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**

DISSENT OF BOARD NOMINEE
TOM McGRATH

DISSENTING OPINION OF TOM McGRATH

I have read the Award issued in this matter by the Chairperson Mr. David C. McPhillips, and I must record my dissent for I consider the Award to be seriously flawed.

FACTS

The Award is flawed in recording the relevant facts of the case in the following instances:

At pages 2 and 3 (starting at the bottom of page 2) the Award states that in September 1993 the Employer decided the job description for the Chlorine Truck Driver would be amended to include giving assistance to the Chlorine Mechanic when the truck was not being driven and to have two reporting sites, Lake City Operations Centre and Coquitlam Watershed. This information was contained in Exhibit 34, an internal administrative memo dated September 30, 1993 to Johnstone Hardie from Tom Heath. The memo refers to an attached job description and a job posting with the proposed changes indicated for action. However, attached to this memo in the exhibit was only a revised job posting originally dated May 1990 and not a revised job description. At page 3 the Award states that "the matter" (the changed job description and job posting) was discussed with the Union, and with Union approval, the job description for Chlorine Truck Driver was amended. The clear inference of fact in this part of the Award is that the October 1993 revised job description (Exhibit ll(a)) made reference to two reporting locations, that the changed job posting was made known to the Union, that the two reporting locations were discussed with the Union in September-October 1993, and that the Union approved at that time of two reporting locations. This is wrong on the facts as presented to the board. The only issue that was discussed with the Union in the fall of 1993 was a minor revision to the duties listed in the job description.

The revised job description agreed to by the Union does not show the reporting location of the position, there is no evidence that the Union was advised in September-October 1993 of the Employer's plan to have two reporting locations (that evidence in any event was not put to Bill Eastwood, union representative witness for the Union), and there is not evidence that the Union approved prior to the December 30, 1993 job posting that two locations could be posted for the position. In addition the Award fails to record the fact that the Union did not become aware of the second planned location for the position until it was advised by job applicant Jay Coleman that in his first interview for the job with Dennis Beattie and Harold Clark he was informed that there had been a mistake on

the first job posting and that there were to be two reporting locations.

At page 5 there is unsatisfactory and incomplete coverage of the evidence with regard to the discussion of "mileage" between Coleman, Clark and Beattie prior to Mr. Coleman being offered the chlorine truck driver position by Mr. Beattie at the Lake City Yard, as described in paragraph 3. In paragraph 3 it states that when Mr. Beaule contacted Mr. Coleman a couple of weeks later Mr. Beanie offered Mr. Coleman that position and indicated that there would be dual start points and "no mileage". Mr. Coleman gave evidence that at some point in his first interview or in any event before the second meeting with Mr. Beanie that the issue of mileage was raised or discussed. This explains why Mr. Beanie made the point in his second meeting with Mr. Coleman that "no mileage" would be paid.

The Award at this point also fails to record the important factual evidence of Jay Coleman that when Dennis Beattie offered Coleman the job he did not want Coleman to "go by the book". The only book that this statement could refer to is the collective agreement. Significantly although Mr. Beanie was present at the hearing he was not called by the Employer to give evidence or to refute any of the statements of fact by Mr. Coleman.

At page 10, paragraph 3, the Award makes reference to the evidence of past practice with respect to mileage allowance and more than one reporting location. It makes reference to the evidence from Standing Committee meeting minutes over the period September 1986 to February 1987 involving the Neil Walsh grievance over payment of mileage while working temporarily as relief in the same job classification at the Beach Yard. However, what the Award does not record is that this was clear evidence of agreement to pay mileage to an employee for use of his own vehicle to report to a second work location which had been on the jab posting. In Exhibit 20(b) the September 11, 1986 Standing Committee minute with respect to 'Mileage for Neil Walsh' records a very similar set of circumstances involving a job posting where two locations and the issue of mileage were discussed during the hiring process:

> "J. Morse responded that there really is no issue here to discuss as the possibility of working at more than one location was explained to Neil at the time of his hire, and that mileage would not be paid. 3. Morse also explained that <u>on the posting sheet</u> it was explained that <u>"both" locations would be involved."</u>
>
> (McGrath emphasis)

In Exhibit 20(d) the November 20, 1986 Standing Committee minute on the same subject

also records:

> "This matter remains unresolved. Management reiterated its position that the posting stipulated that the incumbent would be working out of two locations, and that no mileage would be provided."
>
> (McGrath emphasis)

In Exhibit 20(f) an agreement w pay Neil Walsh a mileage allowance for reporting to the Beach Yard was recorded in the Standing Committee minute of February 19, 1987. This record is reproduced in the Award at page 11.

