IN THE MATTER OF AN ARBITRATION
Under the *Canada Labour Code,* R.S.C. 1985, c. L-2

B E T W E E N:

EXPERTECH NETWORK INSTALLATION INC.

(the "Company"),

- and –

UNIFOR LOCAL 28
(CRAFT AND SERVICES EMPLOYEES)

(the "Union"),

AND IN THE MATTER OF A UNION GRIEVANCE AND INDIVIDUAL GRIEAVANCE OF DAVID WRAY REGARDING TEMPORARY TRANSFERS.

SOLE ARBITRATOR: Gordon F. Luborsky

APPEARANCES

For the Union: Aleisha Stevens, Counsel
Sukhmani Virdi, Counsel
Robert Tulloch, Vice President, Local 26
Emilio Defranchesco, Chief Steward, Local 26
J.P. Komonen, ETE Technician
David Wray, Grievor

For the Company: David Chondon, Counsel
Erin Chedd, Sr. Manager Labour Relations and Human Resources
Hugo Trépanier, Quebec Regional Manager, Construction and Installation

HEARD: October 21, 2020, November 24 & 25, 2020 and April 7, 2021
By Videoconference

DECISION: March 22, 2022

A W A R D

The Nature of the Dispute

[1] The Union represents a bargaining unit of skilled technicians who install and repair the wiring infrastructure necessary for the delivery of telecommunication services.

[2] Each employee works out of a specified "Headquarters" and/or "Reporting Centre" which, among other things, determines the specific Union Local entitled to receive dues from the employee and impacts the employee's exercise of seniority rights (including the ability to claim the temporary transfer through a "canvassing" process that may entitle the employee to certain travel allowances). The employee may be offered opportunities or be assigned to a temporary transfer operating out of a different headquarters and/or reporting centre, subject to terms of the collective agreement, which the Union alleges the Company has and continues to violate repeatedly.

[3] Thus the Union's policy grievance dated January 31, 2018 (X-2018-02-12A) states: "This is a policy grievance in which the Company declined to follow the collective agreement on temporary transfers where they did not recanvas for volunteers and did not follow proper procedures on issuing CO3s". It claims the Company's actions are contrary (but not limited to) "articles 2, 8, 10 and 22" of the collective agreement and requests as remedy that, "the Company follow the collective agreement and recanvas at the end of a CO3 expiry instead of just extending [the temporary vacancy] for up to two years".

[4] As described below, a "CO3" refers to a specified form that documents the transfer of an employee from one location (or "reporting centre") to another, which is supposed to be shared with the appropriate Union officials at the time of each transfer or immediately afterwards.

[5] The Company's response to the Union's policy grievance dated May 8, 2018, denying the claim, is reproduced in relevant part below:

> The Company Grievance Committee has completed a review of the above mentioned local policy grievance and finds no violation of the collective agreement.
>
> The Company maintains its position that the temporary transfers in question were not in violation of the transfer provisions of the collective agreement.
>
> With respect to the timely and accurate processing of CO3s, the Company acknowledges that unintentional errors have occurred and commits that it will continue to make every effort to ensure the timely completion of the applicable CO3s and that all required parties are included in the notification.

[6] The individual grievance filed on behalf of Mr. Dave Wray which is also dated January 31, 2018 (X-2018-02-12B) alleges that, "The Company did not canvass for volunteers and continues to extend an employee's CO3 moving that employee from one work location to another without canvassing [resulting in] lost wages and per diem because [the Grievor] was not asked". It consequently claims the Company violated (among others) "articles 2, 8, 10 and 22" of the collective agreement, requesting as remedy: "For the Company to follow the collective agreement and recanvas at the end of a CO3 expiry before moving an employee from one work location to another, up to and including lost wages and per diem that [the Grievor] would have been entitled to had he been asked."

[7] By letter dated May 8, 2018 the Company denied this individual grievance as well (which had been submitted with others), stating in relevant part:

> The Company Grievance Committee has completed a review of the above mentioned grievances and finds no violation of the collective agreement.
>
> The Company maintains its position that the selection process for the temporary transfers in question was not in violation of the transfer provisions of the collective agreement. The Company further maintains that the Grievors did not incur living and/or transportation expenses, as provided for in the collective agreement, which required reimbursement.
>
> The grievances are therefore denied.

Decision

[8] Having considered the evidence and submissions of the parties, I find multiple violations of the collective agreement by the Company as part of its regular practice in handling temporary

transfers. To that extent, while being subject to the qualification that an employee's move between locations of less than two weeks is permitted under the collective agreement without the need to recanvas for volunteers, both grievances are allowed and the Company is ordered to cease forthwith the violations identified in the Union's policy and individual grievances.

[9] I also conclude that the Grievor's claim for monetary recovery arising out of the Company's failure to canvas his willingness to temporarily transfer to another "reporting centre" that the evidence establishes he would have accepted must succeed up to the final transfer under consideration of June 4, 2018. I consequently remit the appropriate calculation of the Grievor's monetary damages to the parties to resolve, failing which I remain seized to determine.

Contractual Provisions

[10] The provisions of the collective agreement effective March 23, 2016 referred to by the parties or arguably relevant to the foregoing grievances are reproduced below.

ARTICLE 2[1]
DISCRIMINATION

2.01 The Company will not discriminate against an employee because of membership in the Union or activity authorized herein on behalf of the Union.

…

ARTICLE 8
MANAGEMENT RIGHTS

8.01 The Company has the exclusive right and power to manage its operations in all respects and in accordance with its commitments and responsibilities to the public, to conduct its business efficiently and to direct the working forces and without limiting the generality of the foregoing, it has the exclusive right and power to hire, promote, transfer, demote or lay-off employees, and to suspend, dismiss or otherwise discipline employees.

8.02 The company agrees that any exercise of these rights and powers shall not contravene the provisions of this Agreement.

[1] While this article was referred to in the grievances the parties did not make submissions in argument that it had in fact been violated on the facts of this case.

ARTICLE 10
SENIORITY

…

10.02 All employees covered by this agreement whose immediate managers report directly to the same manager shall comprise a seniority unit.

10.03 The exercise of seniority shall be within a seniority unit except as otherwise specifically provided in this Agreement.

10.04 The Company will prepare and post on appropriate Company bulletin boards, on February 1 and August 1, lists showing the seniority of employees within each seniority unit, and their headquarters. One copy of such list will be sent to the local Union office.

10.05 The Company agrees to advise the Stewards concerned where an employee is hired, retired on pension, permanently transferred, temporarily transferred, or assigned to a job location, for five days or more, re-classified, re-assigned, or promoted to a management position. Such advice as well as the employment status of the employee, his occupation and reporting centre will be given to the Stewards in writing at the time the employee is informed, or immediately thereafter. The Company further agrees to advise, in the same manner, the Stewards concerned of an employee's death, resignation or leave of absence for a period exceeding 30 days.

10.06 The Company agrees to supply bi-monthly, to designated Local Officers of the Union, the surname and first name ono Company records, employment status, occupation, and reporting centre, of all employees, as well as the names of the managers and the organization code of the immediate manager of each employee, within a district or equivalent operating unit of the Company.

…

ARTICLE 22
TRANSFERS AND REASSIGNMENTS
Definitions

"Headquarters" means a locality and its continuous territory in and from which an employee normally works as provided in Attachment B of this Agreement.

…

"Transfer" means the assignment of an employee on the basis that he will be required by the Company to begin or end his scheduled tour of duty in a headquarters other than his own, or in the case of an employee in Toronto or Montreal, to another headquarters or to a reporting centre other than his assigned reporting centre and more than 20 airline km from

his assigned reporting centre. Transfers cannot be used to move employees between classes.

…

"Reporting Centre" means a specified location provided for the use of the Company, in an employee's headquarters, and may be a work centre, central office, locker location, storeroom, customer's premises, temporary training centre, warehouse or other Company premises or similarly fixed location to which an employee is assigned.

…

22.01 Each employee shall be assigned a reporting centre by the Company within a headquarters as listed in Attachment B. An employee is to be notified in writing by the Company of a change in reporting centre.

Transfers

22.02 (a) The transfer of an employee for a continuous period of more than 90 days shall be considered a permanent transfer.

(b) The transfer of an employee for a continuous period of 90 days or less shall be considered a temporary transfer.

…

Temporary Transfer

22.09 In the selection of an employee for temporary transfer, where the employee is required by the Company to remain away from his home for a period which is expected by the Company to be in excess of two weeks, the Company will give first consideration to the most senior employee who will volunteer from the functional group in the seniority unit at the reporting centre from which the transfer is to be made, and who has the necessary qualifications.

