

**AMERICAN ARBITRATION ASSOCIATION
VOLUNTARY LABOR ARBITRATION**

**IN THE MATTER OF THE
ARBITRATION BETWEEN**

**SCHINDLER ELEVATOR
CORPORATION,
("Schindler" or "Company")**

-and-

**INTERNATIONAL UNION OF
ELEVATOR CONSTRUCTORS, AFL-
CIO,
("Union")**

COMPANY GRIEVANCE

(Issue of whether or not parties' contract requires Company to test non-bargaining unit supervisory and management employees under the "regular testing program" agreed to by Company and Union for bargaining unit employees; anticipatory breach; remedy.)

OPINION AND AWARD

Before: Elliott H. Goldstein, Arbitrator

AAA Case No. 51 300 00830 03

Arb. Case No. 03/045

Appearances:

On Behalf of the Company:

Peter Robb	Attorney
Scott L. Stadelman	Company President
Michael Shields	HR/Labor Relations Manager
Richmond T. Downie	Region Operations Manager
James Walker	Downs Rachlin Martin Labor Consultants
Gene Moch	Company Vice-President
Roger Cutsinger	Manager Labor/Employee Relations

On Behalf of the Union:

Robert Matisoff	Attorney
James H. Chapman, Jr.	Assistant General President, IUEC
Dana Brigham	General President, IUEC
Mike Langer	Business Manager, Local 4
Tim Smith	IUEC Regional Director
Torry Shanken	IUEC Local 2

I. INTRODUCTION

The hearing in this case was held on May 17, 2005 at the Hilton O'Hare, O'Hare International Airport, Chicago, Illinois, before the undersigned Arbitrator who was duly appointed by the parties to render a final and binding decision in this matter. At the hearing the parties were afforded full opportunity to present such evidence and argument as desired, including an examination and cross-examination of witnesses. A 164-page stenographic transcript of this hearing was made. The parties submitted post-hearing briefs, the second of which (the Company's) was received by the Arbitrator on July 1, 2005, whereupon the record was declared closed. The parties graciously granted the Arbitrator an extension of time in which to render his award.

II. STATEMENT OF THE ISSUE

After considering the issues proposed by the parties, the Arbitrator frames the issues as follows:

- A) Whether the Substance Abuse Program incorporated within the collective bargaining agreement requires the Company to test non-bargaining unit employees when testing bargaining unit employees?
- B) Whether the IUEC and/or IUEC Local 2 violated the labor contract in December 2002 by not allowing bargaining unit employees in the Company's Chicago office to be tested unless non-bargaining unit employees were also tested, and, if so, what is the remedy?

III. PERTINENT CONTRACTUAL PROVISIONS

SUBSTANCE ABUSE¹

* * *

Par. 2. The Company may schedule regular drug testing for employees at no less than 6 month intervals. There shall be no random testing for drugs or alcohol for any reason other than stated in Paragraph 6. An employee

¹ This provision is found on pages 130 through 134 of the parties' July 9, 2002 through July 8, 2007 collective bargaining agreement.

who refuses to submit to random testing of any kind, for reasons other than stated in Paragraph 6, shall not be disciplined, nor shall that employee be refused access to the jobsite.

* * *

Par. 8. Any employee(s) who possesses, sells, transports or distributes illegal drugs or unauthorized alcohol at a work site, on the company premises, or on company time is subject to immediate discharge.

This statement of principles shall apply to all employees represented by the International Union of Elevator Constructors. Substance abuse testing and treatment measures are appropriate for all employer non-bargaining unit employees as well, including company executives and officers.

IV. FACTUAL BACKGROUND

The Company, Schindler Elevator Corporation (Schindler or the Company), has a longstanding bargaining relationship with the International Union of Elevator Constructors, AFL-CIO (IUEC or Union). For many years, the Company was represented in collective bargaining with the Union by an employer association, the National Elevator Industry, Inc. (NEII). The Union and NEII entered into a long series of national collective bargaining agreements, each known as the Standard Agreement. In 2002, Schindler withdrew from NEII when it ceased to function for collective bargaining purposes. The Company and the Union then bargained with each other directly for the current agreement, dated July 9, 2002 to July 8, 2007. The Schindler agreement is almost identical to the labor contracts between the IUEC and other elevator companies.

