would not comment that the amount of any such award would be quite speculative and indeterminate in nature, Further, the Arbitrator does not believe that the Company's request for attorney's fees was "frivolous" in nature, albeit the Arbitrator does not find that an award of attorney's fees to the Company would be justified. Therefore, the Arbitrator will similiarly deny any award of attorney's fees to the Union.

ARBITRATOR'S AWARD

1. The Union grievance on behalf of M__ is *denied*.

2. The Arbitrator *denies* both the Company and the Union any award of attorney's fees.

AGCO CORP. —

Decision of Arbitrator

In re AGCO CORPORATION and UNITED STEELWORKERS OF AMERICA LOCAL 4839, FMCS Case No. 97/16210, July 3, 1998

Arbitrator: Lamont Stallworth, selected by parties through procedures of the Federal Mediation and Conciliation Service.

OVERTIME

1. Out of classification ▸117.3271 ▸24.356

Employer did not violate collective-bargaining contract when it assigned receiving inspection overtime work to employee in another job classification, where contract expressly allowed work assignments outside employee's normal classification, contained temporary assignment provisions that permit temporary transfer of employee to different job because of lack of work or for other valid work reasons, and did not expressly limit such assignment changes to regular work week; past practice was to allow out-of-classification overtime work.

2. Out of classification ▸117.3271

Employer did not violate collective-bargaining contract when it assigned receiving inspection overtime work to precision layout checker instead of quality control inspector, who normally did that inspection work where receiving inspection work was assigned duty of checker, and employer gave that work to checkers during regular hours.

3. Out of classification — De minimus ▸117.3271 ▸117.3273

Employer did not violate collective-bargaining contract when it assigned receiving inspection overtime work to precision layout checker instead of quality control inspector, where work checker did was de minimus; he spent at most two and one-half hours inspecting six batches of work when there was down time in his primary area, while first shift quality control inspector inspected 32 batches of incoming parts during his eight-hour shift.

4. Out of classification ▸117.3271

Employer did not violate collective-bargaining contract when it assigned receiving inspection overtime work to precision layout checker instead of quality control inspector, where inspection work in receiving area was determined to be second highest priority for day, and it made sense to request checker assist in relieving backlog in inspection area if volume of his primary duties declined below normal expectations; employer should not have been faced with choice of making work for checker in his own area or sending him home.

Appearances: For the employer — Charles Freeman, attorney. For the union — John J. Rigling, staff representative.

OUT OF CLASSIFICATION

The Issue(s)

STALLWORTH, Arbitrator: — The Parties submitted the following issue(s) to the Arbitrator:

1. Whether the contract permits the Employer on an overtime day for which the employee is scheduled for eight hours, within the confines of assigning additional work to fill in the eight hours, may the Employer schedule that employee for additional work outside of his or her classification?

2. If not, what shall the remedy be?

With respect to the above-referenced issue, the Arbitrator notes the Employer's position that it has not agreed that the work is outside of the employee's classification.

Relevant Contract Provisions

ARTICLE 6
Hours of Work—Overtime—Allowed Time

Section 5

Paragraph 42.2

Employees who are requested to perform overtime work on Saturday or Sunday shall be notified of such assignment *by lunchtime of their respective shifts* on Friday. In those circumstances where shorter notice is required, employees will be notified as far in advance as possible. Overtime assignments will be made on the basis of the accumulated overtime credited to such employees on the date when notice is given. It is further understood and agreed that, with the excep-

tions noted in Sections 6, 7, 8, and 9 of this Article, overtime will be divided among all regular qualified (non-probationary) employees then working in the department and in the classification, so that all such regular qualified (non-probationary) employees receive an equal share of overtime.

Paragraph 45.C

Whenever the Company requests an employee to work overtime, the employee so requested shall make every reasonable effort to cooperate with the Company, and the Union shall make every reasonable effort to insure that overtime assignments are accepted by qualified employees of the department in which such work occurs.

Paragraph 50.C

When such overtime work is necessary on a Saturday or Sunday in a job classification, and when the classification is not scheduled to work on all shifts on which it is then manned, it shall be distributed among those qualified employees then at work in the job classification, regardless of shift.

