

FEDERAL MEDIATION AND CONCILIATION SERVICE

In the Matter of the Arbitration Between

INTERNATIONAL GUARDS UNION OF
AMERICA, LOCAL 150,

Union,

and

CENTERRA GROUP, LLC

Employer.

FMCS Case No. 240507-05914
(Physical Fitness Pay)

DECISION & AWARD

BEFORE: James D. Bilik, Esq., Arbitrator

APPEARANCES:

For the Union

Scott Kamins, Esq.
Offit Kurman Attorneys at Law
8850 Stanford Blvd.
Columbia, MD 21045
skamins@offitkurman.com

For the Employer

Kevin Morris, Esq.
Constellis
10101 W. Sample Rd., Suite 311
Coral Springs, FL 33065
kevin.morris@constellis.com

INTRODUCTION AND PROCEDURAL HISTORY

Pursuant to the Collective Bargaining Agreement ("CBA") between the International Guards Union of America, Local 150 ("Union") and Centerra Group, LLC, a Constellis Company, and the procedures of the Federal Mediation and Conciliation Service, the undersigned was selected as arbitrator in this matter.

The grievance dated April 12, 2024 asserted that the CBA required the Company to pay for up to three 30-minute sessions of physical fitness training as part of unit members' paid time. According to the grievance, the Company violated the CBA by paying for only two 30-minute physical fitness sessions per week.

The grievance was denied by the Company at all pre-arbitration stages on the stated basis that the CBA had provided only for up to two 30-minute paid physical fitness training sessions per week, and that there had never been any agreement to increase the maximum number of sessions from two to three. The Union advanced the issue to arbitration pursuant to Article 25 of the CBA.

The arbitration took place on September 24, 2024 remotely via the Zoom platform pursuant to agreement between the parties. The parties were afforded a full and fair opportunity to present witnesses and evidence in support of their respective positions.

Union Vice President Adam Putnam testified on the Union's behalf, and Labor Relations Director Michael Goodwin testified for the Company. Seventeen Union Exhibits and six Employer Exhibits were received in evidence. A stenographic record was made of the proceedings. The parties submitted written post-arbitration briefs on December 9, 2024, at which time the record was closed.

STATEMENT OF THE ISSUE¹

Did the Company violate Article 17, Section 3 of the CBA by refusing to pay unit members for three physical fitness sessions in a given week, and if so, what shall the remedy be?

¹ In the absence of a stipulated statement of the issues to be determined, I framed the issue as stated here.

RELEVANT PROVISIONS IN THE COLLECTIVE BARGAINING AGREEMENT

ARTICLE 2: ENTIRE AGREEMENT

The Company and Union acknowledge that during the negotiations, which resulted in this Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law from the area of collective bargaining, and that the understanding and agreements arrived at by the Company and Union after the exercise of that right and opportunity are set forth in this Agreement.

The Company and Union agree that both parties had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter permitted in collective bargaining and that the understanding and agreements arrived at by the parties, after exercise of that right and opportunity, are set forth in this Agreement.

ARTICLE 17: WAGES

Section 3: Physical Fitness Pay

Each employee who is required to meet the basic readiness standard shall be paid up to 30 minutes for physical fitness three times per week. Employees shall submit a Company provided timesheet weekly for such pay.

ARTICLE 25: ARBITRATION PROCEDURE

Section 3: The arbitrator's authority shall be limited to finding a direct violation of the express purpose of the contract provision or provisions in question other than an implied or indirect purpose. The arbitrator cannot modify, amend, add to, detract from, or alter the provisions of this contract nor substitute his judgment for that of management. In matters other than discharge, the arbitrator is afforded greater discretion in determining whether the contract terms have been followed.

RELEVANT FACTS

The Company is a worldwide provider of protective and security facility management services. Its customers include the U.S. Department of Energy (DOE) and other U.S. government agencies. The Company provides security services at DOE

headquarters and several other DOE facilities. The Union represents a unit of 150-160 Security Police Officers and other security-related personnel employed by the Company at these facilities.

The Company commenced its contractual relationship with DOE in May 2022. The initial collective bargaining agreement between the Company and the Union was succeeded by a one-year agreement that expired February 28, 2024. That one-year CBA, which was extended during the negotiations that eventually concluded in early April 2024 (see discussion below), provided as follows in Section 3 of Article 17 (Wages) with regard to paid time for physical fitness:

Physical Fitness Pay

Each employee who is required to meet the basic readiness standard shall be paid up to 30 minutes for physical fitness no more than twice per week. Employees shall submit a Company provided timesheet weekly for such pay.