22.10 In the event that there is no volunteer, as provided in section 22.09, the employee of least seniority from the functional group in the seniority unit, at the reporting centre from which the transfer is to be made, and who has the necessary qualifications, shall be selected.

22.11 It is the Company's intention that on completion of a temporary transfer the employee shall be returned to his former position and reporting centre. It is understood that such re-transfer will not be possible where an emergency situations exists, or where due to unplanned or unforeseen events there is insufficient work and, therefore, his former position at his former reporting centre is not open. However, in order to enable a more senior employee who is on temporary transfer to return to his former reporting centre, the Company agrees to

displace an employee with less seniority in the same functional group at that reporting centre.

ARTICLE 24
JOB POSTING PROCEDURES
Definitions

...

"Normal Servicing Territory (NST)" means a geographic entity as provided in Attachment E of this Agreement.

…

Job Opening

24.01 (a) The definition of a job opening for the purposes of the job posting procedure is:

(i) Any permanent addition or replacement to the Regular Full-Time employee staff within an NST,

(ii) Any permanent upgrade within an NST,

(iii) When a job has been filled by a temporary transfer or temporary reassignment, by either one or more individuals, for 24 consecutive months.

…

ATTACHMENT B
LIST OF HEADQUARTERS[2]

…

Oshawa

..

.

Peterborough

…

Toronto

…

[2] There are some 191 different "Headquarters" sites list in Attachment B, and 110 different Normal Servicing Territories (NST) listed for Ontario alone in Attachment E. I have only listed the Headquarters and NSTs that appear relevant to the present grievances. In the ultimate analysis of the parties' representations, the precise locations of the Headquarters and the Normal Servicing Territories had little relevance except to illustrate the context of the present dispute.

ATTACHMENT E
NORMAL SERVICING TERRITORIES (NST)

ONTARIO		QUEBEC	
…	…	…	…
8.	Kingston, Brockville, Madoc, Belleville (Trenton), Bancroft	…	…
…	…	…	…
11.	Peterborough, Lindsay, Haliburton	…	…
…	…	…	…
24.	Milton, Oakville (Bronte, Clarkson) Brampton, Streetsville, Georgetown, Toronto (Mississauga, Malton)*	…	…
…	…	…	…
27.	Cobourg (Port Hope), Oshawa		

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Summary of the Evidence

[11] In addition to the documents filed on consent and facts stipulated by the parties, the individual Grievor, Mr. Wray, testified for the Union, while the Company presented evidence from Mr. Hugo Trépanier, who is a Regional Manager currently based out of Québec.

(a) The Union's Evidence

[12] The Grievor's seniority date is March 3, 1980. He has worked a number of technical jobs over more than 40 years of employment, the last 33 primarily as a "Splicer, Class 1" with responsibilities that include installing fiber optics and copper splicing. He has also held various positions in the Union for the past 20 years and is currently the Chief Steward and Acting President of Unifor, Local 28, which geographically covers the Cobourg/Port Hope area.

[13] It is noteworthy that different Locals of Unifor represent employees on the basis of the geographical location of their headquarters/reporting centre. An employee working out of Toronto, for example, is under the jurisdiction of a different Union Local than employees

working out of Peterborough; which may impact the exercise of individual seniority rights and the deposit of Union dues to the appropriate Local. Each employee is part of a "seniority unit" connected to the specific "second level manager" responsible for the group of individuals who may work out of different permanent reporting centres.

[14] As of the dates of his testimony, the Grievor identified his permanent reporting centre was a location on Boundary Road in Oshawa; but he was temporarily assigned to a reporting centre on Centre Street in Bellville, Ontario. The Grievor used the term "reporting centre" to refer to the specific location where an employee is assigned to work out of, within a headquarters or normal servicing territory, which he acknowledged could refer to any locker location or storeroom (i.e. for tools and equipment) designated by the Company.

[15] The Grievor took me through several different CO3 forms (in both their "short" and "long" formats where available) which as indicated above, document details of the temporary transfers of employees from one reporting centre to another that are supposed to be filed with the applicable Union Local steward at the time of the transfer to keep the Union informed of the movement of employees for administrative purposes. He also reviewed additional CO3 forms filed by the Company that were entered into evidence on consent.

[16] In examining these documents, the Grievor expressed the following major concerns over the Company's implementation of temporary transfers that he and the Union claimed to be violations of the collective agreement.

[17] First, instead of canvassing "volunteers" for a temporary transfer to be filled by seniority ranking in the particular seniority unit at issue, the Grievor claimed employees were unilaterally transferred by the Company without offering the opportunity to other employees with greater seniority working out of the same reporting centre (and/or seniority unit), with the Grievor having been bypassed himself on occasion for temporary transfers that he testified he would have accepted if offered, which might have garnered additional compensation for the Grievor in the form "per diem" pay, wages and/or travel allowances.

[18] Second, the Grievor highlighted a number of incidents where the transferred employee was scheduled to work for more than 90 days without posting the job as a permanent position, allegedly in violation of terms of the collective agreement.

[19] Third, the Grievor noted circumstances where the temporary transfer was unilaterally "extended" by the Company for a continuous period of more than 90 days without returning the employee to his or her original reporting centre and recanvassing volunteers for the "new" transfer, which he maintained was also a contractual breach.

[20] Related to that, the Grievor highlighted situations where after announcing that it was offering a temporary transfer to a specific location (i.e. "Location A") and after seeking volunteers for that opportunity, the Company transferred the employee to a different reporting centre (i.e. "Location B") without recanvassing volunteers for the alternate location, allegedly in violation of the collective agreement.

[21] And fourth, since each reporting centre is assigned to a specific Union Local (some Locals having multiple reporting centres), the Grievor complained the Company repeatedly neglected to notify or improperly identified the Union representative (and through that person the applicable Union Local) that became responsible for the transferred employee, thereby making it difficult for the Union to monitor and account for these transfers.

[22] To make matters more confusing for the Union, the Grievor also complained that the CO3 forms were frequently inaccurate or incomplete (or were late in transmittal to the Union), that sometimes failed to record the new reporting centre and identify the first level manager (and/or the wrong reporting centre and/or manager were listed in error).

[23] In cross-examination, the Grievor acknowledged that he had been offered the chance to volunteer for some of the earlier temporary transfers connected to the specific project filled by other employees with less seniority, but chose not to because he did not find the project to be interesting. Nonetheless, he maintained that were a number of transfers he would have accepted

if given the chance to volunteer, primarily because they would have resulted in an additional "per diem" resulting in more compensation to the Grievor.

(b) Detailed Review of the CO3 Forms and Other Agreed Documents

[24] The CO3 forms filed by both parties on consent document the transfers of an employee named Ross Thorne, who like the Grievor is classified as a "Splicer, Class 1", but has less seniority than the Grievor, having been employed since June 7, 1999. There is no dispute that the Grievor and Mr. Thorne were part of the same "functional group" referred to in article 22.09 of the collective agreement in the sense of being qualified to perform the same work.

[25] These CO3 forms, which are individually numbered and prepared at the time of each temporary transfer for the immediate information of both management and Union officials, are arguably the best evidence of the Company's actual practice, although they present several challenges as a number include admitted "errors" committed by the Company. Nevertheless, the Union pointed to the CO3 forms as a record of the many alleged deficiencies in the way the Company has been administering the temporary transfer provisions of the collective agreement, which are summarized below.

i. <u>CO3 – 125877</u>

[26] The first of the relevant CO3 forms having an effective date of February 27, 2017 (referenced as CO3-125877), documents Mr. Thorne's temporary transfer from what is recorded as his permanent reporting centre of 380 College Street East Belleville (which was in error given subsequent evidence) and then identifies a move from Mr. Thorne's reporting centre of "1500 Birchmount Road Suite 106 Scarborough" ("Birchmount Road"), which the evidence indicates was his actual permanent reporting centre at the time, to a new reporting centre at 40 Esna Park Drive, Markham ("Esna Park"), with a return date of August 26, 2017.

[27] Both parties agree that this was beyond the 90 day limitation on temporary transfers mandated by article 22.02 of the collective agreement and that the location of the purported temporary assignment was within Local 27c's bargaining unit.

[28] The Company maintains the time for the transfer was stipulated "in error". Mr. Wray testified the Company did not canvass for volunteers for the transfer from the appropriate group in compliance with article 22.09, before it was offered to Mr. Thorne. For purposes of immediate reference the relevant portion of article 22.09 states that, "the Company will give first consideration to the most senior employee who will volunteer from the functional group in the seniority unit at the reporting centre from which the transfer is to be made, and who has the necessary qualifications." There is no dispute that both Mr. Thorne and the Grievor had the necessary qualifications for the work in issue.

