IN THE MATTER OF AN ARBITRATION

BETWEEN:

GREATER VANCOUVER REGIONAL DISTRICT

(the "Employer")

AND:

GREATER VANCOUVER REGIONAL DISTRICT EMPLOYEES' UNION

(the "Union")

(Control Room Operators Grievance)

ARBIITRATION BOARD:	BARBARA R. BLUMAN
FOR THE EMPLOYER:	ALAN J. HAMILTON
FOR THE UNION:	BILL EASTWOOD
PLACE AND DATE OF HEARING:	VANCOUVER, B.C. SEPTEMBER 6, 1994
DATE OF AWARD:	SEPTEMBER 17, 1994

AWARD

I

This is an expedited arbitration and my appointment is pursuant to the provisions of section 104 of the Labour Relations' Code. The arbitration concerns the control room operators who work at the Employer's Beach Control Centre located on Riverside Drive in North Vancouver, B.C. They are responsible for maintaining the integrity of the water system. They monitor water pressures, water flows, control valves,

pump stations, etc. The monitoring is continuous, twenty-four hours per day. There are no employees available for relief purposes and the control room operators are required to remain on the premises over their lunch breaks and to respond to alarm bells. Monitoring over the lunch break is a longstanding practice at the Beach Control Centre. The Employer provides cooking facilities on the premises.

The Union contends that the control room operators cannot be required to monitor over the lunch break and ought to be paid if relief is not provided. While the control room operators have not been compensated for keeping watch over lunch since they converted to a 12-hour work schedule, which as best can be determined, was sometime in 1980, the Union says that this is in contravention of article 2.03 of the collective agreement.

The Employer denies any violation of' the collective agreement. The Employer says that the parties agreed, at the time of the conversion to the 12-hour shift schedule, that the conversion, which had been proposed by the Union, would be cost neutral. Prior to conversion, the control room operators kept watch over their lunch breaks and afterwards, they were paid the same salary. The control room operators continued to man their stations over lunch for many years before the Union objected and the Employer says that this is compelling evidence that there was such an agreement.

However, the Union insists that requiring the control room operators to keep watch over lunch is contrary to the clear and unambiguous wording of the collective agreement. The Union says that lunch relief is provided at other facilities such as the lona Waste Water Treatment Plant where there is also continuous twenty-four hour coverage and a 12-hour shift schedule, Mr. Eastwood was not aware of the reason why the practice carried on so long at the Beach Control Centre without objection. However, he says that the Union, having become aware of the matter, is entitled to rely upon its strict contractual fights.

II

Both parties acknowledge that the hours of work of control room operators are governed by article 2 of the collective agreement and in particular, article 2.03. The relevant portions of article 2 are as follows:

2.01 Working Week

Unless otherwise noted herein:

(a) A work week shall consist of five (5) days of eight (8) hours, Monday through Friday, between the hours of 7:00 a.m. and 4:30 p.m.
(b) Employees will be paid in accordance with Schedule “A”.
(c) Employees will be paid for the hours worked.
(d) The hourly rate for salaried employees will be the bi-weekly rate divided by eighty (80).
(e) Payday will fall on every second Friday.

2.03 12-Hour Shifts

Calculation of 12-Hour Shift:

(a) Under a continuous shift schedule the average working time is 7 1/2 hours.
(b) In 1980 there are 251 working days and therefore the hours to be worked exclu sive of annual holidays are 251 x 7.5 1882.5 hours.
(c) On a 12-hour shift schedule the average time worked is 11 1/2 hours and there

fore the number of shifts to be worked exclusive of annual holidays is 1882.5/11 1/2 = 163.7.

(d) For the purposes of this schedule, statutory holidays will be considered as begin ning at 6:00 a.m. on the declared statutory holiday and ending at 6:00 a.m. the following day. Compensating time for statutory holidays worked will be credited at six (6) hours for each 12-hour shift worked.

(e) Annual vacation and sick leave entitlement will not change. Each 12-hour shift taken as annual vacation, sick leave or statutory holiday compensating time will be considered as 1 1/2 days (i.e. 12 hours).

2.04 Swing Shifts

(a) Shift work will apply on projects involving two or three shifts per day for six or more shifts. Shift work will be considered as in effect from the time the Superin tendent declares it so, otherwise overtime rates will be applicable. When swing shifts are worked on any project, a day shift will consist of eight hours working time, the evening shill will consist of seven and one-half hours working time, and the mid-night shift will consist of seven hours of working time.

