

Subject - Hiring  
- Collective Agreement  
Interpretation

**ARBITRATION AWARD**

BETWEEN:

INTERNATIONAL UNION OF OPERATING ENGINEERS,  
LOCAL 904  
(hereinafter called the "Union")

AND:

OCEANEX (1997) INC.  
(hereinafter called the "Employer" or the "Company")

GRIEVANCE: Hiring Owner Operators

COUNSEL: For the Union  
V. Randell J. Earle, Q.C.

For the Employer  
Denis Mahoney

ARBITRATOR: James C. Oakley

The Arbitration hearing was held at St. John's on November 3, 2006. The parties agreed as follows:

1. The Arbitrator was acceptable.
2. There were no preliminary objections going to jurisdiction to hear the grievance.
3. The grievance procedure was properly followed or any requirements waived.
4. The Arbitrator would remain seized of the matter for sixty (60) days following publication of the Award in the event there was a question of interpretation or compensation arising from the Award.
5. Witnesses were excluded from the Hearing.
6. The Arbitrator's notes and tapes would be retained by the Arbitrator for the purpose of assisting the Arbitrator to prepare the Award and not for the purpose of preparing a transcript. The Arbitrator agreed to retain the notes and tapes until the expiry of any applicable period for judicial review.

The following exhibits were entered at the hearing:

- Consent 1 - Collective Agreement between Oceanex (1997) Inc. and International Union of Operating Engineers, Local 904, effective March 1, 2002 to February 28, 2008
- Consent 2 - Grievance form dated August 24, 2005
- ME - 1 Collective Agreement between Oceanex (1997) Inc. and International Union of Operating Engineers, Local 904 for Truck Driver employees, effective January 1, 2001 to December 31, 2003

### **Nature of the Grievance**

The Union grieves that the Company is expanding its business and hiring outside contractors and not hiring owner/operators from the Union. The grievance form alleges a violation of Article 8.06 and other Articles of the Collective Agreement. The Union requests an order that the Company notify the Union when owner/operators are required and that compensation for lost wages and benefits be paid to affected employees. The Company submits there is no violation of the Collective Agreement and requests that the grievance be denied.

### **Collective Agreement**

The relevant Articles of the Collective Agreement are as follows:

#### Article 1.00 - Purpose

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- 1.03 Owner Operator - Unless otherwise specified, when the word owner operator is used in this agreement, it shall be construed as meaning the owner operator, one per unit, or his designee driver. As outlined by the Canada Labour Relations Board in its ruling of June 13<sup>th</sup>, 2001 as outlined in the attached.

#### Article 2.00 - Recognition

- 2.01 Bargaining Agent - The Company recognizes the Union as the sole collective bargaining agent for the owner operator as outlined by Canada Labour Relations Board in its June 13, 2001 certification order and as outlined in the Schedules of this agreement.

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- 2.03 New Positions - New positions as owner operators created by the Company after the certification of the Union shall automatically be included in this bargaining unit unless specifically excluded by mutual agreement between

the Union and the Company. If an agreement cannot be reached between the Company and the Union to establish the initial conditions of service including invoices and benefits, the items in connection will be submitted to arbitration for final and binding settlement.

Article 3.00 - Union Security

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3.10 All Owner Operators - The Company shall furnish to the Union each month during the term hereof a list of new owner operator hired by the Company stating: the hire date, social insurance number, beneficiary, address and date of birth within thirty (30) days of such hiring, together with a list of terminated owner operator.

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Article 4.00 - Management Rights

4.01 Management Rights - The Company possesses the unique and exclusive right to manage its operations and its owner operators in all aspects, except those specifically limited by this Agreement.

Article 5.00 - Definition of Owner Operator

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5.02 Regular Full Time - Owner Operator - A regular full time owner operator is any person employed on a full time permanent basis whose duties fall within the bargaining unit as defined in Article 2 of this Agreement, and as per seniority list governed by the regular owner operator as posted on the seniority list (See annex "A").

5.03 Duties, New Owner Operator - The Employer shall make known to all owner operators whom they shall receive their instructions from as well as their responsibilities. They shall receive a copy of the Company's rules, policies, procedures and work schedule of the Company where as it applies to the owner operators.

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Article 8.00 - Seniority

8.01 Seniority Defined - Seniority shall mean length of service from the original date of hire for each owner operator with the Employer, and credit shall be given for all service prior to recognition of the bargaining unit.

