plan was, of course, granted to employees on medical leave at that time without question.

And the Union argues that many benefits previously negotiated—specifically the life insurance, income protection, and retirement programs (Joint Exhibit 5) did not require an employee actually to be working at the precise moment of ratification in order to be eligible. Employees on medical leaves have always in the past been considered members of the bargaining unit, on the active payroll although actually not working, it says, and Article 17, Section 20—which "clearly does not require an employee to be actually working at ratification" in order to receive the dental benefits—is the governing factor in this case, with Article 17, Section 24 verifying that all benefits before—new and existing, as past bargaining history substantiates—were always offered to employees on temporary medical leaves.

The Union, accordingly, asks that the arbitrator make the Company cease and desist from the discriminatory and "possibly [under the New Jersey Workman's Compensation statute, which makes it illegal for employers to discriminate against employees because the latter have claimed workers' compensation] unlawful" practice and find that employees on medical leave as of January 1, 2001, are covered by the Dental Assistance plan.

POSITION OF THE COMPANY

Essentially, the Company contends that the Union has simply failed to satisfy its "substantial burden" of proving a binding past practice.

As the Company views the Union attempt in this regard, the latter offered only two basic facts: (1) The benefits that people on leave enjoy (medical insurance, income protection, life insurance) are provided by practice and not by contract, and (2) in 1997 the "new prescription drug plan" was automatically provided to people on medical leave. This is simply, says the Company, not enough.

Only medical leave people who qualify—initially by being on active employment—enjoy these benefits, says the Company and this is quite consistent with the new dental plan eligibility provision. The Union, the Company asserts, acknowledged the eligibility requirement by its attestation to the accuracy of the plan booklets in Joint Exhibit 5 and through its submission to the Company of sample dental plans that it deemed acceptable during the 2000 contract negotiations. Indeed, the Union-proposed dental plans here, the Company argues, contained an eligibility provision (Co. Exhibit 2), which not only required active employment but was harsher than that contained in the Company's dental plan in that it required "three (3) full months of continuous full time employment." And all of the benefit plans enjoyed by qualified people on medical leave contain essentially identical eligibility requirements, the Company declares, requiring active employment at the outset of eligibility.

Nor does the Company care to continue the debate as to whether or not either the 1997 prescription drug amendment or the life insurance plan negotiated later was a new benefit or an "improvement" to an existing benefit, it says. The issue is irrelevant to the stated issue in the instant arbitration as it views matters, because the Company readily agrees that the new dental plan is fully available to medical leave people—consistent with the administration of all other benefit plans (Joint Exhibit 5)—assuming only that they have been on active status for at least a day since January 1, 2001.

Finally, the Company asks the arbitrator to dismiss the Union argument regarding the New Jersey Workman's Compensation Law as being both without merit and raised in an improper forum. And it asks him to dismiss the Union argument that the new dental plan is nothing more than an improvement that should automatically go to people on medical leave as of January 1, 2001, as being specious (because the "oral surgery" provision—"common to all Blue Cross, Blue Shield, major medical packages"—is hardly akin to the newly negotiated full coverage dental plan) as well as irrelevant.

For these reasons, the Company feels that the Union's grievance must be denied.

Case 6 Blame for a Major Accident

THE ISSUE

Was Allan Ramsey discharged for just cause? If not, what should the remedy be?

BACKGROUND

On the morning of March 8, 2004, the Austen Company truck being driven by employee Allan

Ramsey banged into another Company truck at the Lee Tire curve of the Schuylkill Expressway. As a consequence, Mr. Ramsey's vehicle, a 2003 Mack truck worth about $70,000 in 2003 and conceivably half of that figure at the time of the accident, suffered some $4,321.45 in damages that particularly involved the hood and radiator and necessitated the replacement of the entire front end.

The other truck, which did not require repair, had had its four-way flashers on when Ramsey ran into it and Ramsey saw them. The fact that Ramsey's vehicle was in good operating condition with no mechanical problems at the time is also not in dispute. Ramsey has freely admitted, indeed, that the accident was entirely his fault. Mr. Ramsey was terminated as of March 13, 2004.

RELEVANT CONTRACTUAL LANGUAGE

ARTICLE 21

Discharge or Suspension

Section 4. The Employer and the Union have adopted as part of this contract the Uniform Rules and Regulations attached as Exhibit "C."

. . .

EXHIBIT "C"
MOTOR TRANSPORT LABOR
RELATIONS, INC.
"UNIFORM RULES AND REGULATIONS"
Adopted January 5, 1976

. . .

(1) ACCIDENTS:

a. Major chargeable accident (after full investigation)-Subject to discharge

b. Minor chargeable accident

First offense	-Reprimand
Second offense	-1 day suspension
Third offense	-3 day suspension
Subsequent offense	-Subject to discharge

POSITION OF THE COMPANY

In the eyes of the Company, full investigation revealed the March 8 occurrence to have been a major chargeable accident. A substantial amount of damage, avers the Company, was caused and it was lucky that another Austen truck as opposed to an outsider's vehicle was in front of Ramsey at the time or the damage to the Company's finances could have been even greater. Ramsey, moreover, should have been well aware of the considerable congestion existing at the Lee Tire curve and necessitating particular caution on the part of drivers—the Company contends—because he had driven the same route six previous times that same week and the congested conditions were on all of these occasions amply in evidence. In discharging Ramsey amid these circumstances, the Company is convinced that Exhibit "C" has been fully honored.

