IN THE MATTER OF THE ONTARIO *LABOUR RELATIONS ACT, 1995*

-and-

IN THE MATTER OF AN ARBITRATION

BETWEEN:

CARMEUSE LIME (BEACHVILLE) LIMITED
- The Employer

-and-

COMMUNICATIONS, ENERGY AND PAPERWORKERS UNION OF CANADA, LOCAL 3264
- The Union

AND IN THE MATTER OF a contracting out grievance

Arbitrator: Howard Snow

Appearances:
On behalf of the Employer:
Robert J. Atkinson - Counsel
Gord Adam - Manager, Administration and Personnel

On behalf of the Union:
David Wright - Counsel
Rick Cecchin - Local 3264 President

Hearing held June 23, November 24 and December 11, 2003, in Ingersoll, Ontario.

AWARD

I. INTRODUCTION

This collective agreement prohibits the Employer from contracting out bargaining unit work. While an exception is made for situations requiring excess manpower for a short duration, the Employer cannot contract out that work if it is "possible to utilize laid off employees." The Employer contracted out a job which required excess manpower for a short time. These issues arose:

1. Was that bargaining unit work? and,
2. If so, could the Employer have utilized laid off employees? Was the Employer required to shift employees from other jobs in order to make use of the laid off employees?

Additionally, there were two disputes about the scope of the grievance. The parties disagreed as to whether the grievance covered the Employer's failure to first discuss the contracting out with the Union. Secondly, they disagreed as to whether the cleaning associated with the work was covered by the grievance.

II. THE EVIDENCE

The Employer, Carmeuse Lime (Beachville) Limited, operates a quarry and kilns near Ingersoll where it produces lime from limestone. The Employer has three plants on the site. This grievance arose in what is called the East plant, a plant which operates "off and on" depending on the demand for the Employer's products. Various products are made in the East plant including one known as Dolime.

At the plant limestone is crushed and dried and transported through various phases of

production and during this process large amounts of airborne dust are produced. The dust is removed by what is, in essence, a large vacuum. The dirty air is drawn through ducts to central locations, known as bag houses. In the several bag houses are filters, or "bags", placed over metal frames or "cages". The dirty air is drawn through the bags removing the dust. The dust is then periodically removed from the bags and taken from the bag house by a screw conveyor.

The grievance involves two bag houses known as RDC301 and RDC302 which have approximately 100 and 270 bags respectively, and a similar numbers of cages. The East plant was closed for several months in late 2002 and early 2003. In preparation for resuming production in March 2003, the Employer hired CARBO-Tech Environmental Group Inc. to prepare a report on the state of bag houses RDC301 and RDC302. The Union did not take issue with the Employer contracting out this assessment.

CARBO-Tech reported that both bag houses were full of dust and that the dust in RDC302 had crushed about half the cages. CARBO-Tech recommended that the two bag houses and associated ducts be completely cleared of dust, that all bags be changed on both units and that the damaged cages be replaced.

The Employer hired CARBO-Tech to perform the work which it had recommended on bag houses RDC301 and 302. The Union then grieved that the bag change and cage replacement work was done in violation of the collective agreement as this was bargaining unit work and had been improperly contracted out.

The bargaining unit is an all employee unit, excluding foremen, those above the rank of foreman, office staff and non-bargaining unit stores and laboratory staff. The unit might reasonably be called a production unit.

Among the employees in the unit are operators in the Environmental Department. These environmental operators do a variety of jobs including checking and maintaining the bag houses. Previously two environmental operators were assigned to bag house work but currently only one employee is assigned to this job. Among the witnesses were two employees who previously did the bag house job.

Don Smith is a 29 year employee and an environmental operator. He currently operates equipment such as a wash truck, road grader, dump truck, back hoe, etc., but had earlier been one of two employees assigned to the bag house job. He still assists the remaining bag house employee, George Riddle, when needed and he replaces Mr. Riddle when Mr. Riddle is on vacation.

