dent occurred during the 1997 term negotiations when the company presented attendance concerns to the union.[2] The UFCW received notice, again, in August 1998 that a new policy would be implemented October 1. On or about September 17, 1998, the union received a copy of the policy. Other than stating that it believed the company was required to give a 30-day notice, at no time prior to September 17 did the union respond to the new policy other than the local president's statement during the 1997 negotiations that the company could address attendance problems as it saw fit to do so. UFCW's statements and conduct are not demonstrative of its belief that a contractual obligation exists to be undertaken by the employer.

[3] In sum the company notified the union of its intent to change the policy and discussed or consulted with the union through its representative, the local president. Article 12 identifies work rules as a management right and states they are exercised at the sole discretion of the employer "except as these functions are specifically restricted by the terms of the Agreement." There are no contractual restrictions present on changing work roles during the term of the Agreement and there is no requirement in the Agreement pointing to a particular manner or time period in which notice must be provided to the union prior to changing rules. In other words, the practice of notice to the union through consulting and/or discussing changes in the policy prior to the implementation does not alter or modify the unambiguous silence in the contract on these matters and the contractual requirement that any limitations be specifically identified in the Agreement. Unless a practice has some basis in the contract then there is no basis to enforce the practice. If there is a binding practice or requirement for the employer to provide notice that has arisen as a result of consultations and discussions during the 1980s, it would be reflected in the Agreement but it is not.

Thus, having determined that the 1979 letter expired with the 1979-'81 term agreement and the current Agreement contains no notice requirement, this arbitrator concludes that the company was not obligated to give the UFCW thirty (30) days notice regarding the attendance policy. Accordingly, the grievance must be denied.

AWARD

1. The grievance is arbitrable.
2. The grievance is denied.

[2] UFCW maintains that the discussions reflect the employer's obligation to bargain the policy with the union but the scope of bargaining, discussions or consultations between the parties is not the issue before this arbitrator. Moreover, the company's business initiatives for the 1997 negotiations deal with, among other matters, extended absences. This appears to be a matter within the purview of Article 9, Leaves of Absences, and not directed towards an attendance policy.

INTEGRATED METAL TECHNOLOGY —

Decision of Arbitrator

In re INTEGRATED METAL TECHNOLOGY, INC. and UNITED PAPERWORKERS INTERNATIONAL UNION, LOCAL 7410, Grievance No. 1108, March 10, 1999

Arbitrator: Lamont E. Stallworth

DRUG TESTING

1. Reasonable suspicion ▸124.60

Employer properly drug tested inspector, despite contention it lacked reasonable suspicion to do so, where collective-bargaining contract states it can test when person is suspect or when "circumstances or workplace conditions justify it," which is broader than reasonable suspicion.

2. Circumstances ▸124.60

Employer did not violate collective-bargaining contract, which allowed it to drug test employee who is suspect or if "circumstances or workplace conditions justify it," when it tested inspector, even though he did not use truck tractor in which evidence of marijuana use was found, where he worked in shipping area, and had access to truck.

Appearances: For the employer — Michael A. Snapper, attorney. For the union — Darryl R. Cochrane, attorney.

REASONABLE SUSPICION

The Issue

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

Did the Company have the right to require Grievant to take a drug test pursuant to Schedule 3B Part VI of the Collective Bargaining Agreement?

If not, what should the remedy be?

Relevant Contract Provisions

Article 4—Management Rights

The Company retains all customary and normal functions of management including the right to hire, recall, transfer and promote employees, to reprimand, suspend, discipline and to discharge employees for just cause, * * * to make and enforce reasonable work rules and to maintain discipline and efficiency of employees.

Article 5—Grievance Procedure

Section 5.1

It is mutually agreed that disputes of any nature regarding interpretation or application of this agreement or in any way related to ages, hours or working conditions, including whether discharge or other discipline is for just cause, must be processed and resolved under the following procedures.

