

**BEFORE THE ARBITRATOR**

In the Matter of the Arbitration Between )  
)  
Xcel Energy )  
(Docketed as Public Service Co. of Colorado) )  
)  
the Employer )  
)  
and )  
)  
International Brotherhood of Electrical Workers, )  
Local 111 )  
)  
the Union )  
)  
\_\_\_\_\_ )

**ARBITRATOR'S OPINION  
AND AWARD**

AAA No. 77-300-0045 1 HGB

(Grievance of  
██████████)

**Representatives:**

**For the Union:**

Joseph M. Goldhammer, Esq.  
Brauer Buescher Valentine Goldhammer Kelman & Eckert  
1563 Gaylord St.  
Denver, CO 80206

**For the Employer:**

Kevin Hecht, Esq.  
White & Steele, P.C.  
950 17th St. 21st Fl.  
Denver, CO 80202

**Arbitration Panel:**

*Impartial Arbitrator*

Jane R. Wilkinson, Esq.  
PMB 211  
3 Monroe Pkwy, Ste. P  
Lake Oswego, OR 97035

*Partisan Arbitrators*

Union Appointed:

Bruce J. Lawlor  
IBEW Local 111, Senior Assistant  
Business Manager  
360 Acoma Street, Room 305  
Denver, CO 80223

Company Appointed:

Jean Mendoza  
Workforce Relations Consultant  
Xcel Energy  
550 15th St., 5th Floor  
Denver, CO 80202

Date of Award: August 5, 2002

## WITNESS LIST

### **For the Union:**

██████████, Grievant

Tom Boatwright, Senior Service Fitter

Nancy Sheehan, Senior Assistant Business Manager

Ellis Walker, Lead Mechanic, Transportation, Chief Steward, Fort Collins

### **For the Employer:**

Steve Roth, Director of Field Operations

John Stevenson, Manager of Gas Emergency Response Unit

Bob Macias, Manager of Gas Emergency Repair

## EXHIBIT LIST

### **Joint Exhibits:**

1. Collective Bargaining Agreement, to May 31, 2000, with the addendum that expires May 31, 2003
2. First step grievance, February 2, 2002

### **Union Exhibits:**

1. Arbitration Award of Arbitrator Harry N. Maclean, March 1996
2. Notice of Vacancy, posted July 21, 2000, for position of Service Fitter, Apprentice in Grand Junction, Colorado
3. Collection of Notices of Vacancy postings re Service Fitter, Apprentice position in Grand Junction, posting date of August 21, 2000
4. Bid list for gas apprenticeship, Grand Junction, undated
5. Minutes of Functional Joint Apprenticeship Committee (FJAC) meeting, August 3, 2000

6. Minutes of Functional Joint Apprenticeship Committee (FJAC) meeting, August 7, 2000
7. Letter from Greenwood to Sheehan, November 7, 2000
8. Letter to Wright from Greenwood, March 23, 2001
9. Letter to Wright from Greenwood, March 27, 2001
10. Letter to Wright from Greenwood, May 1, 2001
11. Letter to Greenwood from Sheehan, May 11, 2001
12. Letter to Sheehan from Greenwood, May 18, 2001
13. Letter to Sheehan from Greenwood, May 22, 2001
14. Letter to Sheehan from Greenwood, August 2, 2001
15. Letter to Lutz from Sheehan, August 27, 2001
16. Time line compiled by Nancy Sheehan, undated

**Company Exhibits:**

1. Arbitration Award of Arbitrator Carol J. Zamperini, February 13, 1989
2. Arbitration Award of Arbitrator Carol J. Zamperini, November 6, 1989
3. Arbitration Award of Arbitrator Elliott H. Goldstein, circa September 3, 1996
4. Company time line, undated

## **I. INTRODUCTION**

This dispute, between Xcel Energy (docketed as Public Service Co. of Colorado) (the Employer or Company) and International Brotherhood of Electrical Workers, Local 111 (the Union), concerns the grievance of [REDACTED] (the Grievant) that alleges that the Employer violated the Labor Agreement when it failed to give [REDACTED] an apprentice gas service fitter position in Grand Junction in August 2000. The parties were unable to resolve the grievance pursuant to the dispute resolution provisions of their Labor Agreement. Accordingly, they submitted the dispute to arbitration, utilizing the procedures of the American Arbitration Association. At an arbitration hearing held on April 23, 2002, in Denver, Colorado, the parties had the opportunity to make opening statements, submit documentary evidence, examine and cross-examine sworn witnesses and argue the issues in dispute. The parties stipulated that the undersigned arbitration panel has the authority to issue a final and binding decision as to the issues submitted herein. The parties also stipulated that the arbitration panel would retain jurisdiction, for 90 days, over the remedial aspect of the dispute should a remedy be awarded in favor of the Union. Upon the receipt of both parties' closing briefs to the Impartial Arbitrator on June 3, 2002, the hearing closed and the case stood fully submitted for decision. The Impartial Arbitrator circulated a draft of the award to the other panel members on July 16, 2002, and after conferring with them on August 1, 2002, issued this final award.

## **II. SUMMARY OF THE EVIDENCE**

The Company posted two gas service fitter apprentice positions for Grand Junction on July 21, 2000, and the Grievant signed the bid sheet. Three utility workers from Grand Junction (Vern Collins, Ray Wetzberger and Bill Hayes) also signed the posting, along with one or more employees in the Underground Construction and Maintenance Specialist (UCMS) classification, the most senior of who was Greg Whetstone. The Grievant, located in Ft. Collins, was the senior bidder from outside of the Western Division in which Grand Junction is located.

The parties agree that an employee must be a Utility Worker to have seniority to bid on a service fitter apprenticeship, and division seniority governs first. Thus, Utility Workers at Grand Junction's Western Division had seniority rights over Utility Workers from other divisions for the Grand Junction apprenticeship positions. Per the contract, the Functional Joint Apprenticeship Committee (FJAC), a joint labor-management committee, makes the determination as to the bidder's qualifications and awards the position to the senior qualified employee. An employee dissatisfied with the decision of FJAC can appeal to the Systems Supervisory Joint Apprenticeship Committee (SJAC).

On Thursday, August 3, 2000, the FJAC met to consider the applicants for the posted position. Vern Collins had already declined the position. According to the minutes of that meeting, Exh. U-5:

Motion was made to accept the two Grand Junction, Apprentice positions for Ray Wetzberger and Bill Hayes. Elaine [Widmann, secretary] will notify the Apprentice's [sic] and arrange the Orientation.