Mr. Smith testified that bag house operators regularly check the bag houses to ensure that the air cleaning system is operating properly. The operators check that the apparatus for shaking the bags is working, that the removal of the dust at the bottom is being done properly, that the bag house is in good shape with no leaks in the bags, etc. The operators do some routine repairs such as changing belts on the screw system which removes the dust and replacing the solenoid diaphragms in the system which shakes the bags, but the operators sometimes require the assistance of an electrician or millwright for major problems in the bag houses.

Mr. Smith testified that the operators also changed bags as needed although he said that properly maintained bags seldom needed replacement. He said that in the eight months he was assigned to bag house work he changed approximately 15 or 20 bags. In addition, he testified that in the early 1990's he and two other employees changed all the bags in a bag house in the East plant after water got into the bag house and froze. As for changing cages, Mr. Smith said he had not done that work but that he understood from Mr. Riddle that Mr.

Riddle and other bargaining unit employees had changed cages. Finally, he said that he had cleaned out bag houses. He gave as an example an occasion when a bag house was cleaned after the air flow system and the mechanism for shaking the bags were both re-started but not the screw mechanism which removed the dust once it dropped from the bags to the floor. Mr. Smith said the bag house was cleaned using a vacuum truck and shovels.

Mr. Smith said that he believed the work CARBO-Tech did was work he or other operators could do and had done. He said in the only instance where a contractor did a similar job he understood the work was covered by a warranty.

Mr. Smith acknowledged that bag house operators had other tasks beyond bag house monitoring. The bag house operators also ensure that other environmental systems are working properly. In particular, the Employer does some cleaning of the plant using water from a local river which is returned to the river after treatment. The bag house operators are responsible for regular monitoring of the quality of that water.

Angelo Brolese was employed at this facility for some 46 years before retiring in 2001. He was a bag house operator for the last seven years of his employment. As for the bag house work, Mr. Brolese said the bag houses were checked regularly to make sure they were operating normally. As had Mr. Smith, he described the types of problems which arose and the routine maintenance involving replacing diaphragms, belts, etc. He agreed that bags needed to be changed occasionally, and he said that on approximately 10 or 12 occasions it had been necessary to change all the bags in a bag house at one time. He said he had also changed cages but it had never been necessary to change all the cages in a bag house at one time. Mr. Brolese said that during his seven years on the bag house job only he and Mr. Riddle had ever changed bags, although, on occasion, the two of them had been assisted by a labourer who carried supplies and helped with the clean up.

Rick Cecchin is the Local Union President. He testified that although he had never been a bag house operator he had on one occasion some 20 years ago helped to replace all the bags in a bag house in the East plant after the bags had been burned. He said that at that time the East plant had a different owner. He said he had been given instructions that day on how to change a bag and that it was not "rocket science" to change a bag. He said that changing bags, changing cages, and cleaning out bag houses had been done exclusively by members of the bargaining unit since the late 1970's.

Mr. Cecchin testified that at the time CARBO-Tech did the disputed work there were 35 to 40 bargaining unit employees on lay off. Some of them were environmental operators although none had done the bag house job. He said several laid off employees were trained to operate the vacuum truck which would have been useful in cleaning the bag house. He expressed the view that the Employer could have used the laid off employees to do the work done by CARBO-Tech or could have used people currently working and in turn replaced those employees with the persons on lay off. For example, he suggested that Mr. Smith who was trained in bag house work but was then working on the equipment side could have been assigned to the bag house job and that Sean McKay, a laid off environmental operator, could have replaced Mr. Smith on the equipment job.

Gord Adam is the Employer's Manager of Administration and Personnel. He, too, testified that at the relevant time the Employer had a qualified equipment operator on lay off but no trained bag house operator.

