

In The Matter of a Dispute

between

NORTH ATLANTIC REFINING LIMITED

(hereinafter referred to as the “Employer” or the “Company”)

and

UNITED STEELWORKERS OF AMERICA, LOCAL 9316

(hereinafter referred to as the “Union”)

The Grievance

On October 4, 2006, Mr. Brian Ennis filed a written grievance alleging that the Employer violated Article 11 and any other pertinent articles and appendices of the collective agreement when the grievor, a Control Technician, was assigned work outside of the Control Room during a 3 day maintenance shutdown while a Process Technician was assigned to work in the Control Room.

The essential point of contention was that the Process Technician should not have been allowed to cross over from his own progression plan to the Control Technician progression Plan.

The redress requested was that the assignment in dispute be found to be in violation of the collective agreement. No compensation was claimed.

The arbitration hearing was held at St. John's, Newfoundland, on January 9, 2008.

For the Union: Mr. Boyd Bussey, International Representative, *et al.*
For the Employer: Mr. Harold Smith Q.C., *et al.*
Sole Arbitrator: Mr. David Alcock

The parties agreed:

- 1) to the selection of the arbitrator;
- 2) that the arbitrator had jurisdiction to deal with the dispute;
- 3) that the arbitrator would not remain seized to deal with matters of compensation;
- 4) that there were no other persons who would be affected by the award;
- 5) that witnesses would not be excluded;
- 6) that the arbitrator would make every effort to complete the final award within 30 days;
- 7) that the audio tapes would not be considered the record of the hearing.

The following evidence was admitted by consent:

- 1) collective agreement January 1, 2005 - December 31, 2007;
- 2) grievance form dated October 4, 2006;
- 3) Employer's Step II answer;
- 4) Union's answer to Step II, Employer's Step III answer; Union's answer to Step III.

The following evidence was submitted by witness:

RM) Platformer Turnaround Scheduled Time Off Sept. 29 - Oct. 21, 2006; Issued 09/13/2006

Appearances for the Union

Greg Stacey Local President
Brian Ennis, Control Technician, grievor

Appearances for the Employer

Robert Mercer, Area B Operations Manager

The following are the relevant collective agreement provisions:

ARTICLE 4 - MANAGEMENT RIGHTS

- 4.01 It is the exclusive function of the Company, among others, as it sees fit to:
- (1) maintain order, discipline and efficiency, hire, promote, demote, suspend,

discharge for just and sufficient cause, lay off, assign to shift, transfer employees and increase or decrease the working force; make and alter from time to time rules and regulations to be observed by te employees; and to train employees;

(2) manage and operate its business in all respects in accordance with its commitments and responsibilities. The location of the plants, the products to be manufactured, the scheduling of manpower and production, the right to decide on the number of employees needed at any time, the methods, processes and means of manufacturing are solely and exclusively the responsibility of the Company.

4.02 All management rights, whether enumerated or otherwise, shall be reserved unto management except as specifically abridged by this Agreement.

....

8.09 Where a regular employee in line of progression successfully bids for or accepts a position in another line of progression in order to become trained within that line of progression he/she shall until he/she reaches the highest level position in the new line of progression be entitled to return to his/her previous line of progression should he/she become subject to layoff in the new line of progression. Upon returning to his/her former line of progression he/she will be subject to Article 9.02.

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10.01 In the event that the Company determines that a permanent or part time vacancy exists, notice of vacancies shall be posted on Bulletin Boards for seven (7) working days. If a temporary vacancy exists, the Company will inform the Union of the vacancy prior to posting it externally.

Any employee may apply for the job in writing during the posting period.

Selection, to fill vacancies in the bargaining unit, will be made on the basis of minimum qualifications, skill, ability and physical fitness to perform all the duties of the required job to be performed. . . .

10.02 The Union recognizes the right of the Company to select Control Techs on a “most qualified” basis, in accordance with Article 10.01 of the Collective Agreement. The “most qualified” will be determined by evaluating the candidates against the criterion developed during the Master/Control/Computer Tech negotiations.

10.03 The Union recognizes the right of the Company to select Control Techs on a “most qualified” basis, in accordance with Article 10.01 of the Collective Agreement and the criterion developed during the master/Control/Computer Tech negotiations.

10.04 A regular employee upon promotion or assignment for one (1) hour or more to a classified position above the line of progression, calling for a higher rate of pay shall receive the higher rate of pay while performing the duties of that job, except in the case of regular employees who are assigned for the purposes of training.

Part-time employees shall be paid the rate established for the skill group they have been assigned to on the part-time seniority list.

10.05.01 A regular employee assigned to a job which carries a lower rate of pay than a regular employee’s regular rate shall not have his/her rate of pay reduced unless he/she is: (1) assigned to a lower job classification at his/her request, or (2) because of the regular employee’s failure to progress along the line of progression such that Article 11.05.01 applies, or (3) the regular employee is otherwise reassigned through the operations provisions of this Agreement.

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ARTICLE 11 - TRAINING AND PROGRESSION

11.01 In order that the training, ability and qualifications of the work force can best be utilized the Company agrees to create and operate a system of line progression subject to the terms of this Agreement.

11.02 The objectives of the job progression plan are as follows:

(1) to provide the opportunity for employees on progression to learn and develop skills through practical experience and organized training in order to facilitate their meeting the requirements of the higher levels of classification;

(2) to pay employees based on their demonstrated qualifications to meet the agreed upon requirements of an occupational classification;

(3) to provide the Company with a thoroughly competent work force, able to perform effectively the work necessary to keep the plant operating efficiently and safely.

...

The Company will, in consultation with the Union, continue its practice to administer a systematic program, in order to train and qualify employees in the line of progression to meet the qualifications and requirements for classifications in the line of progression.

Progression includes all steps in the progression covering Production Process, Production Offsites, Maintenance/Projects, Warehouse, Laboratory and Fire & Safety and others as herein agreed.

Employees who are paid at a specific level in his/her line of progression will not be considered qualified at that level unless and until he/she successfully completes the training requirements for that level. Employees will be considered qualified for the posts and panels which they have worked prior to December 31, 1997.

11.03 No employee shall suffer reduction in his position or loss of pay through another employee being transferred into a department for training.

....

11.04.03 If the Company fails to provide the required training for the progression program, the employee will automatically receive the rate of pay following the period the employee would have received the required training, except as outlined in the progression plan.

11.05.01 Administration of the Training and Progression program will be the sole responsibility of the Company. Successful completion of each step of the Training Program will be a prerequisite to achieving the next higher level.

Regular employees who fail to meet the criteria for advancement from any level of the Training Progression Program will be given a second opportunity after being informed as to the areas in which he/she is expected to improve and for which he/she may receive extra assistance.

....

