DECISION OF ADJUDICATOR
IN THE MATTER OF A HEARING
PURSUANT TO s.s. 62.1 and 62.2 OF
***THE LABOUR STANDARDS ACT*, R.S.S. 1978, c. L-1 (as amended)**

APPELLANT: IPSCO INC.,

RESPONDENTS: BARRY AUSTIN, RON BAUMANN, CRAIG DRAKE, RAMON FICA, BRAD FORSTER, GARTH GOTTSELIG, GERALD HAAS, BILL HARDER, TIM KACHALUBA, ARTIE KACHUIK, TONY KURUCZ, WAYNE MASSIER, DWAYNE ROBERT McCONNELL, DARRYL R. McEWEN, LARRY SCHICK, VERNON E. SELINGER, DARRELL URJASZ, KELLY URJASZ, ROBERT ALLEN WOULFE, RANDY YAKOBOVICH and DIRECTOR OF LABOUR STANDARDS

DATE OF HEARING: January 21 and 22, 1997

PLACE OF HEARING: Labour Standards Offices
1870 Albert Street
Regina, Saskatchewan

COUNSEL: Larry LeBlanc and Eileen Libby of
MacPherson Leslie & Tyerman
on behalf of the Appellant

Gary Moran of the Civil Law Division
Saskatchewan Department of Justice,
on behalf of the Director of Labour
Labour Standards

I INTRODUCTION

Larry LeBlanc and Eileen Libby, of MacPherson Leslie & Tyerman, appeared for the Appellant employer. Accompanying them was Ron Armstrong, the Employee Relations Supervisor at Ipsco. Gary Moran of the Civil Law Division, Saskatchewan Department of Justice appeared for the employees. Accompanying Mr. Moran was Eric Greene, the Assistant Director of Labour Standards.

II PRELIMINARY OBJECTIONS

The employer has raised a jurisdictional argument which puts into issue my authority to rule on this matter. The employer asks that I defer to an arbitrator acting pursuant to the provisions of the Collective Bargaining Agreement between the Appellant Corporation and the Employees' Union, The United Steel Workers of America, Local 5890. This argument is dealt with below. Subject to their position on this jurisdictional question, however, the parties agreed that the Hearing was properly convened, that appropriate notice had been given to all parties, and that as an adjudicator appointed pursuant to the provisions of *The Labour Standards Act*, I had authority to deal with the questions placed before me in this appeal.

III MATTERS AGREED UPON

The parties agreed that an employment relationship existed as between the individual Respondents and the corporate Appellant at all relevant times. The parties also agreed that the individual employees were members of The United Steel Workers of America Local 5890 ("the Union"), and that the Union and the Appellant were subject to a Collective Agreement which was effective June 20, 1994 to July 31, 1997.

IV THE DISPUTE

The Respondents' claim is based upon a Wage Assessment filed by the Director of Labour Standards on their behalf. The original Wage Assessment, dated September 12, 1996, sets out a claim of $63,414.40 on behalf of 19 employees. An amended Wage Assessment

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was issued by the Director on January 21, 1997. The amended Assessment claims the amount of $66,670.88 and includes the claim of one additional employee.

The employer responded to the Wage Assessment by way of a letter of appeal dated September 30, 1996, claiming that no wages were owing to the Respondents. The grounds of appeal set out by the Appellant are as follows:

> "(1) There are no wages owing to any of the 19 employees (hereinafter the "Complainants") referred to in the wage assessement;
>
> (2) The requirements of section 43 of *The Labour Standards Act* were satisfied in respect of the layoff of the Complainants effective November 10, 1995;
>
> (3) The Complainants well knew or ought to have known (as did the United Steelworkers of America as their agent and representative) from information communicated to them both orally and in writing more than four weeks prior to November 10, 1995 that they would be laid off on November 10, 1995 due to a general plant shutdown;
>
> (4) The Complainants are estopped from contending that they did not receive proper notice in respect of their layoff effective November 10, 1995;
>
> (5) The Complainants are covered by a collective bargaining agreement containing provisions (including in relation to layoff) which are more favourable than the provisions of *The Labour Standards Act* (including in relation to layoff), with the result that the said Act had no application to the layoff of the Complainants effective November 10, 1995;
>
> (6) The grievance and arbitration procedure under the applicable collective bargaining agreement provides the exclusive forum for resolving employee complaints as to wages;
>
> (7) In the alternative, the amount of the Wage Assessment, being the equivalent of four weeks' pay for each of the Complainants, is preposterous and unsupportable having regard to the fact that the Complainants were laid off for a period of only two weeks (from November 10, 1995 to the next shift following November 25, 1995)."

Simply stated, the issue to be determined in this appeal is whether or not the employees received proper or adequate notice of their lay-off and whether or not they are entitled to pay

in lieu of notice pursuant to the provisions of *The Labour Standards Act*.

V ISSUES TO BE DETERMINED

I believe that the issues which arise in the context of the within appeal can be distilled to a consideration of the following questions:

A) Do I, as an adjudicator appointed pursuant to the provisions of *The Labour Standards Act*, have the requisite jurisdiction and authority to determine whether or not the employees in this case were given proper or adequate notice of lay-off, or should I instead defer to an arbitrator appointed pursuant to the provisions of the Collective Bargaining Agreement?

B) As a factual matter, when and how did the Respondents receive notice of lay-off?

C) Has section 43 of *The Labour Standards Act* with respect to lay-off notices been complied with?

D) Have the provisions of the Collective Bargaining Agreement with respect to lay-off notices been complied with?

E) Are the provisions of the Collective Bargaining Agreement more favourable than the provisions of *The Labour Standards Act*?

F) Are the employees estopped by reason of their silence or inaction from contending that they did not receive proper notice of lay-off?

G) Has the amount of the wage assessment been properly quantified?

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No written notice given for Nov 10

Broke service thus reducing Notice from 4 to 1wk IPSCO had already paid some senior men for not enough notice given

Simply stated, the issue to be determined in this appeal is whether or not the employees received proper or adequate notice of their lay-off and whether or not they are entitled to pay

VI THE COLLECTIVE AGREEMENT

The Collective Agreement between Ipsco Inc. and The United Steel Workers of America Local 5890, Regina, was entered into evidence by agreement of the parties. The provisions of the Collective Agreement which are of relevance in determining the issues in this appeal are reproduced below:

"Article 12.02 - Seniority and Job Opportunity

(a) 1. Production and Maintenance Employees Only

The parties recognize that job opportunity and security shall increase in proportion to length of service. It is therefore agreed that (subject to Article 12.01) senior employees shall be entitled to preference in all cases of job posting, transfer, lay-off, vacations, and rehiring after lay-off.

...

(b) The term 'plant seniority' shall mean an employee's length of service as per Article 12.04.

(c) Production and Maintenance Employees Only.

The term 'job seniority' shall mean an employee's length of service on a job within a line of progression, and any leave of absence up to two (2) months in any one (1) year. Employee's job seniority shall start accumulating the date of the bid award.

...

Article 12.06 - Loss of Seniority

An employee shall lose his seniority standing and his name shall be removed from all seniority lists for any one of the following reasons:

a) If the employee voluntarily quits.

b) If the employee is discharged for proper cause and is not reinstated in accordance with the provisions of this Agreement.

c) If the employee is laid off and fails to return to work when notified to do so ...

d) Is on continuous lay-off due to lack of work for a period in excess of his accumulated seniority at the time of lay-off, providing his accumulated seniority is less than six (6) months.

e) Is on lay-off for lack of work for a period of twelve (12) consecutive months providing his accumulated seniority is less than one (1) year, but greater than six (6) months at the time of lay-off.

f) If an employee is absent in excess of three (3) working days and fails to notify the Company of such absence, shall be deemed to have voluntarily terminated employment with the company except where an employee can prove communication with the Company was impossible.

...

Article 12.10 - Lines of Progression and Restrictions Production and Maintenance Employees Only

...

Lay-Offs

l) In the event of cutback or lay-off, an employee shall be deemed to have the right to a position that is lower in that line of progression and will bump down this line to a position which he can hold. You shall regress as you progress and progress as you regress.

...

Article 12.11 - Definition of Lay-off

For the purpose of this Agreement 'lay-off' means temporary dispensation with the services of an employee for a period exceeding three (3) working days in any one (1) calendar month.

Article 12.12 - Lay-Off Procedure

Whenever a lay-off occurs, due to lack of work and subject to the provision of Article 12.02, the Company agrees to give seven (7) days notice to an employee, such notice to be posted on plant bulletin boards with a copy to the Union. A letter of confirmation will also be given to the employee or mailed to his last known address.

Name not posted on list
No letter of confirmation sent
Layoffs cannot be Assumed

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> b) If the employee is discharged for proper cause and is not reinstated in accordance with the provisions of this Agreement.

...

Article 12.15 - Inter-Plant Transfer

Opportunity will be afforded to laid off members from other plants prior to the hiring of new employees. Seniority and/or service shall only apply to benefits, pensions, vacations and severance entitlements under Articles 11, 15 and 17."

VII THE LABOUR STANDARDS ACT

The following provisions of *The Labour Standards Act* are relevant to this Hearing:

"2.(h) 'lay-off' means the temporary termination by an employer of the services of an employee for a period exceeding six consecutive days;

...

Notice to employee of discharge
43. Except for just cause other than shortage of work, no employer shall discharge or lay off an employee who has been in his service for at least three continuous months without giving that employee at least:

a) one week's written notice, if his period of employment is less than one year;
b) two weeks' written notice, if his period of employment is one year or more but less than three years;
c) four weeks' written notice, if his period of employment is three years or more but less than five years;
d) six weeks' written notice, if his period of employment is five years or more but less than 10 years;
e) eight weeks' written notice, if his period of employment is 10 years or more.

Payment to employee in case of discharge or lay-off
44(1) Where an employer discharges or lays off an employee in accordance with section 43, he shall pay to the employee, in respect of the period of the notice given under that section, the sum earned by the employee during that period or a sum equivalent to the employee's normal wages for the period of the notice exclusive of overtime, whichever is the greater.

(2) Where an employer, contrary to section 43, discharges or lays off an

employee without having given the notice required by that section, he shall pay to the employee, in respect of the minimum period of notice required by section 43, a sum equivalent to the employee's normal wages for that period, exclusive of overtime.

(3) Where the wages of an employee, exclusive of overtime, vary from week to week, his normal wages for one week shall, for the purposes of subsection (1) or (2), be deemed to be the equivalent of his average weekly wage, exclusive of overtime, for the four weeks he worked immediately preceding the date on which notice of termination of employment or lay-off was given or, where such notice was not given, the date on which he was discharged or laid off.

...

More favourable provisions in contract of service or custom to prevail
45. Nothing in section 43 affects any provision in a contract of service, or any recognized custom, by virtue of which an employee is entitled to a longer notice of termination of employment or lay off or to more favourable compensation in respect of the period of any such notice than is provided for by that section.