(b) Where operation of sewage treatment plants requires continuous attendance, the day shift shall start at 7:00 am. and stop at 3:30 p.m. including a one-half hour lunch break, afternoon shift shall start at 3:30 p.m. and stop at 11:30 p.m.. Night shift shall start at 11:30 p.m. and stop at 7:00 a.m. At the request of the operators these times may be advanced or retarded a uniform amount.

(c) Operators on continually rotating shifts at sewage treatment plant or other instal lation where there is continuous operation on a 7-day, 24-hour basis will receive a shift differential of 3 1/2% of their bi-weekly pay. Shifts will be scheduled to limit the average number of shifts for each operator to five per week throughout the year or such other lesser period as mutually agreed. In the preparation of schedules for rotating shifts, there will be a period of forty-eight (48) hours between shift tour changes unless otherwise agreed to by the parties concerned. (1978).

The hours of work of employees working the 12-hour shift schedule are governed by article 2.03. Article 2.03(a) says that the work time for these employees is 111/2 hours per day. The Union says that requiring the control room operators to man the control panel for twelve hours is a clearcut violation of the collective agreement.

A 12-hour shift schedule first appeared in a collective agreement between the parties as a memorandum of understanding appended as Addendum VIII to the 1979-80 collective agreement. The M.O.A. provided for the introduction of 12-hour shifts at the Annacis Plant on an experimental basis. Addendum VIII stated:

ADDENDUM VIII

MEMORANDUM OF AGREEMENT

RE: EXPERIMENTAL 12 HOUR SHIFTS - ANNACIS ISLAND

The Greater Vancouver Regional District and the Greater Vancouver Regional District Employees Union agree to ammend (sic) the Collective Agreement made

the 29th day of August 1979 to accommodate, on an experimental basis until December 31, 1980, 12 hour shifts at the Annacis Island Treatment Plant. *The Agreement is ammended (sic) where necessary to be consistent with the principle that employees working a 12 hour shift will work the same total number of hours in a year and will receive the same remunera tion and benefits as now provided in the Agreement for continuously rotating shift work*

This experimental Agreement can be cancelled on thirty (30) days notice give by either party.

For greater clarity it is specifically agreed:

1. Under a continuous shift schedule the average working time is 7 1/2 hours.
2. In 1980 there are 251 working days and therefore the hours to be worked exclusive of annual holidays are 251 x 7 1/2 = 1882 1/2 hours.
3. On a 12 hour shift schedule the average time worked is 11 1/2 hours and therefore the number of shifts to be worked exclusive of annual holidays is 1882.5/11.5 = 163.7.
4. Deferred compensation will be credited at 3/4 hour for each 12 hour shift worked.
5. For the purposes of this experiment statutory holidays will be considered as beginning at 6:00 a.m. on the declared statutory holiday and ending at 6:00 a.m. the following day. Compensating time for statutory holidays worked will be credited at 6 hours for each 12 hour shift worked.
6. Annal (sic) vacation and sick leave entitlement will not change, each 12 hour shift taken as annual vacation, sick leave or statutory holiday compensating time will be considered as 1 1/2 days, i.e. 12 hours.

(Italics added)

The 1981-82 collective agreement was the first to incorporate a 12-hour work schedule into its body. The terms were the same as those in Addendum VIII of the 1979-80 agreement except the new shift schedule did not only apply to the Annacis Plant. It was added as subsection (D) to article 7 which governed "swing shifts". Articles 7(A), (B), and (C) have since been renumbered as articles 2.04 (a), (b), and (c) in the 1991-94 collective agreement. Article 7(D), which was sub-headed "Experimental 12 Hour Shifts", has been made a separate article - article 2.03 - in the 1991-94 collective agreement. The language has not changed over the years except that the 12-hour shift schedule is no longer described as "experimental". Even the base year used to illustrate how to calculate the annual number of shifts is the same as in Addendum VIII, i.e. 1980.