11.06.01 The Company reserves the right to start a new regular employee at any level of the training program commensurate with the individual's prior training and experience. This does not mean, however, that such new employee will be placed on other than the entry level of the progression line unless there is no qualified employees to fill in at the appropriate level in the line of progression with no new employee being hired above the Tech B level.

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APPENDIX A - WAGE RATES: OPERATIONS PROCESS, OPERATIONS OFFSITES, LAB, FIRE & SAFETY

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Classification

Control Tech
Control Tech A1
Control Tech A
Control Tech B
Control Tech C
Control Tech D
Process/OS/Comp Tech
Process/OS/Comp Tech A
Process/OS/Comp Tech B
Process/OS/Comp Tech C
Process/OS/Comp Tech D
Training Level II
Training Level I

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APPENDIX F - LETTER OF UNDERSTANDING #4

LETTER OF UNDERSTANDING:

Between: North Atlantic Refining Limited
AND United Steelworkers of America Local 9316

The purpose of this letter is to confirm the following agreement reached between the parties during contract negotiations to renew a collective agreement effective Jan. 1, 2005

For regular employees hired before December 31, 2000, and not in a line of progression who have already requested and have been accepted to train in a line of progression the Company will endeavour, based on ability, qualifications and seniority, to train an employee for the job to which he/she is most likely to have the opportunity of an upgrade. **Temporary assignments and/or assignments during turnarounds will be used for this purpose with the objective that when a permanent vacancy occurs, the employee will be qualified for the job.**

This letter shall form part of the Collective Agreement.

Signed this 25th day of April, 2005.

President U.S.W.A.

Director of Human Resources
North Atlantic Refining Limited

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APPENDIX G - PROGRESSION PROGRAM

| Area “A” | Plant Registration Requirement |
|---|---------------------------------------|
| Post I Crude Preheat Train/Desalter | |
| Post II Crude Fractionation | |
| Post III Vacuum Distillation | |
| Post IV Kero Merox.Splitter/LSR Merox/LER Unit | |
| Post V Amine/Caustic/Fuel Gas | |
| Post VI Visbreaker Unit | 4 th Class |
| Post VII Distillate Hydrotreater | 4 th Class or CT |
| Post VIII Sulphur Plant/SWS | |
| Area “B” | |
| Post I Isomax: Reactor Circuit | 4 th Class or CT |
| Post II Isomax: Fractionation Section | |
| Post III Hydrogen Plant: Reformer/Compressors/Flare Drum | 3 rd Class |
| Post IV Hydrogen Plant: Purification Section Compressors | 4 th Class or CT |
| Post V Naptha Hydrotreater/Platformate Hydrogenation Unit | 4 th Class or CT |
| Post VI Platformer | 4 th Class |
| Post VII Utilities: Water Treatment | 4 th Class or CT |
| Post VIII Utilities: Boilers | 3 rd Class |
| Area “C” | |
| Post I Crude/Intermediate | |
| Post II Black Valley (Black Oil Area) | |
| Post III Effluent Plant | |
| Post IV Gasoline Hill/Jet Fuel/#2 Fuel | |
| Post V Jetty | |
| Post VI Monitoring Panel | |
| Post VII Truck Loading | |

CONTROL TECH DCS DISTRIBUTION

| | |
|--|-----------------------|
| AREA ‘A’ DCS Section 1; Units 11, 12 | |
| DCS Section 2; Units: 17, 18, 20, 22, 35 & 48 | |
| DCS Section 3; Units: 16, 21, & 23. | 4 th Class |
| AREA ‘B’ DCS Section 1, Units: 19, 32, 33, 34, 35, 57& 63 & 66 | 3 rd Class |
| DCS Section 2, Units: 14, 15 & 25. | |
| DCS Section 3, Units: 13 | |

CONTROL TECH SKILLS:

- PC Skills 1. Interplant - LIMS - Tank Gauging
 2. Maximo
 3. Network Knowledge

- DCS Skills 1. Operation Universal Station (HM, HAPM, APM, PM)
 2. Implementation (High Performance Process Manager)
 3. Loop Commissioning and Troubleshooting
 4. Maintenance (LCN/UCN/High Performance Process Manager)

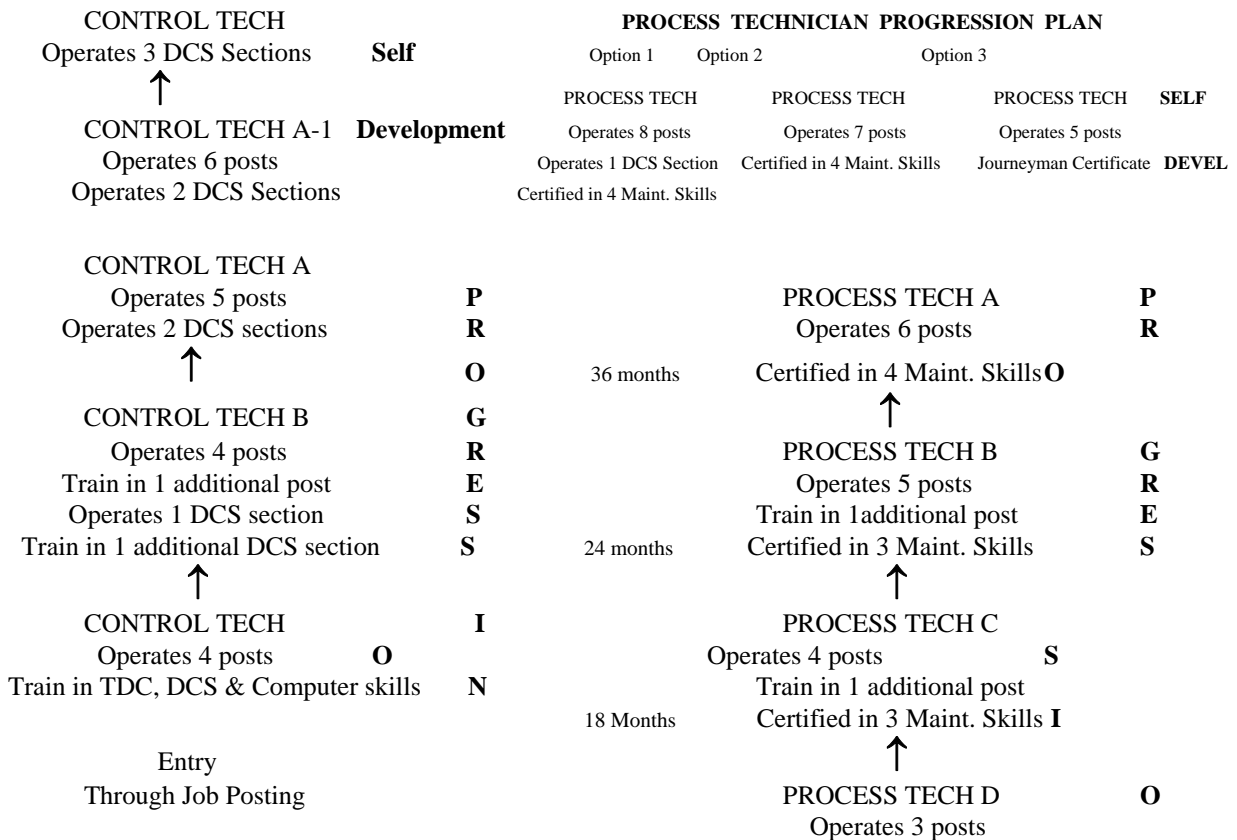
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APPENDIX I - Self Development & Progression Program

The progression program includes three phases of employee training: Compulsory, Progression and 'Self Development'.

