IN THE MATTER OF AN ARBITRATION

BETWEEN:

CANDU ENERGY INC.

("Candu" or the "Employer")

-and-

SOCIETY OF PROFESSIONAL ENGINEERS AND ASSOCIATES

("SPEA" or the "Union")

Grievances of Araksi Nar and Asmae Elalami
regarding layoff and discipline assignment

Bram Herlich, Sole Arbitrator

Tim Lawson, Laura Williams,
Linda Kardmon and Patrick Reid — for the Employer

Micheil Russell, Michelle Duncan, Denise
Coombs, and Mike Ivanco — for the Union

AWARD

(Hearings were held in Toronto on March 26, 2015;
May 13, 2015 and July 9 and 10, 2015)

Introduction

The two individual grievances that are the subject of this award raise similar issues. On or about May 21, 2014 both grievors received layoff notices and each was subsequently laid off.

The collective agreement contains complex provisions regarding layoff and the exercise of seniority. Bargaining unit employees populate 39 "skill categories". For all skill categories there are the same six salary scale levels (PG1-PG6.) The higher rated employees (those at the PG3-PG6 levels) are assigned primary (usually the skill category in which they work) as well as secondary skill categories. (Subject to other provisions) layoffs are effected by seniority within a given skill category. Affected employees with secondary skill categories, however, may exercise their seniority to displace a junior employee working in one of those skill categories.

The grievors in this case, however, are both at the PG2 salary level and the exercise of seniority for such employees (i.e. those at the PG1 and PG2 levels) is different. Like the higher rated employees, PG1s and PG2s work within a specific skill category. And similarly, when there is a layoff, it is effected (as above) by seniority within the affected skill category. But PG1s and PG2s do not have assigned secondary skill categories. Rather, they are assigned to one of six disciplines. As there are only six possible disciplines and 39 different skill categories, it is not surprising that employees with the same discipline may be found working in any one of a number of different skill categories. When a PG1 or PG2 faces layoff in their skill category, they may exercise their seniority to displace a junior employee with the same assigned discipline regardless of the skill category in which that junior employee is working.

The principal provisions here at issue are the following portions of the Skills Inventory System (the "SIS"), which is incorporated into the collective agreement:

SENIORITY DESIGNATION – PG1 AND PG2

7. PG1s and PG2s will be assigned a primary skill. PG1s and PG2s will also be considered "broadly knowledgeable" in the Discipline related to their Honours Degree. PG1s and PG2s may only be designated one discipline. In layoff situations, notwithstanding Article 22.02 (layoffs by seniority within skill category), layoffs of PG1s and PG2s will occur by order of seniority within each Discipline.

8. The Disciplines to which PG1s and PG2s may be assigned are: Chemical, Civil, Electrical, Mechanical, Natural Science, and Business Administration.

Disciplines will be assigned to employees at time of hire. In the event that AECL [the predecessor employer]provides notice of layoff pursuant to Article 22.03, no challenges to skill categories or disciplines may be made until after the layoff cycle is completed. For greater clarity: Once the employer notifies SPEA and/or individual employees of layoff, in accordance with Article 22.03, employees cannot claim proficiency in a different primary or secondary skill category. In addition, each employee can only raise one challenge per year, unless there is a fundamental change in duties or position.

It is plain that the assignment of discipline may have a significant impact on the breadth and scope of the possible exercise of seniority rights by employees such as the grievors.

The grievors had their disciplines assigned as "mechanical" in 2010. In the face of anticipated layoffs (which never materialized), the employer confirmed those assignments, in writing, to the union approximately one year later in 2011. However, in 2013 when the employer sought to compile a current list of existing discipline assignments, it found that it had no such information (the union questions the plausibility of this asserted "lost list"). As a consequence, the employer performed a fresh assessment of the appropriate discipline assignments of its PG1 and PG2 employees. As a result, a relatively small number of employees (including the grievors) emerged with discipline

assignments different from the ones they had previously held. The grievors did not discover their "new" assignments until approximately one year later when they were advised of their pending layoff, which resulted from their "natural science" discipline assignments. There was no serious dispute before me that had the grievors remained in the much larger employee population within the "mechanical" discipline (as the union advocates they ought to have been) rather than the "natural science" discipline (as the employer treated them), they would have been able to avoid their layoff fate.

In the briefest possible terms, the union first asserts that the employer deliberately concocted the "lost list" excuse so as to permit it to reorder the seniority landscape for PG1s and PG2s. Even absent its improper motive, the union contends the employer had no authority to do this. And even if the employer might have some authority to alter existing disciplines, it has failed to conduct itself in the reasonable manner required. And, finally, the employer's assessment was, in any event, wrong.

The employer disputes any bad-faith on its part. It asserts that, however events unfolded, it simply took the opportunity to "correct" the greivors' improper discipline assignments, a legitimate effort on its part with which I ought to be loathe to interfere. And, finally, even if there were procedural shortcomings on the employer's part, these have been effectively cured because the grievors have been allow the opportunity to challenge their discipline assignments through the instant proceedings.

The facts

The parties prepared and filed an Agreed Statement of Facts. In it, they reserved the right to rely on additional facts. And they each exercised that right – much oral evidence was tendered, elaborating on and adding to the agreed facts. In view of that and the more comprehensive review of the facts that follows, I will not reproduce the agreed facts here (they are, however, appended hereto).

Each party called three witnesses. The employer proceeded first and called Patrick Reid and John Ballyk. The former is the senior manager of deterministic safety analysis. At the time of the layoff he was the "functional manager" of employees within the SP30 skill category in which the layoffs in question took place. Mr. Ballyk, at the time of the layoff was Mr. Reid's Director and had responsibility for areas in which employees in some six different skill categories (including SP30) worked. As we shall see, the employer, in May 2013 (re)assessed the grievors' discipline assignments (from "mechanical") to "natural science". These two witnesses, to the extent they were involved in that assessment, testified as to how it was effected. They also offered their views as to the relative propriety of "mechanical" versus "natural science" as the discipline assignment for the grievors.

The grievors testified on behalf of the union regarding events leading up to the filing of the grievances. They also testified in support of their claim that their honours degrees warranted placement in the mechanical discipline. We also heard from Denise Coombs, a SPEA staff representative who has been involved in labour relations between the parties dating back to the tenure of the predecessor, AECL, the negotiation and implementation of the SIS, and all subsequent significant labour relations events that followed the sale and the commencement of the Candu operations as successor to AECL.

Finally we heard, in reply (the employer called its evidence first), from Laura Williams, the employer's manager of labour relations since 2011. She provided some additional detail regarding the circumstances of the (re)assessment of the grievors' disciplines, performed in 2013.

The grievors were both hired in November 2006 by (the predecessor) AECL in positions they retained until their layoff in 2014 from their employment with (the successor), Candu Energy Inc.