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8.05 Recall - The Company may recall employees through notification of phone. Inability to make contact by phone requires the Company to providing notice by registered mail to their last known address. The owner operators must return to work within seven (7) days, or fourteen (14) days, if employed elsewhere, of delivery of the notice or of when the notice would have been

delivered to the last known address. It is the responsibility of the employee to keep the Company informed of his current address. An owner operators, who does not have his vehicle licenced, may refuse a recall without prejudicing his recall rights if the work period for which he is being recalled is less than twelve (12) weeks.

- 8.06 Owner Operators Required - When new owner operators are required, in excess of those on the seniority list: 1) Current paid-up members of the union, who previously worked for the company as owner operators, and laid off in the normal course due to a lack of work, shall be hired, 2) Current paid-up members of the union, who have the qualifications and proper equipment shall be hired. Such requests are to be directed through the union office. Should employees who are members of the union not be available, the employer may obtain employees elsewhere, it being understood that the employees will join the union in accordance with Article 3.0. The employer agrees to give the union office a minimum of Twenty-four (24) Hours advance notice when requiring the union to supply competent workers.

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Article 12.00 - General Provisions

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- 12.03 Sub Contracting - The Company shall not sub-contract to any non-union owner operators unless all unionized owner operators are employed. The Company shall use every effort to ensure that mileage is maximized, particularly during those months where lower volumes are experienced. Unionized owner operators will be given preference on long distance moves.

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Article 15.00 - Grievance & Arbitration Procedure

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- 15.02 Arbitrator - The Arbitrator shall not have the power to alter, vary, or amend any of the provisions of this agreement or to substitute any provisions of this Agreement nor render a decision inconsistent therein. The decision of the Arbitrator is to be compiled within fifteen (15) days of receipt by the parties.

Articles 1.03 and 2.01 refer to the order of the Canada Labour Relations Board dated June 13, 2001.

The Order of the Board states as follows:

WHEREAS the Canada Industrial Relations Board has received an application for certification from the applicant union as bargaining agent for a unit of employees of

Oceanex (1997) Inc., pursuant to Section 24 of the *Canada Labour Code* (Part 1 - Industrial Relations);

AND WHEREAS, following investigation of the application and consideration of the submissions of the parties concerned, the Board has found the applicant to be a trade union within the meaning of the Code and has determined the unit described hereunder to be appropriate for collective bargaining and is satisfied that a majority of the employees of the employer in the unit wish to have the applicant trade union represent them as their bargaining agent.

NOW THEREFORE, it is ordered by the Canada Industrial Relations Board that the International Union of Operating Engineers, Local 904 be, and it is hereby certified to be, the bargaining agent for a unit comprising:

“all dependant contractors classified as owner/operators employed by Oceanex (1997) Inc. at its ‘Finger Pier’ location, Water Street, St. John’s, Newfoundland.”

## **Evidence**

The witnesses called by the Union were Noel Joseph Barrington and Mike Ezekiel. The Company did not call any witnesses.

Mr. Barrington has worked for the Company for 26 years. He has worked as an owner/operator since 1997. He owns his own tractor which he uses to haul trailers owned by the Company. He uses an incorporated company for his operation as owner/operator. He is paid the mileage rates set out in Appendix “A” of the Collective Agreement. He has one designee driver within the meaning of Article 1.03. He is given his work assignment for the following day when contacted on his cell phone by the dispatcher. He delivers the trailers to destinations throughout the island of Newfoundland. He usually leaves the container and the chassis at the destination. Whenever

possible he brings back an empty trailer to the Company's premises at its Finger Pier location, Water Street, St. John's.

Mr. Barrington said that he was part of the group of owner/operators who became unionized as dependent contractors in 2001. He testified that there are currently nine owner/operators in the group of dependent contractors. In 2001 there were seven owner/operators and six of them are still working as owner/operators for the Company. A group of operators providing an LTL (less than truck load) service from the Donovan's warehouse were added to the owner/operator group. Three of the five LTL operators moved to the owner/operator group. The current Collective Agreement is the first Collective Agreement for the owner/operators bargaining unit.