Self Development is a voluntary program whereby employees acquire skills and are paid accordingly. Participation in the program will not enhance employee seniority.

Qualification will apply up to the highest level of the progression program and administered in accordance with the provisions of the Collective Agreement.



| | | | |
|--|--|--|---|
| Minimum Requirement Process Tech 'C' Level | 12 Months | Train in 1 additional post Certified in 2 Maint. Skills | N |
| | | ↑ | |
| CONTROL TECH PROGRESSION PLAN | | TRAINEE II | C |
| Normal Operation: | | Operates 1 post | O |
| Maximum of three Control Techs per area. | 6 Months | Train in 1 additional post | M |
| Operates one area with two Control Techs for Short duration | | Certified in 1 Maint. Skill | P |
| | | ↑ | U |
| Panels/Posts combined from Area "a" & Area "B" | | TRAINEE I | L |
| | | Basic Operations | S |
| | | Class Room & Field Training | O |
| | | Training in 1 post | R |
| | | | Y |
| | Panels/Posts combined from Area "A" & Area "B" | | |

BACKGROUND AND EVIDENCE

Between September 29th - October 21st, 2006, the Employer scheduled a Platformer turnaround in its refinery facility. The role of the Platformer is to sweeten crude oil to blend gasoline to customer specifications. While the Platformer was shut down, the Isomax Utilities were operating normally. Others operated at a lower rate.

As part of an attempt to ensure the best and most efficient use of its employees in those circumstances, the Employer assigned 18 employees to turnaround duties and 16 to continuing operations. The particular issue in dispute was the assignment on October 1st, 2nd and 3rd of Ralph Williams to UTP (Utility Panel) duties on continuing operations, while assigning Control Technician Brian Ennis to 19P and unit 13 duties outside the Control room.

On the one hand, Union's position was that the Employer had violated the collective agreement by improperly allowing Mr. Williams to cross over from the Process Tech line of progression to the Control Tech line of progression. On the other hand, the Employer's position was that Mr. Williams did not cross over to the Control Tech line of progression and was not placed in

the position of Control Tech; rather he was simply assigned certain control panel duties which he was qualified to perform while Mr. Ennis was assigned to 19P, because Mr. Williams was not qualified to perform that duty. The Employer also took the position that there was no violation of the Progression Program because that plan is simply a training program permitting employees to learn new skills and obtain commensurate pay increases; it does not create a proprietary right for Control Techs to any particular duties.

The Union's witnesses focussed primarily on the two Progression Programs, the combinations of posts, units, panels and maintenance skills that permitted advancement through the various steps, and how Process Techs could enter the Control Tech line of progression. Viva voce evidence on that subject was technical, detailed and complex.

Greg Stacey, Local President, explained that new employees follow the Process Tech progression program to a minimum level of Process Tech C before they are able to enter the Control Tech line of progression by applying via job postings. Mr. Stacey further drew attention to Appendix G, which indicates the various posts and units associated with Areas A, B & C, and he explained how experience on numbers of outside posts would provide an employee with sufficient skill to work on an inside panel. Although the Progression Program has been in the collective agreement for some time, Mr. Stacey testified that the self-development sections of both progressions were negotiated in 2000. These sections constitute a voluntary program whereby employees may acquire extra skills, greater job proficiency and attain a higher level of pay. Seniority is not affected by this program.

Mr. Stacey also explained that a DCS section refers to a particular position in the plant. For example, Area A, section 1: units 11 and 12 refers to the crude area Posts I and II; Area A, section 2;

units 17, 18, 20, 22, 23, 35 & 48 refers to Vacuum Distillation Post III. Essentially, a section refers to 3 separate panels (screens) in the Control Room, which enable operators to follow the plant process in real time. Mr. Stacey took pains to point out that nowhere in the Process Tech progression does it show a process Tech operating a control panel, except at the top, i.e., in self-development. In fact, Mr. Stacey's position was that self-development is not part of the progression plan beneath.

In cross examination, Mr. Stacey said he knew Dion Piercey was a Process Operator, but did not know what his qualifications or level were in October 2006. If he was a Tech B or C, he could have had Area B, Post VIII - Utilities: Boiler, which used to be in the Boiler House, but was later moved inside in the Control Room. Mr. Stacey agreed that he would not be surprised if a Process Engineer with a 3rd class ticket operated the post in the Boiler House and continued to operate the panel when it was moved inside. In essence, he agreed that to work that post, either the Control Tech or the Process Tech, both with a 3rd Class certificate and the utilities Boiler post, could be assigned either the inside or outside work. He did not know whether Mr. Piercey applied for a job posting to Control Tech. He understood that it was the Company's responsibility to assign within the line of progression and that the Company would likely prefer to assign the lower paid employee. However, if both a Control Tech and a Process Tech are equally trained and qualified to perform certain jobs, it would not be a violation of the collective agreement for the Employer to assign whomever it likes.

In redirect examination, Mr. Stacey said that Deon Piercey was not involved in this grievance; rather it was Mr. Williams who was put on the panel. He reiterated that nowhere does the Process Tech progression say that they can operate a panel. He also indicated that a post is an

outside position, while a panel is inside the control room. In Utilities a post includes a panel. In Appendix I there is no mention about who can be assigned if a Process Tech and a Control Tech are equally trained and qualified. Mr. Ennis is a Control Tech at the top of his classification. Mr. Williams is a Process Tech B or C who is paid less. The question is who should be assigned to the outside work. In Mr. Stacey's view, the Company selects on more variables than dollars and cents. An off-the-street employee with a 3rd class ticket can be hired up to a Process Tech B level in accordance with article 11.06.01. However, in accordance with article 11.05.01, once slotted in a Process Tech progression, an employee with a 3rd class ticket must go through a job posting to work as a Control Technician. In Mr. Stacey's view, article 10.04 does not permit a Process Tech A, B, C or D to work as a Control Tech.