[29] The parties further agree that following Mr. Thorne's initial transfer from his permanent reporting centre of Birchmount Road to Esna Park, with one exception reported below, no other bargaining unit splicers were canvassed or asked if they were interested in a temporary transfer to the other reporting centres or work locations where Mr. Thorne reported during the period covered by all of the CO3s entered into evidence.

ii. <u>CO3 – 127486</u>

[30] The initial temporary transfer to Esna Park was followed with the subsequent CO3-127486 form effective May 15, 2017, showing another purported temporary transfer for Mr. Thorne from Esna Park with a return date of October 28, 2017, again being more than 90 days duration, without returning Mr. Thorne to what is recorded on this form as his permanent reporting centre of Birchmount Road and canvassing for volunteers from that or any other location for what was a new work assignment to 1235 Boundary Road, Oshawa ("Boundary Road"), which was within Local 28's bargaining unit where Mr. Wray had responsibilities on behalf of the Union Local 28.

iii. CO3 – 130085

[31] From there, Mr. Thorne accepted a temporary transfer effective September 5, 2017 to what was recorded on the applicable CO3-130085 form as "other location", which the Company conceded was a further "error" since the CO3s require that the location be specified for purposes of ensuring remittance of the Union dues to the proper Union Local and for the determination of seniority driven rights that are linked to the particular location of the work assignment.

[32] The CO3 form also recorded the expiry date of the assignment as February 10, 2018, which on its face violated the 90 day limitation period for temporary transfers. Nevertheless, the transfer was in fact to a location in Port Hope, which was recorded on another portion of the CO3 form under the title, "Additional Details", indicating that parking for the transferred employee had been arranged "at Port Hope CO." The Grievor testified he had been asked to accept that transfer but declined the opportunity; following which Mr. Thorne was canvassed and accepted the assignment.

[33] One of Mr. Wray's further complaints was that the email enclosing the new CO3 form documenting the transfer to what turned out to be Port Hope, nevertheless failed to identify (and thus notify) the responsible Local 28 steward in order to ensure the tracking of Mr. Thorne's activities within that Local's jurisdiction for purposes of monitoring proper remittances of Union dues and the exercise of the relative seniority rights of all bargaining unit members within the same seniority unit.

iv. CO3 – 130092

[34] The next CO3 in chronological order under number CO3-130092, indicates that it is a "Revision" of the former CO3-130085, purporting to identify a "temporary change in manager" responsible for Mr. Thorne following his transfer from Boundary Road effective September 5, 2017 to February 10, 2018. However, instead of stipulating the new reporting centre as Port

Hope CO., the revised CO3 identifies the new reporting centre of "Peterborough, 750 The Kingsway" (hereinafter "Peterborough").

[35] The Grievor testified that the Company failed to canvass volunteers for this transfer, and asserted that if asked he would have accepted a temporary transfer to Peterborough. By accepting that temporary transfer, Mr. Wray may have been entitled to additional "per diem" compensation and/or a travel allowance, living and transportation expenses provided under the collective agreement. But he wasn't approached even though he has more seniority than Mr. Thorne and is qualified to do the temporary work.

[36] After complaining to his second level manager, identified as Mr. Al Rodford, the Grievor was advised that the location for the temporary transfer was not supposed to be Peterborough, but rather Port Hope (i.e. another apparent error).

v. <u>CO3 – 130310</u>

[37] Consequently, a correction was issued in a revised CO3 – 130310, which purported to "cancel" the earlier CO3 – 130092; but then nevertheless stating that the temporary transfer to Mr. Thorne was from "750 The Kingsway PETERBOROUGH ON K9J 6W6" to "PETERBOROUGH, 750 The Kingsway, ON K9J 6W6", for the same period commencing September 9, 2017 to February 10, 2018 (obviously exceeding 90 days). However, under the heading "Additional Details" there is reference to: "Parking at Port Hope CO."

[38] When Mr. Wray pointed out what seemed an obvious error in continuing to identify the reporting centre as Peterborough in the face of Mr. Rodford's earlier assurances to the contrary, he was told that the reference to "Parking at Port Hope CO." under the "Additional Details" line in the CO3 was sufficient to establish the new reporting centre as Port Hope CO. Mr. Wray also noted that the Local 28 representative responsible for work out of the Port Hope reporting centre was not copied on the further revised CO3, which is not disputed.

[39] According to Mr. Wray, the revised CO3 should have indicated that Mr. Thorne had accepted a temporary transfer from his permanent reporting centre of Birchmount Road, to the new reporting centre of Port Hope, after canvassing volunteers for that transfer for a period of less than 90 days; none of which was done in accordance with the collective agreement.

vi. CO3 – 130428

[40] Thus it appears that the next CO3 – 130428 issued by the Company was a further attempt to remedy the many deficiencies in the earlier CO3, which Mr. Wray noted had its own problems. That document indicates that Mr. Thorne had accepted a temporary transfer from the Peterborough reporting centre to "other location" that was identified under the "Additional Details" line as 115 Walton Street, Port Hope CO. (which according to Mr. Wray merely repeated the earlier recording errors).

[41] With an effective date for the temporary transfer of September 9, 2017 and an amended return date of November 25, 2017, the CO3 was for less than 90 days, but as in previous transfers, Mr. Wray testified that no volunteers were canvassed for this transfer from the appropriate seniority unit that included Mr. Wray.

vii. CO3 – 130469

[42] A subsequent amendment for this transfer that was recorded in CO3 – 130469 was issued by the Company on or about September 11, 2017 (i.e. after the commencement of Mr. Thorne's temporary transfer).

[43] According to Mr. Wray, this document repeats the same deficiencies of the earlier one in that: (a) it states that the transfer is from the Peterborough reporting centre (when he claims it should refer to Mr. Thorne's permanent reporting centre of Birchmount Road); and (b) it identifies the new reporting centre as "other location" instead of the Port Hope CO. which is referenced later under the heading, "Additional Details" related to parking issues.

[44] Further, Mr. Wray complained the email distribution list for this CO3 failed to properly copy the responsible Local Union officials of Mr. Thorne's temporary transfer falling under that Local's jurisdiction.

viii. CO3 – 131694

[45] The next CO3 – 131694 entered into evidence for Mr. Thorne indicates that the previous temporary transfer has been extended from November 27, 2017 to February 24, 2018, which by itself is some 90 days, but when combined with the earlier temporary transfer from September 9, 2017, without a break, amounts to a total continuous period of approximately 150 days.

[46] As in most of the previous temporary transfer notifications, Mr. Wray testified that the Company did not canvass volunteers to be assigned in seniority order to the extended transfer, including Mr. Wray who was not approached with this opportunity.

[47] He also noted that the CO3 temporary transfer form improperly identified the reporting centre from which Mr. Thorne was being transferred from was as the Peterborough location, when in fact the prior transfer had been to the Port Hope CO with the extension intended to increase Mr. Thorne's work time at the same Port Hope reporting centre. And, as in the immediately previous transfer (that was repeated often) the proper Local Union officials were not included in the email notification chain.

ix. CO3 – 133341

[48] More of the same deficiencies are evident from the next CO3 – 133341 documenting the subsequent temporary transfers for Mr. Thorne. The effective date of this transfer is February 5, 2018 (which dovetails with the previous CO3 transfer form) and the return date is May 5, 2018, which while approximately 90 days in duration represents a further continuation of what is effectively a continuous period of 15 months counted from Mr. Thorne's initial "temporary" transfer from his permanent Birchmount Road reporting centre on February 27, 2017. The CO3

also indicates that the transfer is taking place from Mr. Thorne's then purported reporting centre at Peterborough, to "360 College Street Belleville" (hereinafter "Belleville"), which is located within Local 30-O's bargaining unit.

[49] Yet, as Mr. Wray testified, Mr. Thorne's actual permanent reporting centre at the time continued to be Birchmount Road; and the record on the CO3 form indicating that he was being transferred from the Peterborough location was inaccurate, because in accordance with the prior CO3 – 132657, Mr. Thorne was in fact working out of the Port Hope location while being moved for short durations to Cobourg or Belleville and other locations without recanvassing for volunteers. Furthermore, Mr. Wray noted that the temporary transfer from Port Hope to the new location in Belleville represented a change in the Normal Service Territory (NSF) with a different Headquarters designated under the collective agreement, requiring notifications to responsible Union officials that did not occur.