Dick Bowman is the Superintendent of the East plant and testified that he arranged for CARBO-Tech to do the assessment of the air system and he then received CARBO-Tech's report. Mr. Bowman said the two bag houses were in very poor shape and in his 37 years experience he had never seen bag houses with dust plugging the operation so badly. He

noted that it was very unusual for the cages to be crushed but the dust had absorbed water and expanded and, in expanding, had crushed a number of cages. When it came time to do the work on the two bag houses he said he did not consider using employees. He said his experience suggested the employees did only “running maintenance”. He said he had not been aware before the testimony at the hearing that employees had ever done a full bag change.

The Scope of the Grievance

Because there were two disputes about the scope of the grievance, I summarize the relevant sections of the grievance. The grievance is on a printed form. After the heading "Nature of Grievance" the Union had written "Contractor (Carbotech) changing cages and bags in Dolime system bag house dust collector" and after the heading "Settlement Desired" is "To have company cease from using contractors to do this work. It is bargaining unit work and always has been and shall remain that way."

III. PROVISIONS OF THE COLLECTIVE AGREEMENT

The key provisions of the parties’ 2002-2006 collective agreement follow. The particular subsection in dispute is Article 2.2 (b) ii.

ARTICLE II
RECOGNITION - EXCLUSIONS

. . .

2.2

(a) Under normal conditions, employees outside the scope of the bargaining unit to which this Agreement applies, shall not do work which is customarily performed by members of the

bargaining unit. This shall not apply to staff employees who are engaged in:

i) training employees

ii) experimental work

iii) work which is required due to emergency conditions beyond the control of the Company.

(b) Outside contractors will not perform bargaining unit work. The Company, however, does reserve the right to use outside contractors:

i) on jobs that are capital in scope and beyond the availability of bargaining unit personnel

ii) on jobs that require excess manpower for a short period of time (However, the Company agrees that they shall not use contractors if it is possible to utilize laid off employees.)

iii) on jobs that involve detailed mechanical or electrical repairs of major importance requiring warranties

iv) on jobs of an emergency nature where qualified bargaining unit employees are not available.

The Company will discuss with the Union the intent to use contractors per the above, unless an emergency situation exists precluding that.

IV. POSITION OF THE UNION

The Union submitted that Article 2.2 (b) had been breached. In interpreting that provision the Union said it was necessary to consider the entire Article 2.2. Article 2.2 (a) begins "Under normal conditions" and refers to work "customarily performed" by employees. In contrast, Section 2.2 (b) begins by prohibiting outside contractors from doing bargaining unit work. The general restriction on the use of outside contractors (2.2 (b)) is thus greater than the general restriction on the use of excluded employees (2.2 (a)).

Four exceptions to the general restriction on contracting out then follow. The first exception involves work that is capital in scope and beyond the availability of employees, the third is mechanical or electrical work requiring warranties, and the fourth is emergency situations where employees are unavailable. None of those three exceptions fits this situation. The second exception is jobs requiring excess manpower for a short time. The Union accepted that in this instance excess manpower had been needed for a short time. But even in such a situation the Employer cannot contract out the work if it is "possible" to "utilize" laid off employees. The Union said that the Employer could have used laid off employees and the exception did not apply. As no exception applied, the Employer could not contract out this work.

On the question of whether this was bargaining unit work, the Union submitted that the evidence was clear that this work had only been done by members of the bargaining unit during the period covered by the evidence, that is over the past twenty plus years.

The only remaining question was whether it was "possible" for the Employer to "utilize" laid off employees. The Union said that it did not have to be the easiest or most efficient approach, just possible, and that it had been possible. For example, as Mr. Cecchin suggested in his testimony, the Employer could have assigned Mr. Smith to this job and replaced Mr. Smith with another employee such as Mr. McKay.

In reply to the Employer submission that the cleaning that went with the bag changing and cage changing was not covered by the grievance, the Union submitted that a fair reading of the grievance covered all aspects of this job.

