

February 25, 2002

**To: Laidlaw Educational Services, San Francisco
Local Committee of Adjustment, UTU Local 1741**
From: Micki Callahan, Mediator
Re: Recommendation—35 Hour Guarantee Grievances

We have concluded the mediation process for grievances filed relating to application and interpretation of the "35 Hour Guarantee" included in Section 28 G of the Labor Agreement. As requested by the parties, I will summarize herein my recommendations for settlement of this dispute. These recommendations conform to my opinion as to how an arbitrator would be likely to rule on these matters, should these disputes proceed to hearing.

- 1) The ability of a driver to bid on a position with greater hours is not infringed upon or altered by virtue of his or her status with respect to the 35-hour guarantee (Banks grievance). Drivers under the guarantee have the same rights to bid to a position with greater hours as other drivers. A route with a higher flat rate is considered a route with greater hours. Given the inability of the parties to reconstruct all the bidding that would have taken place under this interpretation, this interpretation should be applied prospectively.
- 2) The provisions of 28 G (13) specifically preclude a driver covered by the 35-hour guarantee from "bidding off" his or her route to a route with equal or fewer hours, except by agreement of the Company (del Campo grievance). This applies to any driver within the group of 120 with a guarantee of 35 hours, even one whose flat rate is above 35 hours per week. All drivers who are not guaranteed 35 hours maintain their rights to bid off.
- 3) A driver whose route has been reduced by one half (1/2) hour or more retains the right to displace another driver junior in seniority, in accordance with Section 12. As Section 28 does not specifically waive this right, it is unchanged regardless of the driver's status with respect to the 35-hour guarantee (Osgood, Wheatley grievances). However, as it is virtually impossible to reconstruct all the bidding that might have taken place under this interpretation, and given the prohibition against "run around" grievances, this remedy should also be applied prospectively.
- 4) A driver who has a flat rate in excess of 35 hours is entitled to receive the midday guarantee for "district service" runs that meet the contractual definition for same (Alfred grievance). The grievant should be made whole by recalculating his pay for the date in question. **Removed, non-precedent setting**
- 5) When a driver who is receiving the 35 hour guarantee is assigned "district service" or other midday work to fulfill the guarantee, he or she is not entitled to receive the midday guarantee for that same work. In other words, only one guarantee applies at a

time. Midday work in these circumstances will be credited at straight time, as completion of this work is already contemplated in the 35-hour guarantee (Hamlin grievance).

- 6) Standby drivers are entitled to receive the 35 hour guarantee for any week in which they work on "guaranteed" routes for all five days, even if the particular guaranteed route worked changes from one to another during that week. Standby drivers who do not work 35 hour guaranteed routes all week are entitled to all normal provisions applicable to standby drivers. (Hamlin grievance). The grievant should be paid the midday guarantee for the date in question.

In the event the parties agree to these recommendations, it is expressly understood that the agreement is made without prejudice to the parties' respective positions on the matters in dispute. While the interpretations, if accepted, set precedent for future cases similar in nature, any additional compensation paid to any grievant as a result of this settlement sets no precedent as to future payments.

Agreement:

For the Company: _____ Dated: _____

For the Union: _____ Dated: _____