...

Effect of Act on other Acts, agreements, contracts and customs
72(1) Nothing in this Act or in any order or regulation made under this Act affects any provision in any Act, agreement or contract of service or any custom insofar as it ensures to any employee more favourable conditions, more favourable hours of work or a more favourable rate of wages than the conditions, the hours of work or the rate of wages provided for by this Act or by any such order or regulation.

(2) Where any provision in this Act or in any order or regulation made under this Act requires the payment of wages at the rate of time and one-half, no provision in any Act, agreement or contract of service, and no custom, shall be deemed to be more favourable than the provision in this Act or in the order or regulation if it provides for the payment of wages at a rate less than the rate of time and one-half.

(3) Any provision in any Act, agreement or contract of service or any custom that is less favourable to an employee than the provision of this Act or any order or regulation made under this Act is superseded by this Act or any order or regulation made under this Act insofar as it affects that employee.

...

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Opportunity will be afforded to laid off members from other plants prior to the hiring of new employees. Seniority and/or service shall only apply to benefits, pensions, vacations and severance entitlements under Articles 11, 15 and 17."

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43. Except for just cause other than shortage of work, no employer shall discharge or lay off an employee who has been in his service for at least three continuous months without giving that employee at least:

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b) two weeks' written notice, if his period of employment is one year or more but less than three years;
c) four weeks' written notice, if his period of employment is three years or more but less than five years;
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(2) Where an employer, contrary to section 43, discharges or lays off an

Agreements not to deprive employees of benefits of Act
75(1) No agreement, whether heretofore or hereafter entered into, has any force or effect if it deprives an employee of any right, power, privilege or other benefit provided by this Act."

VIII EVIDENCE OF THE EMPLOYER

a) Ron Armstrong

Ron Armstrong testified on behalf of the employer. He is the supervisor of Employee Relations at Ipsco. Mr. Armstrong was responsible for coordinating manpower at the time of the November 1995 lay-off at the steel division. The steel division, Mr. Armstrong testified, consists of the melt shop and the rolling mill, both of which are included in the same bargaining unit and have been subject to a Certification Order with the Labour Relations Board since the early 1960's. The Respondent employees all work in the steel division and all are union members within the scope of the Collective Bargaining Agreement.

The steel division at Ipsco was shut down from 7:00 p.m. on November 10, until November 26, 1995. All production in the steel mill ceased during this period and a skeleton staff only was maintained to attend to the plant during the shut down.

Mr. Armstrong testified that it was at the end of September, 1995 that it first appeared that a shut down of the plant would be necessary. However, the company could not, at that point in time, identify a date when the lay-off would occur. Accordingly, initial lay-off notices were given to employees on September 22 to all "one and two week employees", i.e., those employees with less than three years service who would be entitled to only one or two weeks' notice under *The Labour Standards Act*. This notice read as follows:

"IPSCO INC.
22 Sept. 1995

Steel Division
Layoff Notice - 22 Sep 1995

The following employee(s) will be laid off indefinitely due to economic

conditions and with proper regard to the seniority clause in our collective agreement at the end of your last scheduled shift on or before October 06 1995.

The employee(s) listed below have been given a letter of confirmation. Any previously issued layoff notices for the employee(s) listed below are cancelled. If you have any questions, please contact your supervisor.

Any vacations booked between today's date and October 06 1995, have been cancelled."

The Notice included a listing of the employees affected by the lay-off and seniority number. All of the 20 Respondents were included in this initial notice dated September 22, 1995.

Mr. Armstrong testified that the lay-off notice was made in compliance with Article 12.12 of the Collective Bargaining Agreement, reproduced at page 6 above. Accordingly, the Notice was posted on plant bulletin boards (in the security office, washrooms and change rooms, at a total of 15 locations in the steel division), a copy of the Notice was provided to the Union, and a letter of confirmation was mailed to each employee. Mr. Armstrong noted that years ago these notices had been sent out by registered mail, but that in subsequent negotiations with the Union it was agreed that the lay-off notices could be delivered by ordinary mail, which was the manner of service used in this case.

Mr. Armstrong testified that prior to the issuance of the next lay-off notices on September 29, 1995, he had discussions with Union representatives on the Seniority Committee wherein it was agreed that the parties would move to a new more efficient system of providing notice of lay-offs. It was agreed that a general lay-off notice would be posted at the 15 locations throughout the plant and that the actual names of the employees affected and the dates upon which they could anticipate being laid off would be set out in a lay-off notice binder in the security office at the plant.

The next notice was issued on September 29, 1995 in accordance with this new procedure. A notice, in large, bold print, which read as follows, was posted on the plant bulletin boards:

Agreements not to deprive employees of benefits of Act
75(1) No agreement, whether heretofore or hereafter entered into, has any force or effect if it deprives an employee of any right, power, privilege or other benefit provided by this Act."

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The steel division at Ipsco was shut down from 7:00 p.m. on November 10, until November 26, 1995. All production in the steel mill ceased during this period and a skeleton staff only was maintained to attend to the plant during the shut down.

Mr. Armstrong testified that it was at the end of September, 1995 that it first appeared that a shut down of the plant would be necessary. However, the company could not, at that point in time, identify a date when the lay-off would occur. Accordingly, initial lay-off notices were given to employees on September 22 to all "one and two week employees", i.e., those employees with less than three years service who would be entitled to only one or two weeks' notice under *The Labour Standards Act*. This notice read as follows:

"IPSCO INC.
22 Sept. 1995

Steel Division
Layoff Notice - 22 Sep 1995

The following employee(s) will be laid off indefinitely due to economic

"LAYOFF NOTICE
SEPTEMBER 29, 1995

PLEASE BE ADVISED THAT LAYOFF NOTICES FOR THE STEEL DIVISION HAVE BEEN ISSUED FOR ALL STEEL DIVISION EMPLOYEES.

PLEASE REFER TO THE LAYOFF BINDER IN THE SECURITY OFFICE TO DETERMINE YOUR SPECIFIC LAYOFF DATE.

IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT YOUR SUPERVISOR.

PERSONNEL DEPARTMENT
C.C. LOCAL 5890"

Mr. Armstrong testified that at the end of September notices were given to all one, two, four and eight week notice groups. Their practice was to provide notice to the groups requiring less notice on a rotating basis, i.e., as the notices expired the employer would cancel and re-issue notices for the following period. Accordingly, notices were issued to the one, two and four week groups on a revolving basis as they expired, but the six and eight week notices remained in effect for November 17 and November 24, respectively. A lay-off notice dated September 28, 1995, in a form identical to the September 22, 1995 notice, was placed in the lay-off binder at the plant. The September 28th lay-off notice indicated that the last scheduled shift would be on October 13, 1995. Once again, all of the Respondent employees' names were included in the lay-off notice.

Worked beyond this date

Mr. Armstrong testified that by early to mid-October it was decided that the lay-off would take place on November 10, 1995. However, as a precautionary measure, he testified that the notices for the employees requiring a shorter period of notice would be re-issued on a revolving basis until that time. Accordingly, on October 5, 1995 a general lay-off notice identical in content to the September 29th notice was again posted on all bulletin boards in the steel division. A specific lay-off notice containing the names of the employees affected was again placed in the lay-off binder in the security office. The notice stated that the last scheduled shift would be October 20, 1995. Once again, the names of all of the Respondent

Once again worked beyond this date

employees were contained in this notice.

The company posted a further general lay-off notice on the bulletin boards in the plant on October 13, 1995. That lay-off notice read as follows:

"LAYOFF NOTICE
OCTOBER 13, 1995

PLEASE BE ADVISED THAT LAYOFF NOTICES HAVE BEEN EXTENDED FOR ALL STEEL DIVISION EMPLOYEES REQUIRING ONE (1), TWO (2) AND FOUR (4) WEEKS NOTICE. THE LAYOFFS FOR THOSE INDIVIDUALS REQUIRING SIX (6) AND EIGHT (8) WEEKS NOTICE WILL REMAIN IN EFFECT AS ISSUED LAST WEEK.

PLEASE REFER TO THE LAYOFF BINDER IN THE SECURITY OFFICE TO DETERMINE YOUR SPECIFIC LAYOFF DATE.

IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT YOUR SUPERVISOR.

PERSONNEL DEPARTMENT
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Once again, a specific lay-off notice containing the names of the affected employees was placed in the binder in the security room. However, with the exception of Garth Gottselig, the names of the Respondents did not appear on the October 13th lay-off notice. Mr. Armstrong testified that the exclusion of the names of the Respondents on the October 13, 1995 list was due to a clerical error or a computer "glitch" of some kind and that there was never any intention on the part of the employer to exclude the Respondents from the list. The October 13th lay-off notices were intended to include all employees entitled to one, two and four weeks notice. Those entitled to two weeks notice were given notices for October 27th, and those entitled to four weeks notice were given lay-off notices on October 12, 1995, advising that their last scheduled shift would be November 10, 1995. As indicated earlier, it had already been determined that barring any significant change in orders, the lay-off would be effective November 10.

Once again worked beyond this date and unaware of a Nov 10 layoff

On October 20, 1995, a further general lay-off notice was posted on the bulletin boards

"LAYOFF NOTICE
SEPTEMBER 29, 1995

PLEASE BE ADVISED THAT LAYOFF NOTICES FOR THE STEEL DIVISION HAVE BEEN ISSUED FOR ALL STEEL DIVISION EMPLOYEES.

PLEASE REFER TO THE LAYOFF BINDER IN THE SECURITY OFFICE TO DETERMINE YOUR SPECIFIC LAYOFF DATE.

IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT YOUR SUPERVISOR.

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Once again worked beyond this date

in the plant. That lay-off notice read as follows:

"LAYOFF NOTICE
OCTOBER 20, 1995

PLEASE BE ADVISED THAT LAYOFF NOTICES HAVE BEEN EXTENDED FOR ALL STEEL DIVISION EMPLOYEES REQUIRING ONE (1) AND TWO (2) WEEKS NOTICE. THE LAYOFFS FOR THOSE INDIVIDUALS REQUIRING FOUR (4), SIX (6) AND EIGHT (8) WEEKS NOTICE WILL REMAIN IN EFFECT AS PREVIOUSLY ISSUED.

* PLEASE REFER TO THE LAYOFF BINDER IN THE SECURITY OFFICE TO DETERMINE YOUR SPECIFIC LAYOFF DATE.

* IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT YOUR SUPERVISOR.

PERSONNEL DEPARTMENT
C.C. LOCAL 5890"

The specific lay-off notices placed in the binders in the security office on October 20, 1995 again omitted the names of the 19 Respondents who had been missed on the October 13th notice and in addition, the name of a twentieth employee, Garth Gottselig, was also omitted.

