Competition G05/94</u>

I am writing in response to our meeting of March 17, 1994, at which time the issues addressed in your letters of March 16th and February 18th were discussed. From your letters, it is my understanding that the union is seeking:

1. The retraction of posting G05/94 and the reinstatement of the previous posting G53/ 93;

2. Payment of mileage as per Section 3.16 of the Collective Agreement.

The underlying issue affecting both of these concerns is the inclusion of a dual start location provision.

In consideration of the first point, it was explained by management at the March 17th meeting that the earlier posting contained an error which was corrected verbally with each of the applicants during the interview process.

The subsequent concern expressed by one applicant and the Union over the significant change in character of the posting with the error verbally corrected led to management re-posting the position as competition 005/94 to clarify the matter for all concerned. As discussed and clarified by management representatives, Position G53/93 was never accepted under the terms it was offered which included the dual start location. I am unable to take issue with the decision by management to re-post this position with the intended working terms clarified and accordingly I must deny this item of the grievance.

Competition G05/94 identifies two start locations which the union claims is an attempt to avoid paying mileage according to the Collective Agreement. From management's perspective, it was explained at the March 17th meeting that starting location flexibility is needed for efficient seasonal operation of the chlorination team as their method of operation has changed in recent years. The most appropriate time to introduce any necessary revisions to a position is when a vacancy arises to enable candidates to take the changes into account in their decision to apply for the position. At the grievance meeting the union expressed considerable concern that this issue may be viewed as a precedent and could lead to the wholesale erosion of the mileage payment section of the Agreement. Management pointed out that multiple start points for operational requirements are established for several positions, notably construction workers, security guards, sewer workers and water system workers and have not proven to be an issue. I am not aware of any evidence that the dual start location for the chlorine truck driver is other than a similar operations based circumstance which would indicate that the union's broader concerns in this regard are unfounded. Mileage provisions in accordance with clause 3.16 of the Collective Agreement would apply, of course, for the use of private vehicles from these two locations.

Accordingly, I am unable to find a contravention of the Collective Agreement and must deny the grievance.

The Union then took the matter to Mr. Marr pursuant to the steps in the Collective Agreement. On April 27, Mr. Man wrote the Union as follows:

Re: Grievance - Cancellation and Reposting of Competition 053/93

This is further to our meeting of April 19, 1994 concerning the above grievance.

During the course of our meeting, I undertook to look further into the operational reasons for dual work locations for the Chlorine Truck Driver. As I believe you know, the responsibility for the Chlorine Truck has recently transferred from the Superintendent, Water to the Chlorination Crew. In order to integrate the work of the Chlorine Truck Driver more efficiently into that of the Chlorine Crew, it has been determined that:

1. For the winter months (approximately October - April) he will start and end the work day at Coquitlam, so that on those days when the truck is not required, he will be available to assist the Chlorine Mechanics; and

2. For the summer months (approximately May - September), when the requirement to service water chlorination plants and wastewater treatment plants ensures that there will always be work on the truck, he will start and end the work day at Lake City Operations Centre.

I am satisfied that these arrangements will permit both a more efficient delivery system and improved availability of the Driver to assist the crews. I am also advised that, in the event experience indicates to us that Coquitlam is a suitable year-round start point for the Chlorine Truck Driver, we would change these arrangements accordingly.

The grievance is therefore denied.

On May 3 a memo was sent by Mr. Clark to the six employees who had been interviewed for the December posting. It indicated that the closing date on the second posting was being extended until May10. The memo stated:

SUBJECT: Competition No. G05/94 - Chlorine Truck Driver

The following is to confirm the status of your application to the above noted competition.

The final decision on this matter was given by Mr. Ben Maarr on April 19, 1994, where the grivance was denied. This in turn means that Competition No. G05/94 (which you did not apply for) replaces Competition No. G53/93 (which you **did** apply for).