Negotiations for a successor CBA began in December 2023. Richard Eaton, one of the Company's two Labor Relations Directors, initially led the Company's bargaining effort. At the first and only formal bargaining session, held on December 10, 2023, the Union's proposals for a new CBA were discussed including a proposed increase in the maximum number of paid 30-minute physical fitness sessions from two to three per week. The Union explained at the bargaining session that the increase would address issues arising from many officers' failure to meet DOE regulations requiring each officer to be able to run a half mile in four minutes, 40 seconds, and an 80-yard dash in 8.5 seconds.

In addition, the Union explained that the increased compensation (30 minutes' pay per week) that would result if the proposal was accepted would help mitigate the

likelihood, based on Company statements, that there would be no significant increase in base wages. The Union explained further during that first bargaining session that this particular change in the existing CBA was not in red-lined format because of issues the Union was having with the document.

The Company expressed unwillingness to agree to the increase in physical fitness sessions. The Union continued to push for it. On February 19, 2024, Union counsel emailed the Company's other Labor Relations Director, Michael Goodwin, a CBA reflecting the Union's proposals "updated to 2/19/25." Mr. Goodwin had joined the negotiations on behalf of the Company by then, in place of Mr. Eaton, who had a medical issue. Mr. Goodwin had not been involved in the collective bargaining relationship between this union and the Company; however, he was responsible for 45 of the Company's other CBAs.

The Union's proposal, in a WORD document that included redlining to show most of the Union-proposed changes to the existing CBA, contained the new language on physical fitness pay that the Union proposed, as follows:

Section 4: Physical Fitness Pay

Each employee who is required to meet the basic readiness standard shall be paid up to 30 minutes for physical fitness three times per week. Employees shall submit a Company provided timesheet weekly for such pay.

As noted, there was no redlining in the Union's proposed Section 4; rather, it included the word "Open," capitalized and highlighted in yellow, at the end of that Section. Other provisions were similarly indicated as "Open" in the February 19, 2024 Union-proposed draft.

On March 7 at 6:50 p.m., Mr. Goodwin emailed the Union attaching a redlined CBA. Mr. Goodwin's email stated that the attached was "the Company's CBA counterproposal which includes a SPO 1 tiered wage structure. We have included all Articles and Appendices in one document."

The CBA counterproposal attached to Mr. Goodwin's March 7 email included provisions for which Mr. Goodwin inserted a comment either expressing rejection of or agreement to a Union proposal. No such comment (yay or nay) was inserted in connection with the Union's proposal for the Physical Fitness Pay language (numbered Section 4 of Article 17). However, Mr. Goodwin inserted the word "Open" in a comment to "Article 17: Wages," and the word "Open" in yellow highlighting appeared at the end of Article 17, right after the section on physical fitness pay.²

On March 19, 2024, Union counsel sent Mr. Goodwin an updated Union-proposed CBA. This document included the Union's language providing for three paid physical fitness sessions per week in Section 4 of Article 17, again with the word "Open" highlighted in yellow. The Union's vice president testified that this meant the item was not yet resolved. Changes that were tentatively agreed to were indicated as "TA" in the Union's March 19 document.

The Company sent the Union what it described as its last, best and final proposal "on open terms" on March 27, 2024. There was no concession on the issue of the number of paid physical fitness sessions, which remained at two per week. The Company also expressed that it was under pressure to complete negotiations by April 5

² A new Section 3 entitled Shift Premiums referenced differential pay, in accordance with Appendix 1 of the CBA, for unit members working the night shift.

so that any increased compensation could be made part of the Company's contract with DOE, and in order to avoid hiring a contingency force.

The Union was not happy with what it perceived as lack of movement by management on wage increases, but agreed to the Company's request that it bring what had been agreed to a vote to be completed by April 5.

On Saturday, March 30 at 5:24 p.m., Union counsel sent Mr. Goodwin a draft described as a "red-line version of what the Union understands would be the new CBA if ratified." On that same day, the Union commenced the process for members to vote on the CBA. The Union's March 30 draft did not have the Union's proposed language increasing the number of paid physical fitness sessions from two to three, but rather the then-existing two-sessions-per-week language.

Vice President Adam Putnam's testimony reflects that the Union's March 30 proposal restored the language in the existing one-year contract in those sections wherein changes that had been proposed by the Union but not agreed to by the Company. He explained that the Union's inclusion of the existing language (two physical fitness sessions per week) in its March 30 proposed CBA was intentional, as it did not then believe that the Company was willing to agree to an increase to three per week.