At this point in time, the last specific lay-off notice which the Respondent employees had seen with their names on it indicated that their lay-off would be effective on October 20, 1995(with the exception of the last notice containing Garth Gottselig's name, which indicated a last scheduled shift of October 27). However, all of the employees continued to work past October 20th and, indeed, past October 27th as well, right up to the general plant shut down on November 10, 1995.

On October 28, 1995, a different form of notice was posted on all 15 bulletin boards in the steel division. This notice contained a list of 94 employees who were to *continue* working past the November 10th shut down. The Notice read as follows:

"October 28, 1995

NOTICE

The following list represents the employees who will be working past the November 10, 1995 layoff date. In accordance with Article 12.10n(i) of the Collective Agreement, please submit your bump forms to Judy Anderson (Steel Administration, 2nd Floor Operations) on or before Monday, November 6, 1995."

The names of the 20 Respondent employees were not on this list.

A further notice was posted on all 15 bulletin boards on October 30, 1995, reminding employees of their ability to bump into the positions which would remain after the lay-off pursuant to the terms of the Collective Agreement:

"NOTICE
RE: SHUTDOWN

ANY EMPLOYEE WHO SUCCESSFULLY BUMPS INTO ANY OF THE POSITIONS LISTED ON THE NOTICE DATED OCTOBER 28, 1995 WILL BECOME SUBJECT TO A NOVEMBER 17, 1995 LAYOFF DATE. THIS IS THE LAYOFF DATE THAT APPLIED TO THE INCUMBENTS OF THE LISTED POSITIONS.

OCTOBER 30, 1995"

* Nov 17 layoff Not Nov 10 th adds to the confusion + was mentioned

On November 1, 1995, a further notice was posted on the steel division bulletin boards. This notice again contained the names of the 94 employees designated to work past the November 10, 1995 lay-off date. However, this list also included the seniority number for each employee and a reminder concerning "bumping" rights under the Collective Agreement.

"NOTICE

November 1, 1995

The following employees have been designated to work past the November 10, 1995 layoff date. Any employee wishing to exercise bumping rights with

in the plant. That lay-off notice read as follows:

"LAYOFF NOTICE
OCTOBER 20, 1995

PLEASE BE ADVISED THAT LAYOFF NOTICES HAVE BEEN EXTENDED FOR ALL STEEL DIVISION EMPLOYEES REQUIRING ONE (1) AND TWO (2) WEEKS NOTICE. THE LAYOFFS FOR THOSE INDIVIDUALS REQUIRING FOUR (4), SIX (6) AND EIGHT (8) WEEKS NOTICE WILL REMAIN IN EFFECT AS PREVIOUSLY ISSUED.

* PLEASE REFER TO THE LAYOFF BINDER IN THE SECURITY OFFICE TO DETERMINE YOUR SPECIFIC LAYOFF DATE.

* IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT YOUR SUPERVISOR.

PERSONNEL DEPARTMENT
C.C. LOCAL 5890"

The specific lay-off notices placed in the binders in the security office on October 20, 1995 again omitted the names of the 19 Respondents who had been missed on the October 13th notice and in addition, the name of a twentieth employee, Garth Gottselig, was also omitted.

At this point in time, the last specific lay-off notice which the Respondent employees had seen with their names on it indicated that their lay-off would be effective on October 20, 1995(with the exception of the last notice containing Garth Gottselig's name, which indicated a last scheduled shift of October 27). However, all of the employees continued to work past October 20th and, indeed, past October 27th as well, right up to the general plant shut down on November 10, 1995.

On October 28, 1995, a different form of notice was posted on all 15 bulletin boards in the steel division. This notice contained a list of 94 employees who were to *continue* working past the November 10th shut down. The Notice read as follows:

regard to these positions should complete a bump form and return to to J. Anderson (Steel Admin.) as soon as possible.

Please be advised that per Article 12.10(m) of the Collective Agreement, in order to bump these positions you must have 'done that job for a period exceeding 30 consecutive days and can still perform that job efficiently with a familiarization period' (familiarization period of 8 hours)."

Again, the names of the 20 Respondent employees did not appear on the list.

A further notice was posted on all of the bulletin boards and in the security office on November 3, 1995. This notice indicated that the list of employees designated to continue to work after the November 10th shut down had been reduced from 94 to 36 employees:

"NOTICE - RE: LAYOFFS
November 3, 1995

As you know, in connection with a shutdown of the steel mill commencing at 7:00 a.m. on November 11, 1995 there will be a general layoff of steel division employees.

By notice dated October 28, 1995 the Company provided a list of 94 employees designated to work past the commencement of the shutdown until the conclusion of their last scheduled shift on or before November 17, 1995, which was when their layoffs were to come into effect. The Company has now decided to reduce to 36 the number of employees it will retain after the commencement of the shutdown.

The attached list sets out the names, seniority standing and positions of those employees who have now been designated to work past the commencement of the shutdown.

All other steel division employees (i.e. all steel division employees whose names do not appear on the attached list) will be laid off at the conclusion of their last scheduled shift on or before November 10, 1995. For those who were previously subject to a November 17, 1995 layoff date and will now be laid off November 10, 1995, pay in lieu of notice will be provided for the period of approximately one week. Not enough Notice given so IPSCO paid the men out ...

Please be advised that per Article 12.10(m) of the Collective Agreement, in

> order to bump these positions you must have 'done that job for a period exceeding 30 consecutive days and can still perform that job efficiently with a familiarization period' (familiarization period of 8 hours)."

None of the 20 Respondent employees were included in the list of 36 employees designated to continue work after the November 10th general plant shut down.

a layoff cannot be assumed you must have written notice or be on a list

Mr. Armstrong indicated that no employee inquiries concerning the lay-off notices (nor the failure to include the 20 Respondent employees on the lay-off notices in the binders) were ever brought to his attention prior to the November 10th shut down. Mr. Armstrong also confirmed that no grievance had ever been filed with respect to the claims which form the subject matter of this adjudication.

Mr. LeBlanc reviewed the provisions of the Collective Bargaining Agreement with Mr. Armstrong, confirming that Article 12.02(a)(1) provided the right of employees with greater than one year of seniority to have life-time recall rights. If the seniority is less than one year and an employee is laid off for a period longer than the period of employment, the seniority is lost. Mr. Armstrong also referred to the provisions in Article 12.15 of the Collective Agreement providing employees with the ability to transfer between plants in situations where they are laid off and Article 17.08, indicating that certain employee benefits are continued until the end of the month following a lay-off and that they may continue even thereafter if premiums are continued. Reference was also made to Articles 12.02 and 12.04 of the Agreement, indicating that job seniority "as distinct from plant seniority" continues to accumulate during a period of lay-off.

Mr. Moran cross-examined Mr. Armstrong at some length concerning Ipsco's practice of issuing "rolling lay-off" notices. Mr. Armstrong admitted that between September 22 and November 3, Ipsco had given lay-off notices every Friday. He also acknowledged that even though management knew in early to mid-October that the lay-off would be effective November 10th, Ipsco continued to issue one and two week lay-off notices for employees in those categories. This was done, Mr. Armstrong explained, because Ipsco did not know if they were simply going to pare down production prior to the lay-off or whether they would be able to maintain a full work complement prior to November 10th.

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The attached list sets out the names, seniority standing and positions of those employees who have now been designated to work past the commencement of the shutdown.

All other steel division employees (i.e. all steel division employees whose names do not appear on the attached list) will be laid off at the conclusion of their last scheduled shift on or before November 10, 1995. For those who were previously subject to a November 17, 1995 layoff date and will now be laid off November 10, 1995, pay in lieu of notice will be provided for the period of approximately one week. Not enough Notice given so IPSCO paid the men out

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In addition, Mr. Armstrong acknowledged that although the impending shut down was, in his words, "common knowledge throughout the plant", it was also known that there would always be some employees working after the shut down as a fire watch crew. Yes it was, but as to what day it would happen that was not actually known until Nov 9.
Mr. Armstrong testified that letters of lay-off notice were still sent out after the September 22nd notice was issued, as had been the practice in the past. The only difference was that after that date a general notice was set out on the bulletin boards and a specific list containing employee names was placed in the binder in the security office. Mr. Armstrong further acknowledged that after the names of the 20 employees "fell off the list" on September 29th, they would no longer have received letters advising them of their impending lay-off. SO NO Notice given

IX EVIDENCE OF THE EMPLOYEES

a) Robert Allen Woulfe

Mr. Woulfe worked in the steel division. He testified that he only found out on November 9, 1995 that he would be laid off as of November 10, 1995. He stated that he received lay-off notices on a regular basis from his employer. "We get them every week" he stated, "I could wallpaper my house with them." He acknowledged that he had heard rumors of the impending lay-off in October and asked his supervisor about it. Mr. Woulfe was simply told that the supervisor himself did not know when the lay-off would occur and therefore placed no faith in the numerous lay-off notices which he received. He believes that he probably saw one hundred or so lay-off notices during his nine or ten years of employment. When asked about the form of general lay-off notice such as those which were posted after September 29, 1995, he indicated that he had seen many such notices. However, he does not remember seeing lay-off notices such as the more specific lay-off notices which were contained in the lay-off binder in the security office. He states that he only looked in the book in the security office one time and that he did not see his name in the book.

Mr. Woulfe was openly hostile and very defensive during cross-examination and on occasion contradicted evidence he had earlier given. I did not find his evidence to be

particularly helpful or reliable. However, it was clear from his evidence that given the many notices which he had received during his employment, he no longer took much stock in them. Rather, he was satisfied simply to ask his supervisors on an ongoing basis what they might know about an impending lay-off.

b) Darryl R. McEwen

Darryl McEwen has been an employee with Ipsco for nine years. He testified that he never received any notice indicating that he would be laid off on November 10th. He believes that the last notice mailed to his home address indicated that his lay-off would be effective as of October 20, 1995. He continued working after October 20th simply because it was evident that the lay-off was not going to occur at the time specified in the earlier notices.

Mr. McEwen stated that he never looked at the lay-off binder in the security office before October 20th, but that he did so on three or four occasions after that date. Although Mr. McEwen acknowledged that it was common knowledge that there was going to be a lay-off at the plant, he testified that he never knew the timing of the lay-off with any certainty until his last scheduled shift prior to November 10th.

Under cross-examination, Mr. McEwen acknowledged that he worked on a shift with five men, all but one of whom were senior to him and that he found their names in the lay-off binders in the security office. He also admitted that he knew that his name *should* have been in the book but was not.

Mr. McEwen appeared to be a very forthright and intelligent witness. He indicated that he learned by word of mouth that the October 20th lay-off had been cancelled. He testified that this did not surprise him given the Company's practice of cancelling and re-issuing lay-off notices.

In addition, Mr. Armstrong acknowledged that although the impending shut down was, in his words, "common knowledge throughout the plant", it was also known that there would always be some employees working after the shut down as a fire watch crew. Yes it was, but as to what day it would happen that was not actually known until Nov 9.