Therefore, we are providing you the oppurtunity to apply for the above noted competition as posted by sending/faxing your resume to the Personnel department no late than **Tuesday, May 10, 1994 at 4:30 p.m.**

Mr. Coleman testified he received this letter but did not resubmit his name for consideration in this posting. Again, this was because there would be no mileage payments. Mr. CaIdwell, who had been

interviewed on the first posting, submitted a new, more complete resume and was again interviewed for the position. The mileage issue was not discussed with him but there was discussion of the actual time split in the two locations. Mr. CaIdwell was then offered the position. Mr. CaIdwell contacted the Union to be sure he was "not causing any trouble" and was assured by Mr. Eastwood that they would prefer to have a Union member driving the truck while the grievance was being processed. Mr. Eastwood indicated that there would be no hard feelings and also informed Mr. R. CaIdwell that there was a risk he would lose the job because of the grievance. In early May, Mr. Caldwell was trained by Mr. Coleman for a two week period and then Mr. CaIdwell began driving the chlorine truck as the regular driver on May 16, 1994.

On May 18, NI R. Caldwell received the following appointment letter which sets out, inter alia how the reporting times would be split between the two reporting locations:

> I am pleased to confirm your appointment as Chlorine Truck Driver with the Water & Construction Department on a regular full-time basis. Due to operational requirements, this position has dual start locations. During summer months, the position will be based out of Lake City Operations Centre. During the remainder of the year, the position will be based out of the Coquitlam Chlorination Plant. Your salary will be $1,571.75 bi-weekly and you will also receive an additional 6.25% deferred compensation. This position requires union membership within the Greater Vancouver Regional District Employees' Union.
>
> The effective date of your appointment will be May 16, 1994. Having been full- time with no break in service, seniority and benefits will be based on your original start date. Your normal weekly work schedule will consist of 40 hours per week and will be five days per week.
>
> Congratulations on your appointment and best wishes for continued success with the Greater Vancouver Regional District.

The board heard evidence of some past practice of the parties. There are many instances where there have been more than one reporting location for employees or locations have been changed or mileage has been paid. However, each of those situations is quite different from the facts at issue in this grievance. There was evidence of one matter (Neil Walsh Grievance) that went to the Standing Com-

mittee for discussion. That issue involved payment of mileage for an employee who was in a seven week relief position. The minutes of the meeting of the Standing Committee held on February 19, 1987 at which this grievance was resolved state:

> It was agreed that filling in for existing staff during vacation periods or sick time would be considered as relieving and that mileage would be paid under these circumstances. Neil Walsh relieved for seven weeks at the Beach Yard and is covered under this provision.
>
> Some discussion took place as to what length of time constituted a staff transfer for replacement or supplement and what is considered as relieving, the difference being that no mileage would be paid in the case of a transfer. No agreement could be reached on the length of time needed to be considered as a transfer and discussion concluded on the understanding that transfers will be evaluated on an individual basis or as they arise.

It is clear from the last sentence of these minutes that no agreement was reached by the parties concerning any broad interpretation of the provisions dealing with mileage payments.

Positions of the Parties

The Union submits that there are three issues to be decided in this case. First, Mr. Fairey asserts the Employer did not have the right to cancel the first posting and then repost it: Re Inglis Ltd., 27 L.A.C. (4th) 146 (Brandt); Re Robb Engineering, 20 L.A.C. (2d) 340 (MacDougall); Re Marks, 30 L.A.C. (2d) 64 (Weatherill); Union Gas Co. of Canada, 24 L.A.C. 159 (Lysyk); Brown and Beatty, Canadian Labour Arbitration, (3rd edition), pp.5-43 to 5-46. The Union argues that Mr. Coleman had accepted the job as posted in December and, thus, is entitled to it on those conditions. The Union asks the Board to reinstate the first posting and award the position to Mr. Coleman with compensation for any lost wages and benefits since May 16, 1994.

Second, the Union seeks a declaration that the Employer improperly attempted to negotiate directly with applicants during the interview process over the dual start location and mileage allowance and, in doing so, breached Section 27 of the Labour Relations Code and the Union Recognition clause in this Collective Agreement (Article 1): Brown and Beatty, supra, at pp.9-i and 9-2; Board of School Trustees of School District No. 26 (North Thompson), November 22, 1978 (McCoid).