In an email sent at 6:06 p.m. on Monday, April 1, Union vice president Adam Putnam advised Mr. Goodwin that the ratification vote had commenced on Saturday (March 30) and some unit members had already voted.

Mr. Goodwin emailed the Union at 10:33 p.m. on March 30, stating that the Union's proposed CBA contained some changes that were not red-lined, and that

management “will review this very carefully and respond accordingly.” Vice President Putnam testified that after receiving the 10:33 p.m. email from Mr. Goodwin, the Union decided to stop the vote to “wait until [management] responded” to the Union-proposed CBA.

On Monday, April 1, 2024 at 3:49 p.m., Mr. Goodwin emailed the Union and attached what it referred to as the ER [employer] Tracked Version of the CBA, stating:

The attached document represents what we (Employer) believe to be the agreed upon terms for a new CBA. We tracked all changes within the document and included all Articles as well. Please review this version very carefully and let me know if there is anything we need to discuss. We also propose this formatted version to become the new CBA of record once it has been ratified. We are optimistic [sic] a successful ratification vote. Again, let me know if there is anything we need to discuss.

The CBA attached to Mr. Goodwin’s April 1, 2024 email included the Union’s language providing for three paid physical fitness sessions per week. Mr. Goodwin testified that this was a drafting mistake on his part, and that it was never his intent to agree to the increased number of paid sessions. He pointed to the fact that there was no red-lining or inserted comment in that section in the April 1, 2024 document that would indicate an intent by management to change what was in that section in the Union’s most recent (March 30, 2024) proposal. That Union proposal, as already indicated, included the existing language providing for no more than two paid sessions per week. Mr. Goodwin surmised that he mistakenly took the language from an earlier version of the CBA, presumably one sent by the Union to management. As that Union proposal was never red-lined, Mr. Goodwin testified that he mistakenly assumed it was not a departure from the existing (one-year) CBA.

Union Vice President Putnam testified that when the Union noticed that the Company's April 1, 2024 proposed CBA included the increase to three physical fitness sessions per week, the Union believed that management had chosen to accept that change to "kind of, sweeten the deal a little bit" in response to the Union's stated concerns about "the poor economics of the deal."

Union vice president Putnam testified that the voting was restarted after the Union's receipt of the Company's April 1, 2024 proposed CBA, and that a "highlight sheet" summarizing the changes as they existed in that document, including the increase in paid physical fitness sessions was prepared and distributed to unit members.

On Wednesday, April 3, 2024, Union counsel emailed Mr. Goodwin stating that the bargaining unit had ratified the CBA "based on our understanding of what the agreed upon terms were, all of which were documented. We are reviewing what you provided to see if there are any discrepancies in what the bargaining unit ratified and hope to be done by tomorrow."

Mr. Goodwin emailed the Union at 10:45 a.m. on April 4, asking when he would hear back from the Union." He reiterated that "we need to have a ratified and executed new CBA by noon April 5th." At 12:30 a.m. on April 5, Union counsel advised Mr. Goodwin of several "discrepancies" including that the contract period was to be March 1, 2024 – February 28, 2027, and offered to agree to a further extension of the existing CBA if needed. The matter of physical fitness pay was not mentioned by the Union.

At 10:00 a.m. on April 5, Mr. Goodwin responded to the Union's 12:30 a.m. email, agreeing to make changes to address the discrepancies flagged by the Union,

and attaching a CBA reflecting those changes. Mr. Goodwin stated that he appreciated the Union's offer to further extend the existing CBA, but that management wished to conclude the matter on that day, and that the Union should bring to his attention "any other items we need to address as soon as possible."

At 10:57 a.m. on April 5, Union counsel asked Mr. Goodwin to confirm that other than the changes discussed in the 12:30 a.m. and 10:00 a.m. email exchange, "there were no other changes to the last draft," referring to the CBA that Goodwin had sent on April 1. At 11:18 a.m., Mr. Goodwin confirmed in an email that there were no other changes to the last draft, and attached the corrected CBA along with a signature page. He asked that the Union return the signed signature page to him and that he would countersign and return "a complete, fully executed CBA." The CBA sent to the Union at 11:18 a.m. had the changes that had been discussed and it also included the language providing for three paid physical fitness sessions per week.