In or about July 2009, AECL and SPEA finalized the terms of the SIS. Under that agreement, 39 skill categories were adopted. The grievors' positions fell within SP30

(Safety Analysis). The SIS contemplated that, at the time of hire, PG1s and PG2s would be assigned to one of six disciplines and would be considered "broadly knowledgeable" in the discipline related to their honours degree. Existing PG1s and PG2s were assigned to disciplines, a process that concluded in or about May 2010. The grievors were assigned to "mechanical". Indeed (as of July 2011), all but one of the 11 PG2s (there were no PG1s) working in SP30 were assigned to one of the four core engineering disciplines (eight, including the grievors, to mechanical; two to chemical). The remaining PG2, who, unlike all of the others, did not have an engineering degree – his degree was in applied physics – was assigned to the natural science discipline.

In June 2011 the intended sale of the commercial division of AECL to Candu was announced at approximately the same time that notice of mass terminations of up to 900 employees was provided to the Minister. Those layoffs never occurred. The sale of the business was effected in October of 2011. However, the union's uncontradicted evidence was that from the day the sale was announced, Candu assumed effective control of the enterprise in all of its aspects, including labour relations.

The notice of mass termination, not surprisingly, generated concerns and rumours about job security. The union sought to clarify and confirm employees' job security standing. In that context the employer, in response to SPEA requests, provided, in July 2011, a seniority list of PG1s and PG2s, which included their individual discipline assignments. The SP30 assignments were as set out (two paragraphs) above.

The collective agreement under which the instant grievances were filed was concluded in September 2012 (with a term of January 1, 2011 to December 31, 2016). It incorporates the terms of the SIS. The agreement also included a Letter of Understanding whereby the parties agreed to establish a joint committee (the "LOU Committee") to discuss and finalize the necessary updates to the SIS.

Those discussions appear to have been ongoing from at least February 2013 to August 2013. There is no need to review the committee's deliberations in any detail – the

employer did, however, in the context of the committee's mandate, propose the elimination of the discipline system for PG1s and PG2s. There was little evidence that much of any substance was obtained through this committee in this bargaining unit.

During the course of the committee's deliberations, SPEA again requested a listing of PG1 and PG2 employees that included their assigned disciplines. There is no documentary record before me to indicate when precisely the request was made. Laura Williams, who has been the employer's manager of labour relations since 2011 was a member of the LOU committee. She testified that the request was made at the committee. She further testified that another management member of the committee, Sada Joshi, turned to her to obtain the list. The relative timing of the SPEA request (of the employer) and its connection, if any, to Mr. Joshi's request (of Ms. Williams) was not crystal clear.

There is, however, a clear documentary record (in the form of email correspondence) of the events that commenced with Mr. Joshi's request of Ms. Williams. On March 12, 2013, Mr. Joshi wrote to Ms. Williams as follows:

> Can you send me a list of PG1s and 2s in Candu broken down into their six disciplines.
>
> My understanding of the agreement is that in the event of a layoff, any PG1 or PG2 personnel affected by layoff in a skill will displace less senior PG1 and PG2's in their discipline.
>
> As an example, if a layoff is considered in SP21 and there are two PG1's with the initial discipline of Mechanical on the list of affected employees, then the PG1's would displace two less senior PG1's in the Mechanical discipline, although those two PG1's could be working in SP23. Please confirm if my understanding is correct.

The next day Ms. Williams responded:

> I believe your [collective agreement] interpretation…is correct. … I'm embarrassed to tell you (though not surprised) that the PG1 & 2 disciplines haven't been tracked. (I suspect the reason goes back to pre-Candu time when there was an entire department devoted to "Knowledge and Resource

> Management." Upon transition to Candu, this department was eliminated and it appears that their duties were not properly transitioned to others). I apologize
>
> In any event, with any luck SPEA will agree to our proposal to eliminate the PG 1 & 2 discipline concept and this will become a moot point…

A few hours later, Mr. Joshi responded:

> As a back-up plan, we need to put into place the list after reviewing the first degrees of our PG1 and 2 population. This should take no more than a day, can you take that action?

The following day, Ms. Williams forwarded what she described as a "first pass" – she filled in the disciplines she felt were obvious by simple deduction from the individual's recorded bachelor degree and major. She did not spend much time preparing this list; well over half of the entries remained blank.

Some two months later (there was no evidence regarding what, if anything, transpired in the interim with respect to assignment of disciplines), on May 24, 2013, Mr. Joshi forwarded an email to six Directors, including Mr. Ballyk. It read:

> The collective agreement calls for PG1 and PG2 to be assigned to one of six disciplines, viz. Chemical, Civil, Electrical, Mechanical, Natural Science and Business Administration. HR is looking for help to complete its records on a number of PG1 and 2 whose discipline Assignment is missing.
>
> On the attached sheet, just to get the things rolling, I have entered the disciplines based on the field of study shown or the division within which they work. Please review and change as you feel appropriate and return by May 27th.

The sheet Mr. Joshi attached to his email appears to be a reworking or at least a revision to the list Ms. Williams had previously provided him. A number of differences are to be noted. First, the document filed before as Mr. Joshi's list is clearly incomplete. For example, while the two grievors do appear on both (Mr. Joshi's and Ms. Williams')

lists, the absolute number of employees is vastly different. Ms. Williams two-page list included some 88 PG1s and PG2s; Mr. Joshi's one-page list is differently ordered and is restricted to only 53 such employees. Other curiosities appear specifically in relation to employees in the SP30 skill category. For example, at least two SP30 employees included in Ms. Williams list are not to be found in the list prepared by Mr. Joshi. Rachna Chauhan, a PG2 SP30 employee in the Reid/Ballyk grouping was assigned a discipline of Chemical on Ms. Williams list but is nowhere to be found on Mr. Joshi's list (Mr. Ballyk acknowledged but could not explain her absence form the list). A second PG2 SP30 employee, Mahdi Khelfaoui, appears on Ms. Williams' list with a designation of "natural science"; he is not to be found on Mr. Joshi's list. However, a later list of PG1/PG2 assigned disciplines shows him with a "mechanical" designation. Mr. Khelfaoui was the sole PG2 previously assigned a discipline (natural science) outside of the 4 core engineering ones – he was the only one of the group of 11 described earlier who did not possess an engineering degree.

I will return to Mr. Joshi's role in the (re)assignment of disciplines to PG1s and PG2s. For the moment, I note that, as Mr. Joshi elected not to testify and there is no explanation of the just noted discrepancies. And neither do we have his direct evidence regarding how or even why he came to make his assessment regarding the assignment of disciplines.

Shortly after receiving it, Mr. Ballyk reviewed Mr. Joshi's list. It included 18 PG1s and PG2s under Mr. Ballyk's jurisdiction, including eight (the grievors among these) in the SP30 skill category. Mr. Joshi's list proposed to designate all 18 of these employees in the natural science discipline. Mr. Ballyk concurred in that assessment. His agreement was rooted in an assessment of the work being performed in the relevant skill categories and, in particular (at least in relation to the grievors skill category of SP30), in relation to thermal fluid science. Mr. Ballyk's assessment is properly described as a group assessment – there was no suggestion that he considered employees individually or that he examined their individual honours degrees or the courses taken to achieve those degrees.