Prior to the conversion to the 12-hour shift schedule, the control room operators at the Beach Control Centre, like the operators at the Annacis Plant, worked a continuously rotating shift schedule, The evidence suggests that they convened to a 12-hour shift schedule during the term of the 1979-80 collective agreement. The 1979-80 agreement is not in evidence so I do not know for sure if it included the same or similar "swing shift" provisions to those which can be found in both the 1981-82 and 1991-94 agreements, According to the evidence, control room operators working the day shift manned their stations for 8 1/2 hours, those on evening shift for 8 hours, and those on mid-night shift for 7 1/2 hours. However, both the 1991-94 and 1981-81 agreements [article 2.04(a) and article 7(A) respectively] say that a day shift will consist of "eight hours working time", evening shift will consist of "seven and one-half hours working time" and mid-night shift "seven hours of working time". If the contract language was the same in the 1979-80 collective agreement, similar arguments could be raised about the legality of the control room operators keeping watch over lunch before conversion to the 12-hour shift schedule as have been

raised regarding the situation since then.

There is no concrete evidence establishing the date that the 12-how shift schedule was introduced at the Beach Control Centre. It was the understanding of Ron Hyslop, a control room operator since 1977, that 12-hour shifts were first suggested by Eugene Janel, the Union secretary, whose job was that of yardman and to provide relief at the Beach Control Centre. He was familiar with such shifts from his previous employment. It was Hyslop's recollection that the 12-hour shift schedule was introduced at the Beach Control Centre two to four months before it was introduced in the Annacis Plant because the operators at the Annacis Plant wanted to first see if it worked. If Hyslop's recollection is accurate, the 12-hour shift schedule would have been introduced at the Beach Control Centre during the first half of 1980. Unlike in the case of the Annacis Plant, the parties are not aware of any written document providing specifically for the experimental introduction of a [2-hour work schedule at the Beach Control Centre. The earliest evidence of any contractual commitment applicable to this plant is article 7(D) of the 1981-82 collective agreement which made the "Experimental 12 Hour Shift Schedule" available throughout the Employer's operations.

The wage schedule for control room operators is set out under Schedule "A" of the 1991-94 collective agreement. Their wages are expressed as a bi-weekly salary, not an hourly rate. The same wage structure existed prior to the transition to the 12-hour shift schedule. The Employer contends That it is highly significant that prior to the introduction of the 12-hour shift schedule at the Beach Control Centre, and earlier in the term of the 1979-80 collective agreement, the wage rate of control room operators (otherwise known as beach control operators) was studied by a joint Union-Employer Committee. In August, 1979, the parties agreed to supplant the earlier single classification of "beach control operator" with a four level wage scale. This document was reduced to writing in a M.O.A, which was then appended as Addendum Ito the 1979-80 collective agreement.

According to Hyslop, the re-evaluation of the job of beach control operation was precipitated by the fact that the job had become "bigger". He said that there were changes in technology such as the equipment being changed from analog to digital. Not only did they have to learn the new equipment, but at the same time, the system was expanding and the reservoirs being filled.

The Standing Committee which initiated the reassessment of the wages paid control room operators is a creature of the collective agreement. The 1991-94 agreement provides for such a committee in article 8. The Committee is composed of members of the bargaining committees of both parties and its mandate is to "consider and recommend on anomalies, contract changes, working conditions, job descriptions, and administration of the Collective Agreement." The minutes of the Standing Committee's January 30, 1979 meeting indicate that the Committee had agreed at that meeting to establish a sub-committee to review the control room operator positions. The sub-committee was to be composed of Janel, and David Williams, director of personnel of the Regional District. On April 11, 1979 Janel reported to the Standing Committee that he felt that it would be worthwhile for he and Williams to view the Seattle operation. The Standing Committee agreed. On May 17, 1979, the Standing Committee was told that Janel and Williams would be going to Seattle on May 19th. On June 21, 1979, the members of the Standing Committee were informed that the sub-committee would prepare and circulate its report on the beach control operators prior to the next meeting set for July 25, 1979. 1 am satisfied that an undated sub-committee report on beach control operations introduced in evidence by Mr. Hamilton is that report. The report describes the Seattle visit and provides a detailed comparison of the wage rates and working conditions of G.V.R.D. beach control operators and Seattle water supply dispatchers. It sets out what the sub-

committee saw as the factors affecting the beach control operator position and criteria which they felt ought to be used in comparing this position to others in the Regional District. It seems that this report was followed by an Employer-initiated proposal to the Standing Committee dated July 25, 1979 proposing that the single beach control operator classification be replaced by a 3-step grading with a 4th grading for beach control operator trainee. The Union tabled a counter-proposal on August 5, 1979 and on August 20, 1979 the Standing Committee came to agreement on the matter. The single classification was to replaced by a 3-step grading and trainee position. The Standing Committee gave the following rationale for its recommendation:

