SPECIAL BOARD OF ADJUSTMENT NO. 1087

In the Matter of the Arbitration Between: **BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES (BMWE)** **and** **NATIONAL CARRIERS' CONFERENCE COMMITTEE** **and** **NORFOLK SOUTHERN RAILWAY COMPANY (NSR)**	Pursuant to Article XII of the September 26, 1996 National Agreement **OPINION AND AWARD** **CASE NO. 16**

Hearing Date: February 24, 2004
Hearing Location: Chicago, Illinois

QUESTION AT ISSUE:

Did the Carrier violate Article II, Section 1 of the February 7, 1965 Agreement in Mediation Case No. A-7128, as amended by Article XII of the September 26, 1996 Agreement in Mediation Case No. A-12718 when it terminated Claimants' protected benefits?

I. FINDINGS

Upon the whole record and all the evidence, the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted by agreement and has jurisdiction of the parties and of the subject matter. At the neutral's request, the parties waived the Article III, Section D thirty-day limitation for issuing this decision.

II. BACKGROUND FACTS

The parties agree about many of the relevant facts while disagreeing about their implications. Claimants R.L. Beaver, C. A. Smelser and M. V. Elam were furloughed in February, 2000. Each Claimant was determined to be eligible for and was afforded protective benefits under the February 7, 1965 Mediation Agreement, (hereinafter Feb. 7) as amended. All three Claimants have seniority dates prior to December 1, 1983.

In February 2001, six laborer positions were advertised for the R-3A Rail Gang in Bulletin No. DPG-100. Although Claimants were notified about the available positions, they did not exercise their seniority or bid on any of the positions. Ultimately, four of the laborer positions were awarded to employees junior to the Claimants.

Carrier thereafter denied the Claimants' protective benefit claims, taking the position that Claimants forfeited their protected status under the Feb. 7 Agreement because they failed to exercise their seniority rights to obtain positions on the R-3A Rail Gang. The Organization protested the denial of the claims on the ground that Rule 2(e)(4) of the 1986 collective agreement between the BMWE and the Norfolk & Western Railway exempted the Claimants from being required to bid on positions that were not on their seniority district prior to December 1, 1983.

The parties were unable to resolve the dispute on the property and it now comes before the Board for final and binding resolution.

III. PERTINENT AGREEMENT PROVISIONS

Article II, Section 1 of February 7, 1965 Mediation Agreement, as amended by Article XII of the September 26, 1996 Mediation Agreement

> An employee shall cease to be a protected employee in case of his resignation, death, retirement, dismissal for cause in accordance with existing agreements, or failure to retain or obtain a position available to him in the exercise of his

seniority rights in accordance with existing rules or agreements, or failure to accept employment as provided in this Article. A protected furloughed employee who fails to respond to extra work when called shall cease to be a protected employee. If an employee dismissed for cause is reinstated to service he will be restored to the status of a protected employee as of the date of his reinstatement.

Rule 2(e)(4) of the July 1, 1986 Norfolk and Western Agreement

Employees holding seniority rights prior to December 1, 1983, shall not be required to exercise their seniority beyond that embraced by their prior seniority; nor will their failure to exercise such seniority rights have any adverse effect of their merger or other employee protection conditions.

The June 12, 1992 Designated Programmed Gangs Arbitrated Agreement

Section 1.A DPG seniority lists shall be established for the following classifications:

Roster 1	Foreman
Roster 2	Assistant Foreman
Roster 3	Machine Operators
Roster 4	Track Laborers

All employees holding seniority under the several BMWE Agreements in place on the N & W, as of the date of the Arbitrated Agreement, shall be placed on the appropriate seniority list or lists according to their earliest valid seniority date in each classification. Any disputes as to which seniority list is appropriate shall be promptly resolved between the BMWE Vice President (or his designee) and the Director [of] Labor Relations. If two or more employees have the same seniority date, they shall be placed on the seniority list in alphabetical order according [to] their last names.

Section 5 Effect of Other Agreements

Except as specifically provided herein, all other terms and conditions of employment for DPGS's including, but not limited to, rates of pay, filling of vacancies and payment allowances, shall be governed by the Agreement applicable to the territory where the DPG commences service on the first work day of the work week for that entire work week, including rest days.