Article 6 — Seniority

Section 6.6

Seniority shall be from the employee's most recent date of hire and terminated for the following reasons:

* * *

B. If the employee is discharged for just cause.

* * *

Policy Statement

VI. Drug And Alcohol Screening

IMT may require a blood test, urinalysis, breath analysis, or other drug/alcohol screenings of *those persons suspected of using or being under the influence of a drug and alcohol or where circumstances or workplace conditions justify it.* By way of example, and without limiting the generality of the preceding sentence, IMT will require a test whenever an employee is involved in any in an accident, in the plant or elsewhere, on IMT Property, or involving an IMT vehicle, when the accident causes personal injury or property damages. An employee's consent to submit to such a test is required as a condition of employment and the employee's refusal to consent may result in disciplinary action, including termination for a first refusal or any subsequent refusal. The testing procedure may occur during the employee's work hours, and the employee's non-work hours when the request for testing, or the reason for testing, arose during work hours.

* * *

Whenever an employee is required to submit to a test, the employee may request a written statement of reasons for the test. The written statement will be provided to employee promptly, which shall generally mean within three working days, after the request is clearly made.

X. "Last Chance" Rehabilitation Agreement

An employee may request a "Last Chance" Rehabilitation Agreement as an alternative to discharge or other disciplinary action. . . .It is recognized that such a "Last Chance" Agreement ordinarily will include random testing. (emphasis added)

Background

The Company manufactures metal products, specifically metal casings. The instant grievance arises out of incidents relating to the shipping area of the Company. The Grievant in this matter is S__ (hereinafter referred to as the Grievant), an inspector at the Company. While he is an inspector, he is also a member of the bargaining unit.

In early 1997, the Company received certain information which indicated that marijuana was being used in the shipping area. This information was given to Sarah Zysk, the Company's Vice President for Human Resources. This information was identified in a memo from her to the Grievant indicating the reasons why he was being drug tested. Specifically, the evidence included:

> The Company has received a history of reports of marijuana use by Shipping Department employees. Over the past several months, additional evidence of marijuana usage by Shipping Department employees, and specifically in the switcher vehicle, have occurred. These discoveries have included a partial marijuana cigarette, marijuana seeks, wrapping papers and the odor of marijuana smoke. More recently, in late January, [1997], an additional partial marijuana cigarette was discovered in the switcher, and during the week a marijuana seed was discovered in the switcher. The switcher is used exclusively by employees in the shipping Department. . . .

After receiving this information, the Company decided that it was going to test the employees in the area for drugs, based on the drug/alcohol testing language of the collective bargaining agreement (the "Agreement") between the parties. After making this decision, this information was transmitted to the employees who worked in the shipping area. After the decision was transmitted to the employees, two Union Officials, Joe Shwboose, the Local President and Ed Pouch, the Chief Steward approached Zysk. These individuals told Zysk that they did not object generally to testing the employees in the shipping area, they specifically indicated that they thought that the Company should also test the leads and the supervisors who worked in the area. Zysk agreed that leadmen and supervisors should be tested.

However, at that meeting, the Union officials indicated that they did object to the testing of two specific leads, Jody Porter and S__. The Union indi-

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[1] The switcher is a truck tractor that is used in the shipping area to move trailers around the shipping area.

cated that they objected to the testing of those leads because they felt that their duties were different from the duties of the rest of the employees. These employees are inspectors. While Porter and S__ do work in the shipping area, their function is different from the other employees in the shipping area. Their job is scheduling trucks and insuring that the proper loads are placed on the correct truck for shipping. Their job duties do not require them to use the switcher. Other than for taking a break in the cold weather, the inspectors ordinarily would not enter the switcher for any work purpose.

After considering the Union's request, the Company nonetheless determined that it would test all of the employees in the shipping area including employees, supervisors and *all* leads, including Porter and S__. According to Zysk, the Company "decided that it would be better to test all leads rather than try to determine, because of difference in duties, who should or should not be tested".

On or about February 10, 1997, the Company sent a total of twenty (20) employees from the shipping area to be drug tested. According to the testimony at the hearing, the twenty (20) employees consisted of twelve (12) regular hourly employees, seven (7) lead persons and two (2) supervisors. Based on the testimony at the hearing, it is unclear whether, there were 20 or 21 employees being tested. However, that issue is really irrelevant to the outcome of the instant dispute.

