IN THE MATTER OF AN ARBITRATION

B e t w e e n:

BELL ALIANT REGIONAL COMMUNICATIONS L.P.

(the "Company")

- and -

UNIFOR

(the "Union")

and in the matter of National Policy Grievance BA-Craft-ON-14-01 concerning contracting out.

Russell Goodfellow – Sole Arbitrator

APPEARANCES FOR THE COMPANY:

Mireille Bergeron, counsel
Tom Blake
Guy Jetté
Marc Liard
Terry Deighton
Gregory Matthews

APPEARANCES FOR THE UNION:

Micheil Russell, counsel
Maureen Dawson
Kevin Long
Marshall Saar
George Skerkowski
Ray Mortimer

A hearing was held in this matter on April 1 and June 16 & 17, 2015.

AWARD

This is a contracting out grievance. The issue is whether there was a contracting out to which the following collective agreement provision applies:

ARTICLE 36 – CONTRACTING OUT

36.01 At least once per year, or more frequently where mutually agreed, an Officer of the Union (or a delegate) shall meet with a Tier A manager (or a delegate), who has bargaining unit employees in his organization, to discuss the broad principles associated with the contracting out issue as it pertains to the manager's organization.

36.02 Each quarter, or more frequently where mutually agreed, each Tier B manager shall meet with the Local Union President (representing bargaining unit employees in the Tier B manager's organization) to discuss and review contracting out activity and concerns within the manager's organization. The Tier B manager and the Local Union President may jointly agree to delegate, in part or in full, the responsibility for these quarterly meetings where, in their opinion, such delegation would result in more meaningful dialogue between the parties.

36.03 It is agreed that the meetings referenced above shall be face-to-face, or by conference call where mutually agreed.

36.04 Discussions between the Local Union President and Tier B manager (or their designates) shall include, but are not limited to, a review of the following:

(i) Work contracted out by the manager's organization since the last meeting;
(ii) Feedback on work which was contracted out (to highlight possible improvements or suggest alternatives);
(iii) Work which is expected to be contracted out (with as much advance notice as practicable);
(iv) Alternatives to the contracting out of work (e.g., utilizing part-time employees, in the case of Craft & Services work, more efficient utilization of available employees across districts/departments, etc.).

36.05 The Company will objectively review and consider input from the Local Union regarding the availability of necessary skills and equipment, price and quality competitiveness, balancing out the amount of work required to be performed, and achieved with its own workforce.

The Company was created by Bell Canada ("Bell") in 2006. It was part of a joint venture with Aliant Inc. It combined, amongst other businesses, Bell's former regional wireline operations in rural Ontario and Quebec with Aliant's former wireline, IT and related operations in Atlantic Canada. At the time of its creation, and when the present grievance was filed in 2014, Bell owned approximately forty percent of the shares of the Company and, by its own account, "controlled" it. As I understand it, Bell now owns all of the shares.

In 2009, the Company, the Union and Bell made a joint application for a declaration of a sale of a portion of the Bell business, involving operations in certain rural areas in Ontario and Quebec, to the Company. The application, which was successful, recognized that Bell employees working in these areas were transferred to the Company, essentially on a flow through basis, along with their work and certain Bell assets. In 2012 the Company and the Union negotiated their second collective agreement, which included Article 36.

The Canadian Imperial Bank of Commerce ("CIBC") is a customer of Bell. In 2013 CIBC's data network needed updating and Bell was called upon to update it. The project, which was called "Data Network Refresh" ("DNR"), included, amongst other things, the replacement of telecommunications equipment and the subsequent verification of connectivity on CIBC premises and at CIBC ATMs in the Company's geographic area.

Bell contracted out all of the DNR work, both within and outside of the Company's geographic area, to Unisys. There is no dispute that the Company's employees have the skill and ability to perform the work, having performed such work in the past. The same is true of Unisys and its employees.

Neither Bell nor the Company consulted with the Union prior to the contracting out. The Union claims that this was a breach of Article 36.

The Company disagrees. It submits that the work was Bell's to assign, that it did assign it and that the collective agreement between the Company and the Union has no application to any contracting out by *Bell*.

The Union does not dispute that the contracting parties were Bell and Unisys and that the work was for a Bell customer, CIBC. It submits, however, that Article 36 applies notwithstanding.

The Union notes that Article 36 was negotiated in the shadow of the corporate and commercial events just described, in which all of the work performed by the Company's employees' in the relevant geographic area stemmed from Bell. According to the Union, that means that the contracting out clause, which is broadly worded, can and should be read as attaching to subcontracting by Bell. The Union submits that what it describes as the Company's "privity of contract" argument should be given no weight in the circumstances.

As an alternative argument, the Union points to the "Commercial Relationship Agreement" negotiated between Bell and the Company upon the latter's creation. Among other things, that agreement, the Union submits, requires Bell to satisfy its service needs in the relevant geographic area through the Company. In this case, however, it appears that the Company chose not to exercise that right for reasons of cost. The Union submits that, in so choosing, the Company permitted the contracting out to occur, effectively becoming permitting party to it. According to the Union, that provides another basis for applying Article 36.