Prior to reporting his concurrence to Mr. Joshi, Mr. Ballyk reviewed the issue in a meeting of the functional managers responsible for the relevant skill categories. Mr. Reid, who was responsible for the SP30 skill category (at least in the employer's main location), attended that meeting and described the treatment of the question, which occupied but a few minutes of the meeting. The managers were not provided with a copy of Mr. Joshi's list either in advance or at the meeting itself. Rather, as Mr. Reid described it, Mr. Ballyk advised that the affected employees were being assigned to the natural science discipline, some nodding of heads followed, no objections were raised and the meeting moved on to other matters.

Both Messrs. Ballyk and Reid acknowledged that they were aware of the SIS and its discipline component well before the (re)assessment. It was not entirely clear in their evidence whether they thought or knew that they were engaged in a fresh assessment of all PG1s and PG2s disciplines or whether they were just engaged in assisting in an effort to fill some missing entries. That is perhaps not surprising given the lack of clarity on the point in Mr. Joshi's initiating email.

In any event, both were asked whether they thought to ask or suggest that the employer ask either the individual employees or the union or, indeed, Pamela Tume about prior discipline assignments of the employees in question. (Ms. Tume is a member of management who, immediately prior to the transition from AECL to Candu was a member of the "knowledge and resource management group", the group Ms. Williams identified has having had prior responsibilities in relation to the designation and/or tracking of discipline assignments. And she was a member of the LOU committee at the time of SPEA's request for a listing of disciplines. Ms. Williams testified that Ms. Tume was aware of the SPEA request regarding records of discipline assignments. When asked whether inquiries were made of Ms. Tume, Ms. Williams offered, without further specificity that "there would have been discussions". Ms. Tume did not testify.)

Neither Mr. Reid nor Mr. Ballyk made any of the possible inquiries suggested to them in cross-examination. Mr. Ballyk, when asked if he made inquiries of Ms. Tume said that he assumed those avenues had been explored. When asked about making inquiries of the individual employees (regarding their prior discipline assignments) he replied that he assumed that had taken place. And, finally, when asked a similar question in relation to inquiries of the union, he replied that he had no knowledge that had not taken place.

Mr. Joshi apparently concluded his assumed task. On June 6, 2013, the employer forwarded a list of PG1s and PG2s with a discipline assignments noted for each employee. Again, how precisely the list Mr. Joshi had earlier prepared for managers was transformed into this one is not clear. A comparison of these two lists mirrors earlier discrepancies – Mr. Joshi's list included 53 employees; this one has 87. And both Chauhan and Khelfaoui, absent from Mr. Joshi's list appear on this one.

But perhaps more significant than the information provided to the union is that which was not. The text of the covering email enclosing the list reads in its entirety:

> I believe a few weeks ago, SPEA had requested a list of PG1 and PG2 disciplines; please see attached.

If the lack of employer inquiries of its affected employees, of its own management personnel, of the union, or of AECL regarding the prior discipline assignments of PG1s and PG2s lent Mr. Joshi's project something of a stealth character, this terse communication did little to abate that approach. Nowhere in the communication to the union is any information provided to even indicate that a recent (re)assignment had taken place. Nowhere is there any indication that the enclosed discipline listings are freshly produced. Nowhere is there any indication that the union and the employees ought to be alerted to possible changes to prior discipline assignments. The union did not forward the list to its members.

The next significant event occurred in November. On November 13, 2013 SPEA (seeking to compile some demographic information) requested an all-employee seniority list with date of birth information. The employer responded the same day with a seniority list that included the requested information. Ms. Grewal, the Candu labour relations specialist who forwarded the list noted that it also included information regarding secondary skills (for other employees) and disciplines for PG1s and PG2s. This was the first time the employer had ever included unsolicited discipline information on a seniority list provided to the union.

These parties have amply demonstrated a shared capacity to produce, order and re-order impressive amounts of data as well as a mastery of spreadsheet document preparation. This seniority list is illustrative. The hard copy filed with me occupies nine full legal size pages of meagre font size. It includes data organized into 17 different fields. Discipline listings are found in the 14th of those 17 fields.

SPEA, in turn, forwarded (a slightly modified) version of the seniority list to its members with the following caveat:

> Please note that SPEA does not prepare these lists so, if you have any issues or concerns, you should contact Candu HR to get them addressed.

The union (itself not having been alerted of changes or possible changes to original discipline assessments) did not specifically alert its members to vet the discipline listings. None of the union members appear to have raised any concerns at that time.

In fact, the issue did not arise until the announcement of layoffs in, among others, the SP30 skill category. It was then, in May 2014, that the grievors and the union first became aware that the grievors' disciplines, which had been assigned in May 2010 had been altered some three years later. As a result of that change, the grievors were ultimately selected for layoff and the instant grievances were filed challenging both the layoff and the change to previously assigned disciplines.

Once the grievances were filed and even in the discussions leading up to their filing, if it had not been so already, it would have become abundantly clear to all that previous discipline assignments had been made in respect of the grievors and others. The union provided to the employer the discipline list that it (i.e. the employer, more precisely, the predecessor employer, AECL) had prepared in 2011. Thus, Mr. Joshi's exercise was, effectively, at least in respect of a group that included the grievors, a reassessment and alteration of previously established discipline assignments. This state of affairs spawned some revisionist activities and analysis.

For example, filed in the proceedings was a chart prepared by the employer, which showed the original 2010 disciplines as compared to those assigned in the wake of Mr. Joshi's initiative. It demonstrates that the number of employees who actually had their discipline assignments changed was relatively small – only six (including, of course, the grievors) of the 50 PG1s and PG2s listed thereon. (I note, however, that this chart – and we were not advised who was responsible for its production – reflects some of the limitations we saw in the earlier Joshi-Williams "gap". The number of employees listed on this chart is much closer to the number in Mr. Joshi's original list, far fewer than the 88 listed in Ms. Williams' list.)

Mr. Reid took two opportunities to revisit the question of discipline assignment. In early 2014, months before, but in anticipation of, the pending layoffs, he reviewed his staff with a view to assessing the impact the layoff may have. In particular, he might have to make or participate in decisions regarding which employees to "protect" (a collective agreement option the employer has to insulate a limited number of employees from lay off). He also again reviewed the discipline assignments at that time. And once the layoffs were announced and challenged and the employer's earlier list of disciplines was provided to it by the union, Mr. Reid again reviewed the propriety of the discipline assignments. He concluded in both instances that the natural science discipline assigned to the grievors was appropriate. He underlined that if he were doing a fresh discipline assessment now, he would select natural science as the proper discipline.