The Union referred to the following authorities: *Carmeuse Lime (Beachville) Limited and Communications, Energy and Paperworkers Union, Local 3264* (July 29, 2003), unreported

(Haefling); *Communications, Energy and Paperworkers Union, Local 3264 and Carmeuse Lime (Beachville) Limited* (July 25, 2003), unreported (Dissanayake); *Oxford Dictionary of Current English;* and *Re Ivaco Rolling Mills, Division of Ivaco Ltd. and United Steelworkers, Local 7940* (1981), 1 L. A. C. (3d) 186 (Adell).

V. POSITION OF THE EMPLOYER

The Employer submitted that the work involved here was not bargaining unit work and was therefore not covered by the prohibition against contracting out. Bargaining unit work is work which the members do regularly and exclusively. A full bag change and large scale cage replacement is not something employees do on a regular basis.

The Employer was facing a unique situation, the worst that Mr. Bowman had seen in 37 years. CARBO-Tech employees were experts in designing, making, installing and trouble shooting these systems. CARBO-Tech did more work on these bag houses than the bag and cage changes which the Union grieved.

In contrast the environmental operators assigned to the bag house job did much more than simply monitor bag houses. The bag house work was a small part of the work of bag house employees. The work done by, for example, Mr. Smith and Mr. Brolese was fundamentally different from that done by CARBO-Tech . The type of massive repair done by CARBO-Tech was different in nature and kind from bargaining unit work, and was not bargaining unit work.

In the alternative the Employer said that the exception in 2.2 (b) ii applied to allow the Employer to contract out this work. The Agreement contemplated a connection between the laid off employees and the work which needed to be done; that is the laid off employees

were to do the job which might otherwise be contracted out. But in this instance the Employer had no employee on lay off who could do this work. Moreover, it is for management to decide who will be assigned to do particular work. As none of the employees on lay off could do this work, it was not possible to utilize the laid off employees for this job.

In addition, the Employer submitted that the grievance covered only the changing of the bags and cages and did not include the cleaning of the bag houses. Cleaning was not mentioned in the grievance.

The Employer referred to the following authorities: *Communications, Energy and Paperworkers Union, Local 3264 and Beachvilime Limited* (January 24, 1995), unreported (Hunter); *Beachvilime Limited and Communications, Energy and Paperworkers Union, Local 3264* (April 28, 1995), unreported (Samuels); *Beachvilime Limited and Communications, Energy and Paperworkers Union of Canada, Local 3264* (July 9, 1999), unreported (Hinnegan); *Beachvilime Limited and Communications, Energy and Paperworkers Union of Canada, Local 3264* (July 30, 1999), unreported (Hinnegan); and *Communications, Energy and Paperworkers Union, Local 3264 and Beachvilime Limited* (May 6, 2002), unreported (Hunter).

VI. CONCLUSIONS

Scope of the Grievance - Obligation to Discuss

During the hearing a dispute arose about the scope of the grievance. The Union submitted that the grievance included the Employer's failure to discuss with the Union the Employer's intent to use a contractor, as required in the final paragraph of Article 2.2 (b). It was the

Employer's position that the issue was not included in this grievance. I made an oral ruling that the issue of consultation was not part of this grievance and indicated I would include a brief summary of the ruling in this award.

The jurisdiction of an arbitrator is to hear and determine the grievance submitted. The grievance before me is brief and only two sections of the grievance help to determine the scope of the grievance.

The "Nature of Grievance" reads "Contractor (Carbotech) changing cages and bags in Dolime system bag house dust collector." That statement is one about the contractor and the work the contractor did. Other than it being implicit that the Employer contracted with CARBO-Tech to do the work, the grievance says nothing else about what the Employer did or failed to do.

After the heading "Settlement Desired" the wording begins "To have Company cease from using contractor to do this work". That is the main part of the desired remedy and it focuses on the work itself. This section then continues "It is bargaining unit work and always has been and shall remain that way." That sentence reinforce the focus on the work.

