

IN THE MATTER OF AN ARBITRATION

BETWEEN

CANADIAN PACIFIC
(The Company)

and

**INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS
SYSTEM COUNCIL NO.11**
(The Union)

CONCERNING

The assignment of Software Breakdown Testing in the Winnipeg and Repair Shop

SOLE ARBITRATOR: **CHRISTINE SCHMIDT**

THERE APPEARED ON BEHALF OF THE COMPANY:

Mike Moran	– Labour Relations Officer
Kent Law	– Senior Manager, Project Planning and Wiring
Darrell Rutledge	– Director S&C Construction, Western Region
Randy Splett	– Supervisor

AND ON BEHALF OF THE UNION:

Ken Stuebing	– Counsel
Brian Strong	– Senior Chairman
Lee Hooper	– Assistant to Chairman
Jeff Piush	– Local Representative
Danny Strong	– Local Representative

A hearing in this matter was held in Calgary on October 10, 2014. Ad-Hoc matter CS-2014-101

AWARD OF THE ARBITRATOR

UNION'S EX PARTE STATEMENT OF ISSUE

The Union filed a Step 2 grievance under Article 12.7 of Wage Agreement No. 1 alleging, inter alia, a violation of the LOU concerning the establishment of a S & C Wiring and Repair Shop in Winnipeg, Manitoba dated June 24, 2011. The grievance also alleged violations of Articles 1, 3, 4, 5, and 6 of the LOU referred to above. The grievance was filed on behalf of all IBEW employees that were (and continue to be) employed at the aforesaid shop under the LOU that covered the initial staffing of the facility effective July 4, 2011.

On August 29, 2013, the Union was served with a letter from the Company advising that the Company was going to establish a non-union position in the Wiring and Repair Shop effective October 1, 2013. The position was being created to work alongside IBEW represented employees to jointly perform software breakdown tests. The Union took immediate exception with the issuing of the letter and; arranged to meet with the Company on that matter.

On September 20, 2013, the Union and Company met to discuss the proposed new supervisory position referred to above and the ground rules surrounding such. A discussion was also held on the present hourly rates that were being paid to the employees in the shop and how the duties had changed over the past 2 years.

The Company reassured the Union that the Supervisor would be there only to supervise and would not be performing a "hands on" role. The parties had subsequent discussions concerning this matter and changes to the existing compensation of the employees affected. Each time the Company assured the Union that; the new non-bargaining unit position/employee would be restricted to a supervisory (non-working) position in the Shop.

On January 20, 2014, supervisor R. Splett arrived at the Shop to fill the role that the Union was advised of on August 29, 2013. Almost immediately, Mr. Splett assumed the role of an S & C Wiring and Repair Shop Foreman and tried performing the exact work that IBEW represented employees had performed exclusively in this facility since its inception, within the bargaining unit and under the Collective Agreement. Mr. Splett needed to be trained on the procedures and relied on the expertise already held and utilized by the employees in question to learn the various functions of Software Breakdown Testing.

Subsequent to the above, the Union filed, inter alia, an Appendix 6 complaint which alleged amongst other things breaches of the LOU referred to above. This did not stop the violations or actions of Mr. Splett from continuing. Accordingly, on agreement of the parties, the required investigation under Appendix 6 was suspended and a grievance was filed on March 5, 2014. The Union relies upon but shall not repeat the contents of said grievance.

The Company rejected the grievance on May 9, 2014. On May 14, 2014, the Union advised the Company that it wished to further progress the grievance. The Union also referred the grievance to final and binding arbitration as per Article 13.2 of the Collective Agreement. The Union finally advised the Company that the matter would be referred to the arbitrator with a proposed JSI in due course.

The Union seeks the following relief:

1. A declaration that the Company has violated the Collective Agreement, LOU and past practices as alleged above;
2. An Order that the Company cease and desist from said violations;
3. An Order that the Company comply with the Collective Agreement, LOU and past practices;
4. An Order that Union and its employees be made whole on account of the Company's violations;
5. Such further relief as the Union may request and the Arbitrator may grant in connection with this grievance.