Mr. Reid added more. He acknowledged that the relationship between degree and discipline is not always clear, that certain degrees can make one "broadly knowledgeable" in a number of different discipline areas. Neither of the grievors' degrees "map" directly to one discipline over others. Ms. Nar's Engineering Physics degree could lead to a discipline assignment of Mechanical or Natural Science and, possibly, Electrical. Ms. Elalami's degree in Aerospace Engineering could lead to any one of the three disciplines above. The primary factor Mr. Reid pointed to in selecting among the possible disciplines was the work the grievors do or have been doing. He opined that, both at the time of their hire and subsequently, the demands of their positions required that the grievors be broadly knowledgeable in natural science. He did not review the courses the grievors had taken in the path to their degrees, but agreed those courses might demonstrate a high degree of correlation with those typically taken by Mechanical Engineering students. Finally, while he may not have come to the same conclusion, he understood how the person(s) originally assigning the disciplines arrived at mechanical.

Mr. Ballyk's evidence was somewhat less equivocal. Referring to Mr. Joshi's initial request to review the proposed discipline assignments, he expressed the view that "mechanical" would not have been an appropriate discipline assignment for his group of 18 employees (seven of whom, including the grievors, were in the SP30 skill category), though he did qualify that in acknowledging that he had not assessed the group in relation to the mechanical discipline at the time. When asked of his response once he discovered that the initial assignments had been mechanical, he expressed the view that assignment had been "misapplied" – it ought to have been natural science at the outset.

Mr. Ballyk also performed another revisionist exercise, this one quite different from Mr. Reid's. Sometime after the layoffs had been announced and using the (predecessor) employer's list of assigned disciplines from 2011 (i.e. the list the union had provided to the employer), he performed two operations on that data. (Again, it should be noted that data included some 164 PG1 and PG2 employees.) First, he reorganized the data by assigned discipline, demonstrating that of the 80 or so employees assigned to the

mechanical discipline, a significant number (close to half) had degrees with majors in areas other than mechanical engineering. From this (and considering the assignments of others with similar non-mechanical majors), he concluded that the very same degree can lead to different discipline assignments. He also ordered the same data by academic major. This illustrated that of the three employees with degrees in aerospace engineering, one was assigned to mechanical (the grievor Elalami), one to electrical and one to natural science. And of the 18 with engineering physics degrees, there was also a variety of discipline assignments to mechanical (seven employees, including the grievor Nar), two to electrical, and nine to natural science). This, of course, bolstered his initial conclusion that there is no immutable path from degree to discipline. Both degrees in question might lead to assignments in any one of the three disciplines highlighted.

Both grievors testified. Their evidence was similar in content and form and is unnecessary to review in any elaborate detail. Both acknowledged that the seniority list forwarded to them by the union in November 2013 included a notation of their discipline (reflecting the change initiated by Mr. Joshi) as natural science. Neither of them saw or noticed any change to their discipline at that time. The discipline entry was the last of the 12 data fields included in the seniority list provided to employees (by contrast seniority dates were the very first entry). It would not have been immediately visible and could only be accessed if the reader did the scrolling necessary to arrive at later fields. (And this was the first time the grievors had been provided a seniority list that included an entry for assigned discipline.) Both testified that, as they had no reason to suspect there had been any change to their assigned discipline, there would have been no reason to check (even assuming they were aware the discipline entry had been included).

The grievors also reviewed their degrees and the courses followed to achieve them in order to demonstrate that there was a high correlation between the courses they took and those that would typically be taken in pursuit of a degree in mechanical engineering.

The positions of the parties

a. The union

The union begins with what it asserts is an inescapable conclusion: had the employer made "a scintilla of a hint of a genuine effort" it would likely have easily, through any one of a variety of means, discovered what the original discipline assignments had been. It could have inquired directly of the employees in question. It could have inquired of the union. It could have inquired of AECL. It could have inquired of its own staff whose tenure (like Ms. Tume) dated back to AECL days and the implementation of SIS. Even assuming what the union described as the improbable, i.e. that Ms. Tume could not find the list, she would, at a minimum, have recalled the discussions she and Ms. Coombs were involved in in 2011 – a discussion involving the mechanics of the then announced terminations, a discussion that could not realistically have occurred in the absence of information about employee disciplines. The absence of any such employer effort reveals its nefarious intentions.

Neither should we be to quick to presume that it was the union's request for a current list of discipline assignments that was the event which triggered Mr. Joshi's project. The union's request was made in February or March, admittedly temporally proximate to Mr. Joshi's first email to Ms. Williams on the subject. But we ought not to confuse sequence with causation. An examination of Mr. Joshi's email contains no explicit reference to the union request. Indeed, the main preoccupation in his email relates to the interpretation of the collective agreement and the role that discipline assignments play in a layoff. As the correspondence between Ms. Williams and Mr. Joshi demonstrates, this occurs in a context where the employer, in the LOU committee, was seeking to eliminate the discipline system in its entirety. What the employer achieved through Mr. Joshi's project was a compatible, if "second best" result. To the extent that PG1s and PG2s are assigned the same discipline in any given skill category, the disruptive effects of displacements on a layoff can be minimized (something that at least one of the employer witnesses acknowledged).

Thus, Mr. Joshi's goal can and should be seen as a deliberate attempt to "rejig" the seniority landscape. The employer's willful blindness and utter neglect to reasonably pursue the simple options that would have been available to glean the information it was seeking, clearly suggests a less than pure motive was at play.

Quite apart from any assertion of bad-faith, the union advanced three alternative positions:

- disciplines are to be set at time of hire (or in the case of employees then already on board, at the time of the introduction of the SIS) – nothing in the collective agreement contemplates or permits a unilateral employer change to an assigned discipline;

- even if the employer has, in certain circumstances, the authority to alter an existing discipline designation, it must act reasonably in effecting such a change; and

- in the final alternative, mechanical is the proper discipline designation for the grievors.

The union refers us again to the primary collective agreement provisions:

SENIORITY DESIGNATION – PG1 AND PG2

7. PG1s and PG2s will be assigned a primary skill. PG1s and PG2s will also be considered "broadly knowledgeable" in the Discipline related to their Honours Degree. PG1s and PG2s may only be designated one discipline. In layoff situations, notwithstanding Article 22.02 (layoffs by seniority within skill category), layoffs of PG1s and PG2s will occur by order of seniority within each Discipline.

8. The Disciplines to which PG1s and PG2s may be assigned are: Chemical, Civil, Electrical, Mechanical, Natural Science, and Business Administration.

Disciplines will be assigned to employees at time of hire. In the event that AECL provides notice of layoff pursuant to Article 22.03, no challenges to skill categories or disciplines may be made until after the layoff cycle is completed. For greater clarity: Once the employer notifies SPEA and/or individual employees of layoff, in

> accordance with Article 22.03, employees cannot claim proficiency in a different primary or secondary skill category. In addition, each employee can only raise one challenge per year, unless there is a fundamental change in duties or position.

