SUMMARY

CWA Case No. B17-ALL-005
Name of Case: CWA and BST - Contracting Out Buried Service Wire Work
Executive Level Grievance Union WON

This Executive Level Grievance was initiated in 2017, alleging that Company was in breach of Article 10 of the Utility Operations agreement by contracting out buried service wire work before offering available work to Machine Operators in the bargaining unit. The Company's position was that the CBA requires it to offer unlimited overtime to "resident forces" (meaning employees within the exchange + 35 miles) but not to offer available work to other "available forces" in the bargaining unit. CWA's position was that the meaning of "resident forces" has a different meaning in the Utility Operations bargaining unit, given the nature of the work; limiting work to an exchange + 35 miles has no application in the Utility Operations environment. Instead, "resident forces" has always been understood by both parties to mean those employees who have routinely traveled to areas outside of their assigned exchange to perform the work in question. The Company's reliance on the exchange + 35 miles is a unilateral change to the historic practice of assigning work.

Arbitrator Joan Parker sustained the grievance, and remanded the dispute to the parties to determine a remedy. In her award Arbitrator Parker focused on the distinction made by Article 10 of the CBA between "resident forces" and "other available forces". That language requires the Company to offer unlimited overtime to "resident forces" before subcontracting the work in question, and it must also offer the work to "other available forces" before subcontracting. "Other available forces" does not mean any employee Company-wide, but rather means bargaining unit employees beyond the geographic limit of "resident forces".

In the Matter of the Arbitration	:	
between	:	Opinion and Award
AT&T SOUTHEAST d/b/a BELLSOUTH TELECOMMUNICATIONS	:	Subcontracting Buried Service Wire Grievance No. B17-ALL-005
and	:	
COMMUNICATIONS WORKERS OF AMERICA	:	

Before: Joan Parker
Arbitrator

Appearances

For BellSouth:
Attorney for BellSouth
by Steven T. Breaux, Esquire

For the CWA:
Quinn, Connor, Weaver, Davies & Rouco LLP
by John L. Quinn, Esquire

* * * *

Pursuant to the grievance procedure set forth in the August 9, 2015 Collective Bargaining Agreement for Utility Operations ("the Agreement") between the Communications Workers of America (the "CWA" or the "Union"), and BellSouth Telecommunications, LLC ("BellSouth" or the "Company"), the undersigned was designated to arbitrate the instant dispute concerning the subcontracting of Buried Service Wire work.

A hearing was held on January 11, 2019, in Atlanta, Georgia, during which both parties were afforded full opportunity to present testimony, evidence, and argument in support of their respective positions. Post-hearing briefs were received by the Arbitrator on March 30, 2019, at which time the record was deemed closed.

The Issue

The parties were unable to stipulate the submission and therefore reserved to the Arbitrator the right to frame the issue. Having studied the case in its entirety, the Arbitrator has concluded that the issue is appropriately set forth as follows:

> Did the Company violate the Collective Bargaining Agreement when it contracted out bargaining unit Buried Service Wire work under Article 10 after offering unlimited overtime to "resident forces" within the exchange and within 35 miles of the exchange, but without offering "other available forces within the Bargaining Unit" an opportunity to perform the work?[1]

Relevant Contract Language

> **Article 6 – Force Reductions**
> (B)(2)
> ...
> Upfront Bump
> When the most junior employee doing essentially the same type work is located in another exchange within 35 miles, the surplus employee in the original surplus exchange will bump such employee and the bumped employee will become the surplus employee.
>
> State Bump
> When the most junior employee performing essentially the same type work is located in another exchange within the same state, the senior employee may bump the junior employee.
>
> **Article 10 – Jurisdiction of Work**
> C. Contract Work
> The Company reserves the right to contract out the placement of Buried Service Wire during this contract, if it does not make it necessary to lay off full-time employees.
>
> The Company will not allow contractors to perform "wire work" functions referenced in Appendix B.
>
> The resident forces will have been offered unlimited overtime and other available forces within the Bargaining Unit will have been offered the opportunity to perform the work, prior to contracting the work out.