Third, the Union asserts the Employer is obligated to pay mileage to the chlorine truck driver for

use of his own vehicle to any location other than Lake City pursuant to Article 3.16(b) of the Agreement. The Union seeks a declaration that mileage should be paid to the chlorine truck driver and an award of mileage payments to Mr. CaIdwell for any days he has reported to the Coquitlam Watershed since October 6, 1994.

Mr. Caldwell, on his own behalf, submitted that his job was at stake in this case. He argued that Mr. Coleman indicated at the interviews that he would only accept the job as first posted, i.e. without the dual locations. Further, Mr. CaIdwell indicated that although he had been warned by the Union that the matter had been grieved, the Employer did not caution him to that effect when it offered him the position in May.

The Employer argues that the Union did not meet the onus of proving the Employer breached the Collective Agreement in failing to award the job to Mr. Coleman in the terms stated in the job posting of December 20. Mr. Hamilton agrees that the cases submitted by the Union correctly set out the law but the factual question here is whether the Employer went so far that it could not resile from its original posting. Mr. Hamilton submits the GVRD did not. There was no bad faith, no abuse of the process and no prejudice resulting from management's actions.

Second, the Employer asserts that there was no violation in describing a dual location in the job posting. Indeed, the Union agrees with that proposition. This is in accordance with management's right to arrange its affairs and to operate the workplace unless there is evidence of bad faith: Brown and Beatty, supra, at p.5-1 to 5-3 and 5-31 to 5-36.1; Re Union Gas Ltd., 1 L.A.C. (4th) 254 (Palmer); Brunterm Ltd., 23 L.A.C. 139 (Lister); Re Guelph General Hospital, 25 L.A.C. (4th) 260 (Burkett); Re Humpty Dumpty Foods Ltd., 15 L.A.C. (4th) 18 (Dissanayake).

It is asserted that the true issue between the parties is whether mileage must be paid under Article 3.16 in the specific circumstances of this case. Mr. Hamilton submits that generally mileage is not to be paid for reporting to work: Ernest Wiberg , September 24, 1970, (Public Service Staff Relations Board);

Re London and District Association for the Mentally Retarded, 16 L.A.C. (3d) 165 (Saltman); Okanagan Federated Shippers Labour Relations Association, January 20, 1993 (Kelleher). It is asserted the situation in the case before this board does not involve the sort of factors (unscheduled, unpredictable, short term or emergency events) where mileage is contemplated under Article 3.16.

Finally, Mr. Hamilton argues that in this case the past practice between the parties is such that it will not help the board: John Bertram and Sons, 18 L.A.C. 362 (Weiler).

DECISION

As indicated above, the past practice of the parties has varied widely due to the wide range of different employment circumstances within the Regional District. There certainly are a couple of instances where mileage has been paid which are remotely related to the facts of the case at hand but there has certainly been no pattern established such that it can be said that it is helpful to this board in resolving this dispute. We do not feel the Walsh matter was on direct point with our grievance as it involved a temporary relief position. The critical issue in that case was what the distinction was between relieving and a transfer. Further, and in any event, that matter would constitute evidence of a single event rather than of a “past practice” between the parties. There is certainly no evidence of a clear or uniform practice “that has existed over a number of years” between the parties, and there is evidence that some anomalies have existed. The board is unanimous that the alleged “practice” evidence is not at all determinative of the issue. In our opinion, this dispute must be settled solely by reference to the express language of the Collective Agreement.

The parties referred this board to a number of provisions of the Policies and of the Collective Agreement. The critical sections are as follows:

POLICIES

POSTING OF POSITIONS

Vacancies in all permanent jobs covered by this Agreement are posted at GVRD work sites, and you are invited to apply for these positions if you feel qualified to carry out the duties of the position.

. . .

9. Policy re Seniority for Postings

In assessing seniority for applications for posted positions covered by this Agree ment, GVRDEU members will be considered before others.

. . .