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c) Tim Kachaluba

Mr. Kachaluba is a seven-year employee of Ipsco. He indicated that the last letter he received at home advising him of lay-off contained an October 20th lay-off date. Mr. Kachaluba stated that after he received the October 20th notice, he began to check the lay-off binder in the security office on a frequent basis, usually once at the beginning and once at the end of each four-day shift. He continued working after October 20th simply because his name kept appearing on the shift schedule on the bulletin board for the upcoming shifts.

Mr. Kachaluba stated that after October 20th there was talk in the shop of an impending steel division shut down, however, he relied on the advice of his supervisors who continued to tell him "when we know more, you'll know more". Mr. Kachaluba remembers being particularly concerned about the rumored November 10th lay-off date because his brother's wedding was on November 11th and he needed to be at the rehearsal on November 10th. Accordingly, he would have to ask for time off if he was scheduled to work during that period. He stated on the Tuesday prior to November 10th (i.e., November 7) he found his name on the shift schedule and simply assumed that he was to work. He didn't learn until November 10th that he was definitely going to laid off.

Under cross-examination by Mr. LeBlanc, Mr. Kachaluba acknowledged that he was aware that all of the more senior members of his work crew had been given their lay-off notices effective November 10.

d) Vernon E. Selinger

Mr. Selinger has been an employee of Ipsco for five years. He worked in the roll shop at the time of the November, 1995 lay-off. Mr. Selinger also testified that the last letter he received from Ipsco contained an October 20th lay-off date. He stated that he knew the lay-off had been cancelled as a result of discussions with the lead hand on his shift, a Union representative. Mr. Selinger stated that it was only during his shift on Friday, November 10, that he learned that the lay-off would be effective that date. He stated that on Friday he called the Union Office and spoke to Wayne Krushluki and told him that his name was not listed in

the binder in the security office. He stated that Mr. Krushluki advised him not to report for work. Mr. Selinger testified that he did begin to look in the book in the security office after the new system came into effect and general notices only were posted on the bulletin boards. Mr. Selinger admitted that although he did not look for names other than his own, he did recognize that people senior to him were being laid off.

e) Garth Gottselig

Garth Gottselig had been working at Ipsco since 1987 (apart from a six-month hiatus in 1991). He was an employee in the roll shop at the steel division. He stated that after the change in the practice concerning lay-off notices, he checked the binder in the security office on the first day of every shift. He remembers that one of the lists had his name on it and that it provided for an October 27th lay-off date. He continued to work past October 27th simply because the steel division shut down had not yet occurred.

Mr. Gottselig testified that he first knew "for sure" that he was to be laid off on November 10. He stated that on the afternoon of Friday, November 10th, he telephoned Union Representative Wayne Krushluki and asked if he should go into work. He testified that Mr. Krushluki told him that senior men would be upset if employees with less seniority went into work and that therefore he should stay home.

Mr. Gottselig testified that he did see the general lay-off notice posted on the bulletin boards on October 20, 1995, and that the effect of it was clear to him at that point in time. However, he did not agree with Mr. LeBlanc that it was apparent that the lay-off notices were all converging on November 10th. He said that given the fact that the lay-off dates had been rolled forward so many days in the future, he was not really sure when the actual effective date of the lay-off would be. Mr. Gottselig acknowledged that he was aware that people senior to him were being laid off according to the notices in the lay-off binder and that those individuals included some of the people he worked with in the roll shop.

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f) Larry Schick

Larry Schick has been an employee with Ipsco since February of 1991. He stated that he received a letter dated October 5, 1995 indicating that there would be a lay-off on October 20, 1995, but that he did not receive any letters subsequent to that date. Mr. Schick stated that he began to check the lay-off binder in the security office at the beginning and end of each four-day shift. He stated that in early October he asked his supervisor whether or not there would be a lay-off and was told simply to keep coming to work until he had been told differently. He testified that it was not until November 10th that he found out that the lay-off would be effective as of his shift the next day. Mr. Schick also testified that he realized that people senior to him had been given lay-off notices before that date.

Mr. Schick admitted under cross-examination by Mr. LeBlanc that he did not tell his supervisor that his name was not on the list, nor could he offer an explanation as to why he had not taken the matter up with his supervisor. He stated that he did not recall seeing the notice dated October 28, 1995, setting out the names of those who *would* continue work after November 10, 1995. However, upon subsequent review of the notice, he agreed that the effect of the notice was clear.

g) Brad Forster

Brad Forster is a plate processor at Ipsco where he has been employed for the past nine years. He stated that he does not remember the exact dates or times of lay-off notices or what lay-off notices he may or may not have seen. However, he did know that even if the steel mill was going to be shut down, that did not necessarily mean that the plate mill where he worked would also shut down. He stated that his questions to his foreman about the lay-offs were met with the response, "you'll know when we know" and that as the dates had already been pushed back five or six times he was not particularly concerned about the lay-off.

Mr. Forster checked the lay-off binder on quite a few occasions. He referred to the binder only sporadically at first but after his name no longer appeared on the list, he checked the book daily. Mr. Forster testified that he did not look in the book while he was still

receiving letters in the mail. However, as soon as the letters quit arriving he began to look in the book on a regular basis. He acknowledged that the last letter would have arrived shortly after October 5, but that he did not mention the issue to his supervisor until some three weeks later. He was aware that people who were senior to him were being laid off effective November 10.

Mr. Forster testified that after November 7, he knew the plate mill was going to be shut down. After that date he checked the book very frequently. He testified that he thought that they had missed his name and that he couldn't figure out why he wasn't being laid off. He stated that he was happy about this turn of events and it wasn't something about which he was going to complain.

h) Bill Harder

Bill Harder has been an Ipsco employee, as he described it, "off and on" for about 24 years. His seniority in the fall of November, 1995 was calculated as of April 1988. At the time of the lay-off he was working the finishing area at the slitter. He remembers receiving lay-off notices approximately once each week but he can't recall the date of the last lay-off notice he received. Mr. Harder's last day of work before the lay-off was on November 8 at 7:00 a.m. He asked his supervisor during that shift whether or not he was laid off. The supervisor said he would be called. Mr. Harder stated that he had lost at least two weeks of work during the period of lay-off and that he believed he was entitled to recover for at least two weeks' notice which he had not received. Mr. Harder, like several other employees, did not initiate any complaint on his own but, rather, simply went down to the Labour Standards Office after someone there had contacted him.

g) Craig Drake

Craig Drake has been an Ipsco employee for the past nine and a half years. At the time of the lay-off in 1995, he was in the heavy plate area of the steel division. Although he was aware of talk of an impending lay-off in October and November of 1995, he felt that because the heavy plate area was behind they might not be shut down with the rest of the steel division.

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Mr. Schick admitted under cross-examination by Mr. LeBlanc that he did not tell his supervisor that his name was not on the list, nor could he offer an explanation as to why he had not taken the matter up with his supervisor. He stated that he did not recall seeing the notice dated October 28, 1995, setting out the names of those who *would* continue work after November 10, 1995. However, upon subsequent review of the notice, he agreed that the effect of the notice was clear.

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He remembers having received a notice bearing a lay-off date of October 20th. After that, the bulletins he read directed him to look in the book in the security office. He started looking in the book but when he asked his supervisor about the impending lay-off he was simply told, "keep coming in, I'll let you know". Mr. Drake testified that it was not until November 8 that he was finally told by his supervisor that he was to be laid off effective November 10th. Mr. Drake's recollections as to the notices that he was given and his response to them were very vague and he was unable to shed any meaningful light on employee responses to the lay-off notices.

h) Tony Kurucz

Mr. Kurucz has been with Ipsco for five years. In November of 1995 he was working in the shipping department. He testified that he too had been laid off on November 10, 1995 for a period of two weeks. He did receive a notice with an October 20th lay-off date in the mail, but received nothing further after that. Although he testified that he had, on occasion, looked in the book in the security office, he relied on the advice of his supervisor, Roger Bourret, for any news of the layoff. Mr. Bourret told him that he should continue to come to work until advised otherwise. He stated that it was only on November 10 that he learned that the layoff would take place the next day.

Under cross-examination by Mr. LeBlanc, Mr. Kurucz testified that he assumed he was going to continue to keep working simply because he wasn't on the list. However, when he was asked whether the fact that his name was not on the list was the result of a mistake, he answered yes. Mr. Kurucz was unable to be very specific about which lists he had seen and those which he had not. He testified that he really did not look at the bulletin boards very much but, rather, relied on notices which he had received in the mail.

i) Barry Austin

Mr. Austin is a nine-year Ipsco employee. He was working in the heavy plate department at the time of his lay-off on November 10, 1995. He, too, remembers receiving letters at his house advising him that he would be laid off effective October 20th. However,

after discussing matters with his supervisor, Mr. Nguyen, he continued to come to work on the understanding that the date for the lay-off had been pushed back. Mr. Austin stated that when he pressed Mr. Nguyen for an answer concerning the lay-off he was simply told, "you know as much as I do. When I know more -- I'll let you know". He stated that he never looked at the lay-off binder until November 3 and 4, but instead continued to ask his supervisor because he thought his supervisor was someone who was in a position to know whether or not the lay-off would occur as scheduled.

Mr. Austin acknowledged seeing the various notices which had been posted on the bulletin boards. In particular, he remembers seeing the notice dated October 28, 1995, which listed the employees who were to continue to work after the November 10, 1995 date. He indicated that although it was clear from the notice that the steel division would be shutting down as of November 10, he was still hopeful that his department would continue to work after that time. He stated that he maintained the hope that the lay-off might be cancelled or postponed as it had been in the past and that he was encouraged in this belief by the fact that the supervisor didn't know whether or not the lay-off would occur as a certainty until November 10th.

j) Wayne Massier

Wayne Massier was a nine-year employee of Ipsco at the time of the lay-off. Although he currently works in the finishing department, at the time of the lay-off he was a switch man in the steel yard. Mr. Massier appeared to be somewhat confused as to the effective date of his lay-off as set out in the letters which had been mailed to his home. He was aware that there had been a change in the form of notice given to employees and that he was required to look at the binders in the security office in order to determine his lay-off date. He recalls that he wanted to go on holidays to Las Vegas during the week of October 13 and that he knew that he had to be back by November 14, which was the date of his wife's medical appointment in Regina. Accordingly, he and his wife postponed their holiday plans week by week as the date of the lay-off kept getting pushed back. Ultimately, Mr. Massier took holidays from November 3 to November 10. Mr. Massier testified that during the last week of October he went to his supervisor, the yard foreman, Bernie Frankowski, and told him that he had

He remembers having received a notice bearing a lay-off date of October 20th. After that, the bulletins he read directed him to look in the book in the security office. He started looking in the book but when he asked his supervisor about the impending lay-off he was simply told, "keep coming in, I'll let you know". Mr. Drake testified that it was not until November 8 that he was finally told by his supervisor that he was to be laid off effective November 10th. Mr. Drake's recollections as to the notices that he was given and his response to them were very vague and he was unable to shed any meaningful light on employee responses to the lay-off notices.