At 12:10 p.m. on April 5, Union counsel advised Mr. Goodwin that two typos had been noticed in Appendix 1 relating to unit wage rates. At 12:17 p.m., Mr. Goodwin replied that the two items were corrected. At 12:57 p.m., Union counsel forwarded to Mr. Goodwin the CBA with the signature page executed by Union President Carlos Snowden. Mr. Goodwin signed the page that day as well, and the full CBA including signatures of Mr. Goodwin and Mr. Snowden (and the provision for three physical fitness training sessions per week) was forwarded by Mr. Goodwin to the Union's counsel at 1:17 p.m. on April 5.

At 5:24 p.m. on April 5, 2024, Mr. Goodwin emailed the Union stating that management had "discovered an error" in the physical fitness pay section increasing the

number of sessions per week to three. The email noted the absence of any redlining in that section in the February 19 and March 19, 2024 Union-proposed CBAs (although both had the new language with the number of sessions at three), and the fact that the Union-proposed CBA sent to management on March 30 had the predecessor contract language, identifying the number of sessions as two per week.

Union President Carlos Snowden responded on April 8, rejecting management's assertion that the provision in the CBA for three physical fitness sessions had been included in the CBA by mistake. In the meantime, one unit member appears to have been paid for a third physical fitness session in a single week, reflected in his salary for the pay period ending on April 6, 2024. It is undisputed that the Company has otherwise refused to compensate any unit members for a third session in a given week. The grievance at issue here was subsequently filed.

POSITIONS OF THE PARTIES

Union's Position

The Union argues that it reasonably believed that management's inclusion of the change from two to three paid physical fitness sessions per week in the proposed CBA forwarded to the Union by the Company on April 1, 2024, which was asserted to be accurate by management, was meant to "sweeten" the deal, which the Union had indicated would be difficult to sell to the membership given its disappointing wage increase provisions.

The Union argues further that it was the Company that drafted this document, that drafting problems are construed against the party who drafted the language at issue, and that the provision for three paid sessions of physical fitness training remained

in the document throughout the series of communications between the parties from April 1 – 5, 2024 including at the times the Union members ratified the CBA and the CBA was executed by Mr. Goodwin and by the Union president.

According to the Union, the record does not support any finding that there was a mutual mistake, or even a unilateral mistake by the Company of which the Union was aware and took advantage. The Union argues further that a contract cannot be reformed based on mistake without clear and convincing evidence that the parties intended something other than was contained in the agreement, which is not the case here. Moreover, the Company is asking the Arbitrator to force upon the Union a contractual term that the Union never agreed to and its members never ratified.

The Union also cites Article 2 (the zipper clause) and Article 25, Section 3 (prohibiting the Arbitrator from altering any provision of the CBA and limiting the Arbitrator authority to direct violations of the express purpose of the contract provision at issue) in support of its position.

Finally, the Union urges that I grant the grievance and order the Company to pay for up to three physical training sessions per week going forward, and to make unit members whole for any occasions on which they engaged in a third physical training session in any week commencing with the effective date of the 2024-2027 CBA, including any overtime pay that would have been due, plus interest.

Company's Position

The Company asserts that it has proven by clear and convincing evidence that there was a unilateral mistake made by management in drafting the final version of the CBA and that Article 17, Section 3 should be reformed to reflect the parties' intent to

maintain the language in the previous CBA, which provided for no more than two paid physical fitness sessions per week.

The Company points to the fact that the Union's last proposal, the March 30, 2024 proposal, included only two paid sessions per week, that the parties' understanding was that any open items not agreed to (the parties used the notation "TA" for tentative agreement) were to be considered to have been withdrawn by the Union, and there was no discussion held or tentative agreement reached either before or after March 30. Further, the Union commenced a ratification vote including the provision for only two PFT sessions per week before management mistakenly included a provision for three sessions. The Union, moreover, "played a role" in the mistake, as it had never shown its proposed change from two to three PFT sessions in red-lined form. Accordingly, Mr. Goodwin, who was not the Company's primary negotiator with regard to this bargaining unit, mistakenly assumed that the provision for three PFT sessions per week, which he found in a Union proposal made earlier in the negotiations that he used in preparing the Company's April 1 proposal, had actually been part of the prior contract.

The Company asserts that it has established the affirmative defense of unilateral mistake, warranting reformation of Article 17, Section 3 to reflect the intent of the parties, which was to maintain the provision for only two PFT sessions per week. According to the Company, the Union "seeks a windfall by taking advantage of a drafting mistake." The Company cites arbitration decisions supporting reformation of a contract where the mistake is unilateral but "the other party was at fault in causing the mistake such that enforcing the contract would be unconscionable or that the other

party had reason to know of the mistake or should have known of that mistake.” It cites another decision to the effect that as a matter of fairness and the “ethics of contract law,” a party should not be permitted to “snap up a bargain if it knows that the other party is proceeding on the basis of a mistaken understanding.”