> "In January of this year, in consideration of the growing complexity of the Beach Yard Control Room operation, the Standing Committee undertook a review of the Control Room Operator's position with a view to determining whether the position should be upgraded with respect to pay scale.
>
> The Standing Committee has completed its review and is of the opinion that because of the in creasing complexity of the system, the greater knowledge and understanding of electronics and hydraulics needed for the operation, and the additional responsibilities for other monitoring and reporting functions which have been added to the Control Room in recent years, that the position should be upgraded with respect to both qualifications and pay scale."

After the Standing Committee reached agreement, the parties entered into a memorandum of agreement and the M.O.A. was appended as Addendum I to the 1979-80 collective agreement.

According to Hyslop, the re-evaluation resulted in an increase in salary. He said that the control room operators were generally pleased by what had transpired. It was also his recollection that his earnings stayed the same, or even possibly increased, when the Beach Control Centre converted to the 12-hour shift schedule.

Mr. Hamilton says that it is highly significant that the wages of control room operators had been re-evaluated shortly before the conversion to the 12-hour work schedule. He says it is particularly significant that the sub-committee, in its report to the Standing Committee, made reference to the fact that the operators keep watch through the lunch period. The subcommittee identified nine "Factors Affecting the Beach Control Operator Position", two of them being as follows:

3. The work is in a relatively confined work area with none of the relief which occurs during work shift in most other positions in the district.
4. The Operator is in a constant watch keeping position throughout the entire shift, including the lunch period.

According to Mr. Hamilton1 all of this can only lead to the conclusion that the Standing Committee, which included Union officials, took the fact that control room operators were not relieved over lunch into account in establishing the new wage schedule.

Neither party produced a witness involved in the negotiation of the M.O.A.'s appended as Addendum I

and Addendum VIII to the 1979-80 collective agreement. There were also no witnesses involved in the negotiation of the 1981-82 agreement which provided for an experimental 12-hour shift schedule which was to be available throughout the Employer's operations, not just in the Annacis Plant. Mr. Hamilton says that there is documentary evidence that the parties agreed that the conversion to the 12-hour shift schedule, at the Beach Control Centre and everywhere else, would be cost neutral. In that regard, he cites Addendum VIII which says that it is a principle of the agreement that employees are to receive "the same total number of hours in a year and will receive the same remuneration and benefits as now provided in the Agreement for continuously rotating shift work". He says that the parties applied the same principle to the conversion of the control room operators.

III

There is no question but that control room operators have monitored over lunch for a long time and from the inception of the 12-hour shift schedule. It is a practice which carried on for many years without any objection being voiced by the Union or affected Union members. It is a practice which predates the conversion to the 12-hour shift schedule. We know that from Hyslop and from what is written in the report of the sub-committee which reviewed beach control operations.

It is well-settled law that a party may discontinue a practice which is contrary to the collective agreement. The fact that the practice has been a longstanding one does not convert it into a contractual commitment. At page 18 of Vancouver Police Board and Vancouver Police Union, unreported, 1987 (Hope), Professor Weiler, sitting as chairman of The Labour Relations Board of British Columbia is quoted as stating in Re City of Victoria and C. UP.E., Local .50 (1974) 7 L.A.C. (2d) 239 at p. 243:

> Apparently, the City has administered the collective agreement - and in particular this language under s.2 1:10 - for a considerable number of years on the assumption that only three hours' pay at the normal rates was guaranteed on an emergency call. It argued that this past practice implied that that was the correct interpretation. However, I believe that the language of the agreement on its face is sufficiently clear that extrinsic evidence may not be used to alter its meaning, and that is certainly true of the character of the evidence advanced here.