Exh. U-5. Wetzberger accepted the position.

The parties dispute what transpired with Hayes. Bob Macias, then Manager of Gas Emergency Repair in Grand Junction,<sup>1</sup> testified that on Friday, August 4, he spoke with Hayes who was being asked for an on-the-spot decision as to whether he would take the apprenticeship position; Steve McGonigle,<sup>2</sup> the manager of the apprenticeship group wanted the decision right then, Macias explained. Hayes would not give a "right now" response, he testified. (Evidence also suggests that Vern Collins also was upset with the requirement for an on-the-spot decision, see Exh. U-6). Macias testified that he called Steve Roth, the Director of Field Operations, to express his concern that employees weren't given any time to talk to their

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<sup>1</sup> Macias reported to Steve Roth, the Director of Field Operations in Grand Junction, at the time of these events. He laterally transferred to Denver in November 2000. Roth had approved the apprenticeship postings.

<sup>2</sup> Steve McGonigle was located in Denver and reported to someone in Denver. He was a member of FJAC. McGonigle left his employment abruptly under a cloud at the end of August. The parties stipulated that McGonigle plead guilty in January 2002 to the felony of criminal attempt to commit sexual assault, and that the date of the offense was on or about August 28, 2000.

families before making a decision. Roth took the matter from there. Roth, believing that some employees had been given more time to respond, testified that he telephoned McGonigle on August 4 or the morning of Saturday, August 5, and asked him to give Hayes "the same opportunity as everyone else." He didn't state whether McGonigle complied with his request.

Macias testified that Shari Shiffer told him that Hayes was given over the weekend to consider his decision. Macias testified that at 9 am or 10 am on Monday, August 7, Hayes came to him and said he was going to accept the gas apprenticeship.

Sometime on Monday, August 7, FJAC convened an emergency meeting. Present only were Tom Boatwright, a union member, John Stevenson, Manager of the Gas Emergency Response Unit in Grand Junction, and Shari Shiffer, who was listed as filling in for Steve McGonigle.<sup>3</sup> Elaine Widmann attended, took notes and typed the minutes. The minutes of that meeting, a key item of evidence in this dispute, state (punctuation from the original):

We needed to have an Emergency meeting today, due to a seniority problem and how the employee was offered the position of Apprentice. Vince Mazzucca HAD returned a call to accept Evergreen posting and it had been stated to pass him up because he had not returned a call to Steve. Vince was on vacation. Shari Had offered the position to Vince Anderson so we had to explain to him and rescinded the offer. Mike Richardson Told me Vernes [sic] Collins was upset due to the "speedy" reply needed and would probably file a grievance and the union side disagreed of who took Bill Hayes place when he said no. We called Vernes [sic] Collins and talked to him and asked what we could do to make him feel better about the posting and he stated, give him 1 month to decide and we told him that was impossible due to posting rules and if he had another day would he accept, he said no. Tom Boatwright called John Davis up and asked about Seniority List and they decided Greg Whetstone should not have been asked.

The FJAC called Bob MACIAS about the order of the classification in Grand Junction and he stated an Agreement had been made that 5 employees had seniority over the UW classification. So we should get that Agreement that was made. No Agreement could be found so the offer was extended to [REDACTED] in Ft. Collins.

John Stevenson later approved the minutes of this meeting, according to his testimony.

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<sup>3</sup> Tom Boatwright agreed on cross-examination that at least half the FJAC members needed to be present for a quorum, but he also stated that prior to the meeting, he had called the FJAC chairperson for permission to go ahead with the meeting absent a quorum, and the chairperson said it was alright, so long as they followed the contract.

Tom Boatwright testified that the meeting was convened because Hayes (according to what Stevenson told him before the meeting started) had declined the apprenticeship offer and the Union had a concern about the seniority of employees in the Underground Construction and Maintenance Specialist (UCMS) classification. He confirmed that during the meeting, the committee members telephoned Bob Macias who said he thought there was an Agreement making that classification eligible for an apprenticeship, but he could not produce a copy of any Agreement. Boatwright testified that the committee therefore decided that the Grievant, being next in line and qualified, should be given the apprenticeship and Shari Shiffer was asked to telephone him.

John Stevenson, Manager of the Gas Emergency Response Unit, maintained that the meeting minutes were inaccurate (even though he approved them), and that the committee, following customary procedure, agreed to ask the Grievant to meet with them about the apprenticeship. He disagreed that Shiffer was directed to "offer" the apprenticeship to the Grievant. He conceded, however, that FJAC did not ask to meet with Wetzberger or Hayes, although the apprenticeship positions were offered to each of them. Nor do the minutes of the prior meeting show that employees awarded apprenticeships at other locations were asked to first meet with FJAC.

Stevenson verified that Hayes had said "no" to the apprenticeship before August 7, which was why the meeting on that date was called. He also verified that Vern Collins was offered the position but wanted 30 days to consider. When Shiffer could only give him one day, he declined. Stevenson testified that the committee was not aware of Hayes being called and given time to reconsider. Bill Hayes and Vern Collins had the same supervisor in Grand Junction.

The Grievant testified that he received a telephone call from Shari Shiffer on August 7, 2000; Shiffer asked him whether he "was still interested" in the apprenticeship. The Grievant

testified that he wanted a day to think it over, and Shiffer agreed to give him that.

According to the Grievant, on August 8, 2000, Shiffer called him and said that a question had arisen concerning seniority and she would have to contact him again. She never did so.

Tom Boatwright testified that within days of the August 7 meeting, he learned from Shiffer that she had made the telephone call to the Grievant, but that McGonigle had overridden the FJAC's decision to offer the position to the Grievant.

As related previously, Macias testified that Hayes accepted the apprenticeship on or about August 7. The Company asserts that Hayes changed his mind more than ten days later, on or about August 18, 2000. The Company did not produce any documentation of Hayes first accepting and then rejecting the apprenticeship, nor did it produce any first-hand testimony supporting its assertion that he rejected it and that the rejection occurred more than 10 days after he accepted it. Hayes never signed an apprenticeship contract.

Roth testified that he moved Whetstone into the Utility Worker classification on August 10, 2000. Roth testified that he did this because "this appeared the only way to get underground construction workers into the apprenticeship program, so I moved Mr. Whetstone into the Utility Worker classification so he could be eligible for an apprenticeship." He was certain about the date because he checked personnel records on it, he testified. The Employer did not, however, produce any corroborating documentation at hearing. The new Utility Worker position awarded Whetstone was not posted, but the contract does not require posting unless there are transfer requests on file. Nancy Sheehan, business agent for the Union, testified that the Company has done "courtesy postings" when a job is being filled for which there is no posting requirement.