The Company denies the Union's contentions and declines the Union's request.

For the Union:

Brian Strong

Senior General Chairman

AWARD

The Union alleges that in assigning Supervisor Randy Splett ("Supervisor Splett") to the wiring shop in Winnipeg to perform bargaining unit work, including Software Breakdown Testing, the Company violated the Letter of Understanding ("LOU") entered into between the parties on June 24, 2011, which established the S&C Wiring and Repair Shop ("wiring shop") on certain terms.

The Company maintains that it was its prerogative to establish the new position at the wiring shop, which it says is two-fold: Supervisor Splett supervises the existing staff and performs Software Breakdown Testing that has been performed in the field by non-union Construction Supervisors. The Company denies any violation of the LOU or the collective agreement in assigning Supervisor Splett to the wiring shop as it did.

At the hearing, Supervisor Splett testified on the Company's behalf, as did Mr. Kent Law, the manager overseeing the operations at the wiring shop ("Manager Law") and Mr. Rutledge, Director of the S&C Construction workforce in Western Canada ("Director Rutledge"). Leading Maintainer/Wireman Piush ("Lead Maintainer Piush") testified on behalf of the Union.

I turn first to the background leading to the establishment of the wiring shop together with the circumstances surrounding Supervisor Splett's assignment commencing January 20, 2014.

Since at least 1978, the Company had established a wiring shop in Winnipeg. At this shop, Union members exclusively performed the work undertaken in the wiring shop including Software Breakdown Testing, and all testing work. In 1999, the Company sold the wiring shop to Safetran, which in turn sold it to RCL Burco. The Union retained its successor rights through each of these sales. In 2011 the Company took over the operation of the wiring shop from RCL Burco when it ceased operations. The wiring shop opened as a Company shop on July 4, 2011.

The LOU sets out the parties' agreements with respect to, among other things, the Scope, Successor Rights, Positions, Rates of Pay, Filling Positions and Relief, Seniority, Benefit Entitlement, Vacation and Retention and Application of the collective agreement.

The relevant terms of the LOU are reproduced below:

1. Scope

- a) On July 4, 2011, the Company shall establish a shop in Winnipeg Manitoba for the primary purpose of wiring signal and crossing bungalows and repairing components.
- b) In the application of Article 21, wiring and repair work performed at this shop facility including, but not limited to Positive Train Control, AEI, WILD, switch machines, gate mechanisms, and any other work, destined for Canada or the US, shall not be considered as work normally and presently performed by employees at this S&C Wiring and Repair Shop.

As such, work may be contracted out, provided the 1 S&C Foreman position, 1 Leading Maintainer/Wireman position and 8 Wireman positions referenced in item 3 are not laid-off. The Company shall not initiate the contracting out of work when any of the aforementioned positions are laid off.

The Company further commits to not bring an external contractor into the S&C Wiring and Repair Shop to work in a co-mingled environment, unless otherwise agreed by the parties to this agreement.

- c) It is understood that employees at the S&C Wiring and Repair Shop shall not perform duties normally and presently performed by employees in other bargaining units at Canadian Pacific, which includes, but is not limited to, fork lift operations associated with loading and unloading of supplies and materials, normally performed by USW represented employees.
- d) It is understood that this shop facility may be used as a training facility for existing employees and/or those employees in the Apprenticeship Program.
- e) It is understood that employees involved in S&C construction may be deployed to this shop facility to work during non-construction work periods provided that the positions referenced in item 3 are not laid-off. It is understood that the deployment of S&C construction employees into the shop facility shall not be used solely to promote a shorter season for the employees in the Wiring and Repair Shop.

2. Successor Rights

It is mutually agreed that former RCL Burco employees have had their employment relationship properly severed from the RCL Burco business in keeping with Article 1 of the Wage Agreement between the IBEW and Safetran Canada Inc. (now RCL Burco).

As such, it is agreed that successor rights do not apply to the business or employees concerning work formerly performed by RCL Burco and the new Canadian Pacific S&C Wiring and Repair Shop.