Disciplines are to be assigned at time of hire (or with the implementation of the SIS, as the case may be). The assignment of a discipline is a fundamental building block of seniority rights for PG1s and PG2s and, as such, in the absence of clear enabling collective agreement language, such assignments cannot and should not be altered. The above provisions (and the parties agree on this point) provide employees with a limited opportunity to challenge their discipline assignments. There is no such corresponding right vested in the employer – indeed, says the union, it would make little sense to permit the employer to "challenge" its own decision.

To allow the employer to unilaterally alter established discipline assignments is to permit it to, as it has done here, improperly interfere with established seniority rights. And neither should the employer be permitted to stand behind assertions that it was unaware of or did not have access to the original assignments. Even if that is true, it should not permit the employer, after its error is disclosed, to treat the fresh assessments it made as a proxy for those required under the agreement. The grievors each had some eight years of seniority and were, effectively, moved from positions where some 40 employees were junior to them in the mechanical discipline to positions in natural science, where the employee complement was dramatically smaller. Indeed, but for this alteration in discipline, the grievors would have been spared their layoff.

Alternatively and even if the employer has the authority, in certain circumstances, to alter an existing discipline assignment, it must act reasonably in so doing. The employer here falls well short of meeting even that modest standard. The employer claims that Mr. Joshi's project was necessitated by the absence of any information regarding existing discipline assignments. Even if one accepts that assertion (and the union is skeptical of the employer's purported ignorance at the time), the employer did not only fail to make every reasonable effort, it failed to take even a single one of a

variety of simple possible steps even in determining that there was any need for Mr. Joshi's project. No effort whatsoever was made to find the original designations – and they were very "findable".

And that deliberate lack of reasonable effort continued once the company had completed the new discipline list. Even granting the employer the benefit of any possible reasonable doubt, it must have known, or, at a bare minimum, suspected that its 2013 reassessment would potentially result in changes to some discipline assignments.

To effect that change without even the courtesy of notifying potentially affected employees that it had been done is not a reasonable approach. It is true that the information about discipline assignment was included in documents the employer had forwarded to the union prior to the layoff. However, the employer failed or deliberately chose not to alert the union (or advise its employees directly) that the relevant information was the result of the reassessment the employer had undertaken and that one might therefore reasonably expect some employee dissonance in the wake of any difference between their new and old discipline assignments.

And what the employer did with respect to SP30 was to align discipline (natural science) and skill category (SP30). To the extent that virtually all PG1s and PG2s would now share the same limited discipline, the employer protected itself against potential or actual widespread disruption that would result from the exercise of seniority in the event of a layoff. Rather than alerting anyone to this project, it chose to act surreptitiously adopting a "catch me if you can" posture.

Finally, even if neither of the previous arguments finds favour, the evidence of the grievors' educational formation supports the conclusion that the proper discipline assignment is and was "mechanical". I am asked to confirm that conclusion and to declare that the grievors were improperly considered as being in the natural science discipline at the time of their layoff.

b. The Employer

The employer sees matters differently. First, it asserts, the evidence falls well short of establishing any bad-faith or other nefarious effort to "rejig" the seniority landscape. It sees the union's 2013 request for current discipline listings as the starting point of the relevant narrative. That request required an employer response. In turn, that resulted in the discovery that discipline listings were not tracked or otherwise accessible. The employer then proceeded to repair that deficiency. It assigned disciplines in a manner that conforms with the limited guidance the collective agreement provides on the subject. This process was complete almost a full year before the impugned layoffs were effected. That fact alone negatives the existence of any bad faith directed at the grievors and nothing in the evidence otherwise supports such a dire conclusion.

The designation of a discipline is a matter within the discretion of the employer. The only explicit collective agreement limitation on that discretion is that there must be some nexus between the employee's degree and the assigned discipline. Further, nothing in the collective agreement signifies that a discipline, once assigned, is immutable and can never be altered. In the present case, however the employer may have initially conceived its plan, it simply took the opportunity that had presented itself to "correct" the grievors' improper discipline assignments. Although it concedes that the same degree can lead to multiple possible discipline designations, the employer's conclusion that natural science was the best fit is not one with which I should lightly interfere.

There can be no doubt, asserts the employer, that the grievors' natural science designations were reasonable ones that squarely fit within the confines of the collective agreement. The employer relies principally on the evidence of Mr. Ballyk, who explained how his consideration of the work demands of the grievors' jobs favoured a natural science discipline. That choice, even in a context where other discipline assignments, including mechanical, might have properly been considered was proper. It contains no

hint of capriciousness, arbitrariness or bad-faith. It is a reasoned and reasonable exercise of management rights and/or administration of the collective agreement.

Indeed, even if one characterizes the employer's effort as one to alter an existing discipline (even though that was not its original intent), nothing prevents the employer from determining that a prior discipline assignment was or has become inappropriate and taking the necessary steps to rectify the error.

In the normal course the employer can correct and the affected employee can challenge that correction. The parties agree that paragraph 8 of the SIS confers a right on employees to challenge their assigned discipline (a right which can be exercised once per year). But the only standard that would apply in the event there is no agreement regarding such a challenge would be (at its highest) the reasonableness standard just adverted to.

Further, there is simply nothing in the collective agreement that obliges the employer to provide notice to the union or the employees of new or altered discipline assignments. Despite that, the employer did provide such notice (at least to the union) – it did so twice, once in June and then again in November 2013. And the manner in which the union chose to share or not share that information with its members cannot be laid at the employer's feet.

Finally, even assuming there was some notice obligation with which the employer failed to comply, the grievors have not been deprived of their right to challenge the altered discipline. The instant proceedings have conferred precisely that opportunity. Thus, even if there have been any procedural irregularities, nothing of substance has been lost. To underlie its confidence in the point, the employer conceded that it was not relying on that portion of paragraph 8 of the SIS which otherwise prohibits the filing of any challenge to disciplines during a layoff period.

Decision

a. Bad faith

The union asserts that the employer has acted in bad faith. This is not a spurious contention. However, in view of the conclusions that follow, it is unnecessary for me to deal with this issue and I decline to do so.

b. The proper assignment

I turn to the intersection of what may be the employer's main focus with what the union identified as its final alternative position. The union says that when all of the interpretive dust settles and even if all of the resulting conclusions are unfavourable to its position, the fact remains that the grievors' honours degrees clearly support a discipline assignment of mechanical. There is clearly evidence before me to support that conclusion. But the employer asserts that even if mechanical would be a plausible discipline assignment, the natural science discipline remains the "best fit" and, perhaps more importantly, in my view, the employer's conclusion is, in any event, said to be unassailable so long as it is reasonable, as it was here.

By and large, I prefer the employer's interpretive template in this area of the case. However, as will be seen, this is not dispositive of the matter and I will therefore limit my comments on the issue.