The Company argues that the Union knew or should have known that inclusion of the provision for three PFT sessions was a mistake by management. It is not plausible that the Union believed that the Company was looking to “sweeten the deal” by making the change. The Company had never indicated any willingness to accept the change proposed by the Union at any time in the negotiations up to that point, and moreover, if the Company had intended to concede the issue to sweeten the deal, it would have communicated that intent to the Union to bolster the effort to achieve ratification.

The Company also cites the fact that the Union never mentioned the change in its communications with management between receipt of the April 1 Company proposal and execution of the CBA on April 5 despite the numerous emails exchanged during that time.

The Company concludes that the grievance should be denied, and the CBA should be reformed by substituting the word “two” for “three” in Article 17, Section 3.

DISCUSSION & DECISION

In this case, it is undisputed that the CBA that was signed by both the Company and the Union on April 5, 2024 covering the period of March 1, 2024 through February 28, 2027 provides in Article 17, Section 3 (Physical Fitness Pay), that unit members shall be paid up to 30 minutes for physical fitness “three times per week.” The prior

CBA, which expired on February 28, 2024, had provided that unit members be paid for physical fitness sessions “no more than twice per week.”

This increase in the number of paid physical fitness sessions from two to three per week was proposed by the Union at the commencement of bargaining for a new CBA in December 2023. The Company opposed this change throughout the bargaining process through the end of March 2024. On March 30, 2024, the Union, having agreed to bring the CBA to a vote in the form that it was in as of that date, including any changes tentatively agreed to by the parties, assumed the Company’s opposition to the increase in paid physical training sessions was continuing and sent the Company a proposed CBA with the former language, i.e., providing for two paid sessions per week.

However, on April 1, the Company undertook to prepare its own cut-and-paste version of what was agreed to and emailed that version to the Union with the Union-proposed change to three paid physical fitness sessions per week included.

The Union noticed that the Company’s April 1 version contained several items that were inconsistent with the Union’s understanding and advised the Company of these items. The Company thereupon made the changes consistent with the Union’s assertions. These changes did not involve Article 17, Section 3 in any way, and there was no discussion of that Section at any time until after the CBA was signed on the afternoon of April 5, at which point management advised the Union that the change to three paid sessions was an error and asked the Union to agree to restoring the previous language. As discussed above, the Union did not agree to do so.

It is a basic tenet of labor relations that the parties to a collective bargaining agreement are bound by the plain language of the agreement. The plain language in

Article 17, Section 3 in the CBA that was signed on April 5, 2024 calls for three paid physical fitness sessions per week.

Moreover, the CBA that was signed on April 5 contains a “zipper clause” (Article 2) in which the parties acknowledge that they each had the unlimited right and opportunity to make demands and proposals during the bargaining process, and that the “understanding and agreements” arrived at by the parties “are set forth in this Agreement.”

The Company argues that its inclusion of the provision for three paid physical fitness sessions per week was a mistake on its part, and that it should not be bound by that change because the Union knew or should have known that the Company included that provision by mistake. The Company seeks reformation of the CBA to express what it asserts was the parties’ intent, i.e., to continue the former language calling for no more than two paid sessions per week.

The Union points to the principle, held by many arbitrators, that reformation of a contract should never be granted in a case where the mistake is unilateral as opposed to mutual. This principle is grounded in the idea that a party making a unilateral mistake should bear the risk of that mistake. Here, it is undisputed that there was no mutual mistake about the number of paid physical fitness sessions, as the Union clearly understood that the CBA it signed on April 5 provided for three such sessions per week. Indeed, the Union included this change in its list of beneficial CBA changes that was distributed to unit members voting on the contract after the Union received the Company’s April 1 proposal.

However, I concur with the reasoning employed by those arbitrators who hold that contract language included in a CBA because of a party's unilateral mistake should be reformed if that party proves by clear and convincing evidence that the other party knew there had been a mistake and took advantage of it. My adherence to this measure of proof is particularly important here, where the parties acknowledge in Article 2 that the terms in the CBA that was signed on April 5 were in fact agreed to.