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Under cross-examination by Mr. LeBlanc, Mr. Kurucz testified that he assumed he was going to continue to keep working simply because he wasn't on the list. However, when he was asked whether the fact that his name was not on the list was the result of a mistake, he answered yes. Mr. Kurucz was unable to be very specific about which lists he had seen and those which he had not. He testified that he really did not look at the bulletin boards very much but, rather, relied on notices which he had received in the mail.

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checked the book and that his name was not on the list of those to be laid off. Bernie replied that as far as he knew, nobody would be working following the steel shut down other than the fire watch crew. Mr. Massier, who I found to be a very frank and forthright witness, stated that he believed that he would be one of the individuals getting laid off and that the only indication that he had that he would be able to keep working was that his name was not on the lay-off list. He admitted under cross-examination that Mr. Frankowski did not suggest anything to the contrary to him.

k) Gerald Haas

Gerald Haas has been with Ipsco for nine and a half years. He recalls receiving a series of lay-off notices in October of 1995 and that the last lay-off notice he received in the mail was for October 20th. He continued to work after that date because his supervisor, Nick Lipon, told him to continue to come to work. He stated that both Mr. Lipon and the lead hand, Bert Hunter, told him to "never mind" the lay-off notices and to "keep coming in until we tell you not to".

Mr. Haas testified that he only learned of the November 10th lay-off on the Thursday or Friday of that week when the supervisors came out and told him and his fellow workers that no schedule would be going up for the next week. Mr. Haas testified that when he saw the general notices posted on the bulletin boards he would consult the lay-off binders in the security office. He acknowledged that he noticed that his name was missing and that people with more seniority than he were being laid off. As a result, he concluded some mistake had been made.

l) Dwayne Robert McConnell

Mr. McConnell has been an Ipsco employee for nine years. He also testified that he found out about the lay-off only a day before it occurred. He stated that he learned of the lay-off by telephoning the main office.

Mr. McConnell stated that he consulted the lay-off binder in the security office

approximately once a week prior to the lay-off. He stated that approximately one week before the lay-off he told Ron Walbaum, the Chief Shop Steward, that his name did not appear in the lay-off book. He stated that he also told his supervisor, Dwight Cluff, that his name was missing from the lay-off list.

Mr. McConnell acknowledged under cross-examination that he was aware that other individuals on his shift with more seniority than he were being laid off as of November 10th. He also admitted that he would not have expected to have been kept on and that it "looked like there had been a mistake".

X REBUTTAL EVIDENCE

a) Daniel Neal Anderson

Daniel Neal Anderson was called as a rebuttal witness by the employer. Mr. Anderson is a 17-year Ipsco employee and has been a general foreman in the steel shipping department for five years. He testified that two of the employee Respondents, Tony Kurucz and Larry Schick, were in his department at the time of the lay-off in November of 1995. Mr. Anderson testified that neither Tony Kurucz nor Larry Schick made any inquiries of him concerning the lay-off. He testified that neither of them ever asked him if they were to be laid off or whether they should be reporting to work following November 10th. If such an inquiry had been made, Mr. Anderson testified that a record would have been made on the e-mail system in the computer network at Ipsco. He stated that he had checked his files and confirmed that no such communication had been made. Mr. Anderson also testified that contrary to the testimony of Tony Kurucz, he did not ever tell Tony or any other individual to "keep working until they were told otherwise".

Under cross-examination by Mr. Moran, Mr. Anderson testified that the "computer glitch" which caused the Respondent employees' names to be dropped from the lay-off list was discovered in mid-October and that he believed the company had taken steps to correct the problem.

checked the book and that his name was not on the list of those to be laid off. Bernie replied that as far as he knew, nobody would be working following the steel shut down other than the fire watch crew. Mr. Massier, who I found to be a very frank and forthright witness, stated that he believed that he would be one of the individuals getting laid off and that the only indication that he had that he would be able to keep working was that his name was not on the lay-off list. He admitted under cross-examination that Mr. Frankowski did not suggest anything to the contrary to him.

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Mr. Haas testified that he only learned of the November 10th lay-off on the Thursday or Friday of that week when the supervisors came out and told him and his fellow workers that no schedule would be going up for the next week. Mr. Haas testified that when he saw the general notices posted on the bulletin boards he would consult the lay-off binders in the security office. He acknowledged that he noticed that his name was missing and that people with more seniority than he were being laid off. As a result, he concluded some mistake had been made.

l) Dwayne Robert McConnell

Mr. McConnell has been an Ipsco employee for nine years. He also testified that he found out about the lay-off only a day before it occurred. He stated that he learned of the lay-off by telephoning the main office.

Mr. McConnell stated that he consulted the lay-off binder in the security office

b) Jim Burns

Jim Burns was also called as a rebuttal witness by the employer. Mr. Burns has been with Ipsco for 13.5 years. He was a General Foreman in the melt shop at the time of the November 1995 lay-offs. Mr. Burns stated that the following Respondent employees worked under him at the melt shop:

Ramon Fica
Randy Yakobovich
Kelly Urjasz
Rob Woulfe and
Ron Baumann

Mr. Burns testified that it was common knowledge within the melt shop by mid-October that there would be a shut down on November 10th. He stated that he has no specific recollection of any of the employees in his shop making any inquiries of him about the lay-offs prior to November 10th. However, the question of whether or not the shut down would be going ahead as scheduled was a common inquiry in the shop at that time. He stated that his response was always the same: that as far as he knew, the shut down would be proceeding. If there had been any more detailed or specific inquiries he would have referred the employees to Mr. Armstrong.

Mr. Burns admitted under cross-examination that he may well have stated to Rob Woulfe that "when I know, you'll know", and that he was often asked about pending lay-offs. He stated that he was always very careful to say that unless he had received indication to the contrary, the lay-off was proceeding as scheduled. If someone had said to him, "I don't have a lay-off notice", his response would have been, "go and see Mr. Armstrong", and he himself would have contacted Mr. Armstrong. He was also certain that this did not occur with any of the Respondent employees. Mr. Burns stated that he only learned about the computer "glitch" just before the lay-off occurred. He stated that he didn't take any steps to contact the 20 employees after discovering the error because he didn't even know which employees were affected by the lay-off notices.

c) Nick Lipon

Mr. Lipon has been with Ipsco for 36 years. He has been the General Foreman at the cut-to-length slitter for ten to 11 years. He denied that he told Gerald Haas in October or November of 1995, "come to work until I tell you not to". He also denied saying to Mr. Kachaluba, "when we know more, you'll know more". He said that at the time of the shut down both Haas and Kachaluba were in the finishing department and that he was not their supervisor at the time.

d) Ron Armstrong

Ron Armstrong was recalled as a rebuttal witness. He stated that the company became aware of the computer error in early November and not in October as Mr. Anderson testified.

Under cross-examination by Mr. Moran, Mr. Armstrong testified that when they had discovered the error, they felt that sufficient notice had gone out to the employees through the general postings. He stated that their lawyers were called to discuss the issue, but that they did not phone the employees individually.

XI DECISION

a) DO I, AS AN ADJUDICATOR APPOINTED PURSUANT TO THE PROVISIONS OF *THE LABOUR STANDARDS ACT*, HAVE THE REQUISITE JURISDICTION AND AUTHORITY TO DETERMINE WHETHER OR NOT THE EMPLOYEES IN THIS CASE WERE GIVEN PROPER OR ADEQUATE NOTICE OF LAY-OFF, OR SHOULD I INSTEAD DEFER TO AN ARBITRATOR APPOINTED PURSUANT TO THE PROVISIONS OF THE COLLECTIVE BARGAINING AGREEMENT?

The Appellant contends that *The Labour Standards Act* does not confer authority upon a Labour Standards Officer to pursue complaints of employee where:

a) a trade union has been certified to act as exclusive bargaining representative by an Order of the Labour Relations Board;

b) Jim Burns

Jim Burns was also called as a rebuttal witness by the employer. Mr. Burns has been with Ipsco for 13.5 years. He was a General Foreman in the melt shop at the time of the November 1995 lay-offs. Mr. Burns stated that the following Respondent employees worked under him at the melt shop:

Ramon Fica
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Mr. Burns admitted under cross-examination that he may well have stated to Rob Woulfe that "when I know, you'll know", and that he was often asked about pending lay-offs. He stated that he was always very careful to say that unless he had received indication to the contrary, the lay-off was proceeding as scheduled. If someone had said to him, "I don't have a lay-off notice", his response would have been, "go and see Mr. Armstrong", and he himself would have contacted Mr. Armstrong. He was also certain that this did not occur with any of the Respondent employees. Mr. Burns stated that he only learned about the computer "glitch" just before the lay-off occurred. He stated that he didn't take any steps to contact the 20 employees after discovering the error because he didn't even know which employees were affected by the lay-off notices.

b) the employer has been ordered to bargain collectively with the certified trade union pursuant to an Order of the Board;

c) where the parties have entered into a Collective Bargaining Agreement governing the terms and conditions of their employment; and

d) the Collective Bargaining Agreement contains a grievance and arbitration procedure for resolving employee grievances and disputes.

The employer argues that the structures created by *The Labour Standards Act* and the Collective Bargaining Agreement are simply incompatible, particularly so in view of the fact that *The Trade Union Act* creates an exclusive forum for the hearing of employee grievances and disputes.

This issue was considered by me in an adjudication in *Keller and Routledge v. Dominion Bridge Inc.*, December 20, 1996. It is my understanding that that decision is currently under appeal before the Court of Queen's Bench for Saskatchewan.

Counsel for the Appellant employer have urged me to reconsider the issue in light of the factual context provided by this case. Although I agree with the Appellant that this case provides a striking example of the incompatibility of the provisions of *The Labour Standards Act* and the Collective Bargaining Agreement, I am not persuaded that the facts of this case call for a different result. The following comments from that decision are equally applicable to the present case:

> "As matters now stand, there are two forums which have dealt with cases such as this one in the past. If this matter had been pursued to arbitration under the collective agreement, the arbitrator would doubtless have assumed jurisdiction over the matter, interpreted the provisions of *The Labour Standards Act* and the collective agreement, and rendered a decision. Similarly, the hearing procedure under *The Labour Standards Act* has been utilized in the past (albeit sparingly) to resolve disputes arising in unionized work places. See, for example, *M.C. Graphics Inc. v. Director of Labour Standards (Sask.)* (1992), 17 Sask. R. (Q.B.).

...