The Standard Agreements prior to 2002 contained language regarding substance abuse. The version contained in the 1997-2002 Standard Agreement was introduced by the Union in evidence at the arbitration hearing. That substance abuse program did not provide for random or regular testing, but was limited essentially to "reasonable suspicion" and "post accident" testing. Going into the 2002 negotiations for new

agreements to replace the 1997-2002 Standard Agreement, the Union developed a much broader substance abuse program that included for the first time a provision for “regular” testing at six month intervals. As Union General President Dana Brigham testified, he sought to strengthen the substance abuse program not only for obvious safety reasons but to ensure that the Union and the industry had a stellar reputation regarding substance abuse. The proposal was initially proposed by the Union to Thyssen Krupp, the company with which the Union reached agreement first, and then to Otis and Schindler.

Schindler and the Union began negotiations in April 2002. On April 30, the Union presented its comprehensive substance abuse proposal which gave the Company the ability to conduct regular drug tests at six month intervals. The final numbered paragraph of the Union’s proposal contained the paragraph which ultimately gave rise to the instant dispute. It provides as follows:

This statement of principles shall apply to all employees represented by the International Union of Elevator Constructors. Substance abuse testing and treatment measures are appropriate for all employer non-bargaining unit employees as well, including company executives and officers.

Testimony from both Company and Union witnesses established that the Union repeatedly emphasized during negotiations its desire to have a drug-free workplace. When the matter first came up on April 30, Schindler Chief Spokesperson Shields generally agreed with the Union’s proposed efforts to achieve and maintain a drug-free workplace. Over the course of this bargaining session and another that took place on May 6, the Union voiced concerns about field superintendents being tested. The Union expressed the view that supervisors were just as likely to be involved in drug or alcohol incidents as bargaining unit employees.

Union witnesses testified that, in response to a question from Earl Romnes, a Company negotiator, as to who was to be tested under the proposed program, Union General President Brigham stated that "everyone," including supervisors, would be tested. Company witnesses all testified that when this subject came up, Scott Stadleman, now the Company President, raised his hands and asked to stop the discussion. He explained at the bargaining table that Schindler already had a comprehensive substance abuse policy, which provided for random drug testing where permitted by law, for its non-union represented employees. Therefore, he stated, the Company was not going to talk about testing for non-bargaining unit employees. Union witnesses conceded that this may well have occurred, though they were unable to recall the specifics of Stadleman's statement.

In any event, the record shows that the matter was not discussed again. Schindler ended up signing an agreement that contained the Union's proposal for a new substance abuse program, and it included the language of paragraph 8 set forth above. It is the Union's view that acceptance of this language compelled the Company to test non-bargaining unit supervisors when it subjected its bargaining unit field employees to regular testing. As Union General President Brigham and Assistant General President James Chapman testified, the Union used this as a selling point after the negotiations were concluded in explaining the more rigorous substance abuse program to the membership and arguing for its acceptance at the national ratification meeting the Union held in June of 2002.

In December that year, Region Operations Manager Richmond Downie, the head of the Chicago office, scheduled drug testing for the bargaining unit employees in his

area. Downie testified that there had been an unusually large number of injuries and one fatality among its Union represented workforce of about 715 to 720 employees. He stated that the Chicago office had the worst record for on-the-job accidents involving IUEC-represented employees among all of Schindler's numerous offices throughout the United States. However, employees in Schindler's Chicago office who were not part of the IUEC bargaining unit had not incurred a single incident, he testified.