Of the employees that were tested, five (5) had positive results. One of these was a supervisor, who was immediately terminated by the Company. The remaining four (4) employees were members of the bargaining unit. One of these employees who tested positive for drugs was the Grievant. Pursuant to the Agreement, the Company offered the four (4) hourly employees the opportunity to sign a "last chance" agreement instead of being terminated. Specifically, the last chance agreement provided:

> I, ____, agree to participate and comply with the appropriate after care programs suggested by the treatment center. I also understand and agree to periodic drug/alcohol testing for the next twelve months.
>
> I understand that if any of the above terms are not adhered to, my employment at IMT will be terminated.
>
> It is also my understanding that the first positive drug/alcohol screen will result in termination.

The Grievant signed this agreement on February 12, 1997. On February 14, 1997, the instant grievance was filed. Specifically, the instant grievance indicated that "Company did not have just cause to send me, S__ for drug and alcohol test." The remedy requested was "make me whole". The instant grievance proceeded through the grievance procedure without a satisfactory resolution and the matter was properly submitted to arbitration. It is within this factual context that the instant dispute arises.

The Position of the Company

The position of the Company is that it had a legitimate right to test the Grievant because of the evidence of marijuana that was found in the shipping area. Under the language of the Agreement, the Company may test for drugs, not only where an individual is suspect, but also where "circumstances or workplace conditions justify it". The Company points out that the Union has not grieved or challenged the Company's decision to test any other employees in the shipping area. In fact, Union representatives met with the Company and suggested that Company should test all leads and supervisors. This suggestion the Company wholeheartedly endorsed. According to the Company, by taking this action, the Union acknowledged that the Company had sufficient cause to require testing of all shipping employees.

It is the position of the Company that it had the right to send the Grievant for testing because he, like all the other employees who worked in the shipping area, had regular access to the places where drugs were located. While the Company acknowledges that it was not part of the Grievant's responsibilities to use the switcher, that is of no relevance to this decision. The Grievant had access to the switcher and spent all of his work time in the shipping area, where there was significant evidence of drug use. Under the Agreement, there was legitimate justification to test all shipping employees. According to the Company, there is nothing distinguishing the Grievant from the rest of the employees in the shipping area. For this reason, the Company had the right, under the Agreement, to test Grievant.

The Company takes the position that it acted in a completely even-handed fashion by testing *all* employees who worked in the shipping area, *including supervisors*. In fact, the supervisors who tested positive were immediately terminated, while the mem-

bers of the bargaining unit were given a last chance.

The Position of the Union

The Union articulates its position in the form of a fairly straightforward question. It asks: "Did the Company have a reasonable suspicion of drug use by S__." It is the position of the Union that while the Agreement does not specifically use the term "reasonable suspicion", that standard of cause is required in order to drug test an employee pursuant to the language of the Agreement.

It is the contention of the Union that the presence of the Grievant in the shipping area is not sufficient to constitute a "reasonable suspicion." According to the Union, if the Company were allowed to test under the circumstances of the instant case, this essentially changes the intent of the Agreement to be that of random testing. According to the Union, if the Undersigned Arbitrator were to follow the Company's reasoning, the Company would be able to test anytime that it has evidence of drug use on the premises because all employees at the facility generally have access to all areas.

The Union cited a number of arbitration cases on the definition of "reasonable suspicion." See, e.g. *Havens Steel Company*, 100 LA 1190 (Thornell 1993); and *Coca Cola Bottling Group*, 97 LA 343, 347 (Weckstein, 1991). These arbitral awards articulate a standard of individualized suspicion in order to drug test an employee. In addition, the Union cited a number of arbitral awards which illustrated situations that did not rise to the level of the reasonable suspicion and justifying drug testing. One of these arbitral awards indicated that a minor accident is not enough to cause reasonable suspicion. See, e.g., *Tribune Company* 93 LA 202 (Crane, 1989). Another arbitral award indicated that being involved in a "heated" argument is also not cause enough for testing. See, e.g., *Havens Steel Co.*, 100 LA 1190 (Thornell, 1993).

Overall, the Union contends that "generalized suspicion" is not enough to meet the standard of reasonable suspicion. What is required is "individualized suspicion," which, according to the Union, was not present in the instant case. In sum, the Union argues that the decision of the Company to test all employees who work in the shipping area "was anything but an individualized suspicion that S__ was using marijuana. The Company basically randomly tested a circle of employees. This, the Union submits as an abuse and contrary to the 'suspicion' language in the collective bargaining agreement." Accordingly, the Union requests that the instant grievance be sustained in its entirety..