[1] The parties jointly requested that this Arbitrator not order a remedy in the event she finds BellSouth violated the Agreement.

In addition, the Company will give the Union as much advance notice as possible prior to contracting out work.

Article 12 – Travel Expenses

A. Commuting Expenses

1. When an employee is asked to report to work outside his/her headquarters exchange at another location that is 50 miles or less from his/her regular place of reporting and transportation is not provided by the Company, he/she will travel on his/her own time, report for duty at the beginning of his/her assigned tour and be compensated as follows :

Up to and including 35 miles	$18.00
From 36 through 50 miles	$25.00

2. Distance calculations in this section will be actual mileage on the most commonly used direct route.

B. Temporary Transfers

1. For temporary transfers of over 50 miles from the employee's regular place of reporting, reimbursement will be based on the option chosen by the employee.

   Option A
   IRS mileage rate plus a $45.00 allowance for all expenses.

   Option B
   IRS mileage rate plus a S35 .00 per diem for meals and incidental expenses. Company pays for lodging.

   When travel is over 50 miles and the Company pays for transportation and travel time at the overtime rate, the employee will be compensated a $35.00 per diem for meals and incidental expenses. Company pays for lodging.

2. In those cases where work and travel time exceeds 4 hours, the full per diem will apply. If the work and travel time is less than 4 hours, ½ per diem will apply.

Background

In order to bring service to customers, BellSouth must bring wiring from Serving Terminals (STs) located on utilities' right-of-way (generally along streets) to the Outside Network Interface

("ONI") located on the customer's premises. This is accomplished either by running overhead wires or by burying the wires. Burying the wires is referred to as Buried Service Wire ("BSW") work. BSW work is also performed by running wire along a right-of-way. This case involves BSW work from the ST to the customer's ONI. In order to install BSWs, a trench must be dug from the ST to the ONI. The wire is then run through the trench and connected to the ST and the ONI, and the trench is filled in. This requires a variety of digging and boring equipment.

Prior to 1992, BSW installations were performed by contractors. Beginning in 1992, BellSouth and the CWA began a trial to see if the work could be cost-effectively brought in-house. The trial was a success, and in 1995 it was expanded to thirteen BellSouth locations. In 1998, the parties agreed to bring all the BSW work in-house and negotiated a collective bargaining agreement covering BellSouth employees who would perform that work. The in-house process allowed BellSouth to reduce the number of trips needed to connect a customer to the BellSouth service and allowed BellSouth to shift "wire work" elements of the service connection from higher rated Service Technicians to Machine Operators covered by the Agreement. After 1998, the parties negotiated several successor Utility Operations collective bargaining agreements. The instant dispute arose under the 2015 Agreement.

The BellSouth system covers thirteen states and is broken into geographic regions known as exchanges. Employees are assigned to a work station within an exchange. An employee may be required to report for work outside of his/her assigned exchange, and the employee is compensated for travel related to that assignment as specified in Article 12 of the Agreement.

While the Agreement provides four classifications -- Utility Worker, Machine Operator, Heavy Equipment Operator and Mechanic -- the Machine Operator classification is the only one currently populated. Machine Operators currently perform BSW work in approximately half of

BellSouth's geographic area. These employees bring equipment trailers from their work stations to the job site.

BellSouth has a comprehensive training program for new Machine Operators. The training begins with a week and a half of classroom work. After completing the class, it takes approximately sixty days of on-the-job training for a new BellSouth employee to safely perform Machine Operator's work on his/her own and approximately thirty days of on-the-job training for a BellSouth employee who transfers into the position to safely perform the work. If equipment is not available for training, it can take as long as six months for new equipment to be ordered and delivered.

In the 2009 contract negotiations, the Union proposed a change to Article 6 covering Force Reductions. The proposed change expanded bumping within an exchange by adding a 35 mile bumping option. BellSouth agreed to this proposal. This allowed employees subject to a layoff to bump junior employees "in another exchange within 35 miles" instead of being forced to move hundreds of miles away in order to exercise bumping rights. (Jt. Ex 1 at 15).