According to Downie, he decided to look for possible causes for the high number of injuries. Having reviewed the new Schindler Agreement which had gone into effect in July, 2002, Downie focused on the testing procedure set forth in Par. 2 of the substance abuse program. He arranged for MEDTOX, a drug testing company, to perform the tests at several sessions on December 4, 5, and 6. They planned to collect specimens from about 35 employees per session. Downie testified that he combined the drug testing with safety training, which included a review of the changes to the substance abuse program as well as other matters. Downie estimated that one hour of paid time per employee for additional travel time from the drug testing/safety training site to the employee's first job would be needed.

On December 3, Downie called both IUEC Regional Director Ed Christensen and his brother, IUEC Local 2 Business Manager Frank Christensen, to advise them of his intention to give employees a drug test. Regional Director Christensen said he disagreed because, under Paragraph 8 of the substance abuse program, Schindler had to test non-IUEC-represented employees in order to test bargaining unit employees. Downie did not push the matter any further. Instead, he cancelled the MEDTOX testing, which saved

having to pay for tests that were not taken. He did have the employees come in for the training sessions.

On December 16, 2002, the Company filed the instant grievance, claiming that the IUEC “improperly refused to permit drug testing of bargaining unit employees unless the company concurrently required the same drug tests for its employees who do not [sic] bargaining unit work.” The Company requested that it be reimbursed for all costs of scheduling drug tests that were not recoverable and that the Union be instructed to cease and desist any efforts to interfere with drug testing of bargaining unit personnel performed under the substance abuse program. The parties were unable to resolve the dispute, and it now comes before this Arbitrator for final and binding resolution.

V. CONTENTIONS OF THE PARTIES

A. THE COMPANY

To the Company, this is a case where the clear and unambiguous contract language is entitled to enforcement. The substance abuse program plainly does not require Schindler to test non-bargaining unit employees, the Company argues. Par. 8 states that “substance abuse testing and treatment measures are **appropriate** for all employer non-bargaining unit employees,” including company executives and officers, but it does not mandate that such testing be performed. The parties knew how to propose language that would mandate such testing. The omission of reference to the terms “shall” or “must” in Par. 8 was not unintentional. In the Company’s view, the conclusion is inescapable that Par. 8 does not require that substance abuse testing and treatment measures be applied to non-bargaining unit employees.

There is no need to resort to parol evidence to determine the meaning of the disputed contract language, the Company asserts, because no ambiguity exists. Nevertheless, even if extrinsic evidence is considered, it does not favor the Union's theory of the case. Statements made in negotiations for the current agreement confirm that the Company would not address non-bargaining unit personnel at the bargaining table. This is consistent with the fact that Schindler already had a rigorous substance abuse policy for non-Union employees, which, unlike the Union's proposal, permitted random drug testing. Therefore, subjecting non-bargaining unit employees to the lesser restrictions of the substance abuse program proposed by the Union would not have been logical, the Company submits, because it would only have diluted the deterrent factors already applicable for non-Union employees.

Equally important, the Company maintains that the language of Par. 8 only states that substance abuse testing and treatment measures "are appropriate for all employer non-bargaining unit employees as well..." The Company fully complied with this language by having a separate substance abuse policy for non-represented employees. The existing policy already contained "appropriate" substance abuse testing and treatment measures. There was therefore no need to discuss the matter any further, as Stadelman made clear in his emphatic statement at the bargaining table.

Once that finding is made, the Company submits that the Arbitrator must conclude that the Union violated the Schindler agreement by refusing to allow the Company to administer substance abuse testing to bargaining unit members in the Chicago area. In response to Region Operations Manager Downie's courtesy call on December 3, Regional Director Christensen unequivocally announced that the Union

would not allow its members to take the scheduled drug tests unless Schindler also tested superintendents, office personnel and managers as well. Regional Director Christensen's sole support for his directive was Par. 8 of the parties' substance abuse program, Management reminds the Arbitrator. As the Company has shown, however, his interpretation was erroneous. Schindler had the right to give drug tests to bargaining unit employees without testing any non-bargaining unit employees. The Union's refusal to permit testing of bargaining unit employees in Chicago on December 4, 5, and 6, 2002 was a clear violation of the Schindler agreement, the Company asserts, and a make whole remedy is in order.