Opinion

This is a case in which the Grievant was required to undergo a drug/alcohol test because he worked in an area in which there had been evidence that drug activity was present. The Parties submitted the following issue to Arbitrator:

> Did the Company have the right to require Grievant to take a drug test pursuant to Schedule 3B Part VI of the Collective Bargaining Agreement?
>
> If not, what should the remedy be?

The Arbitrator has carefully considered the testimony, other evidence and arguments put forth by the Parties and concludes that the Company did have the right to require the Grievant to undergo a drug/alcohol test under the circumstances of this case. Under the language of the Agreement, the Company did have the right to require the Grievant to undergo a drug/alcohol test. The Arbitrator's findings, reasoning and conclusions are presented below.

In the instant dispute, the Arbitrator is presented with a relatively uncomplicated fact pattern. It is uncontested that there were reports of various drug activities in the shipping area of the Company, including the presence of drugs in the switcher, i.e., the truck tractor that is used to move trailers around the shipping area. It is also not contested that there was the presence of marijuana smoke in the shipping area. Based on this evidence, the Company decided that the language of the Agreement permitted it to test all of the employees whose regular work duties required them to be in the shipping area.

When the drug testing decision was made, Union officials approached the Company. They indicated that they did not object to the testing of the regular hourly employees who worked in the area. However, the Union did not feel that the testing population should be so limited. They requested that in addition to the regular hourly employees, that the leads and the supervisors also be tested. The Company did not object to this suggestion and request. Rather the Company concurred in the suggestion.

The Union did object at that time to two of the leads being tested. Those leads were the inspectors who worked in the shipping area. The specific indi-

viduals were Jody Porter and S__, the Grievant in this matter. The Union contended that because the evidence of marijuana use was found in the switcher and because it was not part of the inspector's responsibilities to work in the switcher, that it was improper to test the inspectors for drug use. The Company disagreed with this contention and indicated that it felt that it was proper to test all of the employees in the shipping area because the inspector's situation could not be distinguished from the other employees who worked in the area. The Company felt that *all* employees who worked in the shipping area should be tested, not just those whose job responsibilities included using the switcher. The Company reasoned that the inspectors, while their job responsibilities did not require them to use the switcher, had regular and routine access to the areas where marijuana use had occurred, including the dock area and the switcher.

The Company went forward with its plans to test all regular hourly employees, leads and supervisors who worked in the shipping area. Of the twenty (20) or so employees tested, five (5) were tested positive. One was a supervisor who was immediately terminated. The remaining four (4) were all bargaining unit members, including the Grievant. All four (4) signed "last chance" agreements after the positive test, allowing them to remain on the job. One of those who tested positive was the Grievant in this matter.

The above mentioned facts are not in dispute. Both parties agree as to what occurred. What is at issue is whether the language of the Agreement allowed the Company to require the Grievant to undergo the test. The relevant language of the Agreement provides:

> IMT may require a blood test, urinalysis, breath analysis, or other drug/alcohol screenings of *those persons suspected of using or being under the influence of a drug and alcohol or where circumstances or workplace conditions justify it* .... (Emphasis added)

A review of the arguments of the Parties clearly indicates the area of disagreement. The Union believes that the Agreement, even though it does not directly articulate this standard, requires that a "reasonable suspicion" standard be used to require drug tests. Under that "reasonable suspicion standard," according to the Union, there must be some type of "individualized suspicion" which leads the Company to believe that an individual was actually using drugs. According the Union, this would have to be:

> Direct observation of use or consumption, odor of alcohol or marijuana, past history of abuse combined with present indicia, involvement in an accident, erratic or abnormal behavior, and physical symptoms of being under the influence, such as red, glassy or watery eyes, slurred speech, unsteady or stumbling bearing or confusion .... *Coca Cola Bottling Group*, 97 LA 343, 347 (Weckstein, 1991)

Conversely, the Company argues that the language of the Agreement does not require such a standard of "individualized suspicion." The Company argues that the language of the Agreement is broad in scope. In addition, the words "persons suspected of using or being under the influence of a drug or alcohol", this Section proceeds to give broad language that allows the Company the right to test "where circumstances or workplace conditions justify it". This is broad language that the Company argues, gives it the broad right to test for a variety of circumstances, above and beyond "individualized suspicion." The Company argues that the evidence of drug use in the shipping area was sufficiently pervasive to require the testing of all employees who worked in the area. The Company points to the fact that the Union *did not* object to the testing of any of its employees except the two inspectors. In fact, when the Union was notified that the Company was going to test the shipping area employees, *it suggested* that the leads and the supervisors also be tested, a group which went beyond the original suspected group.