[50] And finally, consistent with what Mr. Wray complained was the Company's serial violations of the collective agreement, the Company never canvassed for volunteers for the new temporary assignment to the Belleville reporting centre, including Mr. Wray who testified that if asked he would have accepted that transfer, which he would have been entitled to as a more senior member of the bargaining unit.

[51] To the extent the Company later claimed an ability to move Mr. Thorne back and forth between the Belleville and Port Hope CO. locations as required which was apparently its intent, Mr. Wray asserted there was no such right, particularly where the implications of such movement between locations was: (a) different "per diem" payments under the collective agreement depending on the specific reporting centre; and (b) dues owed to different Locals depending on the location of the work.

[52] Also, the practical effect of this CO3 form was, in Mr. Wray's estimation, to further extend Mr. Thorne's "temporary transfer" well beyond 90 days, thereby requiring its

reclassification as a permanent transfer, and consequently subject to the posting provisions of the collective agreement, which the Company was said to have entirely ignored.

x. CO3 – 134678

[53] The next CO3 – 134678 purports to document a "New Temp. Transfer" for Mr. Thorne from April 4, 2018 to May 5, 2018; but there is nothing new about this transfer at all. It states that it is a move from 380 College Street East Belleville to a completely unstated reporting centre. However, Mr. Wray asserted that it was actually a temporary transfer to the same Belleville reporting centre, which in reality was no move at all. This evidence is not dispute by the Company.

xi. CO3 – 135115

[54] A subsequent temporary transfer for Mr. Thorne is then documented by CO3 – 135115 filed by both the Union and Company, which is effective May 5, 2018 (i.e. from the end of the prior temporary transfer) to August 4, 2018, from the Belleville report centre to an unidentified reporting centre that is merely identified as "Other – see additional details", which states: "Revised scheduled hours. Extended temp transfer to manager. Org code, cost centre, and reporting centre to Cobourg/Port Hope". The revision in hours was from 10 to 8 per day.

[55] This, according to Mr. Wray, was nothing more than an extension of the previous temporary transfer making it effectively more than 90 continuous days in duration (when combined with the immediately prior transfer), without canvassing volunteers for the temporary transfer opportunity from the appropriate seniority unit (which Mr. Wray would have been entitled to claimed by virtue of his higher seniority).

[56] Also, as in most of the other temporary transfers regarding Mr. Thorne, the CO3 indicates the Company failed to copy the appropriate Local Union official with notice of the temporary transfer, according to Mr. Wray.

xii. CO3 – 135619

[57] The final CO3 – 135619 documenting Mr. Thorne's transfers records his permanent job in Belleville effective June 4, 2018, which the Union agrees was a legitimate change that was properly documented.

xiii. The Seniority Lists

[58] The parties also jointly filed the seniority lists (posted twice per year in accordance with article 10.02 of the collective agreement) dated February 1, 2018 and August 1, 2018, to demonstrate the relative seniority of the Grievor and Mr. Thorne, which were said to substantively cover the period under consideration during the challenged temporary transfers.

[59] The names on the seniority lists are organized in separate units of employees (having a full range of seniority dates from very high to low service) under the responsibility of 11 named second level managers.

[60] The seniority list dated February 1, 2018 indicates that the Grievor, with a seniority date of March 30, 1981, was in a seniority grouping under the direction of Mr. Allan Rodford (identified as a second level manager), listing his permanent reporting centre as "1235 Boundary Road, Oshawa". The same seniority list shows Mr. Thorne having a seniority date of June 7, 1999 with a permanent reporting centre of "1500 Birchmount Rd, Suite 106, Toronto", within the same seniority unit under the direction of Mr. Rodford.

[61] The second seniority list dated August 1, 2018 (which was after Mr. Thorne's final move to Belleville effective June 4, 2018), shows that the Grievor's employment continued within the seniority group reporting to Mr. Rodford out of the permanent reporting centre of 1235 Boundary Road, Oshawa, while indicating that Mr. Thorne was in a different seniority unit then reporting to Mr. Hugo Trépanier.

xiv. Headcount Sheets

[62] The final documents filed by the Company were identified as the "Headcount Sheet" for the dates, September 15, 2017, January 31, 2018 and February 28, 2018, which are generated by the Company. The Headcount Sheet for September 15, 2017 records the name of Mr. Thorne reporting to first level manager Randy Ruisendaal who reports to second level manager Hugo Trépanier, while indicating that the Grievor was reporting to first level manager Arlene Gunnis, who was under the direction of second level manager Allan Rodford.

[63] The two other Headcount Sheets dated January 31 and February 28, 2018 indicate that Mr. Thorne was reporting to first level manager James Jennett, who reported to second level manager Hugo Trépanier, while the Grievor continued to report to Ms. Gunnis, under the direction of second level manager Allan Rodford.

(c) The Company's Evidence

[64] Mr. Hugo Trépanier, an employee since 2000 with managerial duties beginning in 2010, has been a Company regional manager since 2014 who worked out of the Ottawa office from mid-2016 to mid-2019 (covering the period of the instant grievances) with responsibilities for eastern Ontario. He was called by the Company to explain the many alleged irregularities and/or "errors" in the documentary record of Mr. Thorne's temporary transfers in the period between March 17, 2017 and June 4, 2018. By the date of his testimony Mr. Trépanier had moved to a regional manager position working at the Company's Montreal headquarters.

[65] Mr. Trépanier testified that as regional manager (which is also referred to as a "second level manager" at the same level as Mr. Rodford) he oversees the delivery of "projects" the Company is building or maintaining for the Bell Telecommunications Network, which includes "managing the Human Resources side of the team". This, he stated, involves making assessments of "capacity vs. load" that he described as the requirement to move technicians from one area to another in order to fulfill the Company's obligations. He explained that as regional

manager for eastern Ontario, it was his job to assess the need for splicer technicians as part of a workforce team to satisfy project objectives, which might require the movement of employees with appropriate skills from areas where there is a "surplus" of such technicians to where there is an immediate need. Mr. Trépanier testified that the transfers of Mr. Thorne, as documented by the CO3s filed in evidence, were examples of the kind of movement of technical personnel required to fulfill the Company's project needs.

[66] Addressing Mr. Thorne's CO3 documented temporary transfers between February 27, 2017 and June 4, 2018, Mr. Trépanier noted that the purpose of the CO3 was "to let people know there is a change and to update the system". He identified the person responsible for preparing the CO3s at the relevant time as a new "regional associate" who is a member of the Unifor clerical bargaining unit, reporting directly to the regional manager (which in this case was Mr. Trépanier). He attributed some of the "errors" on the CO3 forms and the occasional lack of timely delivery of the CO3s, to the inexperience of that worker.

[67] In commenting generally on the CO3s concerning Mr. Thorne's movements entered into evidence, Mr. Trépanier conceded that "plenty" of errors were made, which the Company had formally acknowledged in its reply to the Union's grievances. Those errors were primarily identified as mistakes made about the name of the permanent reporting centre and/or specific locations where technicians were transferred from or to, which Mr. Trépanier testified can be confusing because some of these locations may be large reporting facilities where many technicians reporting to multiple first level managers are working out of every day (such as the Birchmount Road location); while others may be as small as a local parking lot close to the actual worksite, as well as errors made in the dates or the duration of the specific temporary transfers under review.

[68] Then focusing on a sample of CO3s documenting the specific temporary transfers for Mr. Thorne, Mr. Trépanier noted that some were limited to minor changes in the name of the first level manager directly responsible for Mr. Thorne's activities; thus suggesting that it was not necessary to complete the form to the exacting detail asserted by Mr. Wray. Errors or changes in

the names of first level manager on the CO3 forms (or failures to name a specific manager when the employee transferred from one location to another) did not constitute a violation of the collective agreement particularly as, in this case, both first level managers reported to the same second level manager.

[69] In explaining CO3 – 127486 which documented the movement of Mr. Thorne from Esna Park to Oshawa, Mr. Trépanier testified the CO3 form did not stipulate the name of a new manager (which was one of Mr. Wray's complaints) because there was no change in the first level manager responsible for activities at the new location.

[70] Referring to CO3 – 130085, which documents Mr. Thorne's next temporary transfer from Oshawa to "Other Location" that the form then purports to identify later under the heading "Additional Details" as "Parking at Port Hope CO.", Mr. Trépanier testified the employee's previous reporting centre did not change, but rather the CO3 form was merely indicating a change "to another building" represented by what he described as "a small location which is not a reporting centre" known as the "Port Hope CO".