The parties' respective positions engage what might be described as the proper standard of arbitral review of the employer's decision to assign a discipline. The collective agreement provides little explicit guidance in respect of this exercise. The only specific requirement is that PG1s and PG2s "will be considered "broadly knowledgeable" in the Discipline related to their Honours Degree" and are to be designated but a single discipline.

On first reading, one might conclude that the use of the singular ("the Discipline" rather than "a discipline" related to their degree) might suggest that any given degree will generate but a single identifiable and invariable discipline assignment. The evidence in this case, however, establishes that while that may often or even regularly be the case, it is simply not always so. Mr. Ballyk's analysis of discipline assignments (i.e. his reworking of the 2011 list the employer claimed not to have at the time of Mr. Joshi's initiative) shows, almost without exception, that degrees which correspond directly to one of the six disciplines will result in a corresponding assignment (the 14 chemical engineering degrees all generated "chemical" discipline assignments; 34 electrical (including computer) engineering degrees generated 33 "electrical" discipline assignments; 44 mechanical engineering degrees netted 44 "mechanical" discipline assignments; and business administration was one for one; there were (at that time) no civil engineering degrees and no employees assigned to that discipline). However, the disciplines assigned to PG1s and PG2s with other degrees appears far less predictable. There are some 5-10 different honours degrees (including the two at issue) where employees with the same honours degree have been assigned different disciplines.

We, of course, do not know how or why this was done in the time leading up to the 2011 list and neither do we know what motivated Mr. Joshi's choices in 2013. But Mr. Ballyk offered a plausible explanation to support the grievors' discipline assignments. In cases where a particular degree does not "map" exclusively to a given discipline, i.e. where multiple disciplines may be properly considered, the employer may look to the work to be performed as a factor to assist in the choice of discipline assignments.

In and of itself, I find nothing untoward in this approach. While the work to be performed is clearly not a factor mandated or required by the collective agreement language, its consideration to "break the tie" is both sensible and reasonable. (I also note that the final sentence of paragraph 8 of the SIS appears to contemplate that a "fundamental change in duties or position" will result in a more accessible right of a PG1 or PG2 to challenge their assigned discipline – this would suggest that a consideration of work performed is not one which the collective agreement views as entirely alien in the

context of discipline assignment.) In a nutshell, where this approach yields a discipline assignment of one among a number of possible alternatives, the result cannot be claimed to be unreasonable. Consideration of the work to be performed cannot be seen as arbitrary or irrational and the factor considered bears a relationship to the object of the exercise. In short, it represents a reasonable exercise of the employer's right to assign a discipline.

Thus, if the factual matrix of the instant case were one in which an initial assignment of discipline was the subject of an employee challenge, the employer's similar approach in such circumstances would likely not be one to be characterized as unreasonable. And, to be clear, I would not likely view my task in such a circumstance as one that necessitates a finding as to the *correct* assignment. Rather, I would likely view it as an assessment of the reasonableness of the employer's designation to be determined in a context similar to that just outlined.

c. Collective agreement interpretation and reasonableness

There are, however, other issues at play in these grievances. Whether or not it reflects the employer's actual intention at the time it occurred, the case involves a reassessment and change to existing seniority designations. The union asks me to conclude that seniority designations, once properly effected as these had initially been, are immutable. I am reluctant to accept that as a firm and fixed rule.

First, while the union may have been proposing some sort of "one-way immutability" i.e. the employer (and only the employer) cannot take steps to alter an existing discipline designation, it is still difficult to reconcile that with what the agreement appears to contemplate. It will be recalled that the latter portion of para. 8 of the SIS provides:

> Disciplines will be assigned to employees at time of hire. In the event that AECL provides notice of layoff pursuant to Article 2.03, no challenges to … disciplines may be made until after the layoff

> cycle is completed. … In addition, each employee can only raise one challenge per year, unless there is a fundamental change in duties or position.

Thus, the collective agreement appears to contemplate that a "fundamental change in duties or position" might support a change in discipline assignment. And, again, even if one were to view this as a change to be effected *only* by way of employee challenge (a less than evident proposition), it is still difficult to reconcile the annual right of an employee to challenge discipline assignment even in the absence of a change in duties or positions. If a discipline assignment is immutable, as the union contends, why would there be any utility to more than a single (rather than an annual) challenge to discipline assignment (outside of a fundamental change in duties or position)?

Ultimately, however, it is not necessary for me to arrive at any final conclusion on this question. I am prepared, in view of what follows, to assume, without so finding, that the assignment of a discipline may, in certain circumstances, be altered by the employer.

But even with the benefit of this assumption, the employer does not have a completely free and unfettered right to change discipline assignments at its whim. Indeed, the employer agreed that in choosing to alter an existing discipline assignment it is bound to act in a non-arbitrary, reasonable and good faith manner. The union asserts that the employer has failed on at least two of those counts, specifically that it has failed to act in good faith or even reasonably in all the circumstances.

For the reasons that follow, I agree that the employer has failed to conduct itself reasonably.

I begin with why and how the employer chose to alter the grievors' existing discipline assignments. Of course, to the extent that the principal actor in this initiative, Mr. Joshi, failed to testify, it is difficult to arrive at the most precise of conclusions. On the other hand, the absence of his evidence does not bolster the employer's case.

In March 2013 Mr. Joshi was advised that the employer did not have any record of prior discipline assignments. As a result, he launched the initiative that resulted in the alteration of the grievors' discipline assignments. This was not a reasonable response in the circumstances. There is no evidence that Mr. Joshi was unaware that prior discipline assignments had been made – his request for the list certainly suggests otherwise. (Even Ms. Williams' evidence, which we did have, suggests or is, at a minimum, consistent with awareness of the existence of prior designations – for while she initially suggested that, at the time, she understood that prior assignments had not been made, she quickly qualified her response to claim she could not remember whether or not she believed, in 2013, that no prior assignments had been made.) In all of the circumstances, I am satisfied that the employer (whether in the person of Mr. Joshi or others) was well aware of the fact that prior discipline assignments hade been made.

Thus, even in the face of a "missing list", any one of four possible obvious responses would likely have resulted in ascertaining the missing information. No inquiries were made of the grievors. No inquiries were made of the union. No inquiries were made of Candu personnel, such as Ms. Tume, who might be reasonably expected to have had information about prior assignments (and Ms. Williams' tentative assertion, lacking in any particularity whatsoever, that "there would have been discussions" with Ms. Tume does not establish that any meaningful inquiries were made, particularly in view of the absence of Ms. Tume's evidence.) No inquiries were made of AECL. There can be no doubt that some or all of any such inquiries would have yielded positive results.

And any effort to find an arbiter of reasonableness in the circumstances need not go much further than the employer's own evidence. It will be recalled that Mr. Ballyk testified that, at the time he was presented with Mr. Joshi's list of proposed discipline assignments, he assumed (incorrectly, though he certainly cannot be faulted for the error) that inquiries would have been made of Ms. Tume and the employees in question (his evidence regarding inquiries of the union was less categorical). Mr. Ballyk's assumptions were perfectly reasonable. The employer's lack of simple inquiry was not.