COLLECTIVE AGREEMENT

1. UNION RECOGNITION

1.01 THIS AGREEMENT made and entered into this sixth day of August 1992.

between the:

GREATER VANCOUVER REGIONAL DISTRICT
(hereinafter called "the Corporation")
being an employer within the meaning of the "Industrial Relations Act of British Columbia" pursuant to Chapter 122 of the revised Statutes of British Columbia, 1987,

OF THE FIRST PART

and the:

GREATER VANCOUVER REGIONAL DISTRICT EMPLOYEES' UNION
(hereinafter called "the Union")
being the duly certified bargaining authority for all employees except office staff and other employees of the aforementioned Corporation who may by mutual agreement be exempted,

OF THE SECOND PART

. . .

3.16 Mileage Rates

(a) Employees may charge mileage allowance only when requested to use their automo biles on Corporation business by the Corporation.

(b) Employees who normally work out of any permanent Corporation office or Corpo ration residence shall compute their mileage from these points.

(c) Employees who normally go directly from their home to the job shall compute their mileage from the check point closest to their home. These check points, subject to change, are: Head Office, Beach Yard, Lake City, Little Mountain and Westbumco.

(d) Employees who are required by the Corporation to use their personal automobiles to transport equipment or tools to the job will be paid mileage to the job, on the job and back to their residence, provided that such mileage claimed is within the boundaries of the Greater Vancouver Districts.

(e) When the use of a private automobile by an employee does not fall within the above provisions, management retains the right to determine how the operating conditions shall be applied.

Schedule of Rates

Mileage	Rates
1 - 150 miles	95 cents
151 - 625 miles	38 cents
Over 625 miles	35 cents

4.02 Seniority Vacancies

Vacancies in all permanent jobs covered by Schedules “A” and “B” will be posted for two (2) weeks and employees will be invited to apply for these jobs.

All postings for permanent positions will state the number of positions to be selected from that posting.

4.03 Seniority Promotions

In the case of promotions, where two or more equally qualified applicants are involved, the senior applicant shall be promoted. If the senior applicant is not selected, the reason why he did not obtain the position will be given to him or to his union representative if so requested by the applicant.

When one or more employees who are equally qualified are to be demoted, transferred or reinstated for periods of two (2) weeks or more, the positions available shall be selected by those employees in order of their seniority.

. . .

8. Standing Committee

8.01 A Standing Committee consisting of the two bargaining committees exists to consider and recommend on anomalies, contract changes, working conditions, job descriptions, and administration of the Collective Agreement.

8.02 (a) The bargaining committee will be advised when new jobs are available so that arrangements may be made to include them in the classification schedule.
(b) Disputes involving wage anomalies relative to the City of Vancouver which can not be settled by the Standing Committee may be referred by either party to arbitration as provided for in Clause 7.03 of the Collective Agreement.

In coming to a decision in this dispute, there are two principal matters which must be addressed. First, this board must decide what substantive rights the Collective Agreement confers on the parties relating to the dual location/mileage issue. Once that is determined, then the board will address the questions related to the posting and reposting of the position in December, 1993 and February, 1994.

With regard to the substantive rights of the parties, it is clear that management has the right to establish dual location positions. There is nothing in the mileage provisions or the remainder of the Agreement which restricts that right. There is no allegation by the Union that the Employer improperly adjusted the functions of the job or was unable to post a dual location. Therefore, the posting of a two location position is not in itself a violation of the Agreement.

The real issue in dispute is whether mileage must be paid to an employee when he attends at the "second" location in a dual location situation. Once again, the provisions of Article 3.16 subsections (a) to (d) state:

(a) Employees may charge mileage allowance only when requested to use their automobiles on Corporation business by the Corporation.

(b) Employees who normally work out of any permanent Corporation office or Corporation residence shall compute their mileage from these points.

(c) Employees who normally go directly from their home to the job shall compute their mileage from the check point closest to their home. These check points, subject to change, are: Head Office, Beach Yard, Lake City, Little Mountain and Westburnco.