Section 11

Paragraph 78

Any employee reporting for work, who has not been notified not to report for work, shall be paid a minimum of four (4) hours time at his regular rate per hour for reporting. At Management's discretion, the employee may be assigned other substantially similar work for which he may be qualified in lieu of being released. No obligation hereunder on the part of the Company shall prevail should inability to work be due to any of the following:

1. A labor dispute
2. Failure of utilities
3. Fire
4. Acts of God
5. Reduction in force of which the Company was unable to notify the employee by reason of his absence on the preceding plant workday.
6. Threats which may imperil life.

ARTICLE 8
Seniority

Section 12

189 A. Temporary Transfers:

190 In emergency or for other proper cause, the Company may temporarily assign employees from their regular jobs to others of a related nature. Any period to exceed ten (10) work days must be mutually agreed upon by the Company and the Grievance Committee, provided however, that no such mutual agreement shall be necessary in the case of temporary vacancies resulting from illness or injury. It is further understood and agreed that, in making temporary transfers, the Company will make every effort to temporarily assign a qualified and willing employee; but, if none such is available, the Company reserves the right to make such assignments within the limitations as outlined herein.

191 B. Temporary Transfers—How Paid:

192 1. When an employee is transferred temporarily, due to lack of work to a different job, he shall receive the rate for the job to which he is transferred.

193 2. When an employee is temporarily transferred for reasons other than lack of work to another job, he shall receive the rate for the job from which he was transferred or the rate of the new job, whichever is higher.

ARTICLE 9
Adjustment of Grievances

226 Fourth Step: Arbitration

(a.) . . . The decisions of the Arbitrator shall be final and binding upon both parties, and his decision must be within the scope of his authority as set forth herein and confined to the grievance as submitted for his determination. He shall confine himself solely to the facts developed at the hearing and directly related to the facts at issue. Not more than one grievance issue shall be referred to any one Arbitrator, without the mutual consent of the parties.

(b.) It shall be the responsibility of the Arbitrator to render a prompt decision and shall not be empowered to add to or subtract from, or change any of the terms of this Agreement, or any supplements in addition thereto.

* * *

ARTICLE 10
Management Rights

Section 1

232 The Management of the operation and the direction of the working force and of the affairs of the Company, including, but not limited to, the right to hire, to assign or transfer employees, to make reasonable rules, discipline for just cause, to promote, demote and schedule employees, to transfer operations or consolidate, or cease operations, in whole or in part, and the right to relieve employees from duty because of lack of work, are vested exclusively in the Company, except as expressly restricted by the terms of this contract. The enumeration of these rights shall not be deemed to exclude other rights not specifically listed herein.

ARTICLE 19
Cooperation

Section 1

309 A. All terms and working conditions are encompassed in the present agreement between the parties. Terms and working conditions not specifically covered by this agreement shall not be recognized.

310 B. The Company and the Union jointly and publicly recognize that only by the establishment of cooperative and harmonious working relationships between the Management and employees of the Company, can full efficiency and economy of operation be achieved and the quality of products be maintained; and, therefore, both pledge themselves jointly to do all in their power to establish and maintain such relationship.

311 C. Recognizing the responsibilities as exclusive bargaining agent of the production and maintenance employees of the Company, the Union agrees that it will cooperate with the Company to assure a full day's work on the part of its members; to actively combat absenteeism and any other practices which restrict production. The Company and the Union further agree to cooperate to eliminate waste in production, conserve materials and supplies, improve the quality of workmanship, prevent acci-

dents, and strengthen goodwill between the employer and the Union, the employee, the customer, and the public.

312 D. It is understood and agreed, however, that nonbargaining unit employees shall not be permitted to perform any work consistently performed by the production or maintenance employees covered by this Agreement, except in cases of training employees and trying out new jobs.

313 E. The Company will continue to make gloves and tools available for purchase by employees at cost in accordance with, and to the extent of, its existing glove and tool sales policy.

* * *

Background

This is a contract interpretation dispute involving three (3) hours of overtime work claimed by the Grievant, Hershel Sowders, a bargaining unit employee. Specifically at issue is whether the Employer is permitted under the Contract to assign overtime work which is arguably outside the employee's classification. The Union contends that the Employer is not permitted to do so and that the Grievant's contractual rights were violated when the Employer assigned overtime Receiving Inspection work to another employee, Precision Layout Checker Larry Miller, rather than to the Grievant, on February 1, 1997.

The Company has been in operation since 1910. The AGCO Corporation acquired the Company in 1993. The Company manufactures a variety of agriculture equipment products. The Company employs approximately 750 employees, 610 of which are in the production and maintenance bargaining unit. The Union has represented this bargaining unit since 1953.