Boatwright testified that he filed a grievance on behalf of the Grievant at the next FJAC meeting on August 14, 2000, protesting McGonigle's action. He stated he doesn't customarily

keep a copy of the grievance form until the Company returns it with a response; the parties date and sign it at that point. He testified that he was going to present it during the meeting but was told that was inappropriate. McGonigle had to leave early so he went out and gave him the grievance then, Boatwright testified.

Boatwright testified that a grievance was the appropriate route for protesting the Company's action. The FJAC had done its job, which was to award the job to the next person in order of seniority who was qualified. But McGonigle overruled the FJAC's action, Boatwright related, saying that the issue was one of seniority. FJAC and SJAC do not deal with questions of seniority, according to Boatwright. Boatwright testified that McGonigle never responded to the grievance he left the Company's employment at the end of August. There is no time limit for filing a Step 1 response and Boatwright testified that the Company sometimes takes "months."

The Company posted or reposted a gas fitter apprenticeship position in Grand Junction on August 21, 2000. Grievant again bid, as did Greg Whetstone. Whetstone, the newly minted Utility Worker, was the senior bidder in Grand Junction and was awarded the position. The Company did not take affirmative steps to notify the Grievant of its selection. The Company did not produce testimony or other evidence showing that the award to Whetstone was posted.

In September 2000, the Grievant began asking his Union representatives about the status of the postings and apprenticeship awards. He testified he asked Chief Steward Ellis Walker and Business Representative Nancy Sheehan and he understood they were unable to get an answer. Even Ft. Collins Director Randy Greenwood wasn't certain what happened with the apprenticeship award at Grand Junction because "there was a lot of turmoil," the Grievant testified. Nancy Sheehan testified that after learning of the Grievant's concern, she telephoned the Division Director in Ft. Collins, Randy Greenwood, to schedule a meeting on the Grievant's issue, as well as other issues. The earliest he could schedule a meeting was October 31, 2000,

she testified.

The parties met on October 31, 2000. Nancy Sheehan testified that Greenwood did not know much about the apprenticeship awards, including who had been awarded the positions. She advised Greenwood that the only thing the Company had told the Grievant was through Shiffer's telephone call on August 8, 2000, saying there was a seniority issue. According to Sheehan, Greenwood stated at the meeting that he couldn't obtain much of the information sought by the Union because the police tape around McGonigle's office barred his entry.

On November 7, 2000, Greenwood sent Sheehan a memorandum addressing the apprenticeship at Grand Junction. The parties agree that the letter contained some inaccurate statements. It also advised the Union that Greg Whetstone had been assigned to a new Utility Worker position on August 21, 2000, and when the apprenticeship posting came down on August 31, 2000, he was awarded the apprenticeship as the senior bidder. His actual promotion occurred "after the first of September 2000." Exh. U-7. A March 23, 2001 letter from Greenwood to the Union stated that Whetstone became an apprentice on September 5, 2000. Exh. U-8.

Chief Steward Ellis Walker testified that he submitted a grievance on the issue in early November 2000.

Sheehan testified that the parties met for a first step meeting on February 2, 2001. Sheehan stated that this is when the parties actually sat down and completed the first step documentation form on this issue. The Company is then obligated to answer the grievance and the parties can then proceed to the second step. The Company's first step response is the afore-referenced letter dated March 23, 2001.

The parties held a second step meeting on April 2, 2001, according to Sheehan, and the Company gave its second step response on May 1, 2002. The letter stated that Hayes withdrew his apprenticeship acceptance during the week of August 14, 2000. Sheehan testified

that she asked for documentation of this fact, but never received it.

The parties stipulated that the Company first raised procedural arbitrability issues on November 19, 2001, after the parties had selected the undersigned Arbitrator as the neutral in this dispute.

### **III. ISSUES**

The parties stipulated to the following statement of the issues:

1. Was the grievance timely?
2. If so, is the grievance inarbitrable because the union did not first appeal to the Systems Supervisory Joint Apprenticeship Committee (SJAC)?
3. If the grievance would be deemed inarbitrable, did the Company waive its ability to raise arbitrability issues by not raising those issues during the grievance procedure and until after the Arbitrator was selected?
4. If the grievance is arbitrable, did the Company violate the Collective Bargaining Agreement when it failed to give [REDACTED] an apprentice gas service fitter position in Grand Junction in August 2000?

### **IV. RELEVANT CONTRACT LANGUAGE**

#### **ARTICLE 2 COMPANY-UNION RELATIONSHIP**

1. Management of Company. The management of Company, the direction of the working forces, the determination of the number of employees it will employ or retain and the right to hire, to suspend, to discharge, or to discipline for proper cause, to promote, to demote, or to transfer, and to release employees because of lack of work or for other proper and legitimate reasons, are vested in and reserved by Company, subject, however, to the provisions of this Agreement and the employees' right of adjusting grievances as provided herein.

## **ARTICLE 15 - SENIORITY**

1. Seniority. In order to provide for the orderly training and advancement of employees, the filling of vacancies and layoffs occasioned by curtailment or retrenchment of operations, the job classifications of all employees have been arranged by divisions and departments, as shown in Exhibit A, and each employee shall have (a) department seniority, and (b) division seniority.

2. Other Qualifications. In all matters relating to promotions, transfers, demotions, layoffs and recall, Company will give full consideration to seniority. Provided physical fitness, skill, ability, efficiency and other qualifications related to performance of the job are sufficient, seniority shall govern according to the provisions of this Agreement.

3. Types of Seniority.

(a) Department seniority shall be defined as the length of time to the nearest calendar day, except as modified in Sections 7 and 8 of this Article, that an employee shall have been engaged in the work of that particular department in that particular division.

(b) Division seniority shall be defined as the length of time to the nearest calendar day, except as modified by Sections 7 and 8 of this Article, that an employee shall have been engaged in the work of that particular division.

4. Seniority Lists. Company will determine from its records as of the date of this Agreement the respective department and division seniorities of all employees and post a list thereof on the appropriate bulletin boards. Such lists shall be revised and posted each year thereafter so long as this Agreement, extension or modification thereof continues. If no objection shall be made in writing within thirty (30) calendar days after posting, employees shall sign this list opposite their name and seniority dates in the space provided therefore, and the respective seniorities shall be considered correct. If objection is made in writing, Union and Company will meet and adjust the matter. Copies of the seniority lists, if and when adjusted, shall be furnished to the Union.