Since *University of British Columbia* and *C U P.E., Local 1/6 [1977]* 1 C.L.R.B.R. 13 (Weiler), a landmark decision of the Labour Relations Board, a party to an arbitration seeking to adduce extrinsic evidence such as evidence of bargaining history is not faced with first clearing the hurdle of establishing that the contract language is legally ambiguous. However, this does not mean that extrinsic evidence can override the written word. In *U B.C. and C. UP.E.*, Professor Weiler endorsed the principle of the sanctity of the written contract and made it very clear that extrinsic evidence can be used as an aid to *interpret* the contract, not to vary what are express terms. He went so far as to state that even if there is evidence that there was an oral agreement to vary a contractual provision, The written word ought to be enforced. At page 17 he stated:

> The proper use by an arbitrator of extrinsic evidence such as negotiation history should depend on the purpose for which that material is advanced. As we stated at the outset, a collective agreement is a bargain which must legally be contained within a written document. If the parties wish to change or add to the existing terms, they must express any such arrangements in writing as well.

> Accordingly, arbitrators should not take account of evidence which is designed to prove that the panics have agreed orally to a variation in their collective agreement. This is the kernel of truth expressed in the traditional exclusionary doctrine: the arbitrator simply has no jurisdiction to enforce obligations which are separate and independent from the written collective agreement reached by the parties. (We would add that these comments are not intended to address the special legal doctrine of promissory estoppel.)
> But quite a different appraisal should be made of extrinsic evidence which is presented to persuade the arbitrator of the proper interpretation of the written contract. Section 92(3) of the Code directs the arbitrator to have regard to the "real substance" of the issues and the "respective merit...under the terms of the collective agreement". The parties do not draft their formal contract as a purely literary exercise. They use this instrument to express the real-life bargain arrived at in their nego tiations. When a dispute arises later on, an arbitrator will reach the true substantive merits of the parties' positions under their agreement only if this interpretation is in accord with their expecta tions when they reached that agreement. Accordingly, in any case in which there is a bona fide doubt about the proper meaning of the language in the agreement - and the experience of arbitra tors is that such cases are quite common - arbitrators must have available to them a broad range of evidence about the meaning which was mutually intended by the negotiators. In our judgment it is not consistent with s. 92 of the Code for arbitrators to be prevented by artificial legal blinkers from looking at material which in real-life is clearly relevant to an accurate reading of disputed contract language.
>
> What is the point of the formulation of this doctrine? First of all, a party which wishes to present evidence of what transpired at negotiations must understand that such evidence will have to be tied in to a written provision contained on the face of the collective agreement and must be prepared to persuade the arbitrator that such extrinsic material discloses the actual meaning intended for this written provision. But if this is the objective, the party does not have to clear a preliminary baffler before that evidence can be utilized, of securing an initial ruling from the arbitrator that the agree ment is legally ambiguous on its face Instead, the arbitrator, when he begins the task of interpreta tion, will be able to do so with a full appreciation of the relevant exchanges which eventually culminated in the formal document. With that material before him, the arbitrator can decide whether he entertains any doubt about the meaning intended for the provision in question and, if so, whether the negotiation history is helpful in resolving that doubt.

Past practice, like bargaining history, can be an important aid to interpreting ambiguous contract language. However, such evidence must be treated with caution. There are many reasons why a practice may develop outside the collective agreement. It may be an oversight or a mistake. It may be a practice born of expedience. The practice may have been a goodwill gesture at its inception but over time, this aspect was forgotten. Practices which develop outside the collective agreement are considered gratuitous benefits and may be discontinued if one party wishes to reassert its contractual rights. It is only if the contract language is ambiguous and capable of being interpreted as either supporting or not supporting entitlement to the benefit that the practice will be considered a persuasive indicator of what was agreed to in the course of collective bargaining. In *Re International Association of Machinist, Local 1740 and John Bertram & Sons Co. Ltd.* (1967) iS L.A.C. 362 (Weiler) at pp. 367-8, Professor Weiler outlined what have come to be accepted as the arbitral principles which are applicable when a party seeks to rely upon evidence of past practice:

> If a provision in an agreement, as applied to a labour relations problem is ambiguous in its require ments, the arbitrator may utilize the conduct of the parties as an aid to clarifying the ambiguity. The theory requires that there be conduct of either one of the parties, as an aid to clarifying ambi guity. The theory requires that there be conduct of either one of the parties, which explicitly in volves the interpretation of the agreement according to one meaning, and that this conduct (and, inferentially, this interpretation) be acquiesced in by the other party. If these facts obtain, the arbi trator is justified in attributing this particular meaning to the ambiguous provision. The principal reason for this is that the best evidence of the meaning most consistent with the agreement is that mutually accepted by the parties. Such a doctrine, while useful, should be quite carefully em ployed. Indiscriminate recourse to past practice has been said to rigidify industrial relations at the plant level, or in the lower reaches of the grievance process.
>
> Hence it would seem preferable to place strict limitations on the use of past practice in our second sense of The term. I would suggest that there should be (1) no clear preponderance in favour of one meaning, stemming from the words and structure of the agreement as seen in their labour relations context; (2) conduct by one party which unambiguously is based on one meaning attributed to the relevant provision; (3) acquiescence in the conduct which is either quite clearly expressed or which can be inferred from the continuance of the practice for a long period without objection; (4) evi dence that members of the union or management hierarchy who have some real responsibility for the meaning of the agreement have acquiesced in the practice.

Finally, I would add that if extrinsic evidence is to be probative value, it must be clear and reliably establish the intent of both parties. In Brown and Beatty, paragraph 3:44 at p. 3-49 it is stated:

> For parol evidence to be utilized, however, it must be “consensual” and must not represent the “unilateral hopes” of one party and it must not be equally vague or as unclear as the written agree ment.

IV

I agree with the Union that the language of article 2.03 appears to be clear and unambiguous. Article 2.03(c) says that the “average time worked” is 111/2 hours. The employee’s shifts for the year are calculated by annualizing the hours worked on the continuously rotating shift schedule and dividing this figure by 11 1/2.

Mr. Hamilton argued that article 2.03 ought to be considered ambiguous because it is not clear what is meant by “time worked”. He says staying on the premises to respond to alarms may not necessarily be “time worked” under this agreement. The problem with this analysis is that it flies in the face of what is commonly understood to be “time worked” in the context of a labour contract. “Time worked” is generally synonymous with being “on duty”. The control room operators are not relieved from monitoring the controls while on lunch; they are “on duty”.

There is nothing in the agreement to suggest that the parties used the term “time worked” in other than its traditional context. Article 2.01(c) says that “Unless otherwise noted herein...Employees will be paid

for the hours worked." Monitoring the controls and responding to alarms is the essence of the work for which the control room operators were hired. I was not referred to any contract provision exempting control room operators or other employees working a 1 2-hour shift schedule from this contractual provision. By the same token, article 2.04(a) says that swing shifts consist of 8 hours (days), 7 1/2 hours (evenings), and 7 hours (midnight shift) of "working time". This terminology implies to me that breaks are to be distinguished from "working time" and that "working time" means the length of time they are to be on duty. Significantly, article 2.04(b), which specifies the start and stop times of the swing shifts worked by sewage treatment plant operators, allows for 8 lC hours (days), 8 hours (evenings), and 7 1/2 hours (midnight shift) "including a one-half hour lunch break". Ron Beaumont, a sewage treatment plant operator, testified that relief is provided and he is free to pursue his own interests during his half hour lunch break.

According to *John Bertram and Sons; supra*, if one is to rely upon past practice as an aid to interpretations, there must be "no clear preponderance in favour of one meaning, stemming from The words and structure of the agreement as seen in their labour relations context". In my opinion, the meaning that the Employer says ought to be give the words "working time" does not meet this test.

With respect to the evidence of bargaining history, I am satisfied that the Union officials who were members of the Standing Committee when it revised the wage schedule for beach control operators in 1979, were aware that the beach control operators kept watch over lunch. However, none of the members of the Standing Committee testified so I do not, really know whether this was taken into account by the signatories to the revised wage schedule and if it was, to what extent they would have been influenced by this. Certainly, what the Standing Committee wrote was its rationale for the new wage schedule makes no reference to lack of relief being a factor.

A cornerstone of the Employer's case is that it was agreed that the transition to the 12-how shift schedule would be cost neutral; However, there is no evidence documenting such a condition being set prior to the conversion to the 12-hour work schedule at the Beach Control Centre. This is in stark contrast to what happened at the Annacis Plant. The terms of the operators' conversion to the. 12-hour shift schedule were reduced to writing and appended as an addendum to the collective agreement. While it may seem logical in hindsight that the earlier deal with the control room operators was probably on the same terms, there is no reliable evidence that there was a deal of any sort and, even if there was, it was not a deal that the parties saw fit to reduce to writing. An oral arrangement cannot override a contractual commitment.