The Grievant has been employed by the Company since December 12, 1956. The Grievant works as a Quality Control Inspector on the first shift. His assigned duties include checking engineering specifications for parts received from vendors and either accepting or rejecting parts according to Company specifications.

At the time of the instant grievance, there were nine (9) bargaining unit members in the Inspection Department for all shifts: five Precision Layout Checkers, three Quality Control Inspectors (including the Grievant) and one Set Up Inspector. According to the Company, the Precision Layout Checkers classification is the most highly skilled in the Inspection Department, followed by the Set Up Inspector classification and then the Quality Control Inspectors, which is the Grievant's classification. The Company notes that notwithstanding the difference in skill level for the three inspection classifications, the inspection of purchased parts is common to all three levels.

With respect to overtime, prior to 1987, overtime was distributed by the Company and equalized among qualified employees within a department without regard to classification. When this proved unwieldy and impractical, the Parties amended the contract language and adopted Article 5, Section 6C, Paragraph 50. Under the amended contract language, weekend overtime was to be distributed among the employees in the classification. However, the Company notes that at the time the amended language was adopted, the Union did not seek any changes in the language in Article 8, Section 12, Paragraph 190 which allows the Company to temporarily assign employees from their regular jobs to "others of a related nature.". The Company also points out that no changes were made to the call-back provisions in Article 5, Section 11 or the provisions of Article 5, Section 5B which requires that overtime work be paid at the applicable rate of the classification involved.

On February 1, 1997, the Company worked overtime in the Inspection Department due to a backlog of work in the receiving area. A number of employees from the first shift and second shift were scheduled to work overtime, including thirty five (35) machine operators (twenty five on the first shift and ten on the second shift), two (2) Precision Layout Checkers and one first shift Quality Control Inspector, who was lowest on the overtime list, Joe Langenkamp. During his eight hour first shift, employee Joe Langenkamp, inspected thirty two (32) batches of incoming parts. One of the Precision Layout Checkers, a second shift Precision Layout Checker, Larry Miller, worked a split shift on Saturday, February 1, 1997, from 12:30 p.m. to 9:00 p.m. in order to finish up any set up work from the first shift and also to assist in getting the second shift machinists started on their assignments.

The previous day, on Friday, January 31, 1997, the Company solicited Larry Miller to work overtime for February 1, 1997. It is undisputed that the Grievant was not asked to work overtime for February 1, 1997. It is unclear as to whether the Grievant was even available to work the overtime in question.

On February 1, 1997, Larry Miller was instructed that if the set up work for Precision Layout Checker did not fully occupy him, then he was to assist in relieving the backlog in the receiving area, according to the Company's stated priorities. It is undisputed that Larry Miller worked in the receiving

area on February 1, 1997 for a portion of his eight (8) hour shift. According to Mr. Miller, during the course of his evening shift, he completed a total of six (6) batch inspections in the receiving area on an intermittent basis for a total of two to two and one-half hours of work in that area. It is undisputed that the regular hours of work during the week for Quality Control Inspectors were not reduced in any manner as a result of the overtime work performed on February 1, 1997.

On February 3, 1997, the instant grievance was filed wherein the Union alleged that the overtime work in the Grievant's classification had been improperly performed by Larry Miller instead of the Grievant. The Grievant requested that he be paid for all the time Mr. Miller worked in the Inspection Area on February 1, 1997.

The instant grievance proceeded through the grievance procedure in accordance with Article 9 of the Collective Bargaining Agreement. The Parties met for a Step 3 meeting on February 18, 1997. At that time, the Company asserted, among other things, that it was within its contractual rights to temporarily assign Mr. Miller to Quality Control Inspection under Article 8. The Union disagreed and instead argued that Mr. Miller should have been sent home if his inspection services were no longer needed in the machine room and called back if the need for his services arose later in the evening. In addition, the Company asserted at the Step 3 meeting that under Article 5, overtime assignments shall be paid for at the applicable rate for the job classification rate for the overtime worked, which the Company argued supported its right to make out-of-classification assignments. The Union stated that Mr. Miller should, therefore, have had a reduction in pay for his work as a Quality Control Inspector in the receiving area.

The Parties were unable to resolve the instant dispute and the matter proceeded to arbitration. It is within this factual context that the instant dispute arises.