Shortly after the 2009 negotiations, towards the end of 2009, BellSouth determined that due to the reductions in its workforce it was spending too much money moving Machine Operators to areas where they were needed. BellSouth's workforce reductions were the result of work lost during the 2008 economic downturn, the shift from landlines to cell phones, and BellSouth's earlier decision to subcontract BSW work performed in right-of-ways. To reduce its travel costs, BellSouth decided to begin exercising rights set forth in the subcontracting language in Article 10(C). While it is undisputed that the Agreement allows BellSouth to subcontract BSW work after meeting the requirements set forth in Article 10, prior to 2010 it had not subcontracted BSW work.

Michael Matthews ("Matthews"), who was BellSouth's Labor Relations Vice President

from 2001 to 2015, realized the CWA would be very upset about this subcontracting decision. He did not want to surprise the Union. Hence, he contacted CWA District Three Vice President Judy Dennis to tell her BellSouth would be subcontracting a significant amount of BSW work. (Tr. at 151) Matthews testified that Dennis, who had recently been elected, was very upset by the news. Matthews told Dennis that, just as BellSouth had agreed to add the 35 mile bumping option to Article 6 in the event of a surplus, BellSouth would add the 35 mile option to the "unlimited overtime" provision in Article 10(C). (Tr. at 152-53) As a result, the "unlimited overtime" provision would apply to the employees in the exchange as well as employees within 35 miles of the exchange. (Id.) BellSouth managers and supervisors were provided with language they were supposed to share with employees prior to subcontracting. It stated:.

> Based on reasonable commuting distances, we have established a 35 mile radius of the affected exchanges to comply with the unlimited overtime requirements in Article 10. All employees within that 35 mile radius will be offered unlimited overtime within the safety guidelines that we are using now and in the past.

(Co. Ex. 6) In 2011, Belinda Lacey, BellSouth's Labor Relations Director, re-communicated the 35 mile rule to BellSouth managers:

> Unlimited overtime as determined by the Company will be offered to the resident forces in the exchange and within 35 miles of the exchange to meet the needs of the business. If this is not sufficient contractors will be used as necessary.

(Co. Ex. 3). Starting in 2010, BellSouth consistently applied this rule prior to subcontracting.

Beginning in 2010, BellSouth began to subcontract the BSW work after offering unlimited overtime to "resident forces" in the exchange as well as within 35 miles. In 2011 and 2013, two CWA locals, Local 3105 in Florida and Local 3601 in North Carolina, filed grievances over the subcontracting. Those grievances were not moved to arbitration. Instead, the CWA filed an executive level grievance over the issue that resulted in this arbitration.

At hearing, the CWA presented the testimony of Nicholas Hawkins, Assistant to the Vice

President of CWA District Three; Shawn Todd, President of Local 3105; Curtis Shew, President of Local 3601; and Jerry P. Keene, the retired former CWA Representative for South Carolina.

Hawkins testified that Dennis and CWA Administrative Director Thelma Dunlap never mentioned the alleged agreement with Matthews regarding limiting the offer of unlimited overtime to an exchange or within 35 miles of an exchange. Nor had John Trageser, BellSouth's Assistant Vice President of Labor Relations, ever raised the alleged agreement during the grievance process. Todd testified that Machine Operators' coverage areas extended over multiple exchanges, some well over 35 miles away. He also stated that Machine Operators were sometimes assigned outside the jurisdiction of his Local. Shew testified employees covered by other Locals were frequently assigned into areas covered by his Local. Shew and Todd each stated that they had members assigned as far as 100 to 180 miles from their exchanges, and the assignments were not overnight. Shew also testified that he had members assigned to locations in other states for as long as three to six weeks, and those members were compensated as Temporary Transfers under Article 12.