IV. CONTENTIONS OF THE PARTIES

The Organization

The Organization contends that Article II, Section 7 of the Feb. 7 Agreement, as amended, contains plain and unambiguous language. It enumerates the circumstances under which an employee ceases to be a protected employee under the Agreement. The particular circumstance at issue in this case is where an employee has failed "to obtain a position available to him in the exercise of his seniority rights in accordance with existing agreements..."

The key phrase in the quoted sentence is "in accordance with existing agreements." It is the Organization's position that Rule 2(e)(4) of the July 1, 1986 Agreement is the existing agreement that addresses the Claimants' seniority rights applicable to this particular case. Under Rule 2(e)(4), employees holding seniority rights prior to December 1, 1983 are not required to exercise seniority beyond the area they were required to protect as of December 1, 1983. Since Claimants hold seniority rights prior to December 1, 1983, any elections of the Claimants not to exercise their seniority rights beyond those prior rights areas should have no effect on their protected status under the Feb. 7 Agreement.

The fact that the R-3 Rail Gang was created under the 1992 Designated Programmed Gangs (DPG) Arbitrated Agreement does not change the result, the Organization contends. Under that Agreement, DPG's were created "to perform production work throughout the Norfolk & Western Railway Company system without regard to former property lines or seniority districts." DPG's travel over very large geographical areas during the work season, well beyond Claimants' prior rights area.

According to the Organization, all prior rights employees subject to Rule 2(e)(4) could bid on DPG positions, but no prior rights employee was required to bid on or displace to DPG positions in order to retain their seniority in their prior rights district on the DPG roster.[1]

Two factors support that conclusion. First, Section 5 of the Arbitrated Agreement provides that if the Arbitrated Agreement does not specifically alter the applicable agreement, then the terms of the applicable agreement are preserved. Since nothing in the DPG Arbitrated Agreement obviates Claimants' rights under Rule 2(e)(4) of the July 1, 1986 Agreement, it must be presumed that Claimants' prior seniority rights have been maintained.

Second, any doubts about the preservation of prior rights were dispelled when the former Nickel Plate lines were integrated into the existing Norfolk & Western collective bargaining structure. In February 2000, the Carrier and the BMWE entered into a Memorandum of Agreement (MOA) providing for the implementation of that integration of employees and collective bargaining rights. The MOA placed parts of the former Nickel Plate territory into the N&W's Eastern Region, the region in which the Claimants held prior rights. Side Letter No. 1 to the MOA clarified the prior rights extended to employees under Section IV of the MOA as follows:

> This confirms our understanding that the prior rights afforded in Section IV will be in addition to existing prior rights. Accordingly, existing prior rights are not diminished, including but not limited to:
>
> * * *

[1] Claimants were placed on DPG seniority lists with seniority dates as follows: Claimant R. L. Beaver – Track Laborer 9/28/76; Claimant M.V. Elam – Track Laborer 9/28/76; Claimant C.A. Smelser – Track Laborer 7/21/76; Foreman 5/16/88; Assistant Foreman 11/14/88.

2) former NW employees granted certain preferential rights in the 12/1/83 Memorandum incorporated into the July 1, 1986 NW-Wabash agreement...

In the view of the Organization, Side Letter No. 1 provides clear and unmistakable evidence that the parties intended to preserve Rule 2(e)(4). That being the case, the Claimants were not obligated to exercise seniority outside of their prior rights territories to remain eligible for protective benefits.

Finally, the Organization rejects the contention of the Carrier that Rule 2(e)(4) applies only to employee protective conditions imposed by the ICC/STB and not to the Feb. 7 job stabilization agreement negotiated by the parties. Such a narrow reading does not comport with the parties' intent or with the ordinary meaning ascribed to the term "employee protective conditions," the Organization argues. Employee protective conditions can consist of agency imposed provisions or a voluntary agreement that satisfies the statutory standards. The Carrier has not advanced any logical or persuasive explanation which would call for a different conclusion.

Based on the foregoing, the Organization submits that it has established its case. Rule 2(e)(4) gave the Claimants a choice as to whether to bid on the DPG positions. The Claimants chose not to bid on the R-3 Rail Gang positions. In so doing, they did not forfeit their protected status under the Feb. 7 Agreement. The claim should be sustained in its entirety.