Here, the record does not support a finding that the Union knew or should have known that the Company's inclusion of the provision increasing the number of paid physical fitness sessions was a mistake. Both before and after the Company forwarded the April 1, 2024 proposed CBA containing that change to the Union, the Company emphasized the thoroughness of its efforts in preparing the document. These assurances began on March 30 when management asserted that the Union's proposed CBA sent to the Company on that date contained changes that were not redlined, and that management would "review this very carefully and respond accordingly."

On April 1, in forwarding its own version of the CBA, the Company stated that it had "tracked all changes within the document and included all Articles," that it believed the document included "the agreed upon terms," and it proposed that this version "become the new CBA of record once it has been ratified."

The Company's argument that the Union knew or should have known that inclusion of the changed language was a mistake is unpersuasive. The Company accurately points out that it had consistently opposed increasing the number of paid physical fitness sessions up to that point, and it argues further that the Union should have perceived that it was a mistake because the Company would have communicated

its willingness to make such a concession in order to facilitate ratification. However, management had assured the Union that its preparation of a proposed CBA to be substituted for the Union's March 30 draft would include looking out for and eliminating any changes that had not in fact been agreed to.

In light of the Company's representations that it would make sure only agreed upon changes would be included in the April 1 proposal, I find plausible the Union Vice President's perception that the increase to three physical fitness sessions in that proposal was intentional on the part of the Company. Further, it made sense for the Union to perceive that the Company decided to accept the increase in the interest of wrapping up the process and reaching agreement, at a time when the Company needed an agreement to comply with DOE deadlines and avoid the costly hiring of a contingency force. Nor do I find the Union's failure to mention the change in Section 3 in its communications that followed its receipt of the Company's April 1 proposal probative of the Company's argument. I find that the Union's communications were reasonably focused on correcting items in the April 1 proposal that disadvantaged unit members.

In sum, neither the fact that the Company had never agreed to the change prior to April 1, nor any other factors cited by the Company, amount to clear and convincing evidence that the Union knew or should have known that the inclusion of the change was a mistake.

The Company's position is not bolstered by the fact that the section on physical fitness was never redlined by the Union in its proposals. As a threshold matter, I do not

adopt the reasoning of those arbitrators who would reform a contract where the other party was at fault in causing the mistake.

In any event, even if that reasoning were sound, it would be inapplicable here, where the Union's most recent draft prior to the Company's April 1 proposed CBA contained the prior contract's language providing for only two physical fitness sessions per week. In addition, in all of the Union's prior drafts of proposed Section 3 that were received in evidence (the Company asserted that it based its April 1, 2024 proposal on draft CBAs predating the Union's March 30 proposal), the Union's proposal to increase the number of paid physical fitness sessions was clearly flagged with the word "Open" in capital letters, highlighted in yellow.

Thus, I do not find that the Union caused management to make the mistake of including the Union's old language in the Company's April 1, 2024 proposed CBA. That mistake may have been understandable in light of the Company's haste in settling the contract, but it was not caused by the Union.

Accordingly, the grievance is sustained. As a remedy, the Company shall pay for up to three 30-minute physical fitness sessions per week. In addition, any unit members who engaged in a third physical fitness session in any week between February 1, 2024 and the date the Company commences paying for a third session, shall be paid for such third session(s), including any overtime pay that would have been due on account of addition a third session. I decline to order the Company to pay interest in the circumstances of this case.

Therefore, based on the facts and circumstances of this case and the preponderance of the evidence, and for the reasons explained, the Arbitrator issues the following:

AWARD

1. The Company violated Article 17, Section 3 of the collective bargaining agreement by refusing to pay unit members for three physical fitness sessions in a week.

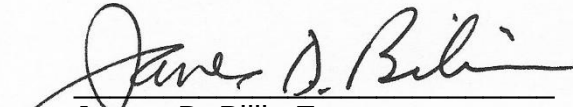
2. As the appropriate remedy: (a) the Company shall pay for up to three 30-minute physical fitness sessions per week going forward; and (b) as to any unit members who engaged without pay in a third physical fitness session in any week between March 1, 2024 and the date the Company commences paying for a third session, the Company shall pay such unit members for such third session(s), including any overtime pay that would have been due on account of such third session.

3. The Arbitrator retains jurisdiction for sixty (60) days solely for the purpose of resolving issues relating to the implementation of this Award.

STATE OF NEW YORK)
) ss.:
COUNTY OF ALBANY)

I, James D. Bilik, do hereby affirm upon my oath as Arbitrator that I am the individual described herein and who executed this instrument, which is my Award.

Dated: January 6, 2024


James D. Bilik, Esq.
Arbitrator