[71] Mr. Trépanier also noted that there was considerable activity at the time of the grievances related to a project known as "Fiber to the Home" (or "FTTH") associated with "a major engineering team" in the Port Hope area, requiring flexibility in the movement of skilled technicians to service the Company's needs. Thus it was suggested the Company was entitled under the Management Rights provisions of the collective agreement (set out in article 8 as reproduced above), to move technicians to the degree witnessed in Mr. Thorne's case in order to fulfill the Company's operational commitments.

[72] In addressing Mr. Wray's complaints about CO3 – 131694, which documents Mr. Thorne's temporary transfer from Peterborough to an unstated reporting centre effective November 27, 2017 to February 24, 2018, Mr. Trépanier explained the absence of the identification of a new reporting centre in that situation was because it was merely an

"extension" of the prior temporary assignment based out of the Port Hope CO. location with no relevant changes.

[73] Mr. Trépanier also confirmed the final move for Mr. Thorne documented by CO3 – 135619 showing his transfer to Belleville effective June 4, 2018, arose out of a successful bid at or about that time by Mr. Thorne for a permanent position available in Belleville.

[74] Notwithstanding the acknowledged "errors" in some of the CO3 forms, which were said to came down to mistakes over the timeframe for individual temporary transfers and the identification of the appropriate reporting centre or proper notification of the stewards associated with each move, in reconciling the various CO3 forms documenting Mr. Thorne's temporary transfers from February 27, 2017 to June 4, 2018 in broad context, Mr. Trépanier emphasized that the Company was dealing with the expansion of a "small team" of three to 13 managers (with associated technicians) in a short period to handle what he characterized as a "massive" FTTH deployment in eastern Ontario at that time, which was heavily focused in the Peterborough, Port Hope and Belleville areas (thus explaining Mr. Thorne's movement throughout those locations).

[75] The effect of Mr. Trépanier's testimony in reviewing the organization of the required work and rationale behind the many transfer involving Mr. Thorne, was to stress the Company's fundamental need and asserted right to manage its operations efficiently and effectively, in a manner consistent with any limitations in the collective agreement. Given its requirements, he noted the Company had in fact temporarily transferred some 100 technicians from Toronto and 50 from Quebec during the relevant timeframe in order to complete the FTTH deployment in eastern Ontario. This was a busy time for the Company requiring significant flexibility for purposes of operational efficiency.

[76] In describing how these technicians were selected, Mr. Trépanier explained that after assessing its needs, the Company typically solicited volunteers from the other areas having a surplus of technicians, and then selected technicians according to seniority ranking from

employees with the appropriate skillset who were willing to work out of another reporting centre. In describing what a "seniority unit" referenced in articles 22.09 and 10.02 of the collective agreement referred to in this context, Mr. Trépanier testified it would be all employees reporting to the same regional manager, which was for the most part Mr. Trépanier himself (however, a second regional manager identified as Mr. Allan Rodford was also involved in this case).

[77] Thus in the factual circumstances at the time that Mr. Thorne was assigned to temporary transfers throughout the Peterborough, Port Hope and Belleville areas, and was required to move between those locations in order to fulfill the required project work, Mr. Trépanier testified that after a 90 day temporary transfer and/or if the Company decided to move the employee between different locations, it was not the Company's practice to return the transferred employee back to his original permanent work centre for purposes of canvassing volunteers from that centre for the technician's next temporary assignment. That, according to Mr. Trépanier, was because employees assigned to a location like Port Hope were what he called "a super small team" of often only two technicians working together in one vehicle, who had to move as a team from one location to another for short periods of time.

[78] Consequently Mr. Trépanier explained that to require each person in such a small team to be returned to his permanent (or original) reporting centre so that volunteers could be canvassed whenever there was a relatively short period of work at a different location or reporting centre, would potentially breakup a single truck of skilled technicians who have been working together for some time, resulting in the disruption of teams, trucks and the distribution of tools, which Mr. Trépanier asserted would "become almost impossible to work" in the context of the massive FTTH project ongoing at that time.

[79] Mr. Trépanier gave an example of the practical difficulties in recanvassing for volunteers each time a small crew of technicians was transferred to different areas during such a massive deployment, with reference to Mr. Thorne's temporary move documented by CO3 – 133341, from February 5, 2018 to May 5, 2018. Throughout that time Mr. Thorne was part of the "super small team" working with a cell of engineers regularly moving between the cities of Belleville,

Cobourg and Port Hope; often with Mr. Thorne working with the same partner out of a single vehicle.

[80] Mr. Trépanier asserted that in such circumstances, after the initial temporary transfer involving Mr. Thorne, the Company was not required to recanvas qualified employees in Mr. Thorne's original reporting centre every time the small team moved from one location to another for a short period of time (i.e. a matter of weeks) as part of the overall deployment dynamics because to do so would turn the membership of such teams into an exercise that Mr. Trépanier likened to "musical chairs". Consequently, he testified that the practice was to ask the employee whether he was willing to extend his temporary transfer another 90 days; only requiring the recanvassing other technicians if the technician already doing the job refused the extended assignment, according to Mr. Trépanier. .

[81] In the present case, since Mr. Thorne indicted his willingness to continue with the work involving the same three cities he had been performing for some time as part of a small team, Mr. Trépanier maintained the Company was not required to recanvas employees every time there was a movement in the location of the work from one city to another. That was particularly important where, as in the deployment of the "massive FTTH project" at the time, there were some 150 technicians on loan from their permanent reporting centres throughout Ontario and Quebec that was necessary to fulfill the Company's commitments.

[82] Hence Mr. Trépanier was of the view that the Company was in compliance with the collective agreement when it did not recanvas for volunteers every time there was a change in work location for Mr. Thorne (and similarly situated technicians); or when a 90 day temporary assignment was "extended" up to another 90 day period, rather than recanvassing for volunteers at the conclusion of every 90 day temporary transfer from Mr. Thorne's permanent reporting centre; which Mr. Trépanier considered to be consistent with the Company's proper exercise of its managerial rights under the collective agreement.

[83] In cross-examination, Mr. Trépanier acknowledged that temporary assignments were made on the basis of seniority from those employees who had the requisite skillset and wanted to perform the work, while nevertheless maintaining that once a technician like Mr. Thorne was appointed to a temporary transfer on a specific project (such as the FTTH deployment), there was no obligation to recanvas employees from the technician's permanent work centre whenever the Company moved him between work locations within the deployment area (which is what occurred in the present case).

[84] He further clarified that while the extension of the transfer "would not be automatic", the Company would ask the technician if he wanted to continue on the temporary transfer, and then would only recanvas employees from the permanent reporting centre if the technician did not volunteer to continue (in which case the technician would be returned to his permanent reporting centre after another was selected).

[85] This explained why in a number of the CO3 forms that were the subject of Mr. Wray's complaints, Mr. Thorne's temporary assignments were either extended or he was moved to different work locations within the same project deployment, without the need to recanvas for volunteers from Mr. Thorne's original reporting centre each time a change in the work location or reporting centre occurred, and without considering seniority as a factor in making such temporary transfer assignments, according to Mr. Trépanier.

The Parties' Submissions

(a) The Union

[86] On behalf of the Union, Ms. Stevens submitted that the undisputed facts as documented by the CO3s filed into evidence support the finding that the Company committed at least four violations of the collective agreement by:

i. Issuing temporary transfers that exceeded 90 days (per CO3s – 125877, 127486, 130085 and 130310);

ii. Extending employees' temporary transfers beyond 90 days without canvassing the employee's permanent reporting centre seniority unit for volunteers and allowing first consideration for the temporary transfer to the most senior employees in that seniority unit (per CO3s – 131694, 133341, 135115);

iii. Running a selection process for temporary transfers identifying the transfer as being for location "A" (which in the present case was Port Hope), and after that transfer bidding process has completed, altering the terms to provide for location "B" (Peterborough) and transferring the employee to location B rather than location A (per CO3s – 130085, 130092, 130310, 130428, 130469, 134678, 135115); and

iv. Moving employees on temporary transfers between various work locations (i.e. Port Hope and Peterborough or Belleville) without canvassing for interest in the new locations (among employees in the appropriate seniority unit) according to seniority (per CO3s – 130092 and 133341).

[87] Advocating a "purposive" interpretation of article 22.09 in the context of the collective agreement read as a whole, and asserting that the language in dispute was mandatory, the Union submitted the clear intention of the parties is to preserve the employees' relative seniority rights by requiring the Company to initially canvass volunteers from the same "functional group in the seniority unit at the reporting centre from which the transfer is to be made, and who has the necessary qualifications", selecting qualified volunteers in seniority ranking (or failing volunteers requiring the least senior employee to accept the temporary transfer in accordance with article 22.10), for a period that under article 22.02(b) must be "90 days or less".