The Carrier

Carrier advances several arguments in support of its contention that Claimants forfeited their protective benefits under the Feb. 7 Agreement. First, it is clear to the Carrier that an employee's right to protection under that Agreement is conditioned upon satisfaction of his obligation to "retain or obtain a position available to him in the

exercise of his seniority rights in accordance with existing rules or agreements." Carrier argues that Claimants failed to fulfill this obligation in the instant case. Claimants had the responsibility to "retain or obtain" positions available to them. If they had chosen to bid for the DPG Laborer positions, they would have been awarded the jobs. Claimants elected not to bid for the positions and thus forfeited any rights they may have had to receive Feb. 7 protection benefits.

Second, Carrier argues that Rule 2(e)(4) of the 1986 Agreement between NW and the BMWE is not applicable to the Feb. 7 Agreement. Carrier submits that when the Feb. 7 Agreement was originally negotiated in 1965, it did not apply to the former NW or WAB territories because the BMWE opted to retain the NW Merger Agreement in lieu of Feb. 7. Moreover, when Rule 2(e)(4) was negotiated in 1986, Feb.7 still did not apply on these territories. Therefore the exception contained in Rule 2(e)(4) could not have been intended by the parties to apply to the Feb. 7 Agreement. Put a bit differently, the negotiators of the July 1, 1986 NW-BMWE Agreement could not have envisioned or intended that the language contained in Rule 2(e)(4) would have any application to a separate job stabilization agreement that was not even applicable on their property.

Carrier acknowledges that in 1996, Feb. 7 became applicable for the first time to the former NW and WAB properties. Significantly, however, no exceptions to the "retain or obtain" requirements were agreed upon. Under the circumstances, it must be presumed that there was no intent to incorporate Rule 2(e)(4) prior rights as an exception to the Feb. 7 requirements imposed upon an employee to retain his protective benefits. Had the parties so intended, they would have included language similar to that seen in Special Board of Adjustment No 1087, Award No. 11, where the parties specified in an

implementing agreement subsequent to Feb. 7 that employees were not obligated to accept positions off of their prior rights district "in order to receive any benefits pursuant to the Mediation Agreement of February 7, 1965 and failure to do so will not be used to assert forfeiture of benefits nor serve to offset any benefits due."

In contrast to that case, the exclusionary language relied on by the Organization in the instant matter does not specify that it applies to Feb. 7. On the contrary, it specifically applies to "merger or other employee protection conditions..." Carrier asserts that Feb. 7 is neither – it is a job stabilization agreement – and was not applicable on the property at the time the exclusionary language was negotiated.

Claimants were required to exercise their seniority to obtain positions even if those positions were located off of their prior seniority territory, Carrier submits. Because they did not do so, they ceased to be protected employees under Feb. 7. As a result, the claim must be denied.

V. DISCUSSION

At issue in this case is whether the Carrier violated Article II, Section 1 of the February 7, 1965 Mediation Agreement, as amended, when it determined that Claimants ceased to be protected employees after they declined to exercise their seniority to obtain positions on the R-3A Rail Gang. The answer turns in large part on the interpretation and application of the following language set forth in Article II, Section 1:

> An employee shall cease to be a protected employee in case of his...failure to retain or obtain a position available to him in the exercise of his seniority rights in accordance with **existing rules or agreements**... (emphasis added)

As a starting point in our analysis, we note that the parties disagree as to whether Rule 2(e)(4) of the July 1, 1986 Agreement was intended as one of the "existing rules or

agreements" referred to above. The disagreement stems to a great extent from differing interpretations of the term "existing." From the Carrier's standpoint, the meaning of that term must be examined in light of the underlying purpose and historical context in which the Feb.7 Agreement was intended to apply. Carrier emphasizes that inquiry must be made as to what the language meant to the parties when the agreement was written The Organization, on the other hand, maintains that the phrase "existing rules or agreements" is plain on its face and must be applied in its current context. In the view of the Organization, Claimants' Rule 2(e)(4) special seniority rights clearly constitute one of the "existing rules or agreements" which must be examined in order to determine whether Claimants forfeited their protected status under the Feb. 7 Agreement.