I turn now from the question of "why" to "how" the employer implemented the change in discipline assignments.

This was clearly Mr. Joshi's initiative. He formulated the proposed discipline assignments for the grievors (and others). And while his proposals were vetted (albeit in peremptory fashion) by subordinate management personnel, it was Mr. Joshi's assessment that prevailed. We do not know how or why Mr. Joshi arrived at the conclusions that he did. And apart perhaps from Mr. Ballyk's consideration of the importance of thermal fluid science to the work performed in the SP30 skill category, the only substantive evidence to support a discipline assignment of natural science comes after the fact – (either in anticipation of) or after the announcement of the (pending) layoffs.

With respect to the substance of the discipline assignment, I have already suggested that the employer might well be in a stronger position were we assessing the first such discipline assignment of a given employee, made in accordance with the terms of the collective agreement. In that context, the choice between two possible, supportable and reasonable discipline assignments might well, effectively, be a simple matter of employer choice. What we are dealing with here, however, is an employer initiative to change existing discipline assignments. In that context, the employer's obligation to act reasonably must extend to the very decision to take steps to change the assignment. There must be some reasonable

basis for the need to effect such a change. The only reason that the employer acted upon at the time was its assertion that the assignments that had previously been made were "missing". I am satisfied that had the employer taken simple and obvious steps of inquiry, the missing data would have been ascertained. Thus, I am satisfied that no reasonable basis existed at the time, none was demonstrated, to effect the change. I will return briefly to the employer's after the fact efforts to justify the change.

Finally, I return to the manner in which the discipline alterations were implemented. Until the layoffs were announced and the instant grievances were filed in May 2014, the employer had yet to specifically advise the union or the affected employees that it had, approximately one year earlier, embarked on an initiative that resulted in the alteration of (among others) the grievors' discipline assignments. Why it or, in particular, Mr. Joshi opted to keep the initiative confidential can only be a matter of speculation.

On the other hand, it is incontestable that, in the period between the impugned changes and the layoff, the employer twice forwarded documents to the union that included the grievors' altered discipline assignments.

In June 2013, the employer forwarded a list of all PG1s and PG2s to the union. It included employees' discipline assignments (reflecting, among many other things, the results of Mr. Joshi's recent initiative). This was a list that the union had previously requested. Of course, at that time, the union had a copy of the 2011 company supplied list of some 164 PG1s and PG2s that included discipline assignments (this was the list that, for the employer, had gone missing). The list the employer provided in 2013 contained some 87 employees. The union's request was designed to update its existing information. And, as is evident and unsurprising, there was considerable "updating" required as between the two lists. Over a period of two years, employees (including PG1s and PG2s) come and go, although the difference in the number of PG1s and PG2s (from 164 down to 87) is

quite dramatic. Quite apart from that dramatic reduction in absolute numbers, it appears that some 37 PG1s and PG2s on the newer list did not appear at all (presumably indicating they were more recent hires) on the previous list. In addition only 50 of the 164 PG1s and PG2s included on the 2011 list continued to appear on the new list, indicating that over the period some 114 PG1s and PG2s left their positions. Of the 50 who remained, only six (including the grievors) had their previously assigned disciplines altered.

In the context of the dramatic personnel differences reflected in the two lists and absent any evidence that the employer had ever previously made alterations to existing discipline assignments or had specifically advised the union that it had done so here (even in the form of simply advising of Mr. Joshi's initiative), it is not surprising that the union did not, had no reason to, vet the actual discipline assignments. Further, for the employer to suggest that, by providing this list it notified the union of the changes is somewhat disingenuous in the circumstances where the employer otherwise deliberately kept the union in the dark regarding Mr. Joshi's initiative.

In November 2013, the employer, in response to a union request for a seniority list that would include employee's date of birth, provided the union with a seniority list with some 17 separate data fields, including, (in the 14th such field) the discipline assigned in the case of PG1s and PG2s. This was the first time discipline assignments had been included in a full seniority list provided by the employer. The union reworked the list, reducing the number of fields to 12, the discipline assignment being in the final position and forwarded it to its members.

There continued, however, to be no reason to suspect that there had been any changes made to pre-existing discipline assignments. Consequently, the grievors felt no need (even had they known they were being provided with the discipline information) to scroll to the last of the data fields to examine the discipline entry.

Despite the inclusion of information regarding discipline assignment in the documents forwarded to the union and, in one case, from the union to employees, I am satisfied that the employer's manner of conducting itself in respect of furnishing this information can generously be described as sharp practice, particularly in the case of the June list of disciplines. This list was the very product and result of the Joshi initiative, yet its contents were communicated without any reference to that recent undertaking or to the obvious conclusion that, at a minimum, there may have been resulting changes to discipline assignments. The employer, for unexplained reasons, preferred silence. But even if the manner in which it communicated information on the latter two occasions is "merely" sharp practice not rising, in and of itself, to the level of a collective agreement violation, it is clearly consistent with Mr. Joshi's approach from the outset.

Having regard to all of the foregoing, including the dubious need for any reassignment of disciplines, the lack of early notice to the union or affected employees and the, at best, perfunctory manner in which the disciplines were determined, I am persuaded that the employer failed to conduct itself in a reasonable manner, thereby failing to live up to its collective agreement obligations.

d. Was the employer's conduct cured?

Finally, I deal with the employer's submissions that its conduct, even if inappropriate, was cured because the grievors, principally by virtue of the grievances that were filed and the conduct of the instant proceedings, have been afforded the opportunity to challenge their assigned disciplines and have therefore lost nothing.

While there may be some merit to this submission, it is, for two reasons, not persuasive.

First, I have already noted that the scope and standard of arbitral review with respect to an initial discipline assignment may not be the same as it is in the case of the alteration of an existing appropriate assignment.

But more important than that consideration is the fact that the instant proceedings do not effectively cure the harm created by the employer's collective agreement breach.

I return once more to the contract. The first two sentences of the last paragraph of Seniority Designation provisions of the SIS:

> Disciplines will be assigned to employees at time of hire. In the event that AECL provides notice of layoff … no challenges to … disciplines may be made until after the layoff cycle is completed.

provide for a clear balancing of interests.

The employees are to know from the outset what their assigned disciplines are. That is information upon which they can rely. And while there are limited circumstances in which an employee can challenge that assignment, the employer is provided with the absolute security of knowing there will be no discipline challenges during a layoff period. Thus, both employees and the employer are provided with corresponding guarantees of certainty. The employer has upset that balance in this case.