[88] Aside from limiting every temporary transfer to a maximum period of 90 continuous days (which the Company acknowledged it violated on a number of occasions during Mr. Thorne's transfers that it called "errors"), such language in the Union's submission does not permit the Company to "extend" a temporary transfer beyond the initial period up to 90 days without recanvassing volunteers from the same functional group in the applicable seniority unit. Nor does the language entitle the Company to simply move an employee to different reporting centres during the term of a temporary transfer or at the conclusion of a temporary transfer without recanvassing for volunteers from the appropriate employees, to be assigned on the basis of

seniority to the specific reporting centre or location in issue, according to the Union. To permit otherwise would, in the Union's submission, lead to the "absurd result" that a person like Mr. Thorne with less seniority than the Grievor, could have his temporary transfer extended past an initial 90 days or moved to another location within a 90 day or extended period of time, where there might be another employee with more seniority who, if asked, would have been willing to accept the temporary transfer to the different location; which the evidence shows the Grievor would have been prepared to accept on certain occasions. It would be an "absurdity", says the Union, to have a person with less seniority entitled to a temporary transfer that an employee with more seniority in the same seniority unit wanted to claim, where seniority rights are among the most important protections negotiated into the collective agreement by the Union.

[89] Thus, as conclusively documented by the CO3s entered into evidence on consent, the Union submitted that the Company violated the collective agreement when it (a) assigned Mr. Thorne to a number of temporary transfers exceeding 90 days (many without canvassing for volunteers); (b) extended Mr. Thorne's temporary transfers on several occasions past 90 days without recanvassing for volunteers to be assigned according to seniority ranking; (c) changed the locations that Mr. Thorne was transferred to without recanvassing for volunteers for the assignment according to seniority ranking; and (d) moved Mr. Thorne around to several reporting centre locations during the period of his temporary transfer without recanvassing for volunteers for the specific location or locations in issue.

[90] In support of its representations the Union also referred to *Re United Electrical Works, Local 512 and Tung-Sol of Canada Ltd.,* 1964 CarswellOnt 520 , [1964] O.L.A.A. No. 9, 15 L.A.C. 161 (Ont. Arb.) (Reville), Sullivan, Ruth, *Sullivan on the Construction of Statutes,* 6th ed., Markham, Ont. 2014, Chap. 9 – Purposive Analysis and Chap 10 – Consequential Analysis; and *Re Communications Energy and Paperworkers Union, Local 8284 and Expertech Network Installation (X82-010D)*, unreported decision dated April 16, 2010 (Que. Arb.) (Marcheterre), application for judicial review substantively dismissed but allowed in part per Prévost, J.C.S., unreported decision of Quebec Superior Court dated June 16, 2011 (hereinafter "Marcheterre Decision").

(b) The Company

[91] On behalf of the Company, Mr. Chondon submitted that the starting point in analyzing the relative rights of the parties in this case begins with article 8.01 of the collective agreement ("Management Rights"), which clearly affirms management's exclusive right to manage its operations and to direct its workforce, including the express right to transfer employees, in the absence of clear provisions in the collective agreement restricting that broad right.

[92] While acknowledging that the Company made errors related to the duration of a number of temporary transfer beyond 90 days involving Mr. Thorne, for which any remedy would be limited to a declaration of breach of contract that the Company regretted and was committed to correct in the future, the Company denied any obligation or express provision under the collective agreement limiting the Company's managerial right: (a) to prevent the Company from extending a temporary transfer for consecutive periods up to 90 days for up to 24 months (as permitted in article 24,01 (a) (iii)) without returning the employee back to his/her permanent reporting to recanvas for volunteers; (b) requiring that the Company recanvas for volunteers from the employee's original reporting centre every time there was a change in specific location of the work (associated with the same general project in the present case); and (c) prohibiting the Company from moving an employee from one work location to another to perform work within the context of a temporary transfer, which occurred in the present case while Mr. Thorne was attached to a small two-person crew in a single vehicle while pursuing tasks during the roll out of a major project initiative.

[93] In support, the Company submitted the words "first consideration" in article 22.09 which in context states that ""the Company will give ***first consideration*** to the most senior employee who will volunteer from the functional group in the seniority unit at the reporting centre from which the transfer is to be made, and who has the necessary qualifications" (emphasis added) meant that once the Company had canvassed volunteers for the first temporary transfer, all subsequent transfers flowing from the first one in the context of an ongoing project (including extensions for consecutive 90 day periods up to 24 months) did not require the Company to

recanvas volunteers from the permanent reporting centre, as urged by the Union. Otherwise, there would be a risk of "musical chairs" of small groups of employees required to move to different work locations which was Mr. Trépanier's concern, that the Company argued was contrary to the Company's ability to manage its operations efficiently, which could not have been the mutual intention of the parties.

[94] Consequently, in the absence of clear language in the collective agreement limiting the Company's ability to transfer employees following Mr. Thorne's first temporary transfer, or requiring the recanvassing of volunteers every time Mr. Thorne's transfer was extended and his specific work assignments changed, there was nothing in the collective agreement prohibiting the Company from directing the specific extensions and transfers in Mr. Thorne's case without offering the temporary transfer opportunities to Mr. Wray, according to the Company.

[95] Finally, even if there was an obligation to recanvas for volunteers whenever Mr. Thorne's assignment changed, the Company asserted that Mr. Wray would not have been entitled to bid on those opportunities because his permanent reporting centre was not the same 1500 Birchmount Road location as Mr. Thorne's. Moreover, as indicated by the three Headcount Sheets filed by the Company, it was asserted that at all material times Mr. Thorne's second level manager was recorded as being Mr. Hugo Trépanier, while the Grievor continued reporting to a different second level manager, Mr. Allan Rodford. Consequently, there was no obligation for Mr. Trépanier to canvass employees under Mr. Rodford's management when Mr. Thorne was temporarily transferred to different locations, according to the Company.

[96] In support of its submissions the Company also referred to *Expertech Network Installation Inc., v. C.E.P. (Hicks),* 2011 CarswellOnt 7251, 107 C.L.A.S. 213 (Ont. Arb.)(Chauvin) and *Re Expertech and Unifor (Upgrades following Temporary Transfers),* unreported decision of Arbitrator Brian McLean dated January 21, 2019.

Reasons for Decision

(a) Managerial rights are limited by express contractual provisions

[97] The two arbitration awards filed by the Company, both *Expertech* decisions, *supra*, support the uncontroversial premise that under article 8.01 of the collective agreement entitled "Management Rights" (which had the same language as the applicable collective agreement in the present case, reproduced above), the Company maintains the exclusive right to manage its operations in all respects, including to conduct its business efficiently and to direct its working forces in all matters that includes the transfer of employees (see, Arbitrator Chauvin's discussion at paras. 54 and 55).

[98] The foregoing entitlement, however, is made expressly subject to article 8.02, which provides that the Company's exercise of its exclusive right to, among other things, transfer employees in the course of managing its operations in an efficient manner, "shall not contravene the provisions of this Agreement".

[99] On the facts of the present case, I conclude that the Company has contravened a number of express provisions of the collective agreement that the parties have negotiated to limit the Company's managerial discretion with respect to temporary transfers, described below.

(b) Contractual constraints on ability to temporarily transfer employees

[100] Article 22.02 (a) of the collective agreement provides that, "the transfer of an employee for a continuous period of more than 90 days shall be considered a permanent transfer", which is to be distinguished from a "temporary transfer" defined under article 22.02(b) as "a continuous period of 90 days or less".

[101] The 90 day limitation in the definition of a "temporary transfer" is an important qualification on the Company's managerial right to transfer employees that I conclude the parties

intended to have real meaning; which from a straightforward reading limits the temporal period of a "temporary transfer" to 90 days. The words, "continuous period" in the contractual definition of a temporary transfer requires that there must be a discernable break in the work assignment by the 90th day; failing which article 22.02(a) expresses the parties' intention that the status of the transfer changes from "temporary" to "permanent".

[102] The 2007 Marcheterre Decision, *supra,* filed by the Union, held that the Company's practice of both transferring and promoting employees (from Splicer – Class 2 to Class 1) at the same time violated the temporary transfer provisions of the collective agreement (that has been followed in the more recent 2019 *Expertech* award of Arbitrator *McLean, supra*). While factually distinguishable from the circumstances of the temporary transfers before me (where there is no issue of the qualifications of the relevant employees as part of the same functional group able to do the required work), Arbitrator Marcheterre noted in his analysis of the applicable contractual provisions at para. 22 that, "One cannot do indirectly what one is not allowed to do directly", which is a premise I adopt in the absence of contractual language to the contrary, for the purpose of considering what I find to be a form of "gerrymandering" the time limits to get around this negotiated 90 day limitation for temporary transfers.