The Union's Position

It is the position of the Union that Management circumvented the Collective Bargaining Agreement when it solicited another employee, Larry Miller, to work outside of his classification in an overtime situation on Saturday, February 1, 1997. The Union notes that Mr. Miller's classification is that of Precision Layout Checker and not that of Receiving Inspector, which is the Grievant's classification. The Union asserts that Management solicited for overtime prior to lunch on Friday, January 31, 1997 and had enough time to solicit the Grievant, the correct employee, but failed to do so. In support of its position, the Union relies on the testimony of the Grievant, Mr. Larry Miller and Mr. Vernie Wynk. The Union also relies on and compares what the Union considers to be the conflicting testimony of Mr. Achenbach, Mr. McKinney, and Mr. Bracy.

With respect to the Company's position that Management set a higher priority on Receiving Inspection than Precision Layout Checking once Mr. Miller's normal classification duties were fulfilled on February 1, 1997, the Union argues that during the grievance procedure, the Company admitted through Andy Achenbach that there was plenty work in the Precision Layout Checking area. Nonetheless, the Union charges that the Company chose to set the priority on the Receiving Inspector's work load and not that of Precision Layout. The Union submits that it holds dearly the contractual rights of working in one's own classification on overtime.

The Union maintains that Management's priority statements have been in conflict throughout the grievance procedure and during the arbitration hearing. The Union submits that the Company never intended to call the Grievant for overtime but instead solicited Larry Miller to work overtime in the Grievant's classification. The Union points to dubious testimony by two Company witnesses that there were no records and to one that stated there were records available relating to the overtime work. The Union is also skeptical of the Company's assertion that it never wanted to make up work. The Union points to the Company's witness testimony that there was additional work in the Layout Checker classification but the set priority was on Receiving. The Union asserts that it has been difficult to get the same answer from Management throughout the grievance procedure.

With respect to Article 8, Section 12 regarding temporary transfers, the Union believes that such contract language does not apply to the instant grievance as the work at issue does not involve a temporary transfer. The Union states that it feels that there is a major difference between overtime and an employee's regular work hours of work. The Union asserts that the Union has not grieved the issue of transfers during the week but believes that weekend assignments belong to the member(s) within the classification.

With respect to the Company's position that the overtime work was within the classification for Precision Layout Checker, the Union objects to any testimony in that regard. The Union contends that such a line of reasoning was not explored by the Company until the arbitration proceeding and should therefore be omitted from consideration by the Arbitrator.

The Union contends that the Company violated Article 5, Section 6, Paragraph 50 (C) when it failed to ask the Grievant to work overtime in his classification on Saturday, February 1, 1997. Accordingly, the Union requests that the instant grievance be granted, that the Grievant be made whole by awarding the Grievant three (3) hours at the overtime rate and that the Company be prevented from circumventing the Contract over this issue in the future.

The Company's Position

It is the Company's position that the instant grievance should be denied as the Company did not violate the Collective Bargaining Agreement when it assigned overtime work to employee Larry Miller in the Receiving Inspection area which the Union contends was an out-of-classification overtime assignment.

The Company first argues that it is clear that Receiving Inspection work may be properly performed by employees who work in any of the three inspection classifications during regular working hours or on overtime. The company notes that Receiving Inspection work is specifically listed as an assigned duty in the Precision Layout Checker, the Set Up Inspector and the Quality Control Inspector Classifications. The Company, therefore, argues that it was proper to assign Mr. Miller the intermittent work of Quality Control Inspection on overtime on February 1, 1997.

The Company contends that Receiving Inspection work has been performed by employees in the Set-Up Inspector and Precision Layout Checker classifications in times of backlog during the regular work week and on overtime, with full knowledge by and without objection from the Union. The Company notes that even the Grievant admitted that it was permissible to assign Receiving Inspection work during straight time hours to a Precision Layout Checker. The Company maintains that neither the Grievant nor the Union have offered an explanation for why such an assignment would be improper during overtime hours.

The Company argues that even if the Receiving Inspection work performed by Mr. Miller on the date in question was "technically" beyond the normal and regular duties of a Precision Layout Checker, the Grievant has no actual standing in the instant grievance. The Company asserts that there is no record evidence that supports the claim that the Grievant was even available for overtime work on Saturday, February 1, 1997. The Company points out that at the hearing the Grievant was inconsistent in his testimony as to whether he was in fact available for the Saturday evening work. The Company submits that absent credible evidence that the Grievant would have been available, the Grievant cannot establish that he was in any way injured in a monetary fashion because of the work performed by Mr. Miller. The Company also notes that the Grievant's eligibility for future overtime assignments was not adversely affected nor was the Grievant's regular work week diminished as a result of the overtime worked by Mr. Miller.