The parties have fashioned an elaborate system for the treatment of seniority and its operation in a layoff context. It may well be that there are some lacunae in its structure and application. In that context it is not surprising that the parties themselves agreed to establish the LOU committee, recognizing that "some updates

to the [SIS] system's functionality, structure and documentation are required". Despite that, there is another aspect of the functioning of system that is abundantly clear. Through the establishment of secondary skills and (for PG1s and PG2s) disciplines, the parties have agreed to the definition of clear paths available to all employees in exercising their seniority in a layoff. This approach eliminates the need to consider the abilities and qualifications, relative or otherwise, in the exercise of seniority in a layoff. It provides salutary certainty.

There is irony in the employer's need, for the purposes of this argument, to, as it did, waive any application of the collective agreement prohibition on discipline challenges once a layoff is announced. But even with this waiver the nature of the right lost by the grievors is clear. The parties have agreed that any challenge to discipline assignments is to occur in a period unencumbered by the strategic considerations likely to become paramount in the face of a layoff. The positions that parties may adopt (the employer, for example, in its decisions about which employees to "protect" from layoff; employees and the union regarding positions on proper discipline assignments) are not ones to be assessed in the context of a looming layoff. Rather, they are to be formulated in the much more neutral context that will allow or at least encourage the triumph of principle over strategic advantage. It is the opportunity to have their discipline assignment concerns addressed in that kind of climate that the grievors lost. It is not clear to me that the result would have been the same had the parties addressed it in the type of atmosphere they have clearly contemplated for such determinations.

Conclusion

Having regard to all of the foregoing, I am satisfied that employer violated the collective agreement when it reassigned the grievors from the discipline of mechanical to that of natural science and treated them, for the purposes of the

subsequent layoff, as being in the natural science rather than the mechanical discipline. The grievances are allowed.

I remit the matters to the parties and will remain seized with respect to any issues of remedy or implementation of the terms of my award.

DATED AT TORONTO THIS 26th DAY OF OCTOBER 2015

_____

Bram Herlich
Sole Arbitrator

APPENDIX 1 – AGREED STATEMENT OF FACTS

Introduction

1. The Society of Professional Engineers and Associates ("SPEA") Is the bargaining agent for two bargaining unit employees working for Candu Energy Inc. ("Candu"). One of the bargaining units is the Scientists and Engineers ("SE") comprising approximately 492 engineers and other professionals.

2. Candu is a wholly owned subsidiary of SNC-Lavalin. Candu purchased the commercial division of the Atomic Energy of Canada Limited ("AECL), a federal crown corporation. The asset purchase transaction closed October 1, 2011.

3. The current SE Collective Agreement between SPEA and Candu has a term from January 1, 2011 to December 31, 2016.

4. The present arbitration concerns grievances filed under the SE Collective Agreement in respect to two layoffs ("the Grievances") of A. Elalami and A. Nar. The layoff notices were issued to A. Elalami and A. Nar on May 21, 2014…

5. The layoffs which give rise to the Grievances are among the first layoffs to occur at AECL/CANDU since 2003 and among the first to occur under the Collective Agreement layoff process described in more detail below.

6. Candu denied the Grievances. SPEA referred the Grievances to Arbitration.

Collective Agreement Provisions and Facts

1. Pursuant to Article 22.02 (b) the SE Collective Agreement, with the exception of "protects", layoffs "shall be in order of seniority within the skill categories". There are currently 39 skill categories, which are set out in the Skills Inventory System Agreement. More experienced employees (that is, employees in the PG3 – PG6 salary scales) may be credited with multiple skill categories – one primary skill and several secondary skills.

2. Article 22.02 (b) continues:

> The parties recognize that employees are deemed proficient in one (the primary skill) and possibly more (secondary skill) skill categories in accordance with the Skills Inventory System. An employee displaced in their primary skill category will displace an employee in their secondary skill category provided they have the requisite secondary skill seniority as per the Skills Inventory

System. (Article 22.02 (b))

3. The Skills Inventory System Agreement was finalized by SPEA and AECL in June of 2009 and was incorporated into the present SE Collective Agreement (Article 16.09).

4. Less experienced employees (PG1s and PG2s) are assigned a primary skill category. But instead of secondary skills as for the PG3s and above, the parties agreed in the Skills Inventory System Agreement that PG1s and PG2s are also assigned to a "Discipline" at the time of hire based on their honours undergraduate degree. The Disciplines are: Chemical, Civil, Electrical, Mechanical, Natural Science, and Business Ministration. (See Inventory System Agreement, paragraphs 7 and 8).

5. The Skills Inventory System Agreement language regarding primary skills and Disciplines for PG1s and PG2s is as follows:

> PG1s and PG2s will be assigned a primary skill. PG1s and PG2s will also be considered "broadly knowledgeable" in the Discipline related to their Honours Degree. PG1s and PG2s may only be designated one Discipline. In layoff situations, notwithstanding Article 22.02 (layoffs by seniority within skill category), layoffs of PG1s and PG2s will occur by order of seniority within each Discipline. (See Skills Inventory System Agreement, paragraph 7.)

6. The Skills Inventory System Agreement language regarding the process for disputing skill category and Discipline designations is found in paragraph 8, as follows:

> The Disciplines to which PG1s and PG2s may be assigned are: Chemical, Civil, Electrical, Mechanical, Natural Science, and Business Administration.
>
> Disciplines will be assigned to employees at the time of hire. In the event that AECL provides notice of layoff pursuant to Article 22.03, no challenges to skill categories or disciplines maybe made until after the layoff cycle is completed. For greater clarity: once the employer notifies SPEA and/or individual employees of layoff, in accordance with article 22.03, employees cannot claim proficiency in a different primary or secondary skill category. In addition, each employee can only raise one challenge per year, unless there is a fundamental change in duties or position. (See Skills Inventory System Agreement, paragraph 8.)

7. When the new Skills Inventory System Agreement was introduced, all PG1s and PG2s had to be assigned a Discipline. That was completed in or around May 2010.

8. A. Elalami and A. Nar were both assigned to the Mechanical Discipline.

9. On May 4, 2010, A. Nar sent an email to AECL management indicating a potential concern with her assigned discipline.

10. Candu provided the list of PG1 and PG2 employees and their assigned Disciplines to the SPEA Executive on June 6, 2013 and on November 13, 2013. [On these lists, notwithstanding the assignment of the grievors to the mechanical discipline some three years earlier, the grievors were listed as assigned to the discipline of natural science.]

11. SPEA provided the same list to their members on November 19, 2013.

12. A. Elalami and A. Nar first challenged the Discipline assignment during the layoff (May 2014).

13. On May 21, 2014, A. Elalami and A. Nar were laid off.

14. A. Elalami and A. Nar have grieved their layoff, for the reasons set out in grievances, including that they were assigned to the incorrect Discipline. Both employees asserted that they should have been assigned to the Mechanical Discipline, and given their seniority within that Discipline, would have avoided layoff. The two most junior employees in the Mechanical Discipline at the time were Adrian Baniak (SP 16) and Bradley Denman (SP24).

15. SPEA and Candu reserve the right to rely on additional facts at the hearing.