In resolving this dispute, the Board's primary goal is to give effect to the intent of the parties. Ordinarily, intent can best be ascertained from the words used in the agreement provisions which the parties themselves have negotiated. However, there are times when the intended meaning of the agreement language is not so clear. Ambiguities can arise from the failure to foresee a problem that arises from the application of a term to new or unexpected situations. Parties may insert words that are inexact or vague. In those sorts of circumstances, traditional canons of contract interpretation become relevant in attempting to ferret out the meaning and significance of the disputed language.

Carrier is correct that ambiguous language in a contract is often construed in light of the circumstances surrounding the contract at the time it is made and the subsequent application of that contract language over time. We will therefore carefully trace the history of the agreement language in dispute.

It is true that, when the Feb. 7 Agreement was negotiated in 1965, it did not apply to the Carrier territories now at issue because the Organization opted, pursuant to Article VI of Feb. 7, to retain the protective benefits of the NW Merger Agreement in lieu of those contained in the Feb. 7 Agreement. It is also true that when Rule 2(e)(4) was negotiated in 1986, Feb. 7 still did not apply on these territories. Thus, we must presume that the parties did not intend when these agreements originally were negotiated to include Rule 2(e)(4) of the 1986 Agreement as one of the "existing rules or agreements" to which Article II, Section 1 of the Feb. 7 Agreement refers.

Our search back in time is not limited to these two events, however. In 1994, the Organization proposed that Feb. 7 be modified to include additional employees who had entered Carrier service subsequent to the qualifying period for the Feb. 7 Agreement. Article XII of the Sept. 29, 1996 Agreement modified Article I, Sections 1 and 2 of the Feb. 7 Agreement coverage to employees once they attained ten years of employment. Because Feb. 7 did not apply to many of the predecessor lines that made up the bulk of the Carrier's territory, the Carrier sent a letter dated November 18, 1996 to the Organization in which it recognized that "effective September 26, 1996, NS and its employees represented by the Brotherhood of Maintenance of Way Employes are covered by the February 7, 1965 Agreement ..."

It is at this critical juncture that the intent of the parties to embrace Rule 2(e)(4) in the Feb. 7 Agreement becomes manifest, in our view. At that time, and continuing to the period when the instant claim was precipitated, the parties were subject to the Arbitrated Agreement of June 12, 1992 which created DPG's and required employees in all seniority districts to hold positions created on the DPG's. The Organization's contention that Rule

2(e)(4) prior rights were unaffected under this Arbitrated Agreement was not challenged by the Carrier. Indeed, the preservation of those prior rights was recognized by the parties in Section 5 of the 1992 Arbitrated Agreement and later confirmed in the February 2000 Memorandum of Understanding which expresses the parties' intent to preserve Rule 2(e)(4) on the territories at issue here. Thus, it must be concluded that when Feb. 7 became applicable on the Carrier property in 1996, the "existing rules and agreements" included Rule 2(e)(4) of the 1986 Agreement.

Carrier nevertheless argues that the omission of specific reference to Rule (2(e)(4) in the 1996 amendments to Feb. 7 should be construed to mean that it was not intended to apply. We do not find that argument persuasive. Agreements must be interpreted so as to avoid nonsensical results in favor of an interpretation that is reasonable. If the Carrier's logic were adopted, we would necessarily have to conclude that any and all other applicable agreements between the parties, including the Arbitrated Agreement of July 12, 1992, were not intended as "existing rules or agreements" within the meaning of Article II, Section 1 of Feb. 7, as amended, simply because they were not specifically enumerated when Feb. 7 was amended.

No such interpretation is warranted here. If the parties had wished to restrict the application of Article II, Section 1 of Feb. 7 so that it did not encompass Rule 2(e)(4) of the 1986 Agreement, or any other existing rule or agreement provision, they had an opportunity to do so when Feb. 7 became applicable for the first time to Carrier properties in September 1996. They did not do so. In the absence of such an affirmative expression of intent, we must conclude that the phrase "existing rules or agreements" encompasses Rule 2(e)(4) of the 1986 Agreement.

Accordingly, we find that the modifications to Feb. 7 -- and particularly the Carrier's November 18, 1996 letter acknowledging that Organization represented employees would henceforth have Feb. 7 protection –must be given their normal significance. Preservation of the language of Article II, Section 1 of Feb. 7, with its specific reference to "existing rules or agreements," coupled with the adoption of that language on Carrier property for the first time in 1996, must reasonably be interpreted to mean that those rules or agreements then in existence would apply when determining whether or not an employee had failed to retain or obtain an available position in accordance with the employee's seniority rights. Rule 2(e)(4) is one such existing agreement.