Schindler argues that the average time for employees to get to their first jobs was one hour per employee. Therefore, the Union should be required to reimburse the Company for one hour of time, at the contractual wage rates plus fringe contributions in effect at the time when the employees finally take the drug test, for all employees in Schindler's Chicago office who were scheduled to take the drug test in December 2002. Although the Company anticipates that the Union will argue that Schindler could combine the tests with future training sessions, Schindler argues that this is not a valid argument for allowing the Union to escape the consequences of its actions. But for the Union's breach of contract, Schindler maintains that it could have, and would have, given the drug tests in December 2002. Schindler should not be penalized now, some two and one-half years later, by a requirement that it wait even longer to make the drug tests coincide with other training. The Company further points out that an employer and union are equal parties to a labor contract and the same standard for assessing damages for breach of contract should be applied to both. Having breached the Schindler agreement,

the Union must be required to make Schindler whole for any damages, the Company forcefully argues.

For all these reasons, the Company requests that the Arbitrator sustain this grievance in its entirety.

B. THE UNION

In the Union's view, this case represents a classic demonstration of the old adage that "no good deed goes unpunished." Having pressed hard at negotiations for a new and much more stringent industry substance abuse program, the Union now finds itself accused by one of the employers that ultimately agreed to the Union's proposal of violating the very program it promoted. However, when the evidence presented at hearing is carefully considered, the Union submits, the conclusion that emerges is that Schindler, and not the Union, violated the provisions of the substance abuse program.

Although the Union acknowledges that the Company was not obligated to bargain over substance abuse measures for its non-bargaining employees, the fact of the matter is that the Company did so bargain in the 2002 negotiations leading up to the adoption of the revised program, I am told. As the Court of Appeals for the Seventh Circuit recognized last year, measures addressing how non-unit workers are treated are permissive, not mandatory subjects of bargaining.² Employers are not required to bargain over such subjects, but may choose to do so. Once they do agree to such measures, the Union asserts, they are bound to them. That is what the Union believes occurred here.

The Company's position that it took the issue of substance abuse testing for non-bargaining unit employees off the table is simply not credible, the Union argues, since the Company obviously agreed to the language in question. In the end, the Union contends

² Lid Electric, Inc., v. IBEW Local 134, 362 F.2d 940 (7th Cir. 2004).

that this case can be resolved by resort to a standard for interpreting contract language often employed in arbitration. When the Union clearly explained at the table that the language of Par. 8 meant that supervisors would be subject to testing, the Company acted at its peril in agreeing to that very language proposed by the Union, without modifying it in some way to spell out that it did not mean what the Union asserted it meant. As Elkouri and Elkouri explain in *How Arbitration Works* (6th Ed. 1997), pp. 455-456: “...where a party has initially objected to a particular proposal, citing a particular reason, but the proposal is ultimately adopted, it may be interpreted as having the scope or effect feared by the objecting party.”

This was not an instance where the Union had some “secret” or undisclosed meaning, intention or interpretation of the language in question. To the contrary, the Union explicitly explained what it sought: testing of non-bargaining unit employees. Thus, the Union maintains that it was not enough for Stadelman to simply throw up his hands and say “stop,” only later to accept the Union’s proposed language for Par. 8 of the substance abuse policy. If the Company’s final position was that it would not agree to what the Union openly sought to obtain, the Company never should have agreed to any language discussing testing of non-bargaining unit employees unless that language clearly spelled out the limitations or conditions the Company wished to impose. In other words, by failing to modify the Union’s proposed language, the Company became bound to the Union’s interpretation when it agreed to the proposal, the Union strongly argues.