Based on the evidence and arguments of the Parties, this is a matter of contract interpretation. Accordingly, the Undersigned Arbitrator must interpret what is required under the following language:

> IMT may require ... drug/alcohol screenings of those persons suspected of using or being under the influence of a drug and alcohol or where circumstances or workplace conditions justify it. By way of example, and without limiting the generality of the preceding sentence, IMT will require a test whenever an employee is involved in any in an accident, in the plant or elsewhere, on IMT Property, or involving an IMT vehicle, when the accident causes personal injury or property damages. ...

Does the contract require "individualized suspicion," as the Union suggests, or is a generalized suspicion all that is necessary, as the Company postulates? Responsibilities of the Undersigned Arbitrator is to determine, from the evidence presented, the intent of the Parties when they drafted the Agreement. In this case, the only evidence the Arbitrator possesses as to the intent of the Parties is the actual language of the Agreement. There is no evidence of bargaining history to

further clarify the intent of the Parties. Consequently, the Arbitrator must look at the language of the Agreement. Certainly, there is no need for interpretation unless the agreement is ambiguous. If the words are plain and clear, conveying a distinct idea, there is no occasion to resort to technical rules of interpretation and the clear meaning will ordinarily be applied by arbitrators. Elkouri and Elkouri, *How Arbitration Works*, 5th Ed. at p. 470.

[1] Subsequent to a review of the relevant language of the Agreement, it is apparent to the Arbitrator that the Parties intended that the Company would be able to drug test for a wide variety of circumstances. There are a number of factors that lead to this conclusion. First, the language itself is broad. The Company is not limited to test only in situations where someone is suspected of using or being under the influence of a drug or alcohol. The language indicates that the Company can drug test when a person is suspect or when "circumstances or workplace conditions justify it." Thus, the language is written not in a specific fashion, but rather, in broad general terms, which gives a great deal of discretion to the Company. Beyond the above-mentioned language, the language of the Agreement proceeds to give an example of allowing an employee to be tested if that employee has been involved in a workplace accident. Again, this language giving post-accident testing as an example also expands the Company's right to drug test. Finally, the language regarding post-accident testing is preceded by the phrase "By way of example, and without limiting the generality of the preceding sentence". This clearly shows an intent that post-accident testing was merely an example and the circumstances should broaden from there.

In addition, a few other circumstances confirm this reading. First, the Undersigned Arbitrator is of the opinion that the Parties could have chosen to use the specific term "reasonable suspicion" in the Agreement. However, the Parties chose *not* to use that term and the Undersigned Arbitrator is bound by that decision and the consequences of same. Further, the Union "did agree" that all employees in the shipping area, except Porter and the Grievant, should be tested. This was in spite of the fact that there was not any evidence in the record indicating that any specific individual had been found with drugs or drug paraphernalia in the shipping area. Thus, after reviewing the language, as well as the facts and circumstances of this case, the Undersigned Arbitrator must conclude that the language at issue is not limited to "reasonable suspicion" as the Union argues, but is broader as the Company alleges and testing is allowed when "circumstances or workplace conditions" justify it.

[2] The Undersigned Arbitrator further concludes that the existing circumstances were sufficient to allow the Company to test the Grievant for drugs. The Grievant worked as an inspector continually in the shipping area. He spent all his time there and had access to the switcher, where the actual evidence of drug use was found. While the Arbitrator acknowledges that it was not part of the Grievant's job responsibilities to use the switcher, that does not exempt him from being properly suspect for drug testing. The Grievant worked in an area in which there was evidence of drug usage including marijuana and marijuana smoke. While the marijuana was confined to the switcher, the smoke was not. Further, it is uncontested that the Grievant had access to the switcher and while there was no evidence that he actually was seen in the switcher, there was evidence that he used the switcher to warm up on cold days.

After a careful review of the evidence and arguments, the Arbitrator must reject the Union's argument that because the Grievant's job responsibilities did not require him to use the switcher, he should not be tested. Under that reasoning, any person who did not have specific job duties in a certain location where there was evidence of drug or alcohol usage, would be immune from testing. The Undersigned Arbitrator is of the opinion that this was not the intent of the Parties.