Mr. Barrington testified that he has observed a steady increase in the volume of work over the last three years. There are now four ships transporting cargo to St. John's, an increase from the former three ships. Mr. Barrington has reviewed the delivery sheets which are prepared each day showing the identification and destination of the containers being dispatched and the identity of the operator. Mr. Barrington observed that many of the operators listed on the delivery sheets are not owner/operators within the bargaining unit. The delivery sheets list a number of outside contractors used to haul trailers, including D and D, M Trans, Whites Excavating and Trucking, Double G, Manuels Transport and Rideouts. Mr. Barrington testified that the delivery sheets frequently list more outside contractors than owner/operators. He testified that he often sees outside contractors hauling Oceanex containers on the highway. Some of the customers of Oceanex are responsible for

trucking their own goods, such as Armour, Midland, Day and Ross and Dominion Stores. Mr. Barrington did not know how the rates paid to the outside contractors were calculated or how particular tractors or drivers were assigned. He was unable to comment on any effect on the revenue of the nine current owner/operators. Mr. Barrington testified that the Company attempts to comply with Article 12.03 and equalize work among the owner/operators by equalizing mileage. The grievance claimed that the Company was not maximizing the amount of mileage for owner/operators in comparison with outside contractors.

Mike Ezekiel testified that he signed the grievance form as business manager of the Union. He testified that the Union grieved that the owner/operators were not receiving the mileage they should be receiving. Every day there were various outside contractors observed to be hauling Oceanex trailers. Mr. Ezekiel said that there seemed to be more work performed by the outside contractors than by the owner/operators in the bargaining unit. Union members were concerned that they were not working while nonunion operators were on the road. At the time the grievance was filed, there were nine owner/operators on the seniority list for Oceanex and all were actively at work at that time. Mr. Ezekiel said that there were Union members who were not employed by Oceanex who had the qualifications and equipment to be hired as owner/operators. Oceanex had not requested the Union to supply additional owner/operators. Under Article 8.06 once the owner/operators on the seniority list were working, if the Company needed more drivers, then the Company was required to contact the Union office and ask the Union to supply drivers and equipment. Mr. Ezekiel testified that Oceanex is required to ensure that all qualified owner/operators who are members of the Union with their own equipment are working before they hire outside contractors. If the Union does not

have drivers available, then the Company may hire outside contractors. The pre-condition for sub-contracting in Article 12.03 applied to any Union members who were not employed, and was not limited to owner/operators working for Oceanex.

The Union also represents a bargaining unit of Company drivers who are employees of the Company, and who operate mostly within the St. John's area. The collective agreement between the Union and the Company that applies to the Company drivers (the "Company Drivers Collective Agreement") (exhibit ME-1) states, in part, as follows:

Article 8:00 - Seniority

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8.07 Employees Required - When employees are required, in excess of those on the seniority list; 1) Current paid-up members of the union, who previously worked for the company, and laid off in the normal course due to a lack of work, shall be hired. 2) Current paid-up members of the union, who have the qualifications shall be hired. Such requests are to be directed through the union office. Should employees who are members of the union not be available, the employer may obtain employees elsewhere, it being understood that the employees will join the union in accordance with Article 3.0. The employer agrees to give the union office a minimum of Twenty-Four (24) Hours advance notice when requiring the union to supply competent workers.

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Article 13.00 - General Provisions

13.11 Sub Contracting - The Company shall not sub-contract or contract out any work that members of the bargaining unit have historically done or that the Union is certified and recognized for within the scope of this Collective Agreement. In the event that a Company owned or leased tractor (truck) is removed from services for repairs or maintenance the Company will use its best efforts to find a replacement vehicle, as soon as the Company vehicle is taken out of service. When possible, the availability of replacement vehicles will be considered for the purposes of scheduling regular maintenance.

Article 14.00 - Job Posting

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14.04 Job Posting - Within Unit - The Company shall fill a posted position from applicants with sufficient qualifications for the position in the following manner; first, from applicants within the bargaining unit and classification that has the vacant position; second, from any other employee within the bargaining unit; and third, from applicants or any other employee within the Company. If there is more than one applicant with sufficient qualifications for the position, the applicant with the most seniority shall be given the position.