Mr. Brian Ennis, Control Tech, earning top rate of \$36.10/hr, testified that he filed his grievance on October 4, 2006 after he was assigned an outside posting while Mr. Williams filled his Control Tech position despite not being in the line progression to do so. It was his understanding that Mr. Williams had only 2 posts. Since he could only come over to Control Tech if he was on self-development, the Employer violated the collective agreement by placing him in that job. Mr. Ennis testified that he was assigned to an outside posting, for which he was not qualified, but had previously spent some time on. This was the first time he had been assigned to work utilities and not on the panel in the control room.

In cross examination, Mr. Ennis explained that he was assigned to Isomax 13, i.e., Area B, section 3, unit 13 Boilers. To obtain his Control Tech position, Mr. Ennis had to operate 3 DCS sections (1 in Area A and at least 2 in Area B). He said that there were always 2 people operating in section 1. In Area B, section 1, units 32, 33, 34, 35, 37 & 63 are the Utility Boilers. Unit 19 has 2

posts and in section 3, unit 13 has 2 posts. Physically the boiler is in another location, but is electronically associated with the panel in the Control Room. At one time that panel was outside and both Control Techs and Process Techs were assigned to operate it at their own rates of pay. At some point in 2005, the utilities panel was moved into the Control Room, where the previous trained Control and Process Techs continued to operate it as they did when they were previously scheduled to utilities. Mr. Ennis stated that he has always operated that panel. He testified that, at the time of the grievance, that unit was on ordinary operation but a partial shutdown occurred elsewhere.

Mr. Ennis said that Mr. Williams operated the Utilities (UTP) panel on October 1st, 2nd and 3rd. He agreed that Mr. Williams had a 3rd Class operator certificate and he had two posts, namely, water treatment (VII) and Boilers (VIII). He believed that a Process Tech with post VII and post VIII may or may not be trained to operate the boiler from the panel. However, he confirmed that they move themselves around in order to learn the whole Area. He also agreed that a Process Tech who was trained on posts VII and VIII could be assigned to work those posts. The same applied for Control Techs. He further agreed that Mr. Williams learned the two posts VII and VIII and the panel in the same way that other employees did. However, it was his opinion that the collective agreement does not permit someone to learn posts VII and VIII (which includes units 32, 33, 34, 35, 36 & 37) and learn the panel too. Specifically he took the position that, since self-development was placed in the collective agreement in 2000, it is not now possible for those Process Techs who operated the utilities panel when it was outside to operate that panel inside the Control Room. He testified that, when the panel was outside, the Process Techs who operated it only had ½ a DCS section, not a full section as is required now in the Control Tech progression. Mr. Ennis indicated that his grievance is based on the fact that Mr. Williams did not have a full DCS section when he

was assigned to the panel in October 2006.

Mr. Ennis agreed that, hypothetically, if a Process Tech has posts VII and VIII plus 4 others (6 in all) plus unit 13 DCS plus 4 maintenance skills, he would be above the Process Tech A step in the progression, and he would be squarely in Option 1 where he would be allowed to operate the panel as part of his self-development. With that background, however, he would not operate a second panel. There is a separate panel for unit 19, which has 2 posts. To be qualified to operate DCS section 1, a Control Tech must be qualified on 2 panels.

According to Mr. Ennis, prior to self-development, a Process Tech with a Power Engineer certificate with posts VII and VIII would have operated the panel and continued to do so after the panel came inside – even though they had not reached Option 1. However, if they are now enrolled in Option 1, they are permitted to learn the panel. It is possible to be in Option 1 working on unit 13 or having control panel experience. Although the panel involved in these particular circumstances was panel 13, Mr. Ennis took the position that Mr. Williams could not be assigned to that panel unless he had a full DCS section. Mr. Williams only has ½ a DCS section. In Mr. Ennis' view, even if someone was in Option 1 with only ½ a DCS section, it would be OK for him to learn the control panel.

It was Mr. Ennis' opinion that, if a Process Tech learned the panel somewhere else, he still could not be assigned to the panel as was done in Mr. Williams' case. In other words, the Company can assign a Process Tech in Option 1 as part of self-development, but that is not what occurred in these circumstances. Mr. Williams was not in Option 1; he was not in self-development; and therefore he could not be assigned to the panel as he was in October 2006.

The Employer's witness, Robert Mercer, Area B Operations Manager for 4 ½ yrs, testified

that Area B includes Isomax and Utilities and that he had been a professional mechanical engineer for 8 ½ years as Operations Manager at Michelin Tire in Nova Scotia.

Explaining the Platformer turnaround in October 2006, Mr. Mercer testified that a 23 day work (and days off) schedule was developed for both Control and Process Techs (see RM#1). Those above the black line were assigned turnaround duties. Those below were assigned to operations duties. Ralph Williams appears in the operations category assigned to UT (one of the two utilities posts VII - Water Treatment or VIII Boilers) and to UTP (the Utilities Panel). Having been hired in October 2005, Mr. Williams' classification at the time of the turnaround was Process Tech B or C. Mr. Mercer testified that Mr. Williams was trained and qualified on the two outside posts and the utilities panel and he also possessed a 3rd class Power Engineer's certificate. (The Class of a Power Engineer certificate depends on the size of the pressure vessel involved. Chief would need 1st Class, Superintendent 2nd Class, Plant 3rd Class and entry level would be 4th Class). The relevant units were 32, 33, 34, 35, 37, 63 & 66 (the latter being butane refrigeration operations and monitoring)

Mr. Mercer testified that, in August 2005, the Utilities panel was moved inside the Control Room and became operational in October of that year. Previously, the panel was in the Boiler House where it was operated by both Control Techs and Process Techs who were trained and qualified. Under the direction of the Shift Engineer, the Chief Engineer certified people to operate those boilers. There was 1 panel person, a boiler treatment person and a water treatment person. Some of the Control Techs had a full DCS section, but the Process Techs did not. The panel was moved inside to ensure a more secure control system that would prevent processing upsets or miscommunications. When it was moved into the Control Room, the shift engineer made the appropriate assignments: both the Control Techs and the Process Techs who previously worked on

the panel outside continued to do so inside in rotation.

On October 3rd, 2006, Mr. Mercer and the shift supervisor assigned Mr. Williams to UTP and Mr. Ennis to Unit 13. On September 13th, Mr. Mercer knew how many employees would be required to cover the various panels and posts who were qualified to do so. Since time off also had to be scheduled, the best utilization of staff under the circumstances was to use Mr. Williams on the UTP (Utilities panel) and Mr. Ennis on Units 13 and 19 because Mr. Williams was not qualified for those posts.

On October 5th, Mr. Ennis' grievance was received. In essence, Mr. Ennis' objection was that he was being moved outside. The grievance complained that Mr. Williams was not eligible to be assigned to the panel. Mr. Mercer's view was then and is now that Mr. Williams was both trained and qualified to work on that panel. In the meantime, Mr. Ennis was grandfathered into his Control Tech position, part of which involved having some experience with 19P. That experience was sufficient to qualify Mr. Ennis to work on 19P. In contrast Mr. Williams had no experience on 19P. Mr. Mercer's position was that Mr. Williams was not placed in the Control Tech line of progression in these circumstances. There was never any intention to have him fill a Control Tech's position. He remained a Process Tech and was paid his own rate of pay while performing those particular duties for which he was qualified.