Moreover, the Company argues, such action also accords with past practice at Austen, to discharge whenever accidents of this nature have occurred, and the Company cites driver Richie Fox, who, it alleges, was discharged for causing much less damage (to an air compressor) than Ramsey generated here and driver Eddie Cohene who was also, it says, discharged for a major chargeable accident.

In addition, the Company submits three cases (*M. K. Morris, Inc., Eastern Freight Ways,* and *Blue Comet Express*, Company Exhibits 3 and 4), governed by the MTLR "Union Rules and Regulations" where discharges were sustained even though the amount of damages was less than was the case here: one (*Davidson Transfer*) where discharge was upheld even though the grievant had never been involved in a prior accident and had had "35 years experience and a good operating record," and one (*T.I.M.E.-DC, Inc.*) where the arbitrator had no difficulty in concluding that damages of between $969 and $1,775 "were major accidents within the context of the Rules and Regulations adopted by the parties."

The last two of these cases were contained in the Company's post-hearing commentary letter. In it, the Company also argues that in three of the four cases submitted by the Union subsequent to the hearing there was "unlike here, some doubt as to chargeability" and that even though reinstatement took place no back pay was awarded. It further contends that the fourth of these cases, *Maislin Transport*, confirms the Company's position because in it there was no question as to the cause of the accident, and because the latter was solely the fault of the grievant discharge was deemed proper.

On all of these grounds, the Company asks the arbitrator to sustain the discharge.

POSITION OF THE UNION

As the Union views the situation, not only does Exhibit "C" not call for automatic discharge in the case of a major chargeable accident, but in the instant case a minor rather than a major chargeable accident was involved. The approximately $4,500 in damages, considering the $35,000 value of the vehicle at the time, when combined with the fact that there was no damage either to the other truck or to any people made this a minor chargeable accident warranting, under the tenets of Exhibit "C," a mere reprimand.

Grievant Ramsey, further asserts the Union, was a four-and-one-half-year Company employee with a perfect work record prior to the accident. At no point in his Austen employment had he even been reprimanded, much less disciplined in any other way, or warned for any action on his part.

Indeed, even if the arbitrator were to find this a major and not a minor accident, given Ramsey's record at most a 3–5 day suspension would be in order.

The Union additionally asks the Arbitrator to ponder three cases (*Walter Troop, Beverly Morgan, and Signal Delivery Service Inc.*) where discharges have not been upheld even though the amount of damages went well beyond $4,500 and one (*Maislin Transport*) where discharge was sustained but one of the bases for such action was the grievant's prior accident record. It contends further that neither the Fox nor Cohene discharges at Austen are relevant to the instant arbitration because each man was terminated for reasons beyond a major chargeable accident. In fact, says the Union, no employee has *ever* been discharged just as a result of an accident at this facility. And the Union points out that in the cases cited by the Company (Company Exhibits 3 and 4), where discharge was sustained despite damages of less than $4,500, the dischargees had, unlike Ramsey, been previously disciplined for prior records.

Case 7 Subcontracting of a Packaging Line Installation

THE ISSUE

Did the Company violate the provisions of the Collective Bargaining Agreement by subcontracting the installation of the Lavacol Peroxide packaging line in September 2003? If so, what shall be the remedy?

BACKGROUND

Beginning sometime in early 2001, the Company began closing down the manufacture of many products in its Detroit facility and transferring much of the work to its Lititz facility in a so-called Project Rationalization I. As a result, Lititz employment grew appreciably, from 360 workers in 2001 to approximately 575 by the late summer of 2003.

Lavacol Peroxide, made in two separate lines in Detroit, had constituted a marginal kind of business in at least the latter years there and the Company had initially decided not to continue such production any place. Finally, in August 2003, however, it decided to keep making this product—in a single line and at Lititz. And because it viewed both the necessary skills and the required equipment as being unavailable at Lititz within the time constraints that it saw itself operating under, it proceeded to subcontract the entire project. The Union, arguing that this violated the Collective Bargaining Agreement, then proceeded to grieve, ultimately triggering the instant arbitration.

CONTRACTUAL LANGUAGE

ARTICLE XXXVII

Subcontracting

The Company will not, under normal circumstances, subcontract the type of work, which is usually assigned to its regular employees, unless:

1. Skills and/or equipment are unavailable in the Plant.

The Company will advise and discuss with the Chief Steward prior to subcontracting out work usually assigned to its regular employees.

POSITION OF THE UNION

The Union argues that Article XXXVII could not be any more clear and that the Company blatantly disregarded it. The circumstances here were not unusual or abnormal, it contends, and the required work was neither so complex nor so time-consuming that bargaining unit employment was precluded: Indeed, it points out, bargaining unit members had installed similar lines in the past.

Moreover, says the Union, while the Company may "perhaps have advised the Union of its intention to subcontract in this case, it did not advise and discuss [the subcontracting] with the Chief Steward," as it was obligated to do here.