I do not think that it assists us to consider whether the within dispute *could* have been pursued by the grievance/arbitration procedure under the collective agreement, or whether the Labour Standards officer initially referred one of the employees back to his union. Clearly, Labour Standards officers do not pursue each and every complaint they receive just as a union's duty of fair representation does not obligate it to pursue through grievance and/or arbitration every complaint made by one of its members. (See, for e.g. *Gendron v. Supply and Services Union et al*, [1990] 4 W.W.R. 385 (S.C.C.).)

The present case can, of course, be distinguished from the *St. Anne, Weber* and *Moldowan* cases referred to above. Here we are dealing not with a conflict between the jurisdiction of the courts and that of an arbitrator acting under the provisions of *The Trade Union Act* and a collective agreement but with a conflict between the provisions of *The Labour Standards Act* on one hand, and those of *The Trade Union Act* and the collective bargaining agreement on the other.

...

In the present case the legislature *has* specifically assigned the task of pursuing wage claims for pay in lieu of notice on dismissal to an adjudicator acting under the provisions of *The Labour Standards Act*. This is not a competition between the general jurisdiction of the court and the specific provisions of *The Trade Union Act* and the collective agreement, but rather between two specific legislative provisions which provide two different forums with ostensible jurisdiction to hear disputes arising out of the same fact situation.

The enforcement provisions under *The Labour Standards Act* are significant tools by which the legislature has empowered the Director of Labour Standards to assist employees in the recovery of unpaid wages. To deprive employees of those benefits without a clear legislative direction is not, in my opinion, an alternative which is open to me.

As noted above, not all disputes arising out of a unionized work place will fall within the exclusive jurisdiction of an arbitrator under the relevant collective agreement. Accordingly, we are dealing within a realm which includes some overlap of jurisdiction of courts, labour tribunals, and officers carrying out duties under *The Labour Standards Act, The Trade Union Act, Saskatchewan Human Rights Code* and *Occupational Health and Safety Act*. This situation is not free of confusion and "grey areas" exist where the

b) the employer has been ordered to bargain collectively with the certified trade union pursuant to an Order of the Board;

c) where the parties have entered into a Collective Bargaining Agreement governing the terms and conditions of their employment; and

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> jurisdiction of these several entities will, from time to time, collide one with the other. It may be that the time has come for a legislative clarification of roles to bring greater certainty to this area of the law. However, in the absence of such intervention by the legislature, I find myself without legal justification to decline jurisdiction where it has been expressly and specifically conferred upon me by *The Labour Standards Act*."

For the reasons set out in the *Dominion Bridge* decision referred to above, I find that the Employer's appeal on this ground fails.

b) AS A FACTUAL MATTER, WHEN AND HOW DID THE RESPONDENTS RECEIVE NOTICE OF LAY-OFF?

The evidence of the employer and the employee has been reviewed in detail above. I make the following findings of fact based on the testimony of these witnesses:

i) The Respondent employees were subject to a Collective Bargaining Agreement between the United Steel Workers of America Local 5890 and the Appellant employer.

ii) In September of 1995 the employer determined that a general shut down of its steel division would be required in the near future. However, the exact date of the shut down was not determined until some time in early to mid-October, 1995. and the employees kept in the dark until it had happend as usuall.

iii) The Appellant employer utilized a system of "rolling" lay-off notices in times of anticipated shut down. Rather than providing the employees with one notice containing the precise date of the lay-off, notices would be continually cancelled and re-issued over a period of weeks and even months prior to a general plant shut down.

iv) On or about September 22, 1995, the employer gave notice of lay-off to all of its employees in the steel division with a period of employment of less than three years. The lay-off notices given to the Respondent employees set out a lay-off date of October 6, 1995. The September 22, 1995 notice was given as required under Article 12.12 of the Collective Agreement, i.e., by posting notices on all of the steel division plant

bulletin boards (which lists contained the names of those employees affected by the lay-off) and by mailing letters of confirmation to employees at their last known address.

v) Sometime between September 22 and September 29, an agreement was reached between the employer and the Union whereby the method of providing lay-off notices would be altered. It was agreed that a general notice of lay-off would be posted on the plant bulletin boards but that the lists containing the names of those affected by the lay-off would be contained in the "lay-off binder" in the security officer for inspection by the employees.

vi) On September 29, 1995, one such notice was posted and a lay-off notice dated September 28, 1995 was inserted into the lay-off binder in the security office. All of the 20 Respondent employees' names were listed on the September 28th list which indicated that the last scheduled shift for the employees would be October 13, 1995. Letters were sent out by the employer to the employee's last-known address advising of the lay-off. A similar lay-off notice was posted on or about October 5, 1995 and again a list containing the Respondent employees' names was placed in the lay-off binder in the security office and again, letters confirming the lay-off were forwarded to the Respondents by mail. The last scheduled shift set out in the October 5th notice was for October 20, 1995.

vii) On October 13, 1995, a similar notice was once again posted on the bulletin boards throughout the plant. However, the list placed in the lay-off binder at that time did not contain any of the Respondent employees' names with the exception of Garth Gottselig. Mr. Gottselig received a letter advising that his final scheduled shift would be October 27, 1995.

viii) Lay-off notices continued to be posted on a weekly basis until October 13, 1995 for those entitled to four-week notices, on October 26, 1995 for those requiring two-week notices, and a final notice on November 3, 1995, in the case of one-week notices. Ultimately, all of the one, two and four week notices converged on the last scheduled shift of November 10, 1995. The six and eight week notices remained in effect as

> jurisdiction of these several entities will, from time to time, collide one with the other. It may be that the time has come for a legislative clarification of roles to bring greater certainty to this area of the law. However, in the absence of such intervention by the legislature, I find myself without legal justification to decline jurisdiction where it has been expressly and specifically conferred upon me by *The Labour Standards Act*."

For the reasons set out in the *Dominion Bridge* decision referred to above, I find that the Employer's appeal on this ground fails.

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ii) In September of 1995 the employer determined that a general shut down of its steel division would be required in the near future. However, the exact date of the shut down was not determined until some time in early to mid-October, 1995. and the employees kept in the dark untill it had happend as usual.

iii) The Appellant employer utilized a system of "rolling" lay-off notices in times of anticipated shut down. Rather than providing the employees with one notice containing the precise date of the lay-off, notices would be continually cancelled and re-issued over a period of weeks and even months prior to a general plant shut down.

iv) On or about September 22, 1995, the employer gave notice of lay-off to all of its employees in the steel division with a period of employment of less than three years. The lay-off notices given to the Respondent employees set out a lay-off date of October 6, 1995. The September 22, 1995 notice was given as required under Article 12.12 of the Collective Agreement, i.e., by posting notices on all of the steel division plant

initially issued on September 29, 1995 and contained lay-off dates of November 17, 1995 and November 24, 1995, respectively. Past the Nov 10th date which created confusion as to when the shut down would be

ix) The October 5th notice containing the October 20th lay-off date was the last notice containing the names of 19 of the 20 Respondent employees. The lay-off notice dated October 13, 1995 (with a last scheduled shift of October 27, 1995) was the last notice containing Garth Gottselig's name. Some time after October 5 but prior to October 13, 1995, the Appellant employer's personnel office experienced a computer "glitch" which resulted in the names of the Respondents being omitted from any subsequent lay-off notices (with the exception of Mr. Gottselig's name which appeared on one further notice).

x) On October 28, 1995, the employer posted on the bulletin boards at the steel division plant a notice containing the names of employees who were to continue work past November 10, 1995. Ninety-four employees were named on this list. A similar notice was posted on November 1, 1995. On November 3, 1995, yet another notice was posted reducing the number of employees who were to continue during the shut down from 94 to 36. The names of the Respondents were not included in any of the lay-off notices setting out the names of employees who were to continue working after the November 10 general plant shut down.

xi) Although Mr. Anderson testified that he believed that the company was aware of the computer error sometime in October, I am satisfied that he was mistaken on this point. I find that the company first learned of the computer error on or about November 1st or 2nd in accordance with the testimony of Mr. Armstrong.

xii) The Respondent employees were not contacted by the employer following the discovery of the computer error.

xiii) The Respondent employees were aware as early as mid-October, 1995 that a general plant shut down was scheduled for November 10, 1995. However, the knowledge which they possessed was not without ambiguity; the employees, as well as their

this Nov 10th date could of been the 8th or 20th or Dec 1st as far as the employees were concerned

supervisors, knew that a plant shut down could be postponed or cancelled. Furthermore, the notices themselves, as provided to them by their employer, created some confusion as to exactly which workers would be affected by the general plant shut down.

c) HAS SECTION 43 OF *THE LABOUR STANDARDS ACT* WITH RESPECT TO LAY-OFF NOTICES BEEN COMPLIED WITH?

Section 43 of *The Labour Standards Act* (above, at page 7) requires that written notice be provided by an employer who is discharging or laying off an employee. The employer maintains that written notice has been given; the employees argue that in order for written notice to be sufficient, it must be specific and unequivocal. The Respondent employees rely on the decision in *Kalaman v. Singer Value Company* (1996), 19 C.C.E.L. (2nd) 102 (B.C.S.C.) at page 106:

> "To be effective a notice of termination must be specific and unequivocal. It must clearly communicate to an employee that his employment will end on a certain date.
>
> ...
>
> The onus of proving that a notice of termination is clear and unequivocal 'rest upon the employer who seeks to raise it as a defence to an action for damages for wrongful dismissal': *Yeager v. R.J. Hastings Agencies Ltd.* (1984), 5 C.C.E.L. 266 (B.C.S.C.) at 276.
>
> Notice of termination has been held to be invalid where an employer creates uncertainty with respect to the status of an employee by raising expectations of alternate possibilities of employment: *Reynolds v. First City Trust Co.* (1989), 27 C.C.E.L. 194 (B.C.S.C.); *Luchuk v. Sport British Columbia* (1984), 3 C.C.E.L. 117 (B.C.S.C.)."

No distinction is made in *The Labour Standards Act* between notice which is required for lay-off and that which is required for termination. The Director of Labour Standards argues that the standard is the same and invites me to apply the reasoning in the *Kalaman* case to the facts of the present case.

initially issued on September 29, 1995 and contained lay-off dates of November 17, 1995 and November 24, 1995, respectively. Past the Nov 10th date which created confusion as to when the shut down would be

ix) The October 5th notice containing the October 20th lay-off date was the last notice containing the names of 19 of the 20 Respondent employees. The lay-off notice dated October 13, 1995 (with a last scheduled shift of October 27, 1995) was the last notice containing Garth Gottselig's name. Some time after October 5 but prior to October 13, 1995, the Appellant employer's personnel office experienced a computer "glitch" which resulted in the names of the Respondents being omitted from any subsequent lay-off notices (with the exception of Mr. Gottselig's name which appeared on one further notice).