In cross examination, Mr. Mercer testified that, since the panel was moved inside, the Employer has not trained new people for the Utilities panel. In his view, it has been better to use those who were trained previously. All except one or two of those people (who were not used for other reasons) have continued to be used on the panel. Mr. Williams was a Process Tech C or B at the time. He was hired on a temporary basis in 2002; he had two posts at the time. The reason why

these people were used for this was due to their Power Engineer certification, which was needed for plant registration. Therefore, they were needed to operate the two utility posts and the panel. That is precisely why Mr. Williams was used: he had a 3rd Class power Engineer certificate. All three men had 2 posts and the utilities panel while they were temporary employees. As temporary employees, they were not on the progression plan. Mr. Williams later started on the progression program with 2 posts and the Utilities panel. He was not assigned to the Control Tech progression in October 2006. Mr. Mercer explained that Mr. Williams has also been used for continuing operations in the same way.

Mr. Mercer agreed that there were two others in Option 1 who could have operated the panel in this situation. Citing Doug Fleming as an example, Mr. Mercer explained that Mr. Fleming, like Mr. Ennis, was qualified to be assigned to 19, whereas Mr. Williams was not. RM#3 demonstrates the assignment to 19 for Mr. Fleming during the period in dispute. Mr. Mercer explained that the assignments to Mr. Williams, Mr. Ennis and others were made for valid and justifiable reasons. In essence, it was his position that all the assignments were made in consideration of the staffing resources and qualifications that were available at the time.

ARGUMENT

The Union

In accordance with article 11.05.01, the successful completion of each step in a progression program is the prerequisite for achieving higher skill and pay levels. Indeed, self-development was introduced to the collective agreement to assist employees progress through the progression chart. Someone coming in with a power engineer certificate moves up progressively by the prescribed

steps. As someone progresses, there is more money for him/her.

Process Techs who progress to Tech A choose self-development voluntarily. From there they can go across to the Control Tech progression program. The title of Appendix I is “Self Development & Progression Program.” The symbol “&” means that self development is not part of the progression program. Article 11.05.01 means that employees must go through the system. The system was introduced so that employees can better themselves through self development. Now the Employer claims that someone can move over from the Process Tech progression program to the Control Tech progression program without going through self development.

Although Mr. Mercer mentioned Mr. Fleming, the Union suggests that there were others above the black line on RM#1 who had the requisite skills, but were not used on continuing operations during the Platformer turnaround.

It should be noted that Mr. Ennis had no problem with a Process Tech in Option 1 coming across to the Control Tech progression program to operate the panel. He also would have no objection with the Employer taking someone from the Control Tech line of progression and putting him in the position in dispute. However, what the Employer is doing is assigning Control Techs outside the control room while Process Techs are assigned to do Control Tech’s work. In the result, the Union requested that the arbitrator rule that 11.05.01 was violated in this case because Mr. Williams had not completed the progression steps that would have permitted him to be assigned to the panel.

The Employer

Neither the grievor nor the Union seem to understand the nature of the Progression Program

in Appendix I. The Union's claim clearly suggests that the Program establishes a proprietary right for a Control Tech to all the duties he/she might perform in his/her classification. That is not the case at all. It is simply not so that someone must be in a particular line of progression when he/she is simply assigned to perform a certain number of duties for which they are qualified. In *Re North Atlantic Refining Limited* and *United Steel Workers of America, Local 9316* (April 16, 2007), unreported (Oakley), the arbitrator ruled that the Employer's supervisors are in the best position to judge an employee's qualifications to do a particular task. The Employer has the responsibility to judge qualifications and it also has the right to assign employees to tasks for which they are qualified unless the collective agreement states otherwise. In the instant agreement, only in layoff situations is there a restriction on this right. There is no restriction where assignments are concerned.

It should be noted that the onus is on the Union to establish on the preponderance of evidence that its interpretation of the collective agreement must be preferred over the Employer's. It would not be enough for the Union to demonstrate only that its interpretation is equal to the Employer's interpretation.

The progression program in this collective agreement is an education and pay system. Its three (3) objectives are clearly stated in article 11.02. The overall purpose of the program is to create the most effective and flexible skills among its work force for the benefit of the Company's work requirements. Clearly, the program does not to establish proprietary rights for anybody. For an employee to acquire the highest pay by having the most skills, the employee must be placed on the progression program. The minimum requirement to gain entry into the Control Tech progression program is the Process Tech "C" level. However, entering the Control Tech progression program must be distinguished from assignments made in accordance with Article 10.

Article 10.02 recognizes the Employer's right to "select Control Techs on a 'most qualified' basis, in accordance with Article 10.01 of the Collective Agreement." Article 10.01 refers to the successful applicant being offered a position within his/her line of progression at a level commensurate with his/her qualifications. Obviously, this requires an application for a job posting. However, there was no job posting in Mr. Williams' circumstances. Rather his was an article 10.04 assignment above the line of progression. If the level of work being performed by a Process Tech in the other classification carries a higher rate of pay, that higher rate prevails unless the assignment is for the purpose of training. In other words, if Mr. Williams was assigned from Process C or B and was performing work within the Control Tech's range of duties, he would get the higher or lower rate applicable.

Appendix I makes it clear that self-help is part of the Process Tech's line of progression. It is not a separate classification. In this case, the Union is trying to create a group of duties exclusive to one classification. Option 1 states "Operates 1 DCS section." The grievor claims that an individual must be in Option 1 to operate a panel. By that logic, if no one chose to go to Option 1, then no Process Techs could operate something they are trained and qualified to operate.

Article 11.05.01 was not violated in this case. This article simply requires employees to move up the line progression by a series of steps. However, article 11.05.02 states:

Notwithstanding 11.05.01, regular employees in the line of progression who have been moved to the next higher level, but without the necessary training for those levels during the currency of the previous Collective Agreement, will receive that training and will maintain their rate until such time as they demonstrate unsuccessful completion of a step in the Training progression program.. . .

That is what Mr. Mercer indicated in his testimony, namely, a Tech's level of pay and level of training may be different. In Mr. Williams case, he had two (2) posts and one panel experience. Therefore, he was qualified for the UTP duties he was assigned to perform. What Mr. Mercer did

was balance the available skills among the employees' various qualifications. Since Mr. Williams was not qualified on 19P, he was utilized in the best possible way, i.e., he was assigned the duties for which he was qualified. That method of assignment was the same for all the other employees who were assigned. This was the Employer's right.

Therefore, the grievance should be denied.