That being the case, we next consider the nature of Claimants' prior rights under Rule 2(e)(4). The rule states:

> Employees holding seniority rights prior to December 1, 1983, shall not be required to exercise their seniority beyond that embraced by their prior seniority: nor will their failure to exercise such seniority rights have any adverse effect of their merger or other employee protection conditions.

Carrier contends that the foregoing language is inapplicable to the instant case because it refers not to the Feb. 7 Agreement but to "merger or other employee protection conditions." Carrier argues that Feb. 7 is a job stabilization agreement negotiated by the parties and thus it falls outside the scope of the protective conditions contemplated under the rule.

We do not believe the language can be so narrowly construed. The use of the phrase "or other" protection conditions clearly contemplates more than the protection conditions imposed by the ICC/STB as a result of a merger. After careful review of all the evidence submitted on this particular point, the Board finds that the Carrier has not

established that a meaningful distinction can be made between employee protections that are agency imposed or the result of a voluntary agreement.

Once that finding has been made, it is clear that the Organization's claim has merit. Claimants exercised seniority in accordance with existing agreements, precisely as specified in Article II, Section 1 of the Feb. 7 Agreement. Since they hold seniority rights prior to December 1, 1983, they were not required to exercise those seniority rights to the DPG positions which were beyond the territory embraced by their prior seniority. Put another way, Rule 2(e)(4) prior rights under the 1986 Agreement survived the 1992 Arbitrated Agreement and were one of the "existing agreements" under Feb. 7 that gave the Claimants the option of bidding or not bidding on the DPG positions. Their decision to refrain from bidding could not result in the forfeiture of their protected status under the Feb. 7 Agreement.

VI. AWARD

> Carrier violated Article II, Section 1 of the February 7, 1965 Agreement in Mediation Case No. A-7128, as amended by Article XII of the September 26, 1996 Agreement in Mediation Case No. A-12718 when it terminated Claimants' protected benefits. The Organization's claim is sustained.

Ann S. Kenis
Chairperson and Neutral Member

Donald F. Griffin
Organization Member

A. K. Gradia
Carrier Member

R.B. Wehrli
Organization Member

John F. Hennecke
Carrier Member

Dated this day of , 2004.

CARRIER MEMBERS' DISSENT
TO CASE NO. 16 OF SBA 1087

The Carrier Members of SBA 1087 rarely issue written dissents to awards rendered by this Board; however, in this instance we are compelled to do so because of the significant errors contained within the award in Case No. 16.

The most glaring error is the Board's mis-statement of the Carriers' position and the ensuing two and one-half pages of analysis by the Board of a position the Carriers did not take in the handling of this claim on the property or before this Board.

At the bottom of page 8 of the award, the majority states:

> *As a starting in point in our analysis, we note that the parties disagree as to whether Rule 2(e)(4) of the July 1, 1986 Agreement was intended as one of the "existing rules or agreements" referred to above* [in Article II, Section 1, of the February 7, 1965 Job Stabilization Agreement]. *The disagreement stems to a great extent from differing interpretations of the term "existing." From the Carrier's standpoint, the meaning of that term must be examined in light of the underlying purpose and historical context in which the Feb. 7 Agreement was intended to apply. Carrier emphasizes that inquiry must be made as to what the language meant to the parties when the agreement was written* . . . .

A thorough reading of the Carrier's handling of this dispute on the property and the handling of this dispute before the Board, in both the written submission and the oral arguments made to the Board, clearly shows that the Carriers have never taken the position described above. This flaw was pointed out to the majority, but, inexplicably, they elected to issue the award in its flawed state. Contrary to the mis-stated Carrier position above, the Carriers emphatically believe that the phrase "*existing rules and agreements*" as it appears in Article II, Section 1, of the Job Stabilization Agreement [JSA], must be interpreted and applied to mean the rules and agreements as they exist on the date that the claim or controversy arises.

This blatantly erroneous mis-statement of the Carriers' Position appears to have blinded the Board majority to the Carriers' real position, which rests on two fundamental points regarding the interplay between Rule 2(e)(4) and Article II, Section 1 of the JSA.