The Award then states at page 11 that: "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." It is not necessary for the purposes of deciding this case to have evidence of agreement on a broad interpretation of the provisions dealing with mileage. It is sufficient that evidence of past practice demonstrate that in a parallel case of a position posted with two locations was agreed to be paid mileage when the incumbent was required to work at the second location. The Employer agreed to pay mileage to Neil Walsh because he was "relieving for seven weeks at the Beach Yard", even r.hough his job posting included that location. What the parties could not agree on is as to whether mileage would be paid in the case of a transfer. However, they did agree that claims for mileage in the event of a transfer "will be evaluated on an individual basis or as they arise". It is to be noted in this regard that there is no definition or language dealing with transfers in the collective agreement and Mr. Hamilton objected to use of the term during Mr. Fairey's questioning of witnesses. The point is however that the pates agreed during the Standing Committee meeting of February 19, 1987 that questionable mileage claim issues would be evaluated jointly on an individual basis or as they arise.

DECISION

At page 13 the Award concludes that the past practice evidence with respect to mileage does not establish a pattern that is helpful to the board in resolving this dispute, that the Walsh case was not direct on point because it involved a temporary transfer, and that the board is unanimous that the practice in evidence is not determinative of the issue. I strongly disagree. Firstly, there is clear evidence that the parties have brought contentions mileage claims issues to the Standing Committee for resolution and that as a result of the Neil Walsh case agreed that if a mileage claim for reporting to a second

location did not involve relieving for existing staff during vacation periods or sick time that such issues would be evaluated jointly on an individual basis or as they arose. Secondly. the parties agreed that Neil Walsh should be paid mileage to the Beach Yard for the period when he was relieving and that this entitlement was consistent with the Employer's right to reassign Walsh to the Beach Yard for such purposes because the posting for his job had given the Beach Yard as a second reporting location. This is clear evidence of past practice involving the payment of mileage to an employee for having to report to the second of two posted job locations.

I therefore disagree with the reasoning and conclusion of the Award with respect to the mileage issue in pages 16 to 18. In my opinion the Employer had previously agreed to pay mileage to a position that was required to report to the second of two posted start locations, and was obligated to discuss with the Union in Standing Committee any variance from that practise at the time that the Chlorine Truck Driver job description was revised, and in any event before implementing the organizational change which in fact did not occur until October 1994 when the Chlorine truck was relocated to the Coquitlam Watershed for the first time. Such consultation has also been mandated since 1993 under Section 53 of the Labour Relations Code of British Columbia.

At page 18 the Award states that the Employer's actions in this case are not analogous to those in the arbitration decisions cited by the Union because this is not a case where the Employer was trying to avoid having to choose a particular individual. I disagree. The evidence of Jay Coleman was that Dennis Beattie told him that he did not want Coleman in the job if he (Coleman) was going to "go by the book" with reference to the single posted location and mileage allowance provisions of the collective agreement. In this also the Employer acted improperly and in violation of the collective agreement.

The Award's decision on remedy at pages 20 and 21 with respect to the Employer's breach of Article 4.03 is inconsistent with its findings in pages 19 and 20 and results in continuation of unequal and unfair treatment of Jay Coleman. If the Employer acted improperly in failing to immediately cancel the first posting in December 1993, in attempting to correct for mistakes in the first job posting by so informing only those interviewed, and then in unilaterally extending the closing date of the second posting as the Award states it did, then the board should have first ruled that the first posting was improperly cancelled, that as a consequence Jay Coleman should have been declared the successful candidate and that the organizational changes anticipated to impact on the position in October 1994 should have been communicated to the Union as soon as they were known to the Employer and any issues arising out of such changes discussed at a

Standing Committee meeting. As a result of not reaching these logical conclusions from it's findings of collective agreement violations Jay Coleman's collective agreement rights as of January 1994 continue to be violated by Award's decision on remedy.

As a result of the Award Jay Coleman has been denied the position for which he was the best qualified applicant in January 1994 (at the time of the first posting), and if he chooses to apply for yet another posting for the same job he must now compete with Ron Caldwell who has had the benefit of over one year of continuous experience in the position and time to acquire the necessary qualifications. As a result the competition between Coleman and CaIdwell will not be as it was in January 1994. Caldwell is the senior applicant with 1 year of experience. Coleman was the superior candidate in January 1994 because he had the advantage of several months previous experience on the chlorine truck and other qualifications required which Caidwell did not then have. That advantage has been eliminated as a result the Employer's violations of the collective agreement, the necessity of bringing this issue to arbitration, and the majority decision that the December 1993 and February 1994 postings be cancelled and the employer ordered to immediately repost the position.

The Award's remedy does not address the first collective agreement violation in this case and the improper and unfair treatment of Coleman as a result. Instead it adds further to his unfair treatment by denying him the posting that he was best qualified for and offered, and which was improperly cancelled.

Furthermore, the Award does not direct the parties in the spirit and intent of Article 8 of the collective agreement and Section 53 of the Labour Relations Code to enter into discussions at Standing Committee prior to implementation any organisational changes regarding changes that will impact on the working conditions of employees under the agreement.

Dated this 4 day of June 1995

Tom McGrath, Union Nominee