Union Rebuttal

The Union agreed that the Company has the right under article 10.02 to select Control Techs on a "most qualified basis". However, 10.02 says that this is done through the job postings mentioned in article 10.01. Mr. Williams was assigned; he did not apply for a job posting. Nobody can be moved over to the Control Tech progression program from the Process Tech progression program unless he does so via a job posting. The Employer did not follow that requirement in Mr. Williams' circumstances. There is no other route to the Control Tech line of progression .

It should be noted that the heading of article 10 reads "**Article 10 - Vacancies, Transfers & Promotions**". What was done in Mr. Williams' case involved none of those three things. Rather he was assigned to the Control Tech progression program. Since article 10.04 is part of Article 10, it applies to vacancies, transfers or promotions. It is not tied to the progression plan. Mr. Williams was put in a job that someone in Option 1 was entitled to do, but was not given the opportunity. Mr. Williams was placed in the Control Techs' line of progression to perform a Control Tech's job assignment. That is not contemplated by article 10.04. When the Employer did this for Mr. Williams' in these circumstances, it circumvented the progression system, which would have provided for someone in Option 1 to perform the work Mr. Williams did. That should not be

permitted now or in the future.

In the final analysis, the violation of article 11.05.01 is the only issue in this case. The Employer failed to follow the requirements of that article in these circumstances. Therefore, the grievance should be upheld.

CONSIDERATIONS

The essential nature of Mr. Williams' assignment in these particular circumstances

The Union's position is that the Employer improperly assigned Mr. Williams to the Control Tech job in the Control Tech progression program, a job he was not qualified to perform because he had not completed the required steps of that program. The grievor's view was that the operation of the Utilities panel is a duty which is the exclusive right of a Control Tech and that, by his assignment to that panel, Mr. Williams improperly filled his position as Control Tech.

Relying on Mr. Mercer's evidence, the Employer essentially took the position that Mr. Williams was not assigned to fill the Control Tech job; rather he was assigned to certain specific duties that he was qualified to perform.

Initial conclusions arising from the facts and application of the collective agreement.

On balance, I accept Mr. Mercer's evidence that, in these particular circumstances, he participated in the assignment of Mr. Williams to a number of specific duties for which he was qualified to perform; he was not assigned to fill the position of Control Tech. The evidence is convincing that Mr. Williams' prior training and experience with the Employer as well as his

possession of a 3rd Class Power Engineer certificate, qualified him to perform the specific tasks (UT and UTP) he was assigned in these particular circumstances. I do not accept the proposition that, because he had not completed the required steps to move all the way up the Process Tech progression program, he was not qualified to perform those specific duties. This was not a training assignment; it was a work assignment. Progression up the training program steps determines qualification to perform all the requirements of positions in advanced jobs, it does not negate qualifications attained by any means for specific duties short of all those required for a full position in a job. Because of its management expertise in such matters, the Employer has the right to determine when qualifications are successfully achieved in the Training progression program. For the same reason, I am satisfied that the Employer is in the best position to determine whether an employee is sufficiently qualified to perform certain specific duties. Therefore, I accept that Mr. Williams was qualified for the duties to which he was assigned. The ultimate question of course is whether the collective agreement permits or prohibits the kind of assignments made by the Employer in these circumstances. I will address that issue later in these considerations.

I respectfully decline to accept the proposition that the assignment of a duty or a relatively small portion of duties normally performed by a Control Tech constitutes assignment to the whole job or the filling of a Control Tech position. Furthermore, in the absence of specific language to the contrary, I do not accept that, because a duty or duties is regularly performed by a Control Tech, or a Process Tech, or any other employee for that matter, a proprietary or exclusive right to that duty or duties is necessarily established. As long as the assignment is not of such a length and breadth as to clearly bring an employee squarely into a position within another job, it does not result in the employee fully assuming that position or job. In my view, the peculiar staffing needs occasioned by

the Platformer turnaround legitimately required assignment of employees to specific duties in order to cover off required operational tasks. Mr. Williams was not qualified for 19P, but Mr. Ennis, having previous experience in that area, was sufficiently qualified as determined by the Employer. This assignment of peculiar skills to operational requirements was a matter of resource allocation. I am satisfied that the nature of the assignments was not intended to and did not result in assignments to other positions either for Mr. Williams or Mr. Ennis. These circumstances did not bring Mr. Williams squarely within the job of Control Tech. The skills of all employees concerned were canvassed and allocated on a relatively short term and temporary basis for valid business reasons. Essentially then, Mr. Williams was no more placed in a Control Tech position than Mr. Ennis was placed in a Process Tech position. Both their assignments were to specific duties on a relatively short and temporary basis. Again the ultimate issue is whether the collective agreement permits or prohibits that kind of assignment.

The issue of “crossing over” lines of progression

I do not accept that the assignment of a Process Tech in Option 1 to duties regularly performed by a Control Tech results in the Process Tech being placed in the Control Tech progression program. Such work is contemplated while the Process Tech retains his/her position, job title, and rate of pay in the classification system, and while the Process Tech remains in his/her own progression program. The only way for a Process Tech to be placed in the Control Tech progression program is by way of a job posting. An assignment of duties does not accomplish that result.

The parties' respective positions

On the one hand, the Union sees the issue squarely in terms of the Training Progression Program, which, it believes, permits a Process Tech to perform the duties of a Control Tech only in two specific circumstances: 1) by means of a job posting placing him/her in the Control Tech progression program, or 2) by training assignments from Self Development Option 1. In the Union's view, article 11.05.01, which states in part, "[s]uccessful completion of each step of the Training Program will be a prerequisite to achieving the next higher level" has been violated. On the other hand, the Employer sees the issue as an express management right under article 10.04 to assign as it did in this case and takes the position that the Progression Program establishes no limitation whatsoever on that right. Both of those positions cannot be correct, but they both possibly could be incorrect.. My task is to determine whether one is acceptable and the other is not, or whether neither is acceptable but a third position is to be preferred.

Matter of interpretation of the collective agreement

This is a matter of collective agreement interpretation. The consensus among the jurisprudence in such matters is that the workplace is not a debating society and that, in the interest of operational efficiency, it is the Employer's right to interpret the agreement in the first instance and to act on that interpretation accordingly, subject only to an arbitration board subsequently determining that it was wrong. In making such a determination, arbitrators have placed the burden of proof on the Union. Its task is to establish that its interpretation of the agreement must be preferred over that of the Employer. It is not sufficient for the Union to establish that its interpretation is equally as good as the Employer's. Rather, it has to prove on the balance of

probabilities that its interpretation is the one that must be preferred.

The parties agree that this case is not without its complexities. In my opinion, some of the wording of the collective agreement is cumbersome and does contribute to a certain level of complexity, if not confusion. Within those caveats, I will analyse the agreement and then apply it to the facts of this case.

What is the nature of the Progression Program?