Looking at the grievance what issue is, or issues are, raised by the grievance? Given that most grievances are drafted under time pressures by regular members of a union, I share the view of many arbitrators that grievances should be read liberally. Clearly this grievance raises the issue of whether the Employer was allowed to contract for CARBO-Tech to do this work. But does it raise any other issue? The grievance focuses solely on the work done by CARBO-Tech. Regardless of how broadly I read the grievance, I can find nothing in the nature of the grievance, nor in the remedy, nor in the grievance as a whole that suggests there is a concern about the requirement for the Employer to discuss contracting out with the

Union. The discussion obligation is a distinct provision and any issue about the discussion provision is separate from the issue related to the work, the issue which is clearly raised by the grievance before me. I therefore ruled that the grievance did not raise the issue of any Employer breach of duty to discuss the contracting out.

Scope of the Grievance - Cleaning the Bag Houses

In its final submissions, the Employer asserted that the grievance did not cover the cleaning of the two bag houses, as distinct from the changing of the bags and cages which was grieved.

Reading the grievance liberally, I conclude that the language of the grievance is broad enough to cover the cleaning. The cleaning of the dust in the bag houses initially and the cleaning following the changing of bags and cages is closely related to the actual changing of the bags and cages and I can think of no labour relations reason why the grievance should have to specifically mention each aspect of the job.

Was this bargaining unit work?

The collective agreement restricts the Employer in contracting out "bargaining unit work." It is helpful to review the evidence about this type of work. The evidence was that the *only* persons to have changed bags and cages in the last twenty or so years, the time covered by the evidence, were members of the bargaining unit and, in addition, this work was done by the members of the unit throughout those twenty years. Mr. Brolese testified that in his seven years in the bag house job he had been involved in a complete bag change on 10 or 12 occasions. In addition, Mr. Smith and Mr. Cecchin each testified that he had on one occasion assisted in a complete bag change although neither had then been assigned to the

bag house job. Mr. Brolese testified that he had also changed cages, although it was never necessary to change all the cages at one time, nor even to change half the cages as CARBO-Tech did in one of the bag houses here.

The provisions of Article 2.2, including the meaning of bargaining unit work, have been the subject of several earlier awards between this Union and the Employer or a predecessor employer. Parties to a collective agreement quite rightly expect arbitrators to follow earlier arbitration awards under their agreement which address the same issue. I will thus review those awards.

I would note that some of the awards have addressed both parts (a) and (b) of section 2.2 without distinguishing the language. I agree with Arbitrator Haefling (2003) that there is confusion in some of the cases as to whether the same standard applies in both sub-sections. In any event, those cases include comments on what is bargaining unit work, the issue before me.

In his first award (1995), Arbitrator Hunter found that the work in question had always been done by both management and union employees so that under Section 2.2 (a) was not work which had been "customarily performed" by unit members. He ruled that it was not a violation for excluded employees to do the work in question. I note that “customarily performed” is an express requirement in Article 2.2 (a).

Arbitrator Samuels (1995) addressed a contracting out grievance under Article 2.2 (b). He applied both an "exclusivity" approach and a "regularity" approach in determining whether work was bargaining unit work. Under the exclusivity approach, work must be performed exclusively by members of the bargaining unit. Under the regularity approach, work must be done "recurrently, daily, weekly, monthly" (at p. 2). It is not bargaining unit work if it

is only incidental to the normal work. Of the two types of work in question there, he found in one case the contractor had been doing that type of work on the site for nearly 40 years and had received some 40 similar contracts in the two years prior to the work being questioned. That work failed both tests for bargaining unit work. As for the other work, it had never been done by members of the unit and, while Arbitrator Samuels does not say so expressly, it too seems to have failed both tests. In any event, he found that neither type of work was bargaining unit work.

Arbitrator Hinnegan's first award (1999) involved Section 2.2 (a) and he found that the work had always been shared between the members of the unit and management and, as shared work, there was no violation of the agreement when excluded employees performed it.