5. Determination Date. Department and division seniority of a temporary employee who becomes a regular employee shall begin with the date on which the employee began the last period of continuous employment. A temporary employee who does not become a regular employee shall have no seniority.

## **ARTICLE 16 PROMOTIONS AND DEMOTIONS**

3. Line of Promotion. For purposes of clarification of the normal line of promotion or demotions, numbers have been assigned, as shown on Exhibit A, to the various job classifications, and employees normally advance in each department from a job classification of a larger number to one of the next smaller number in accordance with the lines of promotion.

(a) In all cases of promotion and demotion where seniority is controlling, department seniority shall be the determinant of the employee's seniority.

(b) When a vacancy is posted in accordance with Section 4 of this Article and an employee in a job classification bearing a smaller number desires to fill the vacancy in a job classification bearing a larger number shall, provided the employee has a greater seniority than those employees with the same or large numbers eligible to bid on the vacancy, have the first opportunity to fill the vacancy provided the employee follows the flow lines of Exhibit A.

(c) After any demotion as covered in Section 3, Paragraph (b) above is made, a vacancy will then exist in a job classification bearing a number smaller than that of the job classification originally posted. This vacancy shall first be posted and filled, followed by the others in numerical order in the following manner:

(1) When the vacancy occurs in a job classification bearing both a number and an asterisk (\*), qualified employees in another job classification, if any, bearing the same number with an asterisk (\*) shall first have the opportunity in the order of department seniority of moving to the vacated job of the same number with an asterisk (\*).

(2) After the lateral moves, as covered by Subsection 1 above are made, employees in the job classifications bearing the next larger number shall be promoted in accordance with the provisions of this Agreement.

#### 4. Filling of Vacancies

(a) \*\*\*\*

Within fifteen (15) calendar days after the posting has expired, except in the case of apprentices which in that event will be within thirty (30) calendar days, Company will indicate on the posted notice the employee who is selected to fill the vacancy. .... Any dispute arising from the filling of vacancies is subject to the grievance procedure as provided for in Article 21.

In the event the employee awarded the job in accordance with the bid does not accept the award, or chooses to return to the original position under Section 6 of this Article within ten (10) calendar days of the award, the vacancy shall not be posted again but the next senior qualified employee signing the original posting shall be awarded the job in accordance with (b) below.

(b) As an aid in the selection of qualified employees to fill vacancies, there shall be in each appropriate department of the

Company a committee composed of three (3) supervisors appointed by the Company and three (3) employees appointed by Union. The function of the committee shall be to examine the qualifications of employees signing a posting notice and to recommend to management the employees suitably qualified to fill vacancies. The qualifications of employees shall be determined in accordance with the provisions of Article 15, Section 2.

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Notwithstanding the foregoing, the selection or rejection of employees for training under the Apprenticeship Training Program shall be the duty of the Functional Joint Apprenticeship Committee.

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6. Acceptance of New Job Assignment. An employee accepting assignment to a new job classification either by promotion or transfer, but not through demotion, shall during the first forty five (45) calendar days of such assignment determine the employee's desire to continue in the new job. If the promotion or transfer requires the relocation of the employee's household, the period for the employee to determine whether to continue in the new job shall be extended to sixty (60) calendar days. In the event such employee does not desire to continue in the new job, the employee shall be returned to the previous job at any time within the aforementioned periods without loss of former seniorities.

## **ARTICLE 21 GRIEVANCE PROCEDURE**

### 4. Grievance Committees.

(a) The Union shall select as may be required to handle Step 2 grievances as hereinafter provided a Union Grievance Committee of three (3) employees or Union officers or staff. Union shall also select as may be required to handle Step 3 grievances, a General Grievance Committee consisting of three (3) representatives from the Union.

(b) No more than three (3) employees, including members of the Step 2 Grievance Committee, will be granted excused absence with pay to attend Step 2 grievance hearings, provided they are attending during their regular working hours. Additional witnesses may, by mutual Agreement, be excused with pay to attend such hearings provided they are attending during their regular working hours.

(c) Any alleged grievances relating to matters covered by this Agreement shall be processed in the following manner:

Step 1:

An alleged grievance shall, within thirty (30) calendar days after the event determining its cause becomes known, be discussed between the appropriate shop steward and/or other Union representatives and the immediate supervisor and/or department head. The aggrieved employee may or may not be present at such a discussion. It is the responsibility of the Company and the Union to make every effort to settle the alleged grievance at this step. If the matter cannot be resolved at this step, both parties will state their respective positions in writing on a joint form and at the election of the Union, the matter may be submitted to Step 2 on or before the expiration of twenty (20) calendar days from the date both parties sign the joint form.

Step 2:

An alleged grievance submitted to Step 2 shall be considered by the Union Grievance Committee and a committee consisting of the appropriate division manager and two (2) associates. These committees will meet within thirty (30) calendar days from the date the grievance was submitted to this step and attempt to resolve the dispute. Company's Step 2 committee will respond, in writing, within thirty (30) calendar days from the date of the Step 2 meeting. If the dispute is not resolved by this meeting and/or written response, Union must notify Company within twenty (20) calendar days after receipt of the Company's Step 2 answer of their desire to appeal the matter to Step 3.

Step 3:

1) An alleged grievance submitted to Step 3 shall be considered by the General Grievance Committee and a committee consisting of the appropriate Vice President and two (2) designated appointees. These committees will meet within thirty (30) calendar days from the date the grievance was submitted to this step and attempt to resolve the dispute. Company's Step 3 Committee will respond, in writing, within thirty (30) calendar days from the date of the Step 3 meeting. If the dispute is not resolved by this meeting and/or written response, Union must notify Company in writing within twenty (20) calendar days after the receipt of Company's Step 3 answer of their desire to submit the matter to arbitration as provided in Article 22.

2) Any alleged grievance may, by mutual consent of Company and Union, be submitted directly from Step 1 to Step 3. In that event, the time limits established for consideration by Step 3 and for submitting the matter to arbitration shall prevail.

3) It is expected that each party will be responsive to the other in the expeditious scheduling of grievance hearings. Failure by either party to conform to the time limits specified in this Article, unless otherwise mutually agreed to, shall stop all further consideration of the grievance, and settlement shall be in favor of the other party, provided however, if the parties are unable to agree whether the grievance is filed timely or whether the timeliness provisions in the grievance procedure have been followed, neither party will refuse to process the grievance through the grievance and arbitration procedure. Mutual extensions of time limits shall be committed to writing and single extensions will not exceed thirty (30) calendar days.