(d) Employees who are required by the Corporation to use their personal automobiles to transport equipment or tools to the job will be paid mileage to the job, on the job and back to their residence, provided that such mileage claimed is within the boundaries of the Greater Vancouver Districts.

This is a significant issue for each side. The Union is concerned that the removal of the mileage payments would allow the Employer to schedule workers without restrictions. For the Employer there is a significant monetary impact. The mileage benefit to the employee in the circumstance of this case would be in the vicinity of $12.00 each day for the seven months when the driver reports to Coquitlam.

Article 3.16(a) is the basic entitlement section for the mileage allowances. The principal right conferred by that provision is to provide a mileage allowance when the employee is requested to use his/her automobile “on Corporation business”. As a general rule, this type of provision would not include mileage covered travelling to and from work.

However, subsection (a) of Article 3.16 must be read in conjunction with the provisions which follow it. Subsection (b) is particularly important in resolving this dispute. The issue here is the interpretation of what is meant by the phrase “normally work out of any permanent Corporation office...” The question is whether an employee can have only “one” normal location or whether there can be different locations which would still qualify as “normal”. These parties have not defined the term “normal” in this Collective Agreement. Further, there is nothing in the Collective Agreement which explicitly requires the Employer to designate a single location or even a primary location in a dual location situation.

The dictionary meaning of the term “normal” means “regular or natural” (Black’s Law Dictionary), “conforming to the typical or standard pattern” (Random House), or “conforming to a certain type or standard; regular; average” (American Webster Dictionary). From these definitions, it can be concluded that the term “normal” does not appear to require there to be a singular or unique reference. The term merely refers to the requirement for a regular or standard pattern.

In the opinion of this board, the word “normal” must be given its ordinary meaning. There is no basis to conclude that the term “normal” in Article 3.16(b) requires that there be only “one” normal location. In the specific case before us, the chlorine truck driver would be scheduled in Coquitlam for seven months and in Lake City for five months. In our view, each of those locations would be a “normal” location under the meaning of Article 3.16(b). During each of these periods, the employee knows to which site he is reporting. (On this logic the Employer’s decision to pay mileage to Mr. CaIdwell to

attend a course at Lake City during the winter of 1994 when he was regularly reporting to Coquitlam was the correct one.) This is as much as this arbitration board is prepared to decide. Obviously, there will be limits on what would be accepted as “normal” but the appropriate solution is for the parties to put their minds to that problem and negotiate provisions which contain more appropriate precision.

In conclusion on this point, the parties are agreed that dual locations can be posted. Further, in the specific circumstances of this case, we have determined that mileage need not be paid to the chlorine truck driver for his regular attendance at the proscribed locations on a seven month - five month split.

It follows from the above conclusion that management was permitted to post the job as a dual location (without mileage payments) in December, 1993. Given that fact, we must now address the specific events surrounding the posting in December, 1993 and the reposting in February, 1994.

It is clear from all the evidence that the Employer’s actions in this case were not analogous to those in the arbitration decisions cited to this board by the Union. This is not a case where the Employer was trying to avoid having to choose a particular individual as in Re Inglis, supra. There was certainly no plan to exclude Mr. Coleman from the position as he was actually offered the job. Nor is it a case where the Employer for no good reason simply changed its mind about a posting after an individual’s seniority rights had crystallized: Re Robb Engineering, supra; Re International Nickel Co., 16 L.A.C. 216m (Lane). Further, this is also not a situation where the Employer reposted the same posting with the effect of merely extending the deadline: Re Marks, supra. In this case, the reposting corrected the terms which had been erroneously posted in December.

In our view, it is only common sense that an employer must be free to correct clerical errors accidentally made in a posting. The type of error here in forgetting to add the second location or similar kinds of errors such as a misstatement of the job title, an incorrect amount of remuneration, or a misstated posting date must be able to be remedied. A clerical error such as that made in the December posting is one of those things that happens in any organization.

However, where the Employer failed to abide by the Collective Agreement was in the

insufficiency of its efforts to correct that innocent mistake. It was not appropriate to remedy the error by informing applicants in the interview that a correction was to be made. That new information would not have been communicated to other employees who had not applied for the position but may have done so if the full and proper information had been available on the posting. All potential candidates in the bargaining unit had the right to be informed of the actual scope of the position being offered.