In his second award (also 1999), Arbitrator Hinnegan was faced with a contracting out case but found that the work was capital in scope and covered by the exception in 2.2 (b) i. He raised the possibility that the work in question was shared work but he found it unnecessary to pursue that as the matter was capital in scope. Finally, he raised the provision in dispute before me, noting that the Employer can also use contractors on jobs that require excess manpower for a short period of time, but he did not pursue it beyond noting that no employees were laid off at that time.

In Arbitrator Hunter's second award (2002), he was faced with a contracting out grievance. He concluded that the work had been done occasionally by members of the unit but had more often been done by a contractor. Somewhat curiously, given that it was a matter of contracting out (covered by Article 2.2. (b)), rather than a situation of managers and other excluded employees of the Employer doing bargaining unit work (covered by Article 2.2 (a)), he then found that the Union had

> failed to prove [that the disputed work] was “work . . . customarily performed by members

> of the bargaining unit". Therefore, there was no violation of Article 2.2 (a) of the Collective Agreement, and the grievance is therefore dismissed. (p. 20)

However he then went on to conclude, in what he expressly stated was "obiter dicta" (that is, a comment entirely unnecessary for his decision), that the work was part of a capital project and exempted by Article 2.2 (b) i. What might have been of some assistance is that he used a "customarily performed" approach to determining whether the work was bargaining unit work. However, given his reliance upon Article 2.2 (a) which includes the "customarily performed" language expressly, for this matter which falls under Article 2.2 (b) of the collective agreement, I do not find this aspect of his award persuasive.

Arbitrator Haefling (2003) also faced a contracting out case. While he considered the exclusivity approach used in earlier cases, he found that at least some shared work was protected by the contracting out provisions. He stated as follows: ". . . article 2.2, in parts (a) and (b) is obviously addressed to 'bargaining-unit work' that is not exclusive and is capable of being 'shared' at least in the listed exceptional circumstances to which the parties together have agreed." (p. 26) He found that the work in question there was capital in scope under Article 2.2 (b) i. He then moved to a consideration of whether that work was also "beyond the availability of bargaining unit personnel", the second part of the "capital" exception. In considering that issue he contrasted the capital exception with the excess manpower exception before me. He noted that in the excess manpower exception the Employer cannot contract out if it is possible to utilize laid off employees. In his case millwrights did the disputed work and there were seven laid off millwrights. He concluded that when the matter was capital in scope the Employer was not obliged by the Agreement to consider recalling laid off employees or redeploying employees already at work. He concluded that rather than the collective agreement mandating the steps the Employer must take in a capital project, any Employer obligations were to be dealt with through the discussion provision. Had the Employer discussed the matter with the Union, the parties

could have considered whether the project should have been done by members of the unit. He found a violation in not discussing the matter and retained jurisdiction over the remedy.

Finally, in the case before Arbitrator Dissanayake (2003), the parties agreed the work was bargaining unit work and the issue was whether the Employer could have utilized laid off employees. That case provides no assistance on the issue of what is bargaining unit work.

Returning to the case before me, the evidence was that over the time covered by the memory of the witnesses (twenty plus years) only the members of the unit had performed bag and cage changes. Applying the exclusivity approach, the work in question has been performed exclusively by members of the unit for the last twenty plus years. Applying the regularity approach - did the employees do this on a regular basis - I find the employees did the bag and cage changes as needed. While that required that bags be broken or cages damaged, events which did not occur according to a schedule, nevertheless the employees did this work often enough that I conclude it was a regular part of their job.

I am not persuaded by the Employer's arguments that the bag houses were so dirty and the damage to the cages so extensive that the work on these bag houses was fundamentally different from what employees normally did. More dirt, and more damaged cages, increase the amount of work but neither changes the basic nature of that work.

I find that the work done by CARBO-Tech was bargaining unit work under Article 2.2 (b).

Having found that this was bargaining unit work using the more common approaches, it is unnecessary to further consider the conclusion of Arbitrator Haefling that the provisions on contracting out also deal with what might be thought of as "shared" work.

In summary, I find that the changing of the bags and cages and cleaning the bag houses in conjunction with those changes was bargaining unit work and was covered by the beginning of Article 2.2 (b) that "Outside contractors will not perform bargaining unit work".