Even if I was convinced that the conditions set out under Addendum VIII ought to apply to the conversion at the Beach Control Centre, such a finding would not necessarily assist the Employer. The M.O.A. says that "The Agreement is ammended (sic) where necessary to be consistent with the principle that employees working a 12 hour shift will work the same total number of hours in a year and will receive the same remuneration and benefits as now provided in the Agreement for continuously rotating shift work" The terms and conditions applicable to continuous shift work under the 1979-80 collective agreement are not in evidence. However, Addendum VIII says that the average working time is 7 1/2 hours which strongly suggests that the terms and conditions were similar, if not identical, to those in the 1981-82 collective agreement. Addendum VIII does not protect the conversion of an average working dine of eight hours if this is contrary to the collective agreement.

The fact of the matter is that I know very little about what transpired around the time the beach control operators converted to a 12-hour shift schedule. While the fact that the control room operators kept

watch over lunch should have been common knowledge, it may well be that no one at the time realized that this longstanding practice may be contrary to the terms of the collective agreement then in force.

I think that it is very significant that it was the operators in the Annacis Plant, not those at the Beach Control Centre, who were the initial focus of those negotiating the terms of the new shift schedule. If the operators in the Beach Control Centre were the first to achieve the new working arrangements, it seems odd that they were not selected. Why this would be so I do not know, it is simply one of many pieces of this puzzle which, on the evidence adduced before me, cannot be explained. However, the fact that they were not the focus of the M.O.A. is relevant insofar as it may explain why no one may have realized at the time that the underlying criteria for the calculation of the annual number of shifts did not reflect what was the practice at the Beach Control Centre. It may have been assumed that the average working time of the control room operators was 7 1/2 hours because that 'was what the contract stipulated for those working continuously rotating shifts. Addendum VIII made it very clear that the transition was to be "neutral" only in the sense that there was to be no loss or gain by either party relative to the terms and conditions provided for in The agreement at the time of the conversion. There is no indication in the written contract that there was any agreement to sanction a longstanding arrangement at the Beach Control Centre which had never been reduced to writing. Since I have not heard from anyone involved in the negotiations during the relevant periods, I do not know if this matter was even considered. There is nothing in the report of the sub-committee to suggest that either Janel or Williams were aware that there may be such an anomaly.

The situation in the Beach Control Centre was a longstanding arrangement which survived many sets of negotiations. Presumably, not just the Employer, but also the employees thought that this was a contractual commitment, not a gratuitous gesture. However, as I stated earlier, time alone does not convert a gratuitous benefit into a contractual commitment. The evidence of bargaining history does not disclose any evidence of special consideration being given to the circumstances in the Beach Control Centre by those negotiating the contract language for the 12-hour shift schedule. The contract language, itself, is devoid of any evidence that they gave the matter any special consideration nor does it suggest that it was contemplated that the control room operators would be treated any differently than others performing continually rotating shift work. I, therefore, conclude that article 2.03 must be interpreted in accordance with its plain meaning, i.e. that a control room operator's shift amounts to 11 1/2 hours and that this includes the one-half hour lunch break if the control room operator is required remain on duty monitoring the controls.

IV

When a party seeks to revoke its acquiescence to a longstanding practice which survived many sets of negotiations, as a general rule, that party will be estopped from doing so until it has given the other party proper notice of its intention to do so. Proper notice will usually mean that the other party had been given an adequate opportunity to bargain a right to continue the practice when the contract last came up for re-negotiation. *Vancouver Police Board and Vancouver Police Union, supra.*
Because of the length of time that the practice carried on before the Union objected, and the other circumstances set out earlier in this award, I have concluded that the Union ought to be estopped from

putting an end to the practice of requiring the control room operators to remain on duty over lunch until such time as the parties enter into a new collective agreement. Since the parties are in the midst of negotiations, the Employer is entitled to have an opportunity to bargain language to continue this practice during these negotiations and it is a term of this award that the Employer be permitted to put this matter on the table, should it wish to do so.
This grievance is allowed on this basis.

Dated at Vancouver, B.C. this 17th day of September, 1994.

Barbara R. Bluman, Arbitrator