While we disagree with the Union's argument that the GVRD's actions in this case went so far as to breach the union recognition clause in the Agreement, there is no doubt that the Employer acted improperly in failing to immediately cancel the posting in December and reissue a new one prior to proceeding with any interviews of employees. Further, the Employer subsequently breached Article 4.03 of the Collective Agreement when it unilaterally extended the time deadline for the closing date on the February posting beyond February 28. It is true that part of that delay was the result of an attempt to solve the problem by dealing with the Union on the matter and then to address the Union's grievance. Nevertheless, there is still a technical breach of the terms of the Collective Agreement. The extension itself should have been discussed with the Union and all employees notified of the delay. Further, when the posting was later extended until May 10, all employees should have been formally notified. It should now be apparent to the Employer that the problem with the type of action undertaken here is that it can have very unfortunate consequences for the Union and individual employees. As an example, Mr. Caldwell might end up losing a job in which he has operated for almost a year and feel very victimized by the circumstances in which that occurred.

Finally, it is also the opinion of this board that even the second job posting was not sufficiently descriptive. The posting should have reflected the Employer's intention to split the two locations on a seven month - five month basis. From the evidence it appears that management did not decide on that precise division until the Spring but employees have a right to know this type of detail when they bid on a job. That decision should have been made before the job was posted and the information included in the posting. This information would have enabled all employees to make an informed decision on whether they wished to exercise their seniority rights and apply for the position.

Therefore, for these reasons we conclude that there have been breaches of the posting provisions of the Collective Agreement by the Employer. By way of remedy, it would not be appropriate in these circumstances to force the Employer to comply with the December posting containing the clerical error as we have found management had the right to have a dual location position and did attempt to correct the problem, albeit poorly. Such a remedy would result in the Employer having to provide more benefits than are required under the Collective Agreement for an indeterminate period.

It is also not appropriate to retroactively award the job without mileage payments to Mr. Coleman even though it is clear from the evidence that at the time he was management's first choice for the position. In coming to that conclusion, we have considered the fact that this is not a case where Mr. Coleman accepted the job that was actually being offered. Additionally, Mr. Coleman indicated at the interview in January he would not take the amended position without the mileage allowance. He further testified that he did not apply on the reposted position in February or again in May because he did not want the job unless mileage payments were to be made. Finally, there might have been other employees who would have applied for the position if more complete information had been available in December.

However, we also feel that Mr. Coleman's behaviour in not applying on the reposting may very well have been affected by his view of his rights to the original posting and outstanding grievance. In our opinion, Mr. Coleman should have the right to make his decision with all proper information and legal rights established. As a result, this board orders that the December posting, the reposting in February and the awarding of the job to Mr. Caldwell in May be cancelled. The position should be reposted with the proper information thereon and then the requirements set out in the Collective Agreement should be followed. If Mr. Coleman should decide to apply for the position, be selected as the successful candidate and then continues in the position, he would also be entitled to any lost wages and benefits from May 21, 1994 to the date he assumes the position.

The majority of this board has had the benefit of reviewing the dissenting opinion of Mr. McGrath. In our view, there is no evidence before us concerning either the present activities of the Standing Committee or the practice of the parties with regard to any obligations to refer matters to that Committee.

Additionally, there has been no allegation by the Union in its grievance or in its argument before this board that Article 8 of the Collective Agreement has been violated.

AWARD

For these reasons, the grievance is partially allowed. The Employer is ordered to immediately repost the position of chlorine truck driver and to follow the provisions of the Collective Agreement. If Mr. Coleman applies and is the successful applicant, and continues in the position he is hereby awarded any lost wages and benefits from May, 1994 to the date he assumes the new position.

The board remains seized of any matters arising from the implementation of this Award.

Dated this 12th day of June, 1995.

David C. McPhillips, Chair

"Dissent attached" Tom McGrath, Union Nominee

Tom Roper, Employer Nominee