Keene testified he was on the CWA bargaining committee during the 1998 negotiations over the Agreement. He explained that "resident forces are the people in the utilities that do the work." (Tr. at 129) Keene also said there were discussions during the 1998 negotiations regarding the meaning of the phrase "other available forces within the Bargaining Unit" in Article 10(C). Keene stated he had discussions with BellSouth mangers regarding application of Article 10(C) and gave an example of what he understood BellSouth would do prior to subcontracting:

> [F]irst he would offer all – prior to doing that, he would offer the resident forces, all of them, unlimited overtime to do that work.
>
> If there's any additional work that they can't handle, then he would offer it to available forces within the bargaining unit, which would be nine states, to transfer in. And obviously, if that doesn't work, then he would have rights to bring a contractor in. (Tr. at 130)

Keene also stated that during the 1998 negotiations, there was never any discussion that the offer

of unlimited overtime was limited to a specific exchange or 35 miles. (Tr. at 131)

BellSouth presented the testimony of Matthews; Lacey; Trageser; Ralph Robinson, Jr., who retired in 2018 as an area manager covering multiple states; Charles Bruner, a BellSouth area manager in Georgia; Garren Echols, who works for the NSO; and Eric Green, Director of BellSouth's Technical Field Services group.

Matthews, who was not involved in the 1998 negotiations, testified that it was always BellSouth's understanding that "other available forces" meant the three titles covered by the Agreement other than Machine Operators. (Tr. at 149-51) Mathews discussed his 2009 conversation with Dennis when he informed her BellSouth would begin subcontracting:

> Q. Tell me what you told her about how you were going to offer overtime when you had contractors coming in.
> A. We're going to offer it to resident forces first.
> Q. And meaning what?
> A. Meaning any title that resides in that exchange in utilities will be able to work all the unlimited overtime they want.
> Q. And what else did you commit to?
> A. And I said what I would do – and I committed – any title in this book that resides within 35 miles of there and offer them unlimited overtime as well.
> ...
> Q. Did she complain about your interpretation?
> A. No.

(Tr. at 154-55)

Green testified regarding how BellSouth addressed spikes in demand:

> So what we would do is when we have that spike, you typically start to work the overtime. Then we typically, within a local, we try to do the mandatory overtime. The whole time we're looking at how much work is there, are we keeping up with our customers' demand. How many days is the customer waiting for us to serve them. That's our first few steps.
>
> If that doesn't work, we'll look at that localized area around them. So we'll say, hey -- you heard the phrase earlier, in a day's work, someone had mentioned. That means within a day when you start your tour, you can travel to that area or you can travel back, within a driving distance. So you couldn't drive, you know, statewide or a thousand miles in the same day. But if you can drive it within reason the same day, we would look at that local

area and say, hey, can you go in and help support them, all in a day's work. And they could, if the load depended upon it.

And then we expanded that and said, well, if this area can't, if it expanded beyond that, let's say across the state, we did things that you heard, temporary loans, earlier. If an area such as in the panhandle can loan to Miami, if there's a large growth, we would pull the technicians and we asked them to go to the area, because they volunteer to do. And then they go and they work that while we put them up in hotels, et cetera, et cetera, to help support that area.

(Tr. at 232-33)

Contentions of the CWA

The Union argues that once it establishes it has jurisdiction over work that was subcontracted, the burden shifts to BellSouth to prove its "affirmative defense," that the subcontracting was not a violation due to an exception in the Agreement. In support, the CWA cites prior arbitration decisions regarding the "Jurisdiction of Work" provision in the parties' Telecommunications Agreement. In those cases, the arbitrators held that once the CWA made a *prima facie* showing that it had exclusive jurisdiction over the subcontracted work, the burden shifted to BellSouth to prove there was an exception to that exclusive jurisdiction, which allowed the Company to subcontract. The Union asserts that the cited decisions are applicable to the instant dispute concerning Article 10, although it acknowledges that in this case, there is no dispute regarding its jurisdiction over BSW work or that BellSouth subcontracted it. Rather, the dispute is over whether BellSouth followed the proper steps prior to subcontracting the work. According to the CWA, BellSouth has failed to meet its burden of proving that it properly relied on the subcontracting exception in Article 10.