The Company further contends that the contract language, when taken as a whole, fully supports the Company's right to assign employees to work outside their classification in an overtime situation. Specifically, the Company argues that Article 5, Section 5 B, Paragraph 44 of the Collective Bargaining Agreement, expressly contemplates tasks which may fall outside of an employee's normal classification, which may nevertheless be performed by that employee provided that the employee is paid at the applicable rate of the classification he normally works. The Company asserts that consistent with well-established labor contract interpretation principles, the Collective Bargaining Agreement must be interpreted in a manner which gives effect to all of its provisions. See, e.g., *John Deere Tractor Company*, 5 LA 631 1946).

The Company maintains that the temporary assignment provisions in the Contract permit the Company to temporarily transfer an employee to a different job because of lack of work or for other valid work reasons under Article 8, Section 12 A and B. The Company asserts that the Contract does not limit such change in assignments to just the regular work week. Rather, the Company avers that a reasonable interpretation of the contract allows the temporary assignment provisions to apply to overtime situations as well as regular hours.

Similarly, the Company notes that the report in pay provisions allow for work assignments outside of an employee's classification and that such rights are not limited in the Contract to the

regular workweek only. The Company asserts that the "cooperation provisions" in Article 19 also support the Company's position that it has the right to assign employees to work which may be technically outside of their classification on an overtime day.

The Company states that the Receiving Inspection work performed by Mr. Miller on Saturday, February 1, 1998 was consistent with the spirit and intent of the contractual provisions as referenced above. The Company submits that the remaining inspection work in the receiving area was determined to be the second highest priority for the day and that it made sound operational sense to request that Mr. Miller assist in relieving the backlog in the Receiving Inspection area if the volume of his primary duties declined below normal expectations. The Company challenges the Union's position that it should have "found", i.e. made "busy work" for Mr. Miller, or let Mr. Miller go home and be recalled rather than assign him overtime work in the Receiving Inspection area. The Company finds that the Union's position is neither supported by the contract nor is it reasonable under the circumstances.

The Company argues that if the Union's position were sustained in the instant grievance, harsh and absurd results would follow. See, e.g. *Rockwell Springs & Axle*, 23 LA 481 (Arb. H. Dworkin, 1954), *Vickers Inc.*, 15 LA 352 (Arb. H. Platt, 1950) and *Metal & Thermist Corp.*, 1 LA 417 (Arb. H. Gilden, 1946). The Company instead asserts that when taken as a whole, the contract language establishes the legitimacy of the Company's position that it retains the right to assign out-of-classification overtime.

The Company also argues that the Receiving Inspection assignments at issue in the instant grievance were also consistent with the past practice at the plant. The Company notes that there have been repeated instances in which employees have been scheduled to work on an overtime day and have been assigned to perform work which is technically outside of their classification. The Company states that instances of work performed by the Coil Cut operators or in the Crib Attendant classification were specifically identified by the Company as past practice examples to the Union at Step 3 of the instant grievance. The Company points out that this practice has been done repeatedly with the knowledge of the Union but without objection from the Union.

Finally, the Company contends that the 1987 revisions to Article 5, Section 6(C) regarding overtime distribution do not prohibit out-of-classification assignments during overtime hours. The Company asserts that the language was changed to limit overtime distribution among employees in a particular classification within a department. The Company argues that the revisions were aimed at narrowing the group of employees eligible to share in available overtime. The Company submits that the revised language was not intended to change the pre-existing flexible work practices of the Company when it comes to the temporary assignment of employees to work outside of their classification on an overtime day. Rather, the Company notes that since 1987 the accepted practice has been to allow employees to work outside of their classifications on a temporary, as-needed basis in overtime situations.

Based on the foregoing and the record evidence in this matter, the Company requests that the Arbitrator deny the instant grievance.