**Union Submission**

The Union submitted that when there was an expansion of the business, the Company was required by the Collective Agreement to hire owner/operators in priority to assigning work to outside contractors. Articles 8.06 and 12.03 should be read together. Article 12.03 states there shall be no subcontracting to any nonunion owner/operator unless all unionized owner/operators are employed. "Unionized owner/operators" includes members of the Union not currently employed as operators for the Company. Article 12.03 applies to all Union members because it does not state that it applies only to unionized owner/operators "employed by the Company". The effect of Article 12.03 is that the Company is not permitted to increase the volume of work assigned to the outside contractors. Article 12.03 does not prohibit the subcontracting that was already in place when the Collective Agreement was negotiated. Article 1.03 defines owner/operator as a dependant contractor and includes a designee driver. The reference in Article 2.03 to new positions being created contemplates that there will be an expansion of the business and a corresponding expansion of the bargaining unit. The words in Article 8.06 reading "when new owner/operators are required" does not mean that the Company has discretion to decide whether work will be done by an

owner/operator or assigned to an outside contractor. Article 8.06 operates in the same manner as a “hiring hall” article in a construction trades agreement. Article 8.06 applies to prospective contractors who had never had a dependant contractor relationship with the Company. A collective agreement may be applied to prospective employees (*I.A.M.A.W. Lodge 1934 v. East Isle Shipyard Ltd.* (1998) 74 L.A.C. (4<sup>th</sup>) 265 (Outhouse) (the “*East Isle*” case). The Collective Agreement sets out the steps the Company is required to follow where there is an expansion of the business. The Company is first required to maximize the mileage of existing owner operators (Article 12.03). The Company then recalls any owner/operators on the seniority list who have been laid off (Articles 8.05 and 8.06). The Company then hires owner/operators who are members of the Union by referral from the Union (Article 8.06). If members of the Union are not available for referral, then the Company may hire persons who are not Union members, but those persons will join the Union upon hiring. The reference in Article 8.06 to “employee” was an error and should read “persons”. Article 8.06 was equivalent to Article 8.07 in the Company Drivers Collective Agreement that applied to the employee drivers. The Union referred to *International Union of Operating Engineers, Local 904 v. Oceanex 1997 Inc.*, unreported, November 22, 2004 (Clarke) which held that there must be clear and unambiguous language in the Collective Agreement in order to limit contracting out. The parties have agreed to such a limitation in this case. The Company had not brought itself within the exception in Article 12.03 to show that all unionized owner/operators were employed. The growth of the business was indicated by the increase in the number of ships and the volumes transported. The assignment of the additional work to nonunion contractors violated the Collective Agreement. The Union requested that the grievance be allowed.

**Company Submission**

The Company submitted that there was no violation of Article 8.06 or any other Article. The grievance referred to Article 8.06 and any issue of a breach of Article 12.03 was not properly before the Arbitrator and was not within the scope of the grievance. The Collective Agreement was negotiated after the Company Drivers Collective Agreement was negotiated. Article 13.11 of the Company Drivers Collective Agreement provides a more explicit and limiting exception to contracting out than the language used by the parties in Article 12.03. At the time of the negotiations, the Company had an existing practice to use non-union outside contractors. The Collective Agreement may be interpreted having regard to the history of bargaining. There was no dispute that the outside contractors were independent and were not dependent contractors brought within the scope of the bargaining unit. The Company was not obligated to offer employment to members of the Union who were not owner/operators working for the Company, before it exercised its right to contract out. Any limitation on the right to contract out has to be expressed in clear language. The Company has the right to exercise its management rights under Article 4.01 which includes the right to decide when to fill a vacancy. The Company has the discretion to decide when it needs to create a new position of owner/operator. Hiring new owner/operators under Article 8.06 is not a precondition to contracting out under Article 12.03. If “unionized owner/operator” in Article 12.03 included persons on the Union’s out of work list who were not current owner/operators, then there could be no preference given to the existing group of nine owner/operators for long distance moves as required by Article 12.03. There was an inconsistency in the Union’s interpretation. All current nine owner/operators were employed. There was no one

on layoff. There was no evidence from any current owner/operator of a loss of income, or loss of mileage. The Union had not provided evidence to prove there was any change in the volume of work assigned to outside contractors. There was no evidence of any hiring by the Company of an owner/operator in violation of Article 8.06. There was no evidence of any adverse impact on the bargaining unit. The *East Isle* case referred to by the Union was based on different collective agreement language. The Company referred to *Wellwood of Canada Ltd. and I.W.A. Canada, Local I-207* (1995) C.L.A.S.J. Lexis 10372 (AB), *G.S.W. Heating Products Co. and U.S.W.A., Local 14092* (1994) C.L.A.S.J. Lexis 9725 (ON), and other authorities. All unionized owner/operators were employed, and therefore the Company had the right to contract out under Article 12.03. The Company requested that the grievance be denied.