Was it "possible to utilize laid off employees"?

The Union acknowledged that the job done by CARBO-Tech was a job that required excess manpower for a short period of time. As such, it was covered by the exception at the beginning of Article 2.2 (b) ii. It follows that the Employer was entitled to contact out that work unless, of course, the proviso found in the brackets - "(However, the Company agrees that they shall not use contractors if it is possible to utilize laid off employees.)" - applied.

Mr. Bowman, who made the Employer decision, was forthright in expressing his understanding when he contracted for this work. He understood that, while employees did routine or running maintenance, employees did not do major maintenance. He acknowledged that when he made the decision he had not known, for example, that employees had done a full changeover of bags. When the Employer made the decision to contract with CARBO-Tech for the disputed work, the Employer did not consider whether it was possible to utilize laid off employees.

Although the actual replacement and cleaning was not unduly complicated, the evidence about this work leads me to conclude that experience working in the bag houses was needed. None of the laid off employees had that experience and I find that they could not themselves have done the job.

Nevertheless, the Union said it was "possible to utilize laid off employees". The Union submitted that it would have been possible, for example, to shift Mr. Smith, a fully trained

environmental operator with bag house experience from his driving duties to the bag house work and to bring in a laid off environmental operator to replace Mr. Smith.

The Employer said that the collective agreement did not contemplate shifting employees - that the agreement required that the Employer utilize laid off employees only if the laid off employees could themselves do the actual job for which there was a need for excess manpower. Since no laid off employee could do the bag house job, there was no laid off employee whom the Employer could utilize.

In the only case under this agreement involving the question of utilizing laid off employees the work was normally done by millwrights and there were laid off millwrights able to do the work. Arbitrator Dissanayake did not need to address this issue of whether the Employer must shift employees.

I turn to the Union suggestion of moving employees. The requirement to utilize laid off employees is not clear. Both the Union approach and the Employer approach are plausible interpretations of the agreement. There is little in the agreement to assist in determining what the parties meant by this language. It is quite possible that they did not turn their mind to the issue. But both interpretations cannot be correct and it is necessary to assess the competing submissions and interpret the provision.

On balance I have concluded that the requirement to utilize laid off employees means that the laid off employees are to work on the job for which the excess manpower is needed, that is the work which the contractor would otherwise do; it does not require the Employer to move a laid off employee to a position that is already filled and shift that displaced employee to the position for which excess manpower is required. I reach that conclusion for two reasons.

First, I find that interpretation is more consistent with the language of the provision. Under this exception the contractors are only to do jobs which require excess manpower. The proviso in brackets after that exception says to me that, instead of the contractors, the laid off employees are to be utilized to do that same work. If the parties had intended to require the use of laid off employees in jobs other that those "jobs that require excess manpower for a short period of time," I would have expected them to have said so more clearly, concluding the statement with language such as "utilize laid off employees *either on the job that requires the excess manpower or in any manner so as to free up other employee(s) to do that job"*.

Secondly, that conclusion is more consistent with the general approach in this collective agreement where employees apply for and are awarded job vacancies on the basis of seniority and are likewise laid off using seniority. It seems unlikely that in a situation of a short term job requiring excess manpower the parties intended that senior employees not on lay off could be reassigned without regard to their seniority and replaced by junior laid off employees. Instead, I think it more likely the parties would have intended that the junior laid off employee would be used briefly to do the job requiring the excess manpower and that the senior employees would remain in their own jobs.

Given my conclusion above that the laid off employees could not have done this bag house job, and my interpretation that the agreement does not require the Employer to move senior employees not on lay off to perform the job requiring excess manpower, I find that the Employer could not have utilized laid off employees and did not violate the collective agreement in contracting out the bag house work to CARBO-Tech.

For the above reasons the grievance is dismissed.

Dated at London, Ontario this 10th day of January, 2004.

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Howard Snow, Arbitrator