The Union asks for a declaration of breach and, as agreed between the parties, that I remain seized with respect to any question of damages if the grievance were to be succeed.

I regret that I am unable to accept the Union's arguments. In my view, Article 36 does not apply in the circumstances.

Contracting out is understood as "the practice whereby one employer arranges to have a second employer perform work on its behalf": *Coca-Cola Ltd. and United Brewery Workers*, 1983 CarswellOnt 2430, [1983] O.L.A.A. No. 37, 11 L.A.C. (3d) 207 at 210 (Springate). See also *SKD Manufacturing Division, SKD Co. and CAW, Local 89*, 1988 CarswellOnt 3852, 33 L.A.C. (3d) 381, 8 C.L.A.S. 67 (Weatherill), *Coca-Cola Bottling Ltd. and Soft-Drink Workers' Executive Council*, 1994 CarswellOnt 6153, 37 C.L.A.S. 4 (MacDowell) and *Ottawa-Carleton District School Board and OSSTF, District 25*, 2009 CarswellOnt 15692, 100 C.L.A.S. 6 (Goodfellow), all as referred to by the Company.

In this case the first employer was Bell. The second employer was Unisys. Neither employer was the Company. The collective agreement is between the Union and the Company. It is not between the Union and Bell and it neither applies nor purports to apply to any contracting out by Bell. In my respectful view, that is the end of the matter. Despite the undeniably intimate relationship between Bell and the Company, which has only increased since the filing of the grievance, there is no contractual basis for doing what the Union described as, "peering behind the curtain in the Wizard of Oz world" that, it submits, Bell, the Company and its employees inhabit. That, as the Union well knows, is the stuff of the common or single employer provision (section 35) of the *Canada Labour Code*. Absent the relevant statutory declaration or very specific, if not altogether unique, collective agreement language, that is not something that would be available under a collective agreement negotiated between the Union and the Company.

On my reading, Article 36 contains no such language. It neither applies nor purports to apply to any contracting out by Bell. The reference in Article 36.01 to a discussion about "broad principles" concerning "the contracting out *issue*", to which the Union pointed in argument, does not have that effect. It does not refer to Bell or any contracting out by Bell. Further, as noted by the Company, Article 36.01 simply requires the holding of an annual meeting at a senior level, which does not appear to be a precondition to any particular contracting out.

While Article 36.02 goes further, in terms of timing and, in my view, effect – requiring quarterly meetings at an operational level that, when Article 36.04 is considered, may well be a precondition to any contracting out – it is still only in respect of a contracting out by the Company, not Bell.

The further reference, in Article 36.04, to "contracting out *activity*", to which the Union also pointed, is of no greater effect. It also does not refer to Bell. The word "activity" was no doubt meant to ensure that *all* contracting out by the Company, not just any specific or recent contracting out, could be the subject of discussion. The *sine qua non*, remains a contracting out by the Company to a third party of the Company's work to be performed by the third party on the Company's behalf.

The Union's further argument, rooted in an interpretation, with which the Company appears to disagree, of the commercial agreement between the Company and Bell, also does not bring Article 36 into play. As the Company pointed out, even were the agreement to have the effect alleged by the Union, there is no indication that is what the parties were negotiating about when Article 36 was created; nor is it part of the collective agreement or enforceable by the Union. Permitting or suffering another party to contract out work is not the same thing as contracting out work oneself. The work was never the Company's *to* contract out. It was Bell's work and, there is no dispute, it was contracted out by Bell.

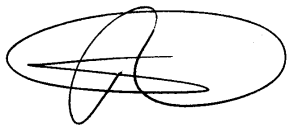
Indeed, in this way, the facts of this case are even stronger than some of those dealt with in the cases to which the Company referred (which, along with those identified above, included *Muskoka Algonquin Healthcare and OPSEU, Local 380*, 2008 CarswellOnt 10870, 96 C.L.A.S. 29 (Schmidt) and *Newfoundland and Labrador Housing Corp. and CUPE, Local 1860*, 1988 CarswellNfld 443, 4 L.A.C. (4th) 89, 12 C.L.A.S. 59 (Cooper)). The case does not involve an actual loss of work so much as a failure to obtain or secure work.

None of the foregoing should be understood, however, as minimizing the effect on the Company or the Company's employees of Bell decision-making or the potential

benefits associated with consultation in the circumstances. As the Union was at pains to point out, the obligation does not appear to be an overly onerous one to fulfill and, in the Union's submission, it might have been able to make suggestions that could have addressed the Company's economic concerns. However, that, too, does not provide a basis for concluding that the collective agreement applies.

The grievance is, respectfully, dismissed.

DATED at Toronto this 17th day of September 2015.



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