Appendix I starts with an explanation on page 106:

APPENDIX I - Self Development & Progression Program

The progression program includes three phases of employee training: Compulsory, Progression and 'Self Development'.

Self Development is a voluntary program whereby employees acquire skills and are paid accordingly. Participation in the program will not enhance employee seniority.

Qualification will apply up to the highest level of the progression program and administered in accordance with the provisions of the Collective Agreement.

First and foremost, this language establishes that the Program is a training program which features three phases, including self-development. Self development is not separate and distinct from the Training progression program; it is one of its three phases. The only thing different about it is that it is voluntary. Therefore, placement in the self development phase is not automatic as it is for the lower levels of qualification reached. The objective of the Program is to train employees to acquire skills and to be paid for possessing those skills accordingly. There are various levels to be attained and "qualification" will result in successfully achieving each level from the lowest to the highest. No seniority right will be created from participation in the program and its administration will be subject to the provisions of the collective agreement.

Page 107 essentially depicts the Control Tech progression program indicating the training sequence commencing from the entry level, which requires that a job posting applicant possess a minimum of Process Tech “C” level. The successful entrant then progresses in his/her training to Control Tech C in 6 months, to Control Tech B in 12 months and to Control Tech A in 24 months. Each step specifies the number of posts, sections and skills associated with that particular step. Once “progression” is completed, “self development” will take a volunteer through more training that will qualify him/her for Control Tech A-1 and ultimately to the highest level of Control Tech. All training so received is practical, i.e., training-by-doing.

Page 108, depicts the Process Tech progression program. There is a beginning “compulsory” section consisting of two steps, a “progression” section consisting of four (4) steps showing the respective number of skills and posts associated with Process Tech D, C, B, and A. Then “self-development” takes a volunteer through more training as Process Tech in Options 1, 2, or 3. In Option 1, for the first time there is training on a DCS section, a training feature found throughout the Control Tech training program. Training in this progression is primarily training-by doing.

There is no question that a Process Tech cannot become part of the Control Tech progression program unless he/she enters through a job posting. At the self development stage, although it is not expressly stated so and there is no explanation how it is arranged, it appears to be a logical inference that a Process Tech in Option 1 must be able to do training in one DCS section. Since all such training involves physically working on the relevant components, i.e., training-by-doing, presumably a Process Tech in that situation would participate in practical work situations. Frankly, I am at a loss to conceive how such practical participation could occur other than by temporary work assignments. Clearly, the Process Tech in Option 1 would remain a Process Tech in that Option throughout any

and all such training assignments. He/she would never become a Control Tech while participating in such training and he/she would not fill a position performing the actual job of Control Tech. Therefore, he/she would never be placed in the Control Tech line of progression during those work assignments. To be placed in the actual line of progression, an individual would have to do the training associated with each level in sequence. Clearly then, a Process Tech in Option 1, would not “cross over” into the Control Tech progression program, he/she would simply perform certain work assignments on a temporary basis that would assist him/her ultimately to acquire the level of training and qualification contemplated in Option 1.

As I see it, the foregoing training would necessarily have to feature temporary work assignments, which at no time would place the Process Tech in another line of progression, i e., in another training line of progression (for that is precisely what a progression program is); there would be no cross over into another line of progression; and there would be no assuming the job of Control Tech. In my view, the lines of progressions on page 107 and 108 do not create proprietary rights such that only the Techs in that line may perform the tasks associated with the various levels. The line of progression does not create any right of ownership to any particular duties, it simply provides the means for employees to qualify for positions that might exist in certain jobs. Qualifying for a position does not by itself create ownership of duties. If there is to be ownership, then the collective agreement would have to clearly and unequivocally say so. Not even job descriptions (of which none were introduced at this hearing) create watertight compartments unless the parties negotiate language expressly saying so. Clearly, work assignments can be made for training purposes. I note that, during the term of this collective agreement, work assignments for training purposes were expressly stated in Appendix F – Letter of Understanding # 4, viz:

....

For regular employees hired before December 31, 2000, and not in a line of progression who have already requested and have been accepted to train in a line of progression the Company will endeavour, based on ability, qualifications and seniority, to train an employee for the job to which he/she is most likely to have the opportunity of an upgrade. **Temporary assignments and/or assignments during turnarounds will be used for this purpose with the objective that when a permanent vacancy occurs, the employee will be qualified for the job.** (Bolding appears as it is in the agreement).

....

So it is clear that temporary assignments have been typically used by the Employer to administer training programs. Those work assignments contemplate working on certain duties; they do not contemplate the filling of a whole job. The question that must be answered of course is whether the collective agreement prohibits the Employer from using temporary work assignments for reasons other than training.

Does the agreement prohibit the Employer from making work assignments other than for training?

There are many articles in the agreement containing the words “assign,” “assigned,” or “assignment”. Article 4.01 , which, subject to being specifically abridged by the Agreement, gives the Employer the exclusive (among others) right to “assign to shift”. This clause does not explain what “assign to shift “ means. But clearly the clause does not state “assign to specific work duties”

As a matter of interpretation, I am satisfied that this expression deals more with the assignment of employees to actual shifts than to the assignment of employees to certain work duties. Therefore, I find that “assign to shift” in article 4.01 does not provide an express right for the Employer to assign employees to specific duties for which they are qualified. If such an express right does exist, it will have to be found in another collective agreement provision, or it might arise by virtue of a

reservation to management under Article 4.02, and not be specifically abridged elsewhere in the collective agreement. It appears that the language of Appendix F and Appendix I tends to confirm that right (whatever its origin) as far as training assignments are concerned. However, the fact that these appendices make mention only of assignments for training purposes does not specifically abridge any right to assign employees in non training situations to specific duties for which they are qualified.

Article 10.04 speaks of the assignment of a regular employee “for one (1) hour or more to a classified position above the line of progression . . . shall perform the higher rate of pay while performing the duties of that job.” The heading of Article 10 is “VACANCIES, TRANSFERS & PROMOTIONS”. In this case, the Union argued that 10.04 does not apply because Mr. Williams’ situation was an assignment, not a vacancy, a transfer or a promotion. As I see it, however, notwithstanding the heading of Article 10, article 10.04 would have application if an assignment were made to a “position above the line of progression.” This expression brings the issue within the context of the Training progression program. A position could be vacant either temporarily or permanently if the incumbent for any number of reasons was unable to fill it. If the Employer needed somebody to fill that position temporarily, a temporary assignment or transfer might be a likely choice. The important point is that 10.04 expressly provides the Employer with the right to assign somebody to fill a position above the line of progression, which means that the individual could be assigned to a higher skilled position carrying a higher rate of pay. I would presume that a reasonable level of qualification or competency would be contemplated before such an assignment is made. The question of course is what “a position above the line of progression” means. To determine a meaning for this, I must digress for a moment to resolve the problematic notions of

duties, job, position, and classification.