Moreover, when stripped to its essentials, the Company’s position makes no sense, the Union maintains. Even apart from the Union’s belief concerning what the Company agreed to in negotiations, the Union says it can think of no legitimate reason

why a company like Schindler, genuinely interested in safety, would not want its field managers to set an example for the rest of the work force and undergo appropriate testing. If the language of Par. 8 of the policy is to have any meaning, the Union submits, it is that the Company's non-bargaining unit employees are subject to the same testing as bargaining unit employees. If not, then the very premise upon which the IUFC based its agreement with the company to the policy – that substance abuse was a serious problem that has to be addressed and dealt with throughout all levels of the entire elevator industry, with management setting an example for field employees – is in doubt.

In addition, the Company's claim that the Union breached the collective bargaining agreement was not established, the Union forcefully asserts. The mere fact that the Union disagreed with the Company's interpretation of Par. 8 hardly amounts to a contractual violation. The Union maintains that the Company was required to establish that the Union violated some specific requirement imposed upon it by the contract. That did not occur here. There was no strike, no interruption of work or other duties. In this case, Downie simply backed away when he learned of the Union's position. Had Downie proceeded with the testing and directed the employees to submit to the drug test, a grievance or even discipline arguably might have been appropriate if employees failed to follow the Company's orders. However, absent some affirmative action or threat by the Union or the bargaining unit employees, the Company's claim of damages for contractual breach is precipitous and should be denied.

Finally, the Union argues that the damage claim itself is flawed. The Company failed to establish exactly what damages were incurred. Even though the drug testing was cancelled, the employees attended a training session. In so doing, travel time was

expended. The Company's contention that it should recover that travel time would amount to a windfall, the Union submits. The damage claim must be denied in full.

Accordingly, and for all the reasons set forth above, the Company's grievance should be denied in its entirety.

VI. FINDINGS AND DISCUSSION

The instant grievance filed by the Company presents a fundamental issue of contract interpretation. How does an arbitrator charged with interpreting and applying a collective bargaining agreement draw the line between an ambiguous contract, requiring interpretation, and a contract in which the parties' intent can be found in the words which they, themselves, employed to express their intent? Certainly, there are various techniques, standards and rules used by arbitrators in executing this function. But the test most often cited is that there is no ambiguity if the contract is so clear on the issue that the intentions of the parties can be determined using no other guide than the contract itself. If the words are plain and clear, the Arbitrator need not resort to technical rules of construction because the straightforward meaning of the language speaks for itself. See, Ralphs Grocery Co., 109 LA 33, 35-36 (Kaufman, 1997); National Linen Service, 95 LA 829, 834 (Abrams, 1990); Clean Coverall Supply Co., 47 LA 272, 277 (Witney, 1966); Metropolitan Warehouse, 76 LA 14, 17 (Darrow, 1981); Safeway Stores, 85 LA 472, 475 (Thorp, 1985); Kennecott Copper Corp., Ray Mines Division, 72 ARB CCH, Par. 8849 (Abernathy, 1970).

The distinguished jurist Learned Hand expressed this fundamental principle in the oft-quoted case of Hotchkiss v. National City Bank, 200 F. 287, 293 (S.D.N.Y.1911), *aff'd*, 201 F. 664 (2d. Cir. 1912):

A contract has, strictly speaking, nothing to do with the personal, or individual, intent of the parties. A contract is an obligation attached by the mere force of law to certain acts of the parties, usually words, which ordinarily accompany and represent a known intent. If, however, it were proved by twenty bishops that either party, when he used the words, intended something else than the usual meaning which the law imposes upon them, he would still be held, unless there were some mutual mistake, or something else of the sort.

This principle is applied “even though the results are harsh or contrary to the original expectations of one of the parties.” Del E. Webb Corp., 48 LA 166 (Koven, 1967). A contract does not become ambiguous if one party negligently uses a term that does not express the meaning intended by the party. Klein Tools, 90 LA 1150, 1153 (Pointdexter, 1988). Moreover, it is the responsibility of the drafter of the contract language to craft the language in a fashion that does not leave the matter in doubt. Ash Grove Cement Co., 112 LA 507, 511 (Wyman, 1999).