In the instant case, the Grievant worked exclusively in an area where there was uncontested evidence of drug use. The Grievant worked in this area and it is uncontested that he had access to the location where actual drugs were found. As stated earlier, it was also uncontested that the Grievant used or presumably sat in the switcher in order to warm up.

Based on this evidence, the above-referenced findings and conclusions and in the light of the expressed language of the Agreement, the Undersigned Arbitrator must conclude that the Company acted properly and not in violation of the Agreement, particularly Schedule 3B, Part VI, when it tested the Grievant for drugs and subsequently permitted the Grievant to enter into a "last chance" agreement.

Accordingly, the instant grievance is denied.

AWARD

The instant grievance is denied in its entirety. The Company acted properly when it required the Grievant, S__, to undergo a drug test in February, 1997 and did not violate Schedule 3B, Part VI of the Collective Bargaining Agreement.

CITY OF MILWAUKEE —

Decision of Arbitrator

In re CITY OF MILWAUKEE and MILWAUKEE POLICE SUPERVISORS ORGANIZATION, Case No. A/P M-99-102, February 24, 1999
Arbitrator: Fredric R. Dichter

DISCIPLINE

1. Dishonesty ▸100.552525 ▸100.5523

City did not have just cause to suspend police sergeant, who agreed to officer's request to post inaccurate statement about settlement of baby-food litigation, for dishonesty, where sergeant responded to questions about whether it was her signature on back of document authorizing posting, but was unsure when asked if it "was her original signature" on front of document; she never claimed signature was forgery but was unsure whether it was original.

2. Dishonesty — Reckless disregard ▸100.552525 ▸100.5523 ▸100.15

Police sergeant, who agreed to officer's request to post inaccurate statement about settlement of baby-food litigation, was suspended without just cause for violating rule prohibiting reckless disregard of truth when she answered questions about document she signed authorizing posting, since reckless conduct required more than failure to exercise reasonable care, grievant was careless in her reading of document when she answered questions, and wrongly believed that document she was shown was not what she authorized.

3. Dishonesty — Reckless disregard ▸100.552525 ▸100.5523 ▸100.15

City did not have just cause to suspend police sergeant, who agreed to officer's request to post false statement about settlement of baby-food litigation, for violating rule prohibiting reckless disregard of truth when she answered questions about document she signed authorizing posting, where her incorrect responses were about authenticity of particular document, she admitted she allowed notice to be read, she never denied that she authorized posting and had no motive to do so once she admitted she allowed notice to be read, and it is plausible she would not recall specific incident inasmuch as it was brief.

Appearances: For the employer — Thomas J. Beamish, assistant city attorney. For the union — John F. Fuchs (Fuchs, Snow, O'Connel & DeStefanis), attorney.

DISHONESTY

Issue

DICHTER, Arbitrator: — The parties stipulated to the following issue:

Did the Employer have just cause to issue a five-day suspension to grievant. If not, what is the appropriate remedy?

Background

The supervisors at the Milwaukee Police Department are represented by the Milwaukee Police Supervisor's Organization, hereinafter called the Organization. They have entered into a collective bargaining agreement with the City of Milwaukee, hereinafter referred to as the City. The agreement covers among other classifications, the sergeants employed at the Police Department.

On occasion, the sergeants are required to assume the role of the lieutenant, when the lieutenant is absent. Grievant was filling that role on April 17, 1997. She was working in District 2. One of her duties as lieutenant is to approve items to be read at roll call and then placed on the bulletin board. Any officer can request that an item be read. However, Departmental Rules require that all requests be placed on an 8½ by 11" paper and that they them on a PM-11 form, which is commonly known as a "buck slip." If approved, the supervisor puts an imprinted authorization stamp on the back and signs it in the blank left for their signature.

On April 17, an Officer approached grievant about approving a notice that dealt with a settlement with Gerber baby foods. He discussed the contents with grievant. The officer testified that he had the form with him when he discussed the notice with the grievant, but was unsure whether grievant approved the notice at the time they discussed it or whether he left it for her to sign later. Grievant recalls that a matter concerning Gerber was discussed with her, but her recollection