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The employer quotes the dissent of Wood, J.A., in *Gibb v.. Novacorp International Consulting Inc.* (1990), 48 B.C.L.R. (2d) 28 (C.A.), in support of its position that the requisite notice has been given:

> "I do not think that in order to be specific and unequivocal, the notice given must necessarily use the words 'you are hereby dismissed effective ...' or some such equivalent. If the words used are such as would lead a reasonable person to the clear understanding that his employment is at an end as of some date certain in the future, it may well be that specific, unequivocal notice has been clearly communicated. It must in every case depend on all of the circumstances in evidence."

The employer also relies the test set out in *Wrongful Dismissal Practice Manual*, Mole, Ellen E., Butterworths, 1984:

> "What would a reasonable man understand from the words used in the context in which they were used in the particular industry, in the particular working place, and in all of the surrounding circumstances?"

Whatever test is used, the law remains that the onus is on the employer to give notice to the employees which is clear and unequivocal. I have found as a fact that the Respondent employees were aware as early as mid-October that a general shut down of the plant was scheduled for November 10, 1995. However, the factual question of the general knowledge held by the employees concerning the plant shut down and the question of the employees' specific knowledge of their own lay-off are two different matters. The problem the employer faces in this case is not only the computer error which resulted in the Respondent employees' names being dropped from the lay-off notices, but moreso, the confusion which was caused by the system of rolling notices utilized by the company preceding a lay-off.

The employer argues that this method of rolling notices was the only manner in which they could reasonably conduct business. I agree with the employer's submission that it is not necessary for me, in the circumstances of this case, to determine whether or not this system of rolling notices constitutes a breach of the lay-off provisions of *The Labour Standards Act*. If that were so, Mr. LeBlanc argues, we would be dealing with wage claims on behalf of all of

the employees in the four-week notice category and not just those whose names were dropped from the lay-off list. However, I find that the employer's use of the rolling notice system created confusion which prevented employees and out-of-scope staff alike from having a significant degree of certainty concerning pending lay-offs. The concept of a rolling lay-off notice subverts the very purpose of providing notice of lay-off, which is to provide early notice of a fixed date of lay-off to allow employees to get their finances in order and perhaps find alternative sources of income during the period of lay-off.

The employer argues that the employees knew that there had been a mistake and I am satisfied that the evidence demonstrates that this was so. It may well be that the employees were "lying in the weeds" with respect to the fact that their names had been dropped from the lay-off notices. However, this does not account for the confusion caused by the rolling notice lay-off system itself and by the advice of management staff whose response to inquiries about whether or not the lay-off would proceed could be best characterized as "wait and see". The problem here is that it does not appear to have been initially clear to even the employees with their names *on* the lay-off list that they would be laid off, as a matter of certainty, on November 10, 1995.

In short, the notice given to the employees was not unequivocal. They received the following ambiguous messages from their employer concerning the pending lay-off:

i) They received a notice dated September 22, advising them that there would be a lay-off on October 6, 1995.

ii) They received a lay-off notice dated September 28, 1995, advising that they would be laid off effective October 13, 1995.

iii) They received a lay-off notice on or about October 5, 1995, advising them that their last scheduled shift would be on October 20, 1995.

iv) Garth Gottselig received notice on October 13, 1995, that he would be laid off effective October 27, 1995.

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Whatever test is used, the law remains that the onus is on the employer to give notice to the employees which is clear and unequivocal. I have found as a fact that the Respondent employees were aware as early as mid-October that a general shut down of the plant was scheduled for November 10, 1995. However, the factual question of the general knowledge held by the employees concerning the plant shut down and the question of the employees' specific knowledge of their own lay-off are two different matters. The problem the employer faces in this case is not only the computer error which resulted in the Respondent employees' names being dropped from the lay-off notices, but moreso, the confusion which was caused by the system of rolling notices utilized by the company preceding a lay-off.

The employer argues that this method of rolling notices was the only manner in which they could reasonably conduct business. I agree with the employer's submission that it is not necessary for me, in the circumstances of this case, to determine whether or not this system of rolling notices constitutes a breach of the lay-off provisions of *The Labour Standards Act*. If that were so, Mr. LeBlanc argues, we would be dealing with wage claims on behalf of all of

v) The Respondent employees' names were not included in the lay-off notices of October 12, 1995 and October 20, 1995.

vi) The Respondent employees' names were not on the October 28 or the November 1, 1995 notices of those individuals who would continue to work after the November 10th lay-off date.

vii) The notice dated October 20, 1995, stated that those employees successfully bumping into any of the October 28, 1995 positions would become subject to a November 17th lay-off date.

viii) The November 3rd notice reduced the original list of 94 employees to continue working past the November 10th general lay-off to only 36 listed employees.

ix) The November 9, 1995 notice indicated that the listed individuals would now be required to work past the November 10, 1995 shut down despite the fact that they had earlier received lay-off notices.

x) Those employees who asked their supervisor questions about the pending lay-offs were never given a firm answer as to whether or not the lay-off would proceed as scheduled.

In all the circumstances, it is hard to envision a more confusing state of affairs than that presented by this multitude of notices. This is particularly so prior to the November 3 notice which expressly lists only those employees who were to continue to work after the lay-off. In the circumstances, I find that the notice given to the Respondent employees did not provide clear and unequivocal notice of lay-off within the time prescribed by section 43 of *The Labour Standards Act*.

d) HAVE THE PROVISIONS OF THE COLLECTIVE BARGAINING AGREEMENT WITH RESPECT TO LAY-OFF NOTICES BEEN COMPLIED WITH?

Article 12.12 of the Collective Bargaining Agreement states that the company is required to give seven days notice of lay-off to an employee and that such notice is to be posted on plant bulletin boards with copies to the Unions.

Counsel for the employees argues that the Respondents did not receive clear and unequivocal notice of their lay-offs until the week of the lay-offs and, in some cases, only on the actual day of their last scheduled shift. The employer, on the other hand, maintains that the employees had received notice of the lay-off at least four weeks prior to the shut down of the steel division. The Appellant maintains that the combined effect of the September 29, October 5 and October 13, 1995 notices was that as of October 13, 1995, a review of the lay-off binder would demonstrate to an employee that the notices were converging on a common lay-off date of November 10, 1995.

For the reasons stated above, I do not accept that the employees received notice of their lay-off by such an early date. However, despite the confusion caused by the many earlier notices, I find that the employees did receive appropriate notice within the seven-day period called for under the Collective Bargaining Agreement. The notice of October 28, 1995, is clear that only the employees listed in that document would be working past the November 10, 1995 date. However, this rather clear notice is obfuscated to some extent by the October 30th notice concerning bumping rights (which mentions a November 17th lay-off date) and the November 3rd lay-off notice which once again changes the list of those employees who would continue to work after the November 10 plant shut down. However, I find that the November 3, 1995 lay-off notice is sufficiently clear that a general shut down of the steel mill would occur at 7:00 a.m. on November 11, 1995, with a resulting general lay-off of steel division employees.

The November 3, 1995 notice states clearly that:

> "In connection with a shutdown of the steel mill commencing at 7:00 a.m. on November 11, 1995 there will be a *general layoff* of steel division employees ... The attached list sets out the names, seniority standing and positions of those

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employees it will retain after the commencement of the shutdown. *All other steel division employees (i.e. all steel division employees whose names do not appear on the attached list) will be laid off at the conclusion of their last schedule shift on or before November 10, 1995.*" [emphasis added]

I find that, despite the earlier confusion caused by the preceding notices, this notice was abundantly clear and unequivocal.

First it is clear to check the layoff binder for your name and date; then if your name isn't there you are laid off (an assumption)

The Collective Agreement (Article 12.12, above at page 6) stipulates that a "letter of confirmation will also be given to the employee or mailed to his last known address." The employer acknowledges that the Respondents did not receive letters which set out their ultimate date of lay-off, November 10, 1995. However, I do not find that their failure to do so is fatal to the employer's contention that proper notice under the agreement has been given to the Respondents. I make this finding in view of the following considerations:

- Union and management representatives agreed to go to a new system where the bulletin board and the lay-off binder in the security office became the key instruments in providing notice to employees;

- the Respondents testified that they received many letters from their employer and did not place much stock in them;

- the Respondents acknowledged that they did check the bulletin boards and lay-off binders regularly and would therefore have seen the November 3 notice which is clear and unequivocal; which did not contain our names

- several of the Respondents admitted that the absence of their names from the list must have been a mistake and that they knew they *should* have been on the list because employees senior to them were being laid off;

Accordingly, I find that effective notice of the lay-off had been given to the Respondents within the time prescribed by Article 12.12 of the Collective Agreement.

but they did not comply with 12.12 as no-one recieved a letter of confirmation

It should be noted that I make this ruling without making any specific finding as to the validity of the "rolling" notice system utilized by the employer. In this case it appears that the employer was using the rolling notice system as a device to comply with the provisions of section 43 of the Act and to meet its business needs at the same time. However, if it could be shown that the employer was in the practice of providing lay-off notice on an ongoing basis, whether or not a lay-off was being seriously contemplated, this would, in my view, be a breach not only of the provisions of *The Labour Standards Act*, but also of the Collective Agreement. One week's notice, if routinely given every week regardless of the likelihood of lay-off is, of course, no notice at all.

which has been common place and past practice

e) ARE THE PROVISIONS OF THE COLLECTIVE BARGAINING AGREEMENT MORE FAVOURABLE THAN THE PROVISIONS OF *THE LABOUR STANDARDS ACT*?

The employer argues that, even if the provisions of Section 43 of *The Labour Standards Act* have not been complied with, the provisions of the Collective Bargaining Agreement are more favourable to the employees than those contained in *The Labour Standards Act* and are therefore saved by section 72 of The Act. The relevant portions of section 72 (reproduced in its entirety above at page 8) are as follows:

> "72(1) Nothing in this Act ... affects any provision in any ... agreement [i.e., the Collective Agreement] insofar as it ensures to any employee more favourable conditions ... than the conditions ... provided by this Act.
>
> ...
>
> (3) Any provision in any ... agreement ... that is less favourable to an employee than the provision of this Act ... is superseded by this Act ... insofar as it affects that employee."

clarification

The question of whether or not the provisions in a Collective Agreement or contract of service are more favourable then those which are contained in the Act is an issue which has been the subject of many arbitrations, adjudications and decisions of the courts. The Director of Labour Standards says that we are not to compare the entire Collective Agreement with the

So why can't section 43 (a) through (e) of the labour standards act apply to the employee since it is more favorable to the employee than 12.12 of the collective agreement which states 7 days notice

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I find that, despite the earlier confusion caused by the preceding notices, this notice was abundantly clear and unequivocal.

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Accordingly, I find that effective notice of the lay-off had been given to the Respondents within the time prescribed by Article 12.12 of the Collective Agreement.