[103] There is no dispute on the evidence before me that the Company violated the 90 day limitation in assigning Mr. Thorne to the temporary transfers documented by CO3s – 125877, 127486, 130085 and 130310. The fact that these "errors", as the Company characterized them, may be attributable to the unfortunate mistakes of "a new regional associate" in the clerical bargaining as described by Mr. Trépanier who may have been confused on matters, does not excuse the Company's accountability for what is a patent breach of contract (without considering the implications of failing to properly canvass volunteers for each temporary transfer, as discussed below). Strictly speaking, the language of article 22.02(a) clearly defines a transfer of more than 90 days as a permanent one, and thus its "error" in that regard was a clear violation of the collective agreement.

[104] The same may be said about the Company's admitted mistakes in being slow to issue the CO3 form accompanying every transfer, and/or failing or incorrectly identifying the applicable Union steward whenever an employee is transferred, in violation of article 10.05 of the collective agreement (reproduced above) which states in relevant part that, "The Company agrees to advise the Stewards concerned where an employee is…temporarily transferred…" and further agrees to inform the Steward, "in writing ***at the time the employee is informed, or immediately thereafter***" (emphasis added).

[105] On that language, I find the numerous examples in the agreed evidence of the Company's failure to copy the proper Union steward, even though by accident, constituted violations of the collective agreement. In my view there should be consequences to such "errors" beyond a mere, "don't do it again" declaration, to impress upon the Company the importance of fulfilling its clear contractual obligations, alluded to later in these Reasons.

(c) There must be a break between consecutive temporary transfers

[106] What is more disturbing, however, is what I find on the present facts to be an attempt to "do indirectly what one is not allowed to do directly" when the Company purports to "extend" a temporary transfer beyond its 90 day limit, without recanvassing for volunteers from the appropriate seniority unit. In that regard, I conclude that articles 22.09 and 22.11 prohibit the extensions of Mr. Thorne's temporary transfers beyond 90 continuous days, without effectively "re-setting" the process by canvassing volunteers for a subsequent temporary transfer (or the continuation of the immediate temporary transfer) from the seniority unit at the applicable reporting centre to then be reassigned in order of seniority if more than one employee applies. (The process where no employees apply for the transfer opportunity and thus the least senior employee may be selected for the move is not a relevant consideration in this case).

[107] For purposes of immediate discussion, articles 22.09 and 22.11 are restated below:

> 22.09 In the selection of an employee for temporary transfer, where the employee is required by the Company to remain away from his home for a period which is

> expected by the Company to be ***in excess of two weeks***, the Company will give ***first consideration to the most senior employee who will volunteer from the functional group in the seniority unit at the reporting centre from which the transfer is to be made, and who has the necessary qualifications.***
> ..
>
> 22.11 It is the Company's intention that ***on completion of a temporary transfer the employee shall be returned to his former position and reporting centre.*** It is understood that such re-transfer will not be possible where an emergency situations exists, or where due to unplanned or unforeseen events there is insufficient work and, therefore, his former position at his former reporting centre is not open. ***However, in order to enable a more senior employee who is on temporary transfer to return to his former reporting centre, the Company agrees to displace an employee with less seniority in the same functional group at that reporting centre.***
>
> [Emphasis added]

[108] On a plain reading of the words in article 22.09, in the context of the collective agreement considered as a whole, I find that a temporary transfer is a period of more than two weeks, and in accordance with article 22.02(b) "a continuous period of 90 days or less". In selecting the employee for the transfer opportunity, article 22.09 directs that the Company "will give first consideration to the most senior employee who will volunteer from the functional group in the seniority unit at the reporting centre from which the transfer is to be made, and who has the necessary qualifications."

[109] The Company submitted that the words, "first consideration" in that provision refer to the first of what might be many consequential or consecutive temporary transfers up to 90 days each of the same employee, where only the first one need be assigned to the most senior employee volunteering for the transfer after canvassing the appropriate reporting centre. Thus adopting that definition, the Company argues that after Mr. Thorne was selected for the first 90 day temporary transfer on February 27, 2017 (documented by CO3-125877) there was no requirement to recanvas volunteers for all coincident temporary transfers of 90 days duration up to a maximum of 24 months in accordance with article 24.01(a)(iii), discussed below.

[110] I respectfully disagree with that interpretation. Rather, in my opinion the words "first consideration" in article 22.09 refer to the initial factor among many that must be satisfied each time the Company temporarily transfers a member of the bargaining unit. The "first" factor or item to weigh is "seniority" that the arbitration awards over the decades have consistently recognized as "one of the most important and far-reaching benefits which the trade union movement has been able to secure for its members by virtue of the collective bargaining process" (per *Tung-Sol of Canada Ltd., supra,* at para. 4). Thus, and consistent with the importance of seniority in the selection process, the parties are first directed to grant the temporary transfer to "the most senior employee who will volunteer" for the opportunity among those who are "from the functional group in the seniority unit at the reporting centre from which the transfer is to be made, and who has the necessary qualifications".

[111] These words are directed to the seniority and qualifications of the employee to claim the specific temporary transfer at issue, defined under article 22.02(b) as a period up to 90 days ***only***. They do not suggest that once an employee is selected for the temporary transfer that the Company may reappoint or extend the temporary transfer every 90 days of the same person to the same transferred location or another location without returning to the "first consideration" by selecting the most senior employee among those who volunteer from the functional group in the seniority unit at the reporting centre from which the transfer is to be made, and who have the necessary qualifications. That interpretation is also consistent with the language in article 22.11 affirming "the Company's intention that on completion of a temporary transfer the employee shall be returned to his former position and reporting centre". Since the limit of a temporary transfer is 90 continuous days, article 22.11 mandates the return of the transferred employee to his or her former reporting centre after that period, without exception.

[112] Therefore, giving the language of articles 22.09 and 22.11 an interpretation that presumes, along with article 22.02(b) limiting the temporary transfer to a "continuous period of 90 days or less", all provision governing temporary transfers act harmoniously, I conclude that at the end of every temporary transfer which may be no longer than 90 continuous days that the "employee shall be returned to his former position and reporting centre" (per article 22.11), requiring the

Company to effectively re-set the process if it wants to continue the transfer as one having "temporary" as opposed to "permanent" status; namely, by giving first consideration to the most senior employee among those who volunteer for the assignment "from the functional group in the seniority unit at the reporting centre from which the transfer is to be made" who also have the necessary qualifications for the job. Article 24.01 (a) (iii) which defines a job opening for purposes of the job posting procedure to include, "When a job has been filled by a temporary transfer or temporary reassignment, by either one or more individuals, for 24 consecutive months" completes the picture of temporary transfers by placing an outside limit on the number of consecutive temporary transfers permitted to the same job to no more than "24 consecutive months", before its status must change to that of a permanent job opening.

[113] On the foregoing interpretation, the Company's practice of extending Mr. Thorne's temporary transfers after the initial 90 days without re-setting the process by canvassing for qualified volunteers from the appropriate functional group and seniority units at the reporting centre from which the transfer was to be made, was contrary to articles 22.09 and 22.11 of the collective agreement; i.e. effectively doing indirectly what is not permitted to be done directly under article 22.02(b) that expressly limits each temporary transfer up to 90 continuous days. As such, I find the temporary transfers documented by CO3 – 131694, 133341 and 135115 violated the collective agreement.

(d) The same "re-set" must occur when moving to different temporary assignments

[114] In addition to violating the collective agreement when it purported to extend a temporary transfer beyond 90 continuous days without recanvassing for volunteers from the applicable reporting centre, I conclude on my interpretation of the same contractual provisions that the Company's practice of unilaterally moving an employee from "location A" to "location B" without "re-setting" the temporary transfer process, even within the same 90 day continuous period, also violated the collective agreement.

[115] Just as the combination of articles 22.02(a)(b), 22.09 and 22.11 do not permit the Company to extend the temporary transfer beyond 90 continuous days without returning the employee to his/her reporting centre and recanvassing for volunteers from the applicable functional group and seniority unit for the next 90 day period, article 10.05 requires the Company to "advise ***the Stewards concerned*** where an employee is…temporarily transferred…in writing at the ***at the time the employee is informed or immediately thereafter***" (emphasis added). Since the evidence before me indicates that different Union Locals having different stewards represent employees assigned to work in different geographical areas; the Company's requirement to "advise the Stewards concerned" must imply that the temporary transfer is specific to a specific location, in order to have any practical effect.