3. Positions

Initial positions established in the Wiring and Repair Shop shall consist of:

Permanent S&C Foreman - 1

Permanent S&C Leading Maintainer/Wireman – 1

Permanent S&C Wireman - 8

It is agreed that:

a) All positions in the Wiring and Repair Shop are considered Safety Sensitive positions.

b) Employees entering Safety Sensitive Positions are subject to a pre-employment medical, which will include a substance test, and a security check.

The Company will make efforts to expedite the pre-employment and security check process, with a view to minimize any adverse impact associated with benefit entitlement continuance, advising the Union when these efforts are commenced.

c) Given the initial importance of staffing the new Wiring and Repair Shop, any new hire employee, including former RCL Burco employees, that commence work prior to receiving the results of the pre-employment medical, (see item b above), will be considered as conditionally employed.

An employee that fails to secure a successful result on the pre-employment medical will not be retained, but will be paid for time worked.

If an employee fails to secure a successful result on the security check, with a "not clear" result, the parties will meet to discuss the associated risk. The Company shall have the final determination.

This rule shall not have any further application to the probationary employment relationship.

d) The positions listed in item 3 do not form an employment guarantee. The number of positions may vary based upon operational requirements.

4. Rates of Pay

a) Hourly Rates of pay shall be those in Article 1 of the collective agreement:

HOURLY RATES OF PAY EFFECTIVE

	Jan. 1, 2010 \$	Jan. 1, 2011 \$	Jan. 1, 2012 \$
S&C Foreman	33.728	34.740	34.740
S&C Leading Maintainer/ Wireman	27.936	28.774	28.774
S&C Wireman	27.582	28.409	28.409
S&C Helper	22.411	23.083	23.083

b) Starting Rates

Upon implementation, on July 4, 2011, starting rates as outlined in Article 1.1 shall not be applied for all new hires employed at the S&C Wiring and Repair Shop. These employees shall commence work at the job rate cited in item a) above. It is agreed that this shall not require the Company to adjust the hourly rates of any other employees on District 3 to job rate.

c) "Hot Testing" of equipment will first be performed by the qualified Leading S&C Maintainer/Wireman and then by a qualified S&C Wireman.

5. Filling Positions & Relief

Initial Positions

a) Initial positions will be filled first by way of an external hiring process. Preference to the one initial S&C Foreman, one S&C Leading Maintainer/Wireman and eight S&C Wireman positions will be offered to former IBEW unionized RCL Burco employees, providing the requirements of item 3 a), b) and c) are met.

b) Any remaining vacancies not filled by item 5 a) will be bulletined on District 3, and filled in accordance with the collective agreement provisions, providing there is no negative impact on the current construction forces. Should there be a negative impact, the vacancies will not be bulletined and the Company will have the ability to hire externally.

c) Relief for the S&C Foreman will first be provided by the S&C Leading Maintainer/Wireman, then, by a qualified S&C Wireman canvassed in seniority order. Failing that, by the junior qualified employee not working as such. Employees providing such relief shall be paid the Signal Foreman rate of pay for all such time worked, but not less than a regular shift.

d) Subsequent vacancies created by the provisions of item 5 c) above need not be backfilled.

Subsequent Positions & Vacancies

e) Positions established subsequent to July 4, 2011 will be in accordance with the provisions of the collective agreement.

f) In the application of item 1(e), employees may be deployed to temporary vacancies in the Wiring and Repair Shop, during seasonal lay-off period, on a senior most basis.

Employees deployed under this item 5 f) will be entitled to expenses as provided for in Article 16.5 of the July 22, 2010 Memorandum of Settlement.

6. Seniority

a) Establishment of Seniority - New Hire

Upon implementation, a former RCL Burco new hire employee, will be provided with a July 4, 2011 seniority date and will be established on a new seniority list created for the S&C Wiring and Repair Shop, to cover the initial hiring of the 10 employees, as follows:

S&C Foreman

S&C Leading Maintainer/Wireman

S&C Wireman

The parties will agree to the initial placement of an employee on the list, by July 31, 2011.