Opinion

This is a contract interpretation dispute involving the assignment of Receiving Inspection overtime work to another employee instead of the Grievant, Hershel Sowders. The Parties submitted the following issue(s) to the Arbitrator:

1. Whether the contract permits the Employer on an overtime day for which the employee is scheduled for eight hours, within the confines of assigning additional work to fill in the eight hours, may the Employer schedule that employee for additional work outside of his or her classification?

2. If not, what shall the remedy be?

With respect to the above-referenced issue, the Arbitrator notes the Employer's position that it has not agreed that the work is outside of the employee's classification.

[1] The Arbitrator has carefully considered the testimony, other evidence and arguments put forth by the Parties and concludes that the Company did not violate the Collective Bargaining Agreement when it assigned Receiving Inspection overtime time work to another employee. The Arbitrator's findings, conclusions and reasoning are set forth below.

It is well established in the field of labor relations that in contract interpretation cases, the arbitrator's authority is strictly limited to interpreting the express terms and provisions of the collective bargaining agreement. In the instant grievance, Article 9 of the Collective Bargaining Agreement expressly limits the arbitrator's authority as follows:

(a.) . . . The decisions of the Arbitrator shall be final and binding upon both parties, and his decision must be within the scope of his authority as set forth herein and confined to the grievance as submitted for his determination. He shall confine himself solely to the facts developed at the hearing and directly related to the facts at issue. Not more than one grievance issue shall be referred to any one Arbitrator, without the mutual consent of the parties.

(b.) It shall be the responsibility of the Arbitrator to render a prompt decision and shall not be empowered to add to or subtract from, or change any of the terms of this Agreement, or any supplements in addition thereto.

* * *

It is therefore clear that the Undersigned's authority is limited to interpreting the contract only. The Arbitrator is prohibited from amending the agreement in any fashion.

In the instant grievance, several portions of the Collective Bargaining Agreement come into play. The Arbitrator is in agreement with the Company that the contract language must be considered as a whole and must be interpreted in such a way that gives effect to all of its expressed provisions. See, e.g., *John Deere Tractor Company*, 5 LA 631 (1946).

The Company contends that the contract language, when taken as a whole, fully supports the Company's right to assign employees to work outside their classification in an overtime situation. The Union, on the other hand, asserts that Article 5, Section 6, Paragraph 50 (C) only applies to the instant grievance. Article 5, Section 6, Paragraph 50 (C) specifically states:

When such overtime is necessary on a Saturday or a Sunday in a job classification, and when the classification is not scheduled to work all shifts on which it is then manned, it shall be distributed among those qualified employees then at work in the job classification, regardless of shift.

While the Arbitrator is in agreement with the Union that Article 5, Section 6 certainly applies to the instant grievance, it is the Arbitrator's opinion that the other provisions of the Contract arguably apply, as well as the particular facts of the instant grievance and the past practice regarding the assignment of out-of-classification work on overtime.

The threshold issue is whether the Company is permitted under the Contract to assign out-of-classification overtime. It is the Arbitrator's opinion that taken as a whole, the Contract does allow for such a practice. As the Company notes, Article 5, Section 5B, Paragraph 44 of the Collective Bargaining Agreement expressly contemplates work assignments which may fall outside of an employee's normal classification, which may nevertheless be performed by that employee provided that the employee is paid at the applicable rate of the classification he normally works. In addition, Article 8, Section 12 contains temporary assignment provisions which clearly permit the Company to temporarily transfer an employee to a different job because of lack of work or for other valid work reasons. Similarly, the Company argues the report in pay provisions allow for work assignments outside of an employee's classification and that such rights are not limited in the Contract to the regular workweek only. Under Article 19, the Company states that the "cooperation provisions" in Article 19 grant the Company the right to assign employees to work which may be technically outside of their classification. Such assignments, however, are to be on an overtime basis.

In contrast to the Union's unsupported position, the Company contends that the Contract does not limit such change in assignments to just the regular work week. Absent an express limiting provision to the contrary, the Arbitrator concludes that a reasonable interpretation of the Collective Bargaining Agreement allows for the application of the temporary assignment provisions to apply to overtime situations as well as regular hours.

The Arbitrator is also persuaded by the undisputed fact that the Parties have a past practice of allowing out of classification overtime time work. The Company notes that instances of work performed by the Coil Cut operators or in the Crib Attendant classification were specifically identified as past practice examples to the Union at Step 3 of the instant grievance. The Company argues that this past practice, when it has happened, was not objected to by the Union despite the Union's knowledge of the repeated past practice.