## **ARTICLE 22 ARBITRATION**

1. Board of Arbitration. In the event a dispute, a misunderstanding, or controversy shall arise between the parties hereto during the life of this Agreement or during any extension or renewal of this Agreement relating to hours, wages, or conditions of employment, as covered by this Agreement, which shall not be settled through the grievance procedure, then, and in that event, the Company and Union shall each select an arbitrator within forty-eight (48) hours (excluding holidays and Sundays) after the Union has notified the Company, in writing, of its desire to submit the matter to arbitration. The Company and the Union shall select a third (Impartial Arbitrator) and the three (3) thus chosen shall constitute a Board of Arbitration to hear and determine the matter of controversy. The arbitration hearing will be scheduled within ninety (90) calendar days from the aforementioned notification submitting the matter to arbitration, unless mutually agreed otherwise. The finding or award of said Board of Arbitration shall be final and conclusive upon the parties hereto, subject to such rules and regulations as any Federal agency having jurisdiction may impose. The Board of Arbitration shall have no power to add to, subtract from, or modify any of the terms set forth in this Agreement.

## **ARTICLE 24 SOLE AND COMPLETE AGREEMENT**

1. The Company and Union acknowledge and agree that during the general negotiations which resulted in this Agreement, each party had and exercised the unlimited right and opportunity to make demands and proposals regarding any and all lawful subjects of bargaining. This Agreement, including any and all letters of Agreement or understanding, listed in Exhibit E, fully and completely incorporates all of the parties' understandings and Agreements, and supersedes all prior Agreements, understandings, past practices, side letters of Agreement or understanding, and any other Agreements or understandings, written or oral, express or implied, not specifically set forth in this Agreement except arbitration decisions interpreting Articles, Clauses, Sections or Parts of the Agreement which remain unchanged following any general negotiations. Any Agreements, understandings, or past practices not specifically incorporated in the Agreement except arbitration decisions as previously referenced, shall have

no force or effect. Provided however, during the term of this Agreement, settlements that the parties mutually agree to include grievance settlements, concerning the interpretation of the Agreement or any new arbitration decisions shall be binding on the parties during the term of this Agreement unless the parties specifically state otherwise in such settlement.

### **APPRENTICESHIP STANDARDS PUBLIC SERVICE COMPANY OF COLORADO**

For the purpose of establishing orderly training programs for Apprenticeships, as set forth in the Agreement between Public Service Company of Colorado and the Union, standards of Apprenticeship and Joint Apprenticeship Committees shall be established as follows:

#### **SYSTEM SUPERVISORY APPRENTICESHIP COMMITTEE**

There shall be one (1) System Supervisory Joint Apprenticeship Committee:

##### **DUTIES:**

1. To see that the Functional Joint Apprenticeship Committees carry out their programs.
2. To correlate and coordinate the programs of the Functional Joint Apprenticeship Committees.
3. To review the acts of the Functional Joint Apprenticeship Committees when necessary and approve or reject such acts.
4. To provide for a hearing for any Apprentice who feels that treatment has not been fair by the action of a Functional Joint Apprenticeship Committee and to render a decision on such matters.
5. Any Apprentice not satisfied with a decision rendered by the System Supervisory Apprenticeship Committee may submit the matter to grievance as provided in the Agreement.
6. To recommend to the Company and the Union necessary modification to these Apprenticeship standards.

#### **FUNCTIONAL JOINT APPRENTICESHIP COMMITTEES**

There shall be a Functional Joint Apprenticeship Committee for each Apprenticeable job classification.

##### **DUTIES:**

1. Functional Apprenticeship Committees shall meet from time to time to carry out the duties of these committees.

2. To formulate and put into operation a training program appropriate for the respective Apprenticeable job classifications which they represent. This program, subject to the approval of the System Supervisory Joint Apprenticeship Committee shall include:

- (a) A schedule of work experience and job rotation plan that will give the Apprentice adequate experience in all phases of the training program.
- (b) A suitable course and schedule of related technical training for each Apprentice classification.
- (c) Appropriate instruction for the various programs.

3. To maintain a system of records that will satisfactorily show the record of each Apprentice's progress in a program.

4. Subject to appeal to the System Supervisory Joint Apprenticeship Committee:

- (a) To accept or reject employees applying for Apprentice training through transfer or promotions.
- (b) To advance Apprentices in their programs.
- (c) To retain Apprentices in any step in a program for further training.
- (d) To eliminate Apprentices from the program.

5. Any matter requiring action that is not resolved by a Functional Joint Apprenticeships Committee shall be submitted to the System Supervisory Joint Apprenticeship Committee.

6. Functional Joint Apprenticeship Committees shall provide the System Supervisory Joint Apprenticeship Committee with the records that they request on Apprentices.

## V. POSITIONS OF THE PARTIES

**A. Position of the Union** – The grievance is properly before the Arbitrator and should be sustained. The Grievant should be made whole for all losses, including award of the apprenticeship position with seniority, back pay and interest retroactive to August 2000. Its supporting arguments are summarized next:

1. The grievance was timely and is arbitrable.

- a. The August 14, 2000, grievance was sufficient notice of the Union's position on both the August and September apprenticeship denials to the Grievant. Any other conclusion would go against the principles of equity and common sense.
    - (1) Tom Boatwright, the Union representative, filed a grievance on August 14, 2000.
    - (2) The Employer did not respond right away; it sometimes waits months before responding to a grievance. Its failure to follow through prevented the Union from taking the August 14 grievance to arbitration.
    - (3) The grievance form itself requires input from both parties; copies are typically not made until both parties have filled out the form. Boatwright went on medical leave for a couple of months after filing the grievance.
    - (4) When he returned, Sheehan told him that a grievance on the issue of the Grievant's right to promotion had resulted from a labor-management meeting in October 2000. Boatwright assumed the matter was covered.
  - b. The November grievance is valid in its own right.
    - (1) The parties' Agreement requires only a discussion within thirty days "after the event determining its cause becomes known."
    - (2) The Employer failed to respond to the Union's August grievance.
    - (3) The Employer never complied with the requirement that it announce its selection to fill posted vacancies.
    - (4) The Grievant began to inquire about the outcome of the postings in September 2000.
    - (5) The labor-management discussion, held October 31, 2000, constitutes sufficient notice to the Employer that the Union had concerns with the denial of the positions to the Grievant.
    - (6) The Employer generated a response letter to the Union on November 7; it contained inaccuracies, including the assertion that Ray Wetzberger first accepted then turned down the apprenticeship position.
    - (7) Upon receipt of the letter, even though it did not yet have minimally acceptable information about the issue, the Union promptly filed a second grievance, thereby fulfilling the requirements of Step 1 in the parties' Agreement.
  - c. The Employer did not respond to this grievance until February 2001.
2. The parties' Agreement does not require the Union to appeal to the SJAC before filing a grievance.
    - a. The Agreement expressly provides that "[a]ny dispute arising from the filling of vacancies is subject to the grievance procedure as provided for in Article 21."
    - b. The Employer's argument that the Union should have first appealed to the SJAC would serve only to waste time and resources.
    - c. There is no deadline for submission of grievances to the SJAC, yet the Employer claims that the grievance is untimely – an illogical association.
    - d. The authority given to the FJAC and the SJAC by the parties' Agreement extends only to accepting or rejecting applicants for apprenticeships based on their qualifications or seniority. Because the Employer rejected the FJAC's choice of the Grievant (an alleged contract violation), the grievance procedure takes over, not the SJAC.