Once all of these employees leave the service of the Company, the list shall be abolished.

b) Seniority Protection

New hire employees, provided with a July 4, 2011 seniority date, may not be displaced by another District 3 employee.

c) Bidding Restriction

New hire employees, provided with a July 4, 2011 seniority date, may not bid, or displace, to other positions on District 3 outside the Wiring and Repair Shop.

...

10. Application of Collective Agreement

Unless otherwise stated in this agreement, all other provisions of the collective agreement and Company policies shall apply.

The Contracting Out Article of the collective agreement provides:

21.1 Work presently and normally performed by employees who are subject to the provisions of this collective agreement will not be contracted out except:

- (i) when technical or managerial skills are not available from within the Railway; or
- (ii) where sufficient employees, qualified to perform the work, are not available from the active or laid-off employees; or
- (iii) when essential equipment or facilities are not available and cannot be made available at the time and place required (a) from Railway-owned property, or (b) which may be bona fide leased from other sources at a reasonable cost without the operator; or
- (iv) where the nature or volume of work is such that it does not justify the capital or operating expenditure involved; or
- (v) the required time of completion of the work cannot be met with the skills, personnel or equipment available on the property; or
- (vi) where the nature or volume of the work is such that undesirable fluctuations in employment would automatically result.

The transition of the wiring shop from RCL Burco to the Company went smoothly. All 10 employees who had worked for RCL Burco (and their predecessors in many cases) were integrated into the initial positions in the bargaining unit – a foreman, a lead maintainer/wireman and eight wiremen - pursuant to the LOU. As stipulated by the LOU, the

employees were provided with a July 4, 2011 seniority date on the new seniority list created solely and exclusively for the wiring shop employees. The wiring shop employees reported to an on site manager, Mr. Gary Weinheimer.

On August 29, 2013, the Company sent the Union the following correspondence requesting that it stipulate its consent to the terms contained in the correspondence by signing and returning a copy to the Company:

This letter is further to our discussions concerning the Software Breakdown Testing on Signal Housings that have been wired by IBEW represented employees at the Winnipeg Wiring Shop.

As you know, Software Breakdown Testing on Signal Housings has traditionally been performed by Non-Union Construction Supervisors in the field. The exception to this is Signal Housings that have been wired and purchased from US vendors under the "Buy America" program. In such cases, the supplier must conduct the Software Breakdown Testing for warranty purposes.

Effective October 1, 2013, the Company intends to transition a portion of the Software Breakdown Testing on Signal Housings that have been wired by the Winnipeg Wiring Shop to be jointly performed by Non-Union Wiring Shop employees with assistance from IBEW represented S&C Wireman.

This agreement is being made on a without prejudice or precedent basis, with both parties agreeing that the Non-Union employees can work alongside the S&C Wireman. Moreover, the parties agree that this is not work exclusive to the bargaining unit and the involvement of the S&C Wireman will not constitute work normally and presently performed as contemplated in Article 21.1 of the Collective Agreement.

The Union did not sign and return to the Company its August 29, 2013 correspondence. Rather, on September 20, 2013, the parties met to discuss a new non-Union supervisory position that the Company proposed to assign to the wiring shop. According to the Union, Manager Law assured the Union that the new supervisor would not perform bargaining unit work.

Supervisor Splett began working at the wiring shop on January 20, 2014. As referenced above, the Company assigned two roles to him: to supervise the bargaining unit employees and to perform and oversee the Software Breakdown Testing that the Company contends Supervisor Splett and many other managers outside the wiring shop had performed in the field on a regular basis for years.

The Union filed a grievance on March 5, 2014, and the Company replied on May 9, 2014, stating in part:

In response, the Company issued a letter to the union on August 29, 2013 not to advise it was creating a non-union position, but to his advise of its intention to bring the Software Breakdown Testing on Signal Housings that had traditionally been performed in the field by non-union Construction Supervisors into the Winnipeg Wiring Shop.