### **Considerations**

The Union grieves that the Company is required to hire owners/operators in priority to contracting out services to outside contractors. The Union submits that in circumstances where there is an expansion of the business, the Collective Agreement requires the Employer to assign the additional work to the bargaining unit by hiring owner/operators.

The description of the grievance on the grievance form states that “Company has hired owners/operators without contacting the Union office”. The grievance alleges a violation of Article 8.06 and any other articles that may have been violated as a result of the Company’s action. The

settlement requested on the grievance form is that the Company notify the Union when owner/operators are required and that compensation be paid for lost wages and benefits.

The Company submits that any alleged violation of Article 12.03 is not within the scope of the grievance. Article 12.03 prohibits subcontracting to nonunion owner/operators unless all unionized owner/operators are employed. The Arbitrator has considered that the grievance form refers to Article 8.06 and other articles that may have been violated. As will be discussed, it is necessary to consider other articles of the Collective Agreement, including Article 12.03, when interpreting Article 8.06. These articles are relevant to the issue of assignment of work in circumstances of an expanding business. It is within the scope of the grievance for the Arbitrator to interpret Article 12.03 and any other articles of the Collective Agreement that are relevant to the dispute. For reasons that will be given in the Award, it is unnecessary for the Arbitrator to decide whether an order of redress for a violation of Article 12.03 is within the scope of the grievance. It is therefore unnecessary to decide whether a grievance that the “Company has hired owner/operators” may also include within its scope a grievance that the Company has contracted out work in violation of Article 12.03.

When interpreting the Collective Agreement the Arbitrator will consider the principles of interpretation discussed in Brown & Beatty, *Canadian Labour Arbitration*, 4th edition, in particular, that the object of construction is to determine the intention of the parties from the express provisions of the collective agreement (paragraph 4:2100), that the language should be viewed in its normal or ordinary sense (paragraph 4:2110), that it should be presumed that all the words used were intended

to have some meaning, and that where the same word is used twice it is presumed to have the same meaning in both places (paragraph 4:2120), and that the language is to be interpreted within the context of the collective agreement as a whole (paragraph 4:2150) and the industrial relations practices of the parties (paragraph 4:2300).

The parties dispute the meaning of “unionized owner/operator” in Article 12.03. To consider the context of the language within the Collective Agreement, the Arbitrator has considered the definition of “owner/operator” in Article 1.03 and Article 5, the recognition clause in Article 2, the union security clause in Article 3, and the provisions of Article 8 dealing with seniority. “Owner/operators” are described as those hired by the Company in Article 3.10, or persons employed on a full time basis in the bargaining unit in Article 5.02. Article 8 provides that owner/operators are assigned seniority from their original date of hire. Recall is by order of seniority under Article 8.05. Article 8.06 refers to the procedure to hire new owner/operators in excess of those on the seniority list. Article 8.06 provides that the order of hiring for new owner/operators in excess of those on the seniority list is (1) paid up members of the Union who previously worked for the Company as owner/operators and (2) paid up members of the Union who have the requisite qualifications. Article 8.06 does not refer to paid up members of the Union with the requisite qualifications as “owner/operators”. Members of the Union who are qualified have certain priority to be hired as owner/operators within the meaning of the Collective Agreement, but do not have the status of owner/operators in the bargaining unit prior to hiring, having regard to the Collective Agreement as a whole.

As noted above, it is a principle of interpretation that it may be presumed that the parties intended the same words to have the same meaning when used more than once in the Collective Agreement. At issue with respect to the interpretation of Article 12.03 is the meaning of “unionized owner/operators”. The phrase “unionized owner/operators” is used in two places in Article 12.03. Article 12.03 states the Company shall not subcontract to nonunion owner/operators “unless all unionized owner/operators are employed”. Article 12.03 also states that the Company will use every effort to ensure that mileage is maximized and that “unionized owner/operators will be given preference on long distance moves”.