- e. Even if the SJAC were found to have jurisdiction over this dispute, this would not nullify the present grievance. SJAC decisions are not binding on either party.
3. The Employer waived its procedural arguments by not raising them at the earliest possible opportunity.
    - a. Arbitrator MacLean's 1996 ruling held that a party must raise objections at the earliest possible opportunity or they are waived.
    - b. The Employer's objections were raised after the impartial Arbitrator had been selected and after the Union had expended considerable time and resources preparing its case.
    - c. Had the Employer raised its "exhaustion of remedies" objection earlier, the Union might have taken its case before the SJAC, regardless of whether it had real jurisdiction, to avoid the expense of arguing the issue in arbitration.
  4. The Employer violated the parties' Agreement by not giving the Grievant an apprentice gas service fitter position.
    - a. When Bill Hayes declined the offer of a position, rights to the position vested in the Grievant.
      - (1) The Agreement provides that seniority governs among a pool of qualified applicants.
      - (2) The record indicates that Hayes rejected the apprenticeship offer; minutes from the August 7 meeting indicate that "Hayes said 'no.'"
      - (3) The written record does not support the Employer's version of events.
        - i. The Employer contended that Hayes had not rejected the offer but was considering it. Had this been the case, there would have been no need for the emergency FJAC meeting of August 7. The meeting minutes further indicate that no attendee considered Hayes a live candidate for the position.
        - ii. The telephone call to Bob Macias of the Grand Junction office, to investigate the rights of the UCMS classification (Whetstone's department), would have been superfluous had the parties not been trying to decide between the Grievant and Whetstone, further evidence that Hayes was out of the picture.
        - iii. Union Exhibit 6 documents, and Boatwright testified, that Shiffer extended an offer of apprenticeship to the Grievant, not merely offering him an opportunity to appear before the FJAC. In any case, her contact with the Grievant indicates that the Employer believed Hayes had rejected his offer.
        - iv. Employer witnesses offered only hearsay testimony to contradict the minutes of the August 7 meeting.
        - v. The minutes of the August 7 meeting indicate that all attendees considered it a legitimate meeting.
        - vi. The Employer did not call Shari Shiffer or Elaine Widmann, major players in the relevant communications, as witnesses.
    - b. The Grievant should have been offered the apprenticeship after Hayes rejected it.
      - (1) The Employer has not proven that Hayes rejected the offer more than 10 days after being offered it; the Employer should not have re-posted the position.

- (2) In any case, the 10-day period never began because Hayes never started the apprenticeship.
- (3) The exact date of Hayes' purported rejection of the offer is shrouded in mystery; the Employer has not offered an exact date.
- c. No evidence was offered that Hayes conveyed his rejection to the FJAC, the body that is supposed to receive apprenticeship rejections.

**B. Position of the Employer** – The grievance is not arbitrable, and even if it is deemed arbitrable, it lacks merit and should be denied. The Employer's supporting arguments, summarized, are as follows:

1. The grievance is untimely.
  - a. The alleged wrongdoing, "denial" of an apprenticeship to the Grievant, occurred in August or September 2000.
  - b. The Union grieved the matter on October 31, 2000, more than 30 days after the disputed incident.
2. The Union did not appeal the alleged wrongdoing to the SJAC.
  - a. The collective bargaining Agreement states that any decision of the FJAC is subject to appeal to the SJAC. Only after appeal to the SJAC is a matter ripe to be submitted to grievance proceedings outlined in the Agreement.
  - b. Arbitral law holds that an Arbitrator is pre-empted from ruling on a dispute where the Union failed to exhaust all available remedies before proceeding to arbitration.
3. The Employer did not waive its ability to contest the timeliness and non-arbitrable nature of the dispute.
  - a. The Employer did not bring up these issues at the 11<sup>th</sup> hour; the Union had notice of the Employer's lines of defense very early in the process, on November 19<sup>th</sup>, 2001, over five months before the arbitration itself.
  - b. The Employer informed the Union that it would be willing to resubmit the matter to the lower steps of the grievance process.
  - c. Some Arbitrators have allowed a party to raise issues of timeliness or arbitrability for the first time at the hearing itself.
4. The Employer did not violate the parties' Agreement when it failed to offer the Grievant an Apprentice Service Fitter Position.
  - a. The decision of who receives apprenticeship positions is made by the FJAC, not by management.
    - (1) The Grievant was never offered the position, merely asked whether he was still interested.
    - (2) Before he responded whether he was still interested, management informed him that there was a seniority dispute and the position was on hold.
  - b. The Grievant, as a Northern Division employee, was eligible for the position only if all eligible Western Division employees rejected it.
  - c. There is no evidence that Hayes withdrew from his apprenticeship position in less than 10 days.

- d. Whetstone was the next senior Grand Junction employee who bid on the reposted position and it was properly awarded to him.
- e. For the arbitration panel to find differently, it would have to add or subtract from the terms of the Collective Bargaining Agreement, something that that Agreement expressly forbids.

## **VI. DISCUSSION AND ANALYSIS**

### **A. Was the grievance timely?**

Article 21.4, Step 1 of the parties' Collective Bargaining Agreement states that:

An alleged grievance shall, within thirty (30) calendar days after the event determining its cause becomes known, be discussed between the appropriate shop steward and/or other Union representatives and the immediate supervisor and/or department head.