Considering that the work itself had been performed by Management in the past, the Company offered the Union a co-production type of arrangement whereby both local Management and S&C employees would jointly perform the Software Breakdown Testing in a centrally located environment, the Winnipeg Wiring Shop, rather than the manner in which the work had previously been done, in the Field.

Mr. Splett continues to perform work in the Wiring Shop that has been traditionally performed by non-union personnel. Nothing has changed in this regard and it is the Company's position that the Software Breakdown Testing has never been work exclusive to the bargaining unit.

Decision

There is no dispute that Software Breakdown Testing on signal housings work, indeed all testing work, carried out in the wiring shop, is "presently and normally" performed - to use the Contracting Out language of Article 21.1 of the collective agreement - by bargaining unit members working in the wiring shop. This work has been exclusively performed by bargaining unit members in the wiring shop since well before the Company took over the operation from RCL Burco. That is the factual backdrop to the negotiation of the LOU. Prior

to January 20, 2014 no manager or non-union wiring shop employee had attempted to perform or performed testing work in the wiring shop.

The evidence of Supervisor Splett and Lead Maintainer Piush confirms that upon Supervisor Splett's arrival at the wiring shop in January 2014, he began performing work that had been performed by Foreman Ficek and well as performing (or attempting to perform given my comments below) the Software Breakdown Testing work performed by Lead Maintainer Piush. Further, it was not uncommon for Mr. Rob Rusnak, a Maintainer/Wireman ("Maintainer Rusnak"), who had regularly performed Software Breakdown Testing alongside Lead Maintainer Piush, to be relegated by Supervisor Splett to performing wiring work so that Supervisor Splett could undertake Software Breakdown testing duties.

The evidence disclosed that Supervisor Splett did not have sufficient familiarity with the Software Breakdown Testing carried out by the wiring shop bargaining unit employees to supervise their work. It was evident that Supervisor Splett had not performed Software Breakdown Testing on a regular basis in the field as the Company had asserted.

Moreover, it was abundantly clear that there was nothing that Supervisor Splett could possibly have taught Lead Maintainer Piush that he did not already know or that he was not already doing when it came to Software Breakdown Testing. Given Supervisor Splett's significant deficit as it related to Software Breakdown Testing, I accept Lead Maintainer Piush's evidence that the bargaining unit members were essentially training Supervisor Splett

on every aspect of Software Breakdown Testing performed by bargaining unit members in the wiring shop.

It is noteworthy that in the Union's cross-examination of Manager Law, it was put to him that he had approached Lead Maintainer Piush in July 2014, six months after Superintendent Splett's arrival at the wiring shop, and told him that, if the Union could not come to a co-production arrangement in the wiring shop with both local management and S&C employees jointly performing Software Breakdown Testing, the Company would be bringing in all supervisors to do the work. Manager Law replied that he had said that that would be an option that the Company would have to look at if no agreement could be reached.

The Company contends that the Software Breakdown Testing undertaken by Management in the field was more comprehensive than the "Hot Testing" (referred to specifically in the LOU") or Software Breakdown Testing carried out by employees in the wiring shop since 2011.

A thorough review of the uncontested evidence of Lead Maintainer Piush reveals that between 2011, when the Company took over the business from RCL Burco, and 2014, Lead Maintainer Piush continued to do the Software Breakdown Testing in the wiring shop and that this work had not changed in nature or to any significant extent. Lead Maintainer Piush required no additional training to continue to do the testing work in all respects and without consultation with management despite the Software Breakdown Testing Plan changing from

the Xorail Plan to the Company Plan. Lead Maintainer Piush continued to communicate, just as he always had, directly with the software designers from the time of receipt of software through the troubleshooting process through to the completion of pre-commissioning testing performed prior to installation in the field. Supervisor Splett had sought, however, to displace Lead Maintainer Piush's and S&C Foreman Ficek's direct communication with the software designers once he had arrived on the scene.

For the reasons set out below, and in light of the foregoing, it is unnecessary for me to explore the variability in practices across the country between management's role and those of bargaining unit members when Software Breakdown Testing is performed in projects large and small in the field "at times frequently and at times not" in Director Rutledge's experience, and on a "very infrequent basis" in the field in Manager Law's experience.