[116] This means that each temporary transfer is specific to a reporting centre, which as demonstrated from the evidence before me in relation to Mr. Thorne's many transfers, may have different responsible stewards within the jurisdiction of different Locals of the Union. To give such language any sense of business efficacy is to import the Company's obligation to make each temporary transfer "location specific"; and consequently, any change in location must further require notification of a potentially different Union steward having responsibility for the different location, which was also demonstrated in a number of the transfers involving Mr. Thorne. As such, I conclude the collective agreement requires each temporary transfer to be to a specified reporting centre; with the effect that every change in specific location requires a further "re-set" of the temporary transfer process in accordance with article 22.09 by: (a) canvassing for volunteers and selecting the senior employee; (b) among the functional group in the seniority unit; (c) at the reporting centre from which the transfer is to be made; (d) who has the necessary qualifications for the work.

[117] Thus applying the foregoing interpretation of the applicable contractual language before me, I conclude the Company violated the collective agreement on a numerous occasions when it unilaterally transferred Mr. Thorne from one location to another, or from an unstated reporting centre to a stated reporting centre (which the Company attempted to rationalize as mere clerical "errors"), without re-setting the temporary transfer process under article 22.09, in the temporary

transfers for Mr. Thorne documented by CO3s - 130085, 130092, 130310, 130428, 139469, 134678 and 135115, described above.

[118] Mr. Trépanier testified that it would be so restricted to recanvas for volunteers each time he moved an employee like Mr. Thorne to a different location within the context of a single temporary transfer, as to make it impossible to fulfill the Company's obligations in the context of a major initiative like the FTTH project involving the movement of some 150 technicians from Ontario and Quebec. He was particularly concerned that the outcome of such a requirement would be the inefficient split up of small teams of technicians working in a single truck on a regular basis, which he likened to "musical chairs".

[119] That may cause administrative challenges, but it does not override the negotiated provisions of the collective agreement that I have found require the kind of recanvassing described above. To rule otherwise would, in my opinion, lead to the result that employees like the Grievor, who may be interested in moving to one of the locations Mr. Thorne was assigned in the context of his serial temporary transfers, would not be able to exercise his greater seniority to claim the right to work at that location, where seniority is also of fundamental importance to the Union in the organization of the workforce. Since recanvassing under article 22.09 only arises where a transfer is for more than two weeks, the parties have struck a balance in negotiating the specific terms of that provision to enable the Company to unilaterally transfer employees to different locations for periods of less than two weeks without regard to their relative seniority standing; but afterwards they have imposed strict rules that the Company has committed itself to follow that include the obligation to recanvas for volunteers whenever the location changes.

[120] The fact that the parties have provided in article 22.09 for the ability of the Company to unilaterally transfer employees to different reporting centre or like locations for less than two weeks without regard to the recanvasing limitations, is a partial answer to Mr. Trépanier's "musical chairs" concerns giving the Company some flexibility in the movement of small teams for relatively short periods of time. But, it doesn't go as far as the Company has demonstrated by

the effect of its treatment of Mr. Thorne's transfers by disregarding that obligation altogether, which is contrary to the limitations in the collective agreement negotiated between them.

[121] Consequently, I must find that the Company's practice of moving small teams between different reporting centre locations of the kind illustrated by Mr. Thorne's movements documented by CO3 – 130092, and 133341, also violated the collective agreement.

(e) The Grievor is entitled to compensation for proven damages

[122] The final issue for determination is whether the Grievor is entitled to monetary damages arising out of the Company's breach of contract.

[123] While admitting that he hadn't volunteered for some of the early temporary transfers in issue notwithstanding his higher seniority, the Grievor maintained that if asked he would have accepted the transfers to Peterborough documented by CO3-130029, 133341 and possibly 130428. It appears there may have been additional compensation payable to the Grievor under different provisions of the collective agreement had he taken those assignments.

[124] The Company argues that even if it had an obligation to recanvas employees each time Mr. Thorne changed temporary assignments the Grievor was not part of the same seniority group because he reported to a different second level manager (i.e. Mr. Trépanier) than the Grievor, whose second level manager was Mr. Rodford. In support the Company relies upon internal Company "Headcount Sheets" for September 15, 2017, January 31, 2018 and February 28, 2018; each showing that Mr. Thorne's second level manager was Mr. Trépanier while the Grievor's second manager is recorded as Mr. Rodford.

[125] At the same time the parties filed the seniority list dated February 1, 2018, which is understood to represent the relative seniority of Mr. Thorne and the Grievor during most of the temporary transfers at issue; along with the seniority list dated August 1, 2018, which is after Mr. Thorne's final move on June 4, 2018 to a new permanent reporting centre identified as College

Street, Belleville. The February 1, 2018 seniority list shows that both the Grievor, assigned to the permanent reporting centre in Oshawa, and Mr. Thorne assigned to the permanent reporting centre on Birchmount Road, Toronto, were both within a group of employees reporting to Mr. Rodford. The August 1, 2018 seniority list indicates that while the Grievor's second level manager continued to be Mr. Rodford, Mr. Thorne's new permanent reporting centre brought him under the direction of second level manager Trépanier.

[126] In considering the weight to give to this seemingly contradictory documentation (in the sense that the Headcount Sheets indicated different second level managers for Mr. Thorne and the Grievor at the relevant times), I rely on articles 10.02, 10.03 and 10.04, reproduced above. Article 10.02 states that employees "whose immediate managers report directly to the same manager shall comprise a seniority unit". Article 10.03 provides that for present purposes the "exercise of seniority shall be within a seniority unit". And article 10.03 mandates that, "The Company will prepare and post on appropriate Company bulletin boards, on February 1 and August 1, lists showing ***the seniority of employees within each seniority unit, and their headquarters"*** (emphasis added), with one copy of the list sent to the local Union office.

[127] On this language I conclude that the seniority lists exchanged with the Union (that has the presumptive right to challenge any list as inaccurate), is the governing documentation for purposes of identifying the relevant "seniority unit". Noting that the Company did not file any previous seniority lists different than the February 1, 2018 list before me, I conclude on a straightforward reading of the lists filed into evidence that at all times relevant to the questioned temporary transfers both the Grievor and Mr. Thorne were part of the same seniority unit, under the direction of the same second level manager, Mr. Rodford, at least until June 4, 2018, when the undisputed evidence is that Mr. Thorne moved to the permanent reporting centre of Belleville, under the direction of second level manager Mr. Trépanier.

[128] Thus until Mr. Thorne's permanent move to the Belleville office, I find that both he and the Grievor were part of the same seniority unit reporting to the same second level manager. The

seniority lists also establish that the Grievor has more seniority relative to Mr. Thorne, bringing with it all of the rights of having greater seniority standing to the Grievor.

[129] To the extent the Company's internal "Headcount Sheets" may suggest otherwise, I must give them little, if any weight. Part of my reticence arises out of the admission of Mr. Trépanier that there were "plenty" of errors in the Company's administrative dealings in connection with Mr. Thorne's temporary transfers. In the face of such errors, which have consequences beyond the Company simply saying, "We're sorry", the immediate consequence is that I can have little confidence in the other documentation submitted to me by the Company, at least to the extent it seems contradictory to the seniority lists formally exchanged between the parties. As such, I find on the reliable documentary evidence in the form of the seniority lists, that at all relevant times, the Grievor and Mr. Thorne were part of the same seniority unit.

[130] Consequently, the Company's failure to offer the Grievor the temporary transfers that I accept on his testimony he would have taken if asked, but were instead unilaterally assigned to Mr. Thorne, constituted a breach of the collective agreement for which the Grievor is entitled to damages to recover any proven monetary losses as a result.

Disposition

[131] Therefore both the Union's policy and individual grievances are hereby allowed.

[132] For the reasons set out above, I declare that the Company's practice in temporarily transferring employees in the manner itemized herein violated the collective agreement, which the Company is ordered to cease and desist forthwith. The Company is henceforth required to follow the provisions of the collective agreement as described in processing future temporary transfers.

[133] I also conclude on the evidence before me that the individual Grievor was wrongfully bypassed, without being canvassed, for a number of temporary transfers which he would have

accepted, if asked. He is therefore entitled to monetary damages for all loses established as a result which is remitted back to the parties to resolve, failing which I will remain seized to determine the matter.

DATED THIS 22ND DAY OF MARCH, 2022

"G. F. Luborsky"
Gordon F. Luborsky,
Sole Arbitrator