Applying these basic tenets to the matter before me, I must conclude that a reading of Par. 8 of the parties’ substance abuse program enables me to answer the threshold question posed by the parties. Does the substance abuse program require the Company to drug test non-bargaining unit employees when testing bargaining unit employees? The answer, plainly, is no.

Par. 8 bears repeating here. It states in pertinent part: “Substance abuse testing and treatment measures are appropriate for all employer non-bargaining unit employees, as well, including company executives and officers.” (emphasis added) The parties agree that the adjective “appropriate” can be defined as “suitable,” “fit,” or “proper.” Roget’s *New Millennium Thesaurus*, (1st Ed. 2005). It is a non-mandatory term. Simply because something is suitable or would be proper does not mean that it has to be done. The contract does not say, as it could have, that substance abuse testing *must be extended to or*

is required for non-bargaining unit employees. The Arbitrator simply cannot interpret the word “appropriate” to mean “required” or “mandated” when the meaning of the words used so clearly dictates otherwise.

I recognize that the Union has argued, to the contrary, that there is ambiguity in the contract language which must be analyzed by evidence of bargaining history. It is asserted that the Union made it clear during negotiations that Par. 8 was intended to require the testing of non-bargaining unit employees when bargaining unit employees were drug tested. The Union contends that the Company’s objection to the proposal -- evidenced when Stadelman threw up his hands and stopped the discussion about extending the substance abuse program to non-bargaining unit employees -- should be interpreted against the Company because Management negotiators ultimately agreed to the meaning of the language to which the Company now objects.

There are several difficulties with that argument, however. First, extrinsic evidence is generally deemed irrelevant where there is clear-cut contractual language, as noted above. If an agreement is not ambiguous, it is improper to modify its meaning by invoking the record of prior negotiations or permitting parol evidence to modify the contract.

Equally important, even if I were to look behind the four corners of the agreement and examine the evidence concerning bargaining history, it is clear that the record does not support the Union’s position. As the Company correctly points out, the parties have had a collective bargaining relationship for a long time. They are sophisticated in drafting agreements. The negotiators for both parties are veterans experienced in labor

relations matters. They must be presumed to know how to draft language which would create a mandate or a requirement.

Indeed, in the second paragraph of Par. 8, the Union proposed, and the Company agreed, that “this statement of principles **shall apply** to all employees represented by the International Union of Elevator Constructors.” (emphasis added) This sentence is mandatory. It requires the stated principles to be applied to IUEC-represented employees. By significant contrast, the mandatory term “shall apply” was not used in describing the application of the substance abuse program to non-bargaining unit employees. The substitution of the words “are appropriate” can only mean that the testing and measures can be, but are not required to be, applied to non-bargaining unit employees.

The Union drafted this language, it must be remembered. Whatever its expressed intentions, it chose to use language that did not create a requirement for non-bargaining unit employees to be tested in conjunction with bargaining unit employees. Whether intentional or not, the Union failed to use the terminology necessary to express the meaning it apparently intended. Both the Union and the Company are bound to the agreement they executed. In this case, that means there is no requirement for substance abuse testing and treatment measures to be applied to non-bargaining unit employees in the same way as they are applied to the bargaining unit.

All this is not to say that the laudable objectives of the Union were unsuccessful. As the evidence presented at hearing demonstrated, non-bargaining unit employees often visit the same job site where field employees work and they are exposed to the same hazards involving heavy equipment and electrical use. The Arbitrator understands the

concern that, if impaired, non-bargaining unit supervisors pose a potential danger in the same way as any bargaining unit employee on the job.