The Company argues that the Union has not met its burden to demonstrate that there has been a contracting out of the Software Breakdown Testing in the wiring shop, in violation of Article 21.1 of the collective agreement. It asserts that there is an overlap between management and bargaining unit employees in the performance of Software Breakdown Testing in the field. The Software Breakdown Testing at issue cannot, therefore, in the Company's view, be characterized as work presently and normally performed by bargaining unit members for the purpose of the LOU.

Contrary to the Company's submission, in my view this case is not about contracting out. The Company did not make an arrangement with a third party contractor to perform

Software Breakdown Testing. Rather, the Company simply arranged for its management to perform the Software Breakdown Testing work, which to that point had been exclusively carried out in the wiring shop by Lead Maintainer Piush and Maintainer Rusnak. Contracting out is not what happened here and therefore clause 1 b) of the LOU and the contracting out cases the Company relies on have no application to the circumstances before me.

It would appear that the Company viewed Supervisor Splett as akin to a contractor brought in to work in a co-mingled environment. That would explain why, in its initial correspondence to the Union dated August 29, 2013, it sought the Union's agreement to have Software Breakdown Testing undertaken jointly by non-union wiring shop employees working alongside the S&C wireman employees (see paragraph 3 of clause 1. b) of the LOU).

In the circumstances of this case, the LOU sets out the unique contractual terms negotiated by the parties and relating to the wiring shop in Winnipeg. To be clear, the wiring and repair work performed in the shop, and any other work (including Software Breakdown Testing) is not considered as work normally and presently performed by the employees at the wiring shop only in the application of the Contracting Out Article – 21.1. The Company can contract out the work so long as it complies with other terms of clause 1b) of the LOU. It cannot "contract in" to the wiring shop without the agreement of the Union.

In the wiring shop, however, Software Breakdown Testing is work presently and normally performed (indeed exclusively performed) by bargaining unit members who are on

an exclusive seniority list, and clause 5 e) of the LOU requires that any additional positions to the 10 initial ones established pursuant to the LOU be posted and bid in accordance with the provisions of the collective agreement. That clearly did not occur here. Rather, what the Company did was assign a manager to perform work that, up to that point, had been performed only by bargaining unit employees.

The Company contends that "Hot Testing" referred to in clause 4 c) of the LOU includes Software Breakdown Testing but of a less comprehensive kind than that now performed by management in the field. The uncontested evidence before me did not support that contention. Furthermore the evidence revealed that Lead Maintainer Piush has been performing that work in the wiring shop since the Company took over from RCL Burco – consistent with clause 4c) of the LOU. Hot testing, I am persuaded, on the evidence before me, includes Software Breakdown Testing, and as such, it belongs to the Leading Maintainer/Wireman and the Wiremen in the wiring shop. It is bargaining unit work when it is performed at the wiring shop.

The Union directed me to Arbitrator Freedman's decision in *North West Co, Re 57 L.A.C. (4th) 158 ("North West")*, where the Arbitrator cited from *Nova Scotia (Department of Transportation and Communications) and C.U.P.E., Local 1867, Re 19 L.A.C. (4th) 23 ("Nova Scotia")*, and adopted the analysis from that case. Arbitrator Freedman adopted the Nova Scotia analysis to circumstances where a manager began regularly performing work that was normally done by bargaining unit members. The agreement before Arbitrator Freedman contained no expressed provision restricting management from doing so. The Arbitrator's

conclusion is that that there are certain restrictions on management's rights to have non-union members do certain work. I adopt that analysis because it articulates what is at stake in the instant case:

82 There is another way of looking at it. Either the Employer can make what work assignments it chooses or it cannot.

83 Assume it [management] can assign as it pleases. If it were for the Employer to take work usually done by those in the bargaining unit out of their hands, as and when the Employer chose to do so, the recognition of the Union as the bargaining agent, and the definition of the "bargaining unit", would be meaningless. Unfettered in this regard, it would follow that the Employer could impair the integrity of the bargaining unit, or could destroy it altogether if it chose to do so. This follows because on such a view the Employer has not given up or fettered any of its rights. Those rights include the right to assign work as it pleases. This assumption leads inevitably to the conclusion that the Employer extends recognition and reserves work to the bargaining unit as matters of its grace and favour only. The assumption carries with it the corollary that these concessions could be withdrawn at any time, on the same basis. I do not think that was the intention of the parties at all. Such a view would make of the whole collective bargaining process and its result -- the Agreement -- a meaningless exercise.