The CWA first looks to the meaning of "resident forces" in Article 10(C), arguing the term covers a much broader area than an exchange. The CWA maintains that in the Utility Operations world, as opposed to the Telecommunications environment, the term "exchange" has no real

meaning, as an employee's work location depends on where the next subdivision is being built, regardless of the exchange. The CWA asserts that prior to 2010, an employee's work area covered a much broader geographic area than an individual exchange. Due to reductions in the bargaining unit, bargaining unit members were required to travel well beyond their exchanges to cover work assignments. While the CWA does not suggest a specific definition of "resident forces" other than "members of the workforce who normally perform the work in that area," the implication of its argument is that the term should apply at least to the locations that employees historically traveled to and from in a single work day.[2] The CWA concludes that BellSouth simply redefined the term "resident forces" to be limited to an exchange and within 35 miles of an exchange to reduce BellSouth's travel costs and obligation to offer unlimited overtime. This action, in the Union's view, was a unilateral and incorrect application of the Agreement.

The CWA further contends that BellSouth cannot credibly dispute that the phrase "other available forces in the bargaining unit" in Article 10(C) refers to transferring bargaining unit employees to areas requiring additional support. It rejects BellSouth's position that the phrase refers to the bargaining unit classifications that are no longer populated, emphasizing that nothing in the language limits its application to specific bargaining unit positions. The CWA also relies on BellSouth's practice of transferring employees across states and across the region to address work needs as evidence that the phrase requires the Company to give employee transfers the opportunity to work before engaging in subcontracting.

Contentions of BellSouth

BellSouth contends that the CWA, as the moving party, has the burden of proof in this

[2] BellSouth assumes in its brief that the CWA is arguing that "resident forces" means any employee in the BellSouth network. However, the CWA's argument is not that broad.

case. It rejects the argument that the burden shifts to the Company once CWA has established jurisdiction of BSW work. Citing three decisions involving other employers, which held that the union shoulders the burden of proof in a contract interpretation case, BellSouth also asserts that in order to prevail, the CWA must show that its interpretation of the Agreement is the "sole correct interpretation," not merely that it is a "reasonable" interpretation.[3]

BellSouth argues that it offered unlimited overtime even more broadly than was required under Article 10(C). It asserts that the term "resident forces" refers to employees within an exchange. In support, it points out that the parties operate based on exchanges. Therefore, it makes sense that employees within an exchange are offered unlimited overtime before work in that exchange can be subcontracted, as those employees are residents of that exchange. BellSouth concludes that applying a broader definition to "resident forces" eliminates the term "resident" from Article 10(C).

BellSouth acknowledges that Article 10(C) requires it to offer the opportunity to perform the BSW work to "other available forces" before it can subcontract the BSW work. However, it argues that the phrase "other available forces" refers to the three job classifications that are no longer populated, and thus there are no available forces in those classifications:

> Originally, when the parties negotiated the provisions, they had other employees in other titles performing other work, but there are no longer any such employees. There are no "other available forces"; there are only Machine Operators.

(BellSouth brief at 13) BellSouth rejects the CWA's claim that the phrase "other available forces" also includes Machine Operators, arguing that the Union's position is both illogical and inconsistent with the contractual language. BellSouth asserts that nothing in the Agreement requires it to transfer Machine Operators from one location to another, and that if the parties meant

[3] Citing, Tampa Shipyards, 87-1 Lab. Arb. Awards (CCH)¶8031 (July 2, 1986) (Nolan, Arb.)

to require that type of relocation, they would have included such a requirement in clear contract language. The Company also maintains that the CWA did not present any evidence that Machine Operators were available. Thus, it concludes that it makes no sense to transfer Machine Operators who are needed in their location to locations in another part of the state. Finally, BellSouth notes that the Machine Operator headcount has increased, and there is no evidence of adverse impact as a result of the subcontracting.