Both the Union and the Company appear to be casual in their documentation of events. Tom Boatwright however, offered an explanation as to why there is no document dated August 14, 2000, even though he testified he submitted a grievance to Steve McGonigle on that date.<sup>4</sup> According to Boatwright, he gave McGonigle the grievance form, but it is not customary for the parties to sign and date it until the Step 1 meeting. While this struck the neutral panel member as an unusual practice, the Company did not offer evidence disputing Boatwright's testimony, and his explanation is corroborated by the documentation of the "second" grievance that the Company asserts was submitted on October 31, 2000 or a few days thereafter. The actual documentation of that grievance is dated February 2, 2001, the date the parties met at Step 1 and the Company denied the grievance. Exh. Jt-2. Boatwright testified that the absence of a prompt response from the Company was not unusual and it can take months for the Company to respond. Again, Exh. Jt-2, showing that the Company's response to the October 31, 2000, grievance came three months later, corroborates this assertion.

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<sup>4</sup> By comparison, as shall be discussed subsequently, the Company offered no explanation as to why it did not produce any evidence documenting its key assertions.

The contract language does not require a written grievance within 30 days. It merely states that "a grievance shall ... be discussed." Boatwright did that, according to his unrebutted testimony. Both parties obviously dropped the ball on that grievance after that. McGonigle left the Company's employment two weeks later and apparently police would not allow access to his office for awhile. Boatwright went on medical leave and believed that Nancy Sheehan was picking up where he left off. Sheehan took it as a matter that required investigating and she needed more information, which turned out to be difficult to obtain. In any event, Chief Steward Ellis Walker, working with Sheehan, grieved again the Company's failure to award the apprenticeship to the Grievant again on October 31, 2000, or during the following week. That second grievance can be fairly characterized as an extension or amendment of the first one, when one considers substance over form. Therefore, in the arbitration panel majority's opinion, the grievance Boatwright submitted was timely and the Company had early notice of the nature of the complaint.

Given the Impartial Arbitrator's finding on grievance submitted by Boatwright, it is not necessary to address the Union's other arguments supporting the timeliness of the grievance. But, were the Impartial Arbitrator to address those claims, she would be inclined to find that they have merit.

Accordingly, the majority of the neutral arbitration panel concludes that the Union's grievance was timely.

**B. Is the grievance inarbitrable because the Union did not first appeal to SJAC?**

The contention of the Company that the Grievant's complaint should have been appealed to the SJAC first lacks merit. As the Union maintained, appeals to SJAC must be made from decisions of the FJAC. There is no evidence in the record showing any decision of the FJAC unfavorable to the Grievant. To the contrary, the evidence shows a decision made by FJAC that was favorable to the Grievant. The minutes of the August 7, 2000, FJAC meeting

show that the committee determined that employees in the USMG classification were not eligible for the apprenticeship, making the Grievant next in line for the job. Exh. U-6. The Company asserts that Hayes, who was senior to the Grievant, actually accepted the job and a little more than ten days later changed his mind. It then reposted the position, and awarded it to Greg Whetstone, who in the interim had been moved into the Utility Worker classification and was the senior Grand Junction bidder. The Company produced no evidence that the FJAC had anything to do with the events that transpired after August 7 (if indeed those events occurred). In fact, the Company's position is conspicuous for its absence of documentation of such things as subsequent FJAC meeting minutes, although the record shows that a meeting of FJAC was held on August 14, 2000, and that minutes were always kept of those meetings. The Union is correct in its assertion that the Grievant had no unfavorable FJAC decision to appeal to the SJAC.

Given the arbitration panel majority's disposition of the arbitrability questions raised by the Company, it is not necessary for the panel to decide whether the Company waived its defenses (or more appropriately was estopped from asserting them) because it waited until after the Impartial Arbitrator was selected to alert the Union to those issues.

**C. Did the Company violate the Collective Bargaining Agreement when it failed to give the Grievant, [REDACTED], an apprentice gas service fitter position in Grand Junction in August 2000?**

As a preliminary matter, the Company vigorously asserts that the Grievant was never "offered" the apprenticeship position. It cites testimony, including that of the Grievant, to the effect that Shiffer merely asked him whether he was still "interested" in the position. John Stevenson testified that the FJAC only agreed to invite the Grievant to appear before the committee, for what purpose, he did not say. He so testified despite the fact that Hayes and Wetzberger were not asked to first visit with the committee before being offered the apprenticeship, and the minutes from the August 3, 2000, meeting, indicate that this procedure

was not followed with the apprenticeships in other locations. See Exh. U-5. And of course, there is the most damaging piece of evidence contradicting Stevenson's testimony, the minutes of the August 7 meeting, which Stevenson himself approved. Those minutes state, in pertinent part: "No Agreement could be found so the offer was extended to [REDACTED] in Ft. Collins." Exh. U-6.

Despite the evidence showing that an offer probably was extended to the Grievant, the Impartial Arbitrator finds the Company's argument perplexing. The Union has not suggested that there was an offer and acceptance that formed a binding contract. The Impartial Arbitrator notes that the minutes of the August 7, 2000, meeting show that contrary to the earlier information FJAC received, Vince Mazzucca had accepted the apprenticeship posting at Evergreen, but not knowing that, Shari Shiffer had mistakenly offered the position to Vince Anderson. The minutes stated that the committee had to explain the mistake to Vince Anderson and rescind the offer. See Exh. U-6. Apparently FJAC did not believe there was a binding obligation to Vince Anderson; rather, a simple mistake had been made that had to be undone.

Turning to the merits of the grievance, the arbitration panel must first sort out the evidence. Bob Macias testified that after talking to Hayes on Friday, August 4, he complained to Steve Roth about employees not being given time to think over their decision and consult with their families. Roth testified that he telephoned McGonigle that day or the next and asked him to give Hayes the same opportunity as other employees. Bob Macias testified that Hayes told him on Monday that he had decided to accept the apprenticeship; this testimony creates an inference that McGonigle did give Hayes the weekend to consider his decision. If this occurred, the FJAC was clearly unaware of it. It believed Hayes had turned down the position the week prior and was unaware of his being given another opportunity to consider it. The peculiar thing about the Company's claim that Hayes accepted the position on August 7 but later changed his

mind is that although Macias spoke with the FJAC group on that day about the eligibility of an UCMS employee for the apprenticeship, he didn't mention Hayes' acceptance to them. He must have known that the committee was attempting to determine who was next in line for the apprenticeship, but he didn't tell them that Hayes had accepted the position, making the UCMS eligibility question moot. He testified that he talked to Hayes after speaking to the committee,<sup>5</sup> but he made no attempt to get back to Stevenson, Boatwright or Shiffer to tell them that Hayes had taken the position, nor did he offer an explanation for his not doing so at hearing.