However, the Company has a substance abuse policy for its non-represented employees. There is no indication that it is less stringent than the program applicable to the bargaining unit. True, it does not provide for regular testing at six month intervals -- a requirement now incorporated in the parties' collective bargaining agreement -- but it does contain provisions for random testing and other kinds of testing that clearly address many of the concerns about substance abuse in the workplace. Thus, when the Company agreed to "appropriate" testing and other measures for its non-represented employees, it is easy to see why the Company believed they would be in compliance with the substance abuse program incorporated in the collective bargaining agreement.

Concluding as I do that the substance abuse program that is listed in the collective bargaining agreement does not require the Company to test non-bargaining unit employees when testing bargaining unit employees, we turn to the second issue posed by the parties in this case. The Company claims that the Union violated the labor contract by not allowing bargaining unit employees in the Company's Chicago, Illinois office to be given drug tests unless non-bargaining unit employees were also tested. After careful examination of the record evidence in its entirety, I am unconvinced that there was a contractual breach or that damages were incurred by the Company.

A fair reading of the evidence shows that Region Operations Manager Downie notified the Union in advance of the drug testing that was scheduled in December 2002. The Union responded that it did not agree with the Company's interpretation of the substance abuse program and contended that non-bargaining unit employees should be

tested as well. At that point, Management was at a fork in the road. They could have demanded that the bargaining unit comply with the drug testing or they could have cancelled the testing until the matter was sorted out. As we know, the Company chose the latter option. Had the employees been put to the test, we would have the classic “obey now, grieve later” situation. Instead, what we have, at best, is a difference of opinion regarding the interpretation of the contract.

It is basic contract law that, where two contracting parties differ as to the interpretation of the contract or as to its significance, an offer to perform in accordance with the interpretation of one of the parties is not in itself an anticipatory breach. In order to constitute such a breach, the offer must be accompanied by a clear manifestation of intent not to perform in accordance with any other interpretation. *Corbin on Contracts*, 1 Volume Ed., Sec. 973 (1952). Absent a direct order by the Company or a refusal or threat by the Union not to have the bargaining unit submit to the testing, the Company’s claim of a contract violation is simply premature. A disagreement as to the meaning of contractual terms does not amount to a violation of the contract.

Finally, there is no basis for a claim for damages in the instant case. Although the Company prevailed on the first issue presented in this matter, it did not meet its burden of establishing that there was a contractual breach in December 2002. Equally important, the Arbitrator does not see how the Company was financially harmed. It did not have to pay MEDTOX for any expenses incurred. Moreover, despite the fact that the drug testing was cancelled, Schindler proceeded with the safety training. Employees attended the training session. Whatever travel time they would have incurred to be drug tested was necessary in any event to attend the safety training. In fact, it would appear that the

Company benefited financially because employees returned to their jobs sooner than they otherwise would have if they had to wait to be drug tested. The damages claim must be denied for all these reasons.

In sum, the evidence established that the parties agreed to precatory language in Par. 8 of the Substance Abuse program which does not require Schindler to test non-bargaining unit employees in conjunction with the bargaining unit. The Company is correct on that particular point. Under the facts at bar, however, the Company failed to establish that the Union violated the terms of the collective bargaining agreement by refusing to permit its members in the Chicago office to take drug tests in December 2002. There was at best a disagreement on the meaning of the contract, not a breach or violation of the collective bargaining agreement. Finally, there is no basis for a finding that the Union should make Schindler whole for losses sustained because of the Union's refusal to permit bargaining unit employees to take drug tests in December 2002.

VII. AWARD

For all the reasons set forth above and incorporated herein as if fully rewritten:

- A. The substance abuse program listed in the collective bargaining agreement does not require the Company to test non-bargaining unit employees when testing bargaining unit employees.
- B. Neither the IUEC nor Local 2 violated the labor contract in December 2002 when they expressed their position that bargaining unit employees should not be given drug tests unless non-bargaining unit employees were also tested.
- C. The Company's claim for monetary damages is hereby denied.


ELLIOTT H. GOLDSTEIN, Arbitrator

Dated this 12th day of December, 2005.