84 This Agreement is the product of serious negotiation. It was meant to, and in my opinion, does, establish legal relations and a contractual regime having real consequences. It would be the epitome of pointlessness to hold otherwise. I would have to conclude, in spite of the fact that the parties established the Union as the sole collective bargaining agent, went the further step of classifying jobs and/or employees with respect to function and pay, and concluded a comprehensive agreement in respect of those employees, that the Employer could still take the work which is being done by those employees, and reassign it as it chooses to non-unit employees. The bargaining unit would have no integrity at all.

59 That analysis is compelling, and one which I adopt. For the concept of the bargaining unit to be meaningful, and for the bargaining unit to have integrity, both of which are necessary conditions to a meaningful collective agreement, it must be acknowledged that (absent express language so stipulating) the Company has not reserved to itself the right to assign in a material way work to non-unit members that is normally and regularly done by unit members. Were that not so, then the sanctity of the bargaining unit, and indeed the value of the collective agreement, would be fragile and greatly limited at best. That result would be inconsistent with the labour relations regime in this province and country, and could not be sustained without very clear language in the Agreement.

60 Many authorities have spoken of the importance of maintaining the integrity of the collective agreement, and the integrity of the bargaining unit. Cases such as this, and contracting out cases, are typically those where these issues arise. I am satisfied that in this case there is such a concept as "bargaining unit work" even though not expressly so defined.

61 As to precisely what is the "bargaining unit work" at the North West Company store at Pine Falls, I am satisfied that in the aggregate it comprises the various tasks described by Ms. Cowan and Ms. Kemball (and undoubtedly there are some other tasks) which are normally and regularly performed by bargaining unit members. The evidence is clear that from time to time in the past when management personnel have encroached upon this work they were asked to stop and did so. The fact that on occasion they did this work does not remove it from the category of bargaining unit work. The Union's evidence is clear and consistent, to the effect that when management was approached it ceased encroaching on the bargaining unit's domain.

The evidence before me is that Supervisor Splett undertook the work of Foreman Ficek and that he attempted with very limited success to undertake the Software Breakdown Testing work performed by Lead Maintainer Piush and Maintainer Rusnak. He did so on a daily basis from the time he was assigned to the wiring shop until management removed him from all work associated with Software Breakdown Testing pending the outcome of this arbitration. In so assigning Supervisor Splett, the Company assigned him to duties that were up to that point exclusively performed by bargaining unit members at the wiring shop. The work performed by Supervisor Splett essentially brought him within the bargaining unit.

On the evidence before me I have no difficulty finding that the Company's assignment of Supervisor Splett to perform Software Breakdown Testing in the wiring shop was not contemplated by either the collective agreement or the LOU. There are three ways to have the wiring shop work performed: post and hire bargaining unit employees; contract the work out under certain conditions; or contract in the work in with the agreement of the Union. There is no fourth alternative in the collective agreement or in the LOU to co-share the work

between management and bargaining unit employees in the wiring shop. Any co-production type of arrangement between management and the unionized wire shop employees to jointly perform Software Breakdown Testing in this case would have to be negotiated with the Union.

For these reasons, in assigning the performance of Software Breakdown Testing to Supervisor Splett, the Company violated the integrity of the bargaining unit and the collective agreement and LOU and I so declare. Since the Company has already removed Supervisor Splett from any role with respect to Software Breakdown Testing, I do not consider it necessary to issue a cease and desist order as requested by the Union. The Company can be expected to act in good faith and comply with this Award.

November 20, 2014



CHRISTINE SCHMIDT

ARBITRATOR