The factual context of Articles 8.06 and 12.03 will be considered. The bargaining unit is comprised of dependent contractors hired by the Company as owner/operators to haul trailers from the Company’s terminal in St. John’s to other locations in Newfoundland. At the time the bargaining unit was certified, on June 13, 2001, the Company was also assigning the type of work performed by the bargaining unit to outside contractors. Article 12.03 recognizes that the Company may subcontract work to outside contractors under certain circumstances. When the parties negotiated the Collective Agreement, they did not negotiate any provision that required the Company to discontinue its existing practice of subcontracting. It is contemplated by the Collective Agreement that the work of hauling trailers may be assigned to either the owner/operators within the bargaining unit or the nonunion owner/operators outside the bargaining unit, subject to any restrictions set out in the Collective Agreement. The Arbitrator notes that there must be clear and unambiguous language in a collective agreement in order to limit contracting out (*International Union of Operating Engineers, Local 904 v. Oceanex (1997) Inc.*, November 22, 2004 (Clarke), Brown and

Beatty, *Canadian Labour Arbitration*, 4<sup>th</sup> edition, paragraph 5:1310).

The statement in Article 12.03 that unionized owner/operators will be given preference on long distance moves, may be given meaning by determining the identity of the group over which the “unionized owner/ operators” have preference. The other group that performs long distance moves are the nonunion outside contractors. Therefore, Article 12.03 provides that unionized owner/operators will be given preference over the nonunion outside contractors for long distance moves. To interpret the words to mean that owner/operators with no seniority with the Company are included in the group to be given preference on long distance moves would mean that persons not employed as owner/operators for the Company would have the same preference as the current owner/operators. It would not be a reasonable interpretation of “unionized owner/ operators” to find that it included owner/operators who are members of the Union, but do not have any seniority with the Company. It would be a more reasonable interpretation of Article 12.03 to find that unionized owner/operators for the purpose of long distance moves meant the owner/operators who have seniority with the Company, having regard to the context of the Collective Agreement as a whole. The Union submits that the Collective Agreement prohibits subcontracting unless “all unionized owner/operators are employed”, which the Union submits means all owner/operators on the seniority list together with all owner/operators who are members of the Union but have no seniority with the Company. However, to apply the Union’s interpretation would require that a different meaning be assigned to “unionized owner/operators” in the first sentence of Article 12.03 than is assigned to the same words in the last sentence of Article 12.03. As stated, it may be presumed that the parties intended the words to have the same meaning wherever used throughout the Collective Agreement.

There is no basis to find the parties agreed to a different intention. Therefore the reference to “unionized owner/operators” in the first sentence of Article 12.03 means unionized owner/operators on the seniority list with the Company.

The Arbitrator finds that the reference to “unionized owner/operators” in Article 12.03 means the owner/operators on the seniority list. There are currently nine owner/operators in the bargaining unit. There were nine owner/operators in the bargaining unit when the Union was certified as bargaining agent. Under these circumstances there has been no reduction of the number of bargaining unit members. There is no evidence of loss of work from the bargaining unit. There is no evidence of any impairment to the integrity of the bargaining unit. The reference to “unless all unionized owner/operators are employed” is a reference to the owner/operators in the bargaining unit and the assignment of work to the bargaining unit. On the facts of this case, there is no evidence of any violation of Article 12.03.

The Union submits that where there is an expansion of the business, the additional work is required to be assigned to new owner/operators and not to outside contractors. Article 8.06 describes the procedure to hire union members “when new owner/operators are required in excess of those on the seniority list”. Article 8.06 does not identify the circumstances for which new owner/operators are required. Having regard to the plain meaning of Article 8.06, and other articles, the reference to “in excess of those on the seniority list” is a reference to circumstances where all owner/operators on the seniority list are actively employed. In those circumstances, new owner/operators would be “required” when there is additional work to be assigned to owner/operators in excess of the volume

of work that is performed by those on the seniority list. However, having regard to the Arbitrator's interpretation of Article 12.03, the Company may subcontract work to outside contractors when the owner/operators on the seniority list are employed. To find that "required" meant that all additional work was required to be performed by new owner/operators would be an interpretation inconsistent with Article 12.03.

Article 8.06 provides a procedure for hiring new owner/operators. In the event that the Company hired an operator who worked for the Company as a dependent contractor, then that person would be brought within the bargaining unit. If the Company did not follow the hiring procedure in Article 8.06, then there would be a violation of Article 8.06. There is no evidence that any of the outside contractors assigned work by the Company are dependent contractors. There is no evidence that the Company has hired an owner/operator in violation of Article 8.06.

**Decision**

The grievance is denied for the reasons stated in the Award.

**DATED** this 18<sup>th</sup> day of January, 2007.

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James C. Oakley  
Arbitrator