Opinion

Inasmuch as the CWA filed this grievance concerning contract interpretation, it bears the burden of proof. The CWA's argument, that BellSouth bears the burden of proof, is not persuasive. Unlike the arbitration decisions cited by the CWA, this is not a case in which the parties are disputing whether the CWA has jurisdiction over defined work and in which BellSouth is claiming an exception to the CWA's jurisdiction. Rather, in this case, the CWA claims that BellSouth failed to satisfy the contractually required prerequisites before subcontracting bargaining unit work. BellSouth does not dispute that the CWA has jurisdiction over the subcontracted work. Rather, BellSouth argues it followed the steps required in order to engage in permissible subcontracting of that work. In these circumstances, the CWA retains the burden of proof.[4]

The analysis in this case starts with the disputed sentence in Article 10(C):

> The resident forces will have been offered unlimited overtime **and** other available forces within the Bargaining Unit will have been offered the opportunity to perform the work, prior to contracting the work out. (emphasis added)

This provision sets forth two independent steps BellSouth must take before subcontracting. Each step uses different language to define the group of employees to which the step applies. It is a

[4] This Arbitrator would have reached the same decision in this case if the CWA was correct that the burden of proof shifted to BellSouth.

basic principle of contract drafting that when different language is used to identify two terms, the difference in the language reflects that the two terms have different meaning. In this case "resident forces" and "other available forces within the Bargaining Unit" must refer to two separate groups of employees. The parties dispute the meaning of both terms.

Merriam-Webster's online dictionary defines "resident" as "one who resides in a place". It defines "resides" as "to dwell permanently or continuously". See, www.merriam-webster.com. The natural application of those definitions in this case is that BellSouth employees at a minimum "reside" in their exchanges. The Union argues that the term "exchange" has no meaning for this bargaining unit. However, as recently as 2009, the Union proposed (and the parties agreed) to modify Article 6(B)(2), covering Force Reduction, to include bumping within 35 miles of an exchange. The term "exchange" was integral to the Union's proposal. If the Union believed "exchange" had no meaning, it would be expected to have made a proposal that did not include the term "exchange" as the reference point. It did not so propose.

Moreover, Article 12, covering Travel Expenses (which the CWA relies upon in its argument regarding the second disputed phrase of Article 10(C)), uses an employee's exchange as the starting point for measuring travel compensation. While employees may frequently work outside their home exchange, the term "exchange" certainly continues to have meaning in the Utility Operations bargaining unit.

The parties recognized in the 2009 negotiations that, at least for Force Reductions, restricting employees' options to their exchange was too limiting. Matthews reached the same conclusion in late 2009 when discussing the impact of the upcoming subcontracting with Dennis. During that conversation, he expanded the definition of "resident forces" to include the 35 mile extension. Since that time, BellSouth has consistently applied the term "resident forces" to include

the exchange and within 35 miles of the exchange. While the CWA challenged Matthews' testimony about the understanding he reached with Dennis in regard to the 35 mile extension for resident forces, Matthews gave a credible account. Moreover, the fact that the 35 mile rule has been consistently applied for resident forces since 2009 supports his testimony.

The Union's argument, that the term "resident forces" applies to a broader geographic area than applied by BellSouth, is based on employees sometimes working beyond their exchange and 35 miles. However, the fact that some or even all employees may sometimes work further than 35 miles from their exchange does not expand the geography applicable to "resident forces." As discussed above, the term "resident" implicates a home base or area. The definition does not extend to every area to which a resident employee travels. While the parties could have used clearer language to define the application of the unlimited overtime requirement, this Arbitrator concludes that the unlimited overtime provision applies only to employees within the exchange and within 35 miles of the exchange.

Because the term "resident forces" is defined as employees in a defined area, the phrase "other available forces within the Bargaining Unit" must refer to a group of employees outside of that area. The phrase could not be written more broadly. It does not include any geographic limitation or any limitation on the classifications it includes. The phrase's only limitation is the term "available," which is discussed below. The plain meaning of the language is that it applies to every "available" bargaining unit employee located anywhere in BellSouth's territory.