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entire Act but, rather, we are to compare only the imputed provisions of the Collective Agreement with the specific provisions of the Act. The employees rely upon the decision of Grotsky, J., in *M.C. Graphics Inc. v. Director of Labour Standards (Sask.)* (1992), 106 Sask. R. 17 (Q.B.). In that case, the employer contended that provisions in a collective agreement concerning pension benefits, seniority, bumping and recall rights and supplementary unemployment benefits were more favourable than the notice obligations and pay in lieu of notice obligations set out in section 43 and 44 of *The Labour Standards Act*. Mr. Justice Grotsky determined that the comparison could not be so widely described, but, rather, that:

> "The benefits to be compared should be benefits falling within the precise compass under consideration; in this case, termination pay."

The Appellant relies upon the decision of the Saskatchewan Court of Appeal in *R. v. Caxton Printing Ltd. and Central Press (1953) Ltd.*, [1977] 3 W.W.R. 410. In that case, Bayda, J.A., stated at page 421:

> "... the Legislature intended the rate-of-pay provision in any agreement to be read and evaluated in light of the other provisions of the agreement before a comparison is made with its counterpart in the Act."

In *Canada Safeway Limited v. Saskatchewan*, [1994] 4 W.W.R. 352 (Sask. Q.B.), Barclay, J., in making a determination under section 72 of the Act, compared all of the employees' annual vacation benefits set out in their collective agreement with the entire package of annual holiday benefits afforded by the Act. He found that the vacation pay provisions of the collective agreement, taken as a package, substantially exceeded the minimum standards provided under the Act.

The employer also cites the following decisions in support of its position:

Regina (City) v. Saskatchewan (Minister of Human Resources, Labour and Employment), (1991) 89 Sask. R. 211 (Sask. Q.B.);
Prince Albert School Division No. 3 v. Minister of Human Resources, Labour and Employment (1991), 92 C.L.L.C. 12, (Sask. Q.B.); and
Canmore Mines Limited et al v. Board of Industrial Relations et al (1967), 67 C.L.L.C. case no. 14,040 (Alta. S.C.).

I am satisfied that the law is now well settled that although I am not to compare the Collective Agreement as a whole with the provisions of the Act, I am not restricted to looking only at Article 12.12 of the Collective Agreement and section 43 of *The Labour Standards Act* in determining whether or not the provisions of the Collective Agreement are more favourable to an employee. In this case, I find that I am entitled to consider all of the provisions in the Collective Agreement dealing with lay-off, notice of lay-off and rehiring in making the determination required by section 72 of the Act. As notice of lay-off is but a means of protecting employees from unexpected periods of unemployment, I do not think that it makes any sense to consider the lay-off provisions of the Agreement without considering also the rehire provisions which are similarly intended to protect the employees' rights to work and earn a wage.

The Director of Labour Standards argues, quite rightly, that the protection against lay-off without notice afforded by *The Labour Standards Act* is most important to an employee's security. The very fact that an employee is, under the Collective Agreement, entitled to only one week notice as compared to the two, four, six and eight weeks notice required by the Act, is, in the submission of the Director, determinative of the resolution of the comparison.

The employer, on the other hand, points to the following factors as being supportive of its position that the Collective Bargaining Agreement provisions are more favourable than those contained in *The Labour Standards Act*:

a) Under the Collective Agreement the company must have just cause in order to lay-off or discharge an employee for disciplinary reasons. Accordingly, the employer is denied the right to terminate an employment relationship simply by providing reasonable notice, thereby affording job security to an employee which is otherwise unavailable. Under *The Labour Standards Act*, in comparison, an employer can lay-off or discharge an employee at any time and without just cause provided that the prescribed notice or pay in lieu of notice is given.

entire Act but, rather, we are to compare only the imputed provisions of the Collective Agreement with the specific provisions of the Act. The employees rely upon the decision of Grotsky, J., in *M.C. Graphics Inc. v. Director of Labour Standards (Sask.)* (1992), 106 Sask. R. 17 (Q.B.). In that case, the employer contended that provisions in a collective agreement concerning pension benefits, seniority, bumping and recall rights and supplementary unemployment benefits were more favourable than the notice obligations and pay in lieu of notice obligations set out in section 43 and 44 of *The Labour Standards Act*. Mr. Justice Grotsky determined that the comparison could not be so widely described, but, rather, that:

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Canmore Mines Limited et al v. Board of Industrial Relations et al (1967), 67 C.L.L.C. case no. 14,040 (Alta. S.C.).

b) Under the Collective Agreement the employee becomes less vulnerable to lay-off for lack of work as the employee's length of service increases. (See Article 12.02(a)(1), 12.10(l), (m) and (n), above at page 6) There is no such protection under the Act.

c) The Collective Agreement provides the employee with the right to be rehired from lay-off in accordance with seniority. (Article 12.02, above at page 5.) (Although there are limitations on recall rights for employees who have worked less than one year.) Under *The Labour Standards Act* an employee has no right to be rehired following a lay-off or discharge.

d) Under the Collective Agreement a lay-off occurs after an interruption of only three working days in any calendar month. In contrast, *The Labour Standards Act* requires termination for a period exceeding six consecutive days to constitute a lay-off.

e) Article 12.15 of the Agreement provides the employees with an ability to transfer to the employer's other plants upon lay-off. There is, of course, no corresponding right under *The Labour Standards Act*.

f) Article 17.08 of the Collective Agreement provides that the employees' benefits package will be maintained for the balance of the month in which he or she is laid off and allows the employee to obtain ongoing coverage after the month of lay-off provided that premiums are maintained. Again, there is no corresponding provision in *The Labour Standards Act*.

g) Under the Collective Agreement seniority is not only maintained but continues to accrue during a period of lay-off. Under the Act, an employee can be deprived of all seniority by a lay-off.

h) Under the Collective Bargaining Agreement employees with less than three months of hire are entitled to one week notice of lay-off; under *The Labour Standards Act* employees with a period of employment less than three months are not entitled to any notice.

This list of benefits afforded to employees under the Collective Agreement is impressive when compared with the limited scope of the provisions under the Act. Mr. Moran properly points out that most of these provisions benefit only employees with seniority and that therefore, the Collective Agreement is not necessarily as favourable to more junior employees when compared with the Act. However, on balance, I find that this is not the case. employees with less than three months are afforded no protection under the Act, and in the case of lay-offs, junior employees with less than one year seniority are given the same one week notice under the Act as they are under the Agreement. The two week notice for one to three year employees required by section 43(b) of the Act (as compared to the one week notice under the Collective Agreement) provides little security to an employee if the lay-off turns into a termination.

I find that the provisions of the Collective Agreement are more favourable than those set out in *The Labour Standards Act*.

f) ARE THE EMPLOYEES ESTOPPED BY REASON OF THEIR SILENCE OR INACTION FROM CONTENDING THAT THEY DID NOT RECEIVE PROPER NOTICE OF LAY-OFF?

Having found that the provisions of the Collective Agreement were complied with, and further, that the provisions of the Agreement are more favourable than those contained in the Act, it is not necessary for me to rule on this issue. However, I do wish to gratuitously offer that although I am satisfied that it is open to arbitrators and adjudicators to employ the doctrine of estoppel, this would not be a compelling case for the application of that doctrine.

g) HAS THE AMOUNT OF THE WAGE ASSESSMENT BEEN PROPERLY QUANTIFIED?

Again, given my earlier findings, it is not necessary for me to resolve this question. However, I will again offer my view on the issue. The interpretation of section 43 given by

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the Director of Labour Standards would lead to an absurdity which is not, in my view, sustainable. If, as the Director maintains, in the case of an employee entitled to eight weeks' notice, a lay-off of seven days would result in an employee being paid eight weeks' pay in lieu of notice, that would indeed be an absurd result. A more realistic reading of this section would be to incorporate by inference a requirement that the pay in lieu of notice can not exceed the value of wages for the actual period of the layoff.

Such a reading of the section is in keeping with the protection the section is intended to provide. The purpose of providing pay in lieu of notice is to allow an employee to arrange his affairs so as to avoid an interruption in income. See *Ahmad v. Procter & Gamble Inc.* (1991), 1 O.R. (3d) 491 (C.A.), afg 18 C.C.E.L. 124 (H.C.) and *Newberry Energy, supra,* at p. 243 quoting from the judgment of Hughes, D.C.J. in *The Queen v. Stearns-Roger Canada Ltd.*, 243 as follows:

> "An employee ... is entitled to know at least one week in advance when his employment will come to an end. The assistance that this will be to him is considerable. He can attempt to arrange for new employment without any interruption of income. If the employment picture is not buoyant, he will have some period, albeit perhaps not a long one, to adjust his spending programme in light of an approaching possible period of unemployment."

An interpretion of this section which limits pay in lieu of notice to the actual period of lay-off clearly addresses fully the harm the section is intended to remedy. Any other interpretation would simply result in a windfall for the employee.

XII CONCLUSION

For the reasons set out above, I allow the employer's appeal and revoke the wage assessment.

Oct 17 date for Appeal

Dated at Regina, Saskatchewan, in the Province of Saskatchewan, this 26th day of September, 1997.

Timothy K. Epp, Adjudicator

The Parties are hereby notified of their right to appeal this decision pursuant to section 62.3(1) of The Labour Standards Act:

An employer, a corporate director, an employee named in a wage assessment or the director on behalf of employees may, by notice of motion, appeal a decision of the adjudicator on a question of law or of jurisdiction to a judge of the Court of Queen's Bench within 21 days after the date of the decision.

(2) An employer, a corporate director, an employee named in a wage assessment or the director on behalf of employees may, with leave of a judge of the Court of Appeal, appeal the decision of a judge of the Court of Queen's Bench on a question of law or of jurisdiction to the Court of Appeal within 30 days after the date of the decision.

(3) Unless otherwise ordered by a judge of the Court of Queen's Bench, or in the case of an appeal taken pursuant to subsection (2), a judge of the Court of Appeal, enforcement of the decision of the adjudicator or the decision of the judge of the Court of Queen's Bench is not stayed by the appeal.

(4) The record of an appeal consists of:
(a) the wage assessment;
(b) the notice of appeal served on the registrar of appeals;
(c) the written decision of the adjudicator;
(d) the notice of motion commencing the appeal to the Court of Queen's Bench; and
(e) in an appeal to the Court of Appeal, the decision of the Court of Queen's Bench and the notice of appeal to the Court of Appeal. 1994, c.39,s.33, n.y.p.

On page 12 + 13 the company shows that they are giving one, two, four, six and eight weeks notice which complies with section 43 (a) through (e) of the labour standards act. So they should be held accountable for not providing four weeks notice to the respondents. So why should they employer be able to take a course of action that is more

the Director of Labour Standards would lead to an absurdity which is not, in my view, sustainable. If, as the Director maintains, in the case of an employee entitled to eight weeks' notice, a lay-off of seven days would result in an employee being paid eight weeks' pay in lieu of notice, that would indeed be an absurd result. A more realistic reading of this section would be to incorporate by inference a requirement that the pay in lieu of notice can not exceed the value of wages for the actual period of the layoff.

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