With regard to this inclusive interpretation of the contractual overtime provisions, it is the Arbitrator's opinion that the application of out-of-classification overtime warrants a finding in favor of the Company in the instant grievance. The facts in the instant grievance are largely undisputed. Employee Larry Miller was solicited by the Company on Friday, January 31, 1997, to work overtime for Saturday, February 1, 1997, in his classification as Precision Layout Cutter. It is also undisputed that the Grievant was not asked to work overtime for February 1, 1997. It remains unclear as to whether the Grievant was available to work any overtime on that day or whether he actually suffered any monetary loss.

On February 1, 1997, the Company instructed Larry Miller that if the set up work for Precision Layout Checker,

did not fully occupy him, he was to help reduce the backlog in the receiving area according to the Company's stated priorities. The Parties do not dispute that Larry Miller worked in the receiving area on February 1, 1997 for a portion of his eight (8) hour shift. Mr. Miller testified that during the course of his evening shift, he completed a total of six (6) batch inspections in the receiving area on an intermittent basis for a total of two to two and one-half hours of work in that area out of a total of eight (8) scheduled hours. The Arbitrator notes that this is in stark contrast to the amount of time the first shift Quality Control Inspector, Joe Langenkamp, who inspected-thirty two (32) batches of incoming parts during his eight (8) hour tour on the first shift. The Arbitrator also notes that the Union does not contend that the regular hours of work during the week for Quality Control Inspectors were not reduced in any manner as a result of the overtime work performed by Mr. Miller on February 1, 1997.

The Company asserts that it is clear that Receiving Inspection work may be properly performed by employees who work in any of the three inspection classifications during regular working hours or on overtime. Receiving Inspection work is specifically listed as an assigned duty in the Precision Layout Checker, the Set Up Inspector and the Quality Control Inspector Classifications. It is the Company's position that it was proper to assign Mr. Miller the intermittent work of Quality Control Inspection on overtime on February 1, 1997.

[2] While the Union argues that this is new a argument on the part of the Company, regarding job classification duties, the Arbitrator notes that in the grievance packet, the Company stated in its February 10, 1997 "Disposition By Company Representative" that "the alternative work assignment was within the classification of Receiving Inspection, work that Larry Miller was qualified to perform." The Arbitrator concludes the Company's argument convincing on two counts: (1) the overtime work performed by Larry Miller as a Receiving Inspector was arguably part of his stated job classification duties; and (2) even the Grievant admitted it was permissible to assign Receiving Inspection work during straight time hours to a Precision Layout Checker. On that factual basis alone, the Arbitrator can reasonably conclude that the Company was within its contractual rights when it instructed Larry Miller to perform limited Receiving Inspection work on an overtime basis.

[3] In addition, it is the Arbitrator's opinion that a close examination of the overtime work actually performed by Mr. Miller warrants the conclusion that the amount of receiving work performed by Mr. Miller was arguably *de minimus* compared to the amount of overtime he spent on his job as a Precision Layout Checker on February 1, 1997. Mr. Miller credibly testified that at best he only spent two or two and one-half hours inspecting six batches at work in this area, when there was down time in his primary area. In comparison, the first shift Quality Control Inspector, Joe Langenkamp, inspected thirty two (32) batches of incoming parts during his eight (8) hour tour on the first shift.

[4] The Arbitrator notes the Company's persuasive argument that the remaining inspection work in the receiving area was determined to be the second highest priority for Saturday, February 1, 1997, and that it made sound operational sense to request that Mr. Miller assist in relieving the backlog in the Receiving Inspection area if the volume of his primary duties declined below normal expectations. The Arbitrator cannot conclude that the Company should have either made work for Mr. Miller in his own area or sent him home. The Arbitrator cannot conclude that the best interests of the Company or its employees would be served under such a scenario.

Based on the facts and circumstances of the instant grievance, the Arbitrator must conclude that the Collective Bargaining Agreement permits the Company to schedule an employee, within the confines of assigning additional work to fill an eight hour shift, for work outside of his or her classification in an overtime situation. Accordingly, the Arbitrator must deny the instant grievance.

AWARD

The instant grievance is denied.

NEW JERSEY TRANSIT BUS OPERATIONS —

Decision of Arbitrator

In re NEW JERSEY TRANSIT BUS OPERATIONS, INC. and AMALGAMATED TRANSIT UNION DIVISION 820, New Jersey State Board of