

IN THE MATTER OF AN ARBITRATION

BETWEEN

**BOMBARDIER TRANSPORTATION CANADA INC
THUNDER BAY PLANT
(hereinafter the “Employer”)**

AND

**UNIFOR LOCAL 1075
(hereinafter the “Union”)**

CONTRACTING OUT GRIEVANCE

ARBITRATOR: Tom Hodges

FOR THE EMPLOYER: George Gasbarrino, Director, Human Resources

FOR THE UNION: Andy Savelle, National Representative
Dominic Pasqualino, Local President
Ron Frost, Bargaining Chairperson

HEARING: April 28, 2015

AWARD: May 8, 2015

AWARD

JURISDICTION

The parties agree that I have jurisdiction in accordance with Article 12 of the collective agreement along with the expedited processes used to adjudicate this dispute.

BACKGROUND

On January 5, 2015, four employees of the Plant submitted a grievance, alleging that the employer contracted out work normally performed by the bargaining unit, while the grievors were on layoff, in direct contravention of Article 50 of the collective agreement between the parties.

UNION POSITION

The union contended that the employer improperly contracted out bargaining unit work while qualified employees were on layoff, without the required consultation, and without any indication of emergency conditions. The union requested that the arbitrator allow the grievance and make whole the four employees adversely affected by the employer action.

EMPLOYER POSITION

The employer maintained that the work in question was contracted out in accordance with established past practice at the Plant, and that by extension, had not been normally performed by members of the bargaining unit. The employer as a result declared that the contracting out in question did not constitute a violation of the collective agreement, and requested that the arbitrator dismiss the grievance.

DECISION

Article **50.0 Subcontracting** of the collective agreement reads as follows:

- 50.1 All work normally performed by Bargaining Unit employees, or similar work, shall not be performed on the Plant premises by employees outside of the Bargaining Unit, except the following:
- a) All concrete, cement, brick, tile and foundation work.
 - b) Maintenance/repair of all roof top gas fired HVAC units greater than 400,000 B.T.U. and interlocked vents. Refer to Memorandum dated October 17, 2003.
 - c) Janitorial services as it relates to the Office Admin building proper (janitors excluding cafeteria and cafeteria hallway)

- 50.2 The Company will keep the Union advised at all times when subcontracting out. The Company will keep the Union informed when vendors are coming into the Plant on warranty work.
- 50.3 The Company recognizes the Unions concern regarding contracting out bargaining unit work. The Company agrees to meet with the Union at least ten (10) days prior to letting any work **unless it is an emergency. The focus of the meeting will be to discuss the reasons for Management contemplating contracting out the work, and the utilization of the bargaining unit members including the hiring of apprentices** (emphasis added).
- 50.4 Skilled Trades work which has been past practice to have been performed by employees within the Bargaining Unit shall not be contracted out without prior consultation with the Skilled Trades Committeeperson, Bargaining Chairperson and Chairperson of the Joint Apprenticeship and Training Committee and or a Skilled Steward. The Skilled Trades Committee person shall have the option of including a representative of the specified trade affected.
- 50.5 When Skilled Trades employees are on layoff, the laid off trades will be given first consideration to perform the work, provided they are available and able to perform the work as per the Company's requirements, except in the following circumstances:
- a) short completion time requirements and immediate availability of the required trades people on staff for the work to be performed, or
 - b) the unavailability of space or required equipment, or
 - c) short duration jobs for which it is not practical to recall the trades person, and the trades at work have refused the opportunity to complete such assignment.

In the case of an emergency, Management will notify the Union Chairperson immediately.

There was no evidence of substance presented by the employer at the arbitration hearing of any established past practice of contracting out the work in question. As well, there was no semblance of consultation between the parties prior to the decision to contract out the work, nor was the opportunity afforded the union to advocate retaining the work within the bargaining unit, as contemplated by Article 50.3.

The grievance is therefore allowed, and the employer is directed to compensate the grievors for all lost wages and benefits. As one of the individuals is no longer working with Bombardier, he will receive the average of the amounts calculated for the other three employees. The employer will also meet with the

union within 30 days of the date of this award in order to jointly review the provisions of Article 50, and in particular, renew the commitment to the mandated consultation process, going forward.

I remain seized should there be any dispute with respect to any aspect of the interpretation, enforcement or implementation of this award.

Dated this 8th, day of May, 2015

A handwritten signature in black ink, appearing to read "Tom Hodges", written in a cursive style.

Tom Hodges
Arbitrator