The Company produced no documentation showing the fact or dates of Hayes' acceptance and subsequent rejection. Steve Roth testified that he was "certain" it was more than ten days intervened because he checked the Personnel Action Form. Yet that document was not produced at hearing, and Randy Greenwood's Step 2 response to the Union dated May 1, 2001, stated only that this occurred during the week of August 14th. (If Hayes accepted on August 7 and changed his mind on August 14, 15 16, or 17, then the interval was ten days or less. If it was August 18, 19 or 20, then the interval was more than ten days). The only evidence of Hayes' change of heart is circumstantial: The Company reposted the position on August 21st.

The Company's post-hearing brief asserts that no evidence was produced showing that Hayes did not accept the position and did not change his mind more than ten days later. The fallacy with that argument is that the burden of presenting evidence lies with the party possessing the same, and although Steve Roth testified that documentation of the date Hayes changed his mind existed, it was conspicuously absent from the Company's case. Given the insubstantial nature of the Company's evidence, the Impartial Arbitrator is not convinced that if Hayes accepted the apprenticeship, he rejected it more than ten days later. Thus, Article 16, as interpreted by the Company, would not come into play and the position should not have been

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<sup>5</sup> Macias testified that he talked to Hayes fairly early in the day, around 9 am or 10 am. Unfortunately, the record contains no information as to what time the FJAC met.

reposted. It should have gone to the next senior employee who signed the bid sheet, the Grievant.<sup>6</sup>

The Union also contends that even if the facts were as asserted by the Company, it misinterpreted the ten-day rule. The Union asserts that the ten-day rule applies only after the employee has signed a contract for the apprenticeship. A careful reading of Article 16.4 supports the Union's position. Article 16.4(a) states that:

In the event the employee ... chooses to return to the original position under Section 6 of this Article within ten (10) calendar days of the award, the vacancy shall not be posted again but the next senior qualified employee signing the original posting shall be awarded the job in accordance with (b) below.

(Emphasis added). The applicability of the ten-day rule is tied to the promoted employee's *return to the original position*. There is no evidence Hayes ever left his original position. Given that he never signed anything confirming his enrollment in the apprenticeship program, he would not have left his Utility Worker position during the alleged ten-day interval. Yet, under the contract language, the employee necessarily must have left the original position or there would be nothing for that employee to return to.

Moreover, there is a second qualifier to the ten-day rule: The return to the original position must be "under Section 6 of this Article." Section 6 of Article 16 states:

6. Acceptance of New Job Assignment. An employee accepting assignment to a new job classification either by promotion or transfer, but not through demotion, shall during the first forty five (45) calendar days of such assignment determine the employee's desire to continue in the new job. If the promotion or transfer requires the relocation of the employee's household, the period for the employee to determine whether to continue in the new job shall be extended to sixty (60) calendar days. In the event such employee does not desire to continue in the new job, the employee shall be returned to the previous job at any time within the aforementioned periods without loss of former seniorities.

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<sup>6</sup> Roth testified that he promoted Whetstone to Utility Worker on August 10, but the Company produced no documentation of that date. Greenwood's November 7, 2000, letter to the Union, stated that the Company promoted Whetstone on August 21, 2000. In any event, the Company does not argue that if the position was wrongly reposted, it should have gone to Whetstone anyway. Had it made that argument, the Impartial Arbitrator would have rejected it for the lack of sufficient evidence showing the date Hayes rejected the position and the date Whetstone was promoted. In addition, Article 16.4(a) states that the job should go to the "next senior qualified employee signing the original posting ...." If Whetstone signed the original posting, he was not qualified at the time.

Paraphrased, Section 6 creates a 45 or 60-day window for the employee to change his or her mind. That window begins with the starting date of the "assignment," according to the quoted language. The evident intent of Section 6 is to give the employees a chance, after experiencing the new job, to decide whether it is really suitable and if it is not, to return to their old job without loss of seniority. It would make no sense for this window to start before employees start to work at their new job.

Accordingly, even the Company had established its proffered version of the facts, those facts would not have justified its reposting of the second apprenticeship position at Grand Junction. The Company violated the parties' Agreement when it did not then award the apprenticeship to the Grievant.

**D. The Appropriate Remedy**

As a remedy, the Union seeks an order placing the Grievant in an equivalent gas apprenticeship position at the earliest opportunity with a seniority date retroactive to August 8, 2000, plus back pay and interest. The Union requested this remedy during the arbitration hearing, according to the Impartial Arbitrator's notes of that hearing, so that no part of its claim should come as a surprise to the Company. The Company did not address or oppose this remedy at hearing or in its post-hearing brief. Accordingly, the remedy the Union seeks will be awarded.

**VII. AWARD**

Pursuant to the foregoing discussion and analysis, the grievance herein is SUSTAINED. The arbitration panel majority finds that the Company violated the parties' Collective Bargaining Agreement when it failed to award the service fitter apprenticeship position posted for Grand Junction to the Grievant in August 2000.

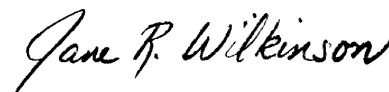
To remedy the violation, the arbitration panel hereby orders the Company to:

1. Place the Grievant in a gas apprenticeship in Grand Junction (or other location mutually agreeable to the Company and the Grievant) at the earliest opportunity, with seniority commencing on August 8, 2000.
2. Make the Grievant whole for the economic (wage) loss he incurred by reason of the Company's breach;
3. Pay interest on the amount calculated for the Grievant's economic loss consistent with the practice and rates set by the NLRB.

The Impartial Arbitrator shall retain jurisdiction in this matter for 90 days from the date of this award in order to resolve any issues pertaining to the remedy herein ordered.

The parties are ordered to share equally in the fees and expenses of the Impartial Arbitrator.

Date: August 5, 2002



Jane R. Wilkinson  
Impartial Arbitrator

\_\_\_\_\_ I concur.

\_\_\_\_\_ I concur.

\_\_\_\_\_ I dissent.

\_\_\_\_\_ I dissent.

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Bruce J. Lawlor  
IBEW Local 111, Senior Assistant Business  
Manager

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Jean Mendoza  
Exel Energy Workforce Relations Consultant