BellSouth's arguments for a more limited definition are not persuasive. It submits that the term "resident forces" applies to Machine Operators and that "other available forces" applies only to the three job classifications that are no longer populated: Utility Worker, Heavy Equipment Operator, and Mechanic. However, while Matthews testified that BellSouth always believed that

was the interpretation, there is nothing in the contract language to support such a specific restriction. If the parties had wanted to exclude Machine Operators from the definition of "other available forces," they would have been expected to include such a limitation. They did not.

The restriction is also inconsistent with the testimony of BellSouth's witnesses regarding the Company's training program. Article 10(C) requires BellSouth to first use bargaining unit employees to address spikes in workload before subcontracting the BSW work. It would take employees who were not trained as Machine Operators a minimum of over thirty days of training to safely operate the equipment. There was no testimony presented regarding whether employees in other Utility Operations job classifications were trained to operate the Machine Operator equipment. However, excluding the Machine Operators from "other available forces" is contrary to the intent of the provision, which is to quickly deploy employees to address a spike in workload before subcontracting the work. Machine Operators, who are already trained and regularly perform that work, are best suited to meet those spikes. It is unreasonable to assume the parties meant to exclude the most capable job classification from the "other available forces" requirement.

BellSouth also argues there is nothing in the Agreement that requires it to transfer Machine Operators from one location to another, and if the parties meant to require relocation, they would have included such a requirement in the Agreement. That argument ignores two facts. Article 12 includes provisions for compensating employees for travel, and Keene credibly testified that to address upturns in workload, BellSouth assigned employees to travel significant distances during the work day and transferred employees for weeks at a time. While Article 10(C) does not expressly require relocation, the parties' Agreement anticipated travelling longer distances for an assignment, as well as temporary transfers.

Finally, BellSouth submits that it makes no sense to transfer Machine Operators to locations in another part of the state when they are needed in their location. BellSouth may be correct on this point. However, the fact that the Agreement places obligations on BellSouth that currently do not make operational sense is not a basis for an Arbitrator to redefine or eliminate the Agreement's requirements. BellSouth's contention that it should not be compelled to transfer employees who are needed in their location goes to the meaning of the word "available" in Article 10(C). There was no testimony presented by either party on the meaning of that word or whether bargaining unit employees were "available" when BellSouth contracted out the work. Other than a short reference in BellSouth's brief, neither party addressed the issue.

As discussed above, however, at a minimum, "and other available forces" means bargaining unit members beyond the geographic limits of the resident forces. Hence, pursuant to Article 10(C), resident forces must be offered unlimited overtime, and other available forces within the Bargaining Unit must be offered the opportunity to perform the BSW work before BellSouth can subcontract. But given that there is no evidence in the Record as to which bargaining unit employees, if any, were available, and by what definition their availability was to be measured, the Arbitrator makes no ruling on that issue. The most she can say is that the Company erred in not attempting to offer the other available forces the opportunity to perform BSW work prior to contracting it out.[5]

Based on the foregoing, the grievance is granted. While BellSouth properly offered unlimited overtime to "resident forces" within the exchange and within 35 miles, it failed to also

[5] BellSouth's arguments that Machine Operator headcount has increased and that there is no adverse impact as a result of the subcontracting, are not relevant to whether BellSouth violated the Agreement. While the arguments may go to remedy, the parties have directed this Arbitrator not to issue a remedy in this case.

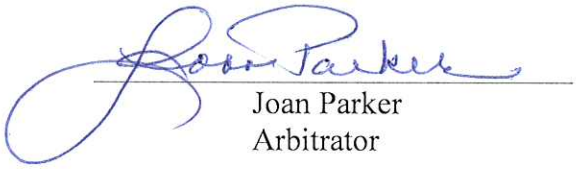
offer "other available forces within the Bargaining Unit" an opportunity to perform the subcontracted work.

Award

Prior to subcontracting BSW work, BellSouth properly offered unlimited overtime to "resident forces", who are employees within the exchange and within 35 miles of the exchange. However, BellSouth failed to offer "other available forces within the Bargaining Unit" an opportunity to perform the subcontracted work prior to subcontracting.

Therefore, the grievance is granted.

April 25, 2019



Joan Parker
Arbitrator