Their first argument was that the phrase "*. . . nor will their failure to exercise such seniority rights have any adverse effect on their merger or other employee protection conditions.*" as it appears in Rule 2(e)(4) of the 1986 Agreement, could not have been intended by the parties to apply to the JSA Agreement, because the JSA Agreement did not exist on this property in 1986 when the parties wrote this language. Stated another way, it is patently absurd to conclude that the parties in 1986 intended to exempt certain employees from their obligation to fully exercise their seniority rights to obtain or retain a position in the normal exercise of their seniority rights (including their newly expanded seniority rights) under the JSA, when the JSA did not have any application to these employees, and there was no reason to believe that it ever would apply. It is precisely for these reasons that the Carrier saw no need in

1996 to reemphasize the intended application of Rule 2(e)(4), which the majority relies upon to support its erroneous interpretation of Rule 2(e)(4)

Second, although the majority dedicated two and one-half pages to the analysis of a position the Carriers did not even advance, they gave scant attention or analysis to the Carriers' other primary contention. The Carriers' contended that the phrase "*merger or other employee protection conditions*" contained in the 1986 Agreement was limited to those protective benefits derived from transactions requiring STB (formerly ICC) approval, with such approval being **conditioned** on the Carrier providing a specific level of protection to employees affected by the transaction as imposed by the ICC/STB as a **condition** for their approval of the transaction. The phrase "protection **conditions**" is a term of art in the railroad industry (the only industry in the country subject to such conditions) and reference to **conditions** is widely known and generally accepted to be a reference to the type of protection eminating from a transaction requiring ICC/STB approval. Since collectively bargained employee protection benefits (such as under the JSA) are agreed upon voluntarily by the parties and not as a **condition** for the approval of a transaction, the term **protection conditions** is not used to describe these agreements or the benefits which flow from such agreements. It is noteworthy that during the handling of this case before the Board, the Organization did not produce a shred of evidence to support their argument as to how this phrase should be interpreted. Yet, the majority, who spent pages analyzing a position which the Carriers did not even advance, rejected the Carriers' actual position, without any analysis of the Carriers' position or the substantial evidence and argument submitted in support of its position, with the majority relying only upon its "belief." Without providing any foundation for or explanation of its "belief", the majority simply stated: "We do not believe the language can be so narrowly construed." In a futile effort to justify this unsupported conclusion, the majority sought the comfort of the phrase "or other" which precedes the words "employee protection conditions" in the 1986 Agreement to speculate that the protection conditions referred to in the 1986 Agreement contemplated "more than the protection conditions imposed by the ICC/STB as a result of a merger." However, had the majority looked carefully at the documentation provided by the Carriers regarding ICC/STB imposed conditions, they would have noticed that the ICC/STB imposes protection conditions for other types of transactions besides **mergers** (*New York Dock Conditions*), e.g., abandonment of operations (*Oklahoma Conditions*); acquistion of control-stock purchase (*Southern-Central of Georgia Conditions*); abandonment of railroad lines (*Oregon Short Line Conditions*); trackage rights (*Norfolk & Western-Burlington Northern Conditions*); and lease of trackage (*Mendocino Coast Conditions*). Thus, it is clear that the words "*or other*" in the phrase "*merger or other protection conditions*" does not automatically lead to the conclusion that the phrase goes beyond ICC/STB imposed conditions and also encompasses collectively bargained agreements providing protective benefits to employees. Quite to the contrary, the phrase "*merger or other protection conditions*" is clearly limited to protection **conditions**, imposed by the ICC/STB as a condition for the approval of a merger "*or other*" transactions requiring ICC/STB approval, such as abandonments, acquisitions, trackage rights and leases. While the majority cites its "*careful review of all the evidence submitted on this particular point*" (bottom of page 12), such review is not reflected in an award that is completely lacking in any type of substantive analysis of one of the Carriers' primary positions.

In the final analysis, the Award in Case 16 did not truly address the actual positions of the parties as set forth by the parties in their written briefs or oral arguments. As a result, the Award in Case 16 is deeply flawed; so flawed as to render it void of any value in resolving the real matters submitted to the Board for its consideration and lacking in any precedential value whatsoever.

CARRIER MEMBERS

A. Kenneth Gradia

A. Kenneth Gradia

John F. Hennecke

John F. Hennecke

Dated: October 1, 2004