What do duties, job, position and classification mean?

In my experience, many parties get into collective agreement language difficulty by failing to correctly distinguish these terms. That is particularly so for position, job, and classification, which are often used interchangeably. Practically speaking, the operation of any workplace begins with identifying the various tasks or duties that must be performed in order to produce the products or outcomes required by an organization. Once identified, those duties need to be grouped into rational bundles that would identify particular jobs, which are given job titles. For example a particular bundle of duties might constitute the job of Labourer, another might constitute the job of Welder, the job of Plumber, and so on for Clerk, Secretary, (and with the Refinery in mind) Process Tech, Control Tech, etc. Once the various jobs (in accordance with the type of particular duties bundled together) are identified, an employer will set about determining how many individuals it regularly needs to perform each job: for example, how many Welders, how many Process Techs, etc. This essentially will identify how many positions will be required. For example, it might mean 20 positions for the job of Process Tech, 15 positions for the job of Control Tech, etc. There might also be further distinctions or subsets determined such as Process Tech D, C, B, A. or Control Tech C, B, A. For each position needed, an employee will be recruited, selected, etc., by the usual human resources activities. Then the employer will have to determine the appropriate rate of pay to assign to each job or position. This is accomplished by means of a classification system (sometimes referred to as a job classification system) which applies techniques such as job analysis and job evaluation and appropriate market comparisons. In other words, classification is not a job, or a job title, or a

position; it is a pay ranking system. The word classification to describe a job title is often inappropriately utilized, thereby resulting sometimes in problematic collective agreement language. The ultimate result of classification is the ranking of jobs relative to each other on a pay scale. In the instant collective agreement, the parties have expressed the sequence of pay ranking in descending order for a number of Control Tech and Process Tech job titles on page 79 of the agreement, viz:

Classification

Control Tech
Control Tech A1
Control Tech A
Control Tech B
Control Tech C
Control Tech D
Process/OS/Comp Tech
Process/OS/Comp Tech A
Process/OS/Comp Tech B
Process/OS/Comp Tech C
Process/OS/Comp Tech D
Training Level II
Training Level I

Interestingly, the parties have chosen to use the word classification to describe each job title on the above list. Clearly, the parties have chosen to identify more than the job of Control Tech and the job of Process Tech; they have identified 13 job titles in all.

What is meant by “assignment to a position above the line of progression”?

The parties have chosen to identify a distinct job title for Control Tech and another for Control Tech A-1. Both of those job titles exist squarely in the self-development phase above the progression phase in the Control Tech progression program. This would appear to allow application of article 10.04, i.e., assignment “above the line of progression . . .” in that progression program. Similarly, the parties have chosen to identify the single title of Process Tech in each of “Option 1,

Option 2 and Option 3" in the self-development phase of the Process Tech progression program. There is a distinct pay rate assigned to that job title. This would indicate that article 10.04 also has application to assignments to positions above the line of progression in the Process Tech progression program. Clearly, the Process Tech line of progression is not beneath the Control Tech line of progression. Although the classification system indicates that the various Control Tech titles pay more than the corresponding level Process Tech job titles, the fact of the matter is that the full Control Tech pay scale is not above the full Process Tech pay scale. Some higher levels in the Process Tech category pay more than some of the lower levels in the Control Tech category. This is consistent with the classification pay scale ranking system. But the classification ranking is not the same as the line of progression ranking. Advancement to the top self development phase of the Process Tech progression program does not entitle a Progress Tech to be assigned to a position in the Control Tech progression program. The only way a Process Tech can be assigned to a Control Tech position is by way of a job posting to Control Tech D at the entry level. In the result, it is my interpretation that assignments to positions above the line of progression refers to assignments to positions in the self development phase of each respective progression program.

In my view, since the parties chose job titles and classification pay scales for two (2) jobs in the Control Tech self development phase and one (1) job title and a single pay scale for one job in the Process Tech self development phase, it follows that anybody performing one of those jobs must be filling a position at that level. Therefore, it is possible in each program to be assigned to a position above the line of progression in that program. It does not follow, however, that someone one can be assigned to a position in another progression program. To reiterate: the only way to fill a position in another progression program is to enter the progression via a job posting.

The foregoing covers the issue of assignments to positions within the training progression program. It does not deal with other types of non training assignments.

Does article 10.04 express a right to assign to specific duties?

In my view, it is not too fine a point to pose the question whether there is anything in the collective agreement preventing the Employer from assigning someone, not to a position above a line of progression as article 10.04 contemplates, but to certain specific work duties in another position or job for which duties he/she is qualified. Article 10.04 does not specifically address this issue. It deals only with assignments to a position, not to assignments to certain specific duties. For that reason, I do not accept the Employer's claim that its right to assign to specific duties is expressly provided in article 10.04.

Is there a reserved right of management which is not abridged by any other provision of the agreement?

However, the fact that 10.04 does not mention assignments other than to a position does not mean that all other types of assignments are prohibited. In other words, article 10.04 does not specifically express such a right, but neither does it expressly prohibit it. The remainder of the collective agreement must be examined to determine whether such a right is expressed or prohibited. A cursory look at provisions already discussed might suggest that straight forward definitive provisions do not exist. For example, we know from appendices F and I that such assignments do occur for training reasons, but the issue of other types of non training assignments is neither expressed nor prohibited. A first blush then, if the collective agreement sections relied upon by the parties do not settle this issue, it might be prudent at this point to initially anticipate that an express

right might not exist at all. If a right to assign for other than training reasons is not directly expressed in a collective agreement provision, the issue then would be whether it exists as a reserved right of management. As article 4.02 says:

All management rights, whether enumerated or otherwise, shall be reserved unto management except as specifically abridged by this Agreement.

Clearly, the parties have put their minds to the notion that a management right can exist in the absence of a collective agreement provision specifically expressing it, and that it would require specific language in another collective agreement provision to abridge it. In other words, it would take specific collective agreement language to prohibit reserved management rights.

Therefore, I will continue with the collective agreement analysis to determine 1) if there is a provision expressly granting such a right to the Employer, or 2) if the right exists as a matter of reservation to management and 3) whether there is a provision specifically prohibiting such a right.

Article 10.05.01 refers to “assigned to a job” and “assigned to a lower job classification.” Neither is relevant because the issue in this case is assignment to specific duties..

Article 10.05.02 also refers to “assigned to a job,” and for the same reason is not relevant.

Article 10.06 01 does not mention the word assignment as such, but it describes “a temporary vacancy, where a bundle of duties is required to be performed by reasons of absence or a temporary excess work load” Interestingly, this clause goes on to provide that a permanent vacancy will be declared after a regular employee has performed the temporary vacancy for 140 days, and only at that point will “the duties being performed ... constitute a job for which a vacancy is deemed to exist which then must be posted in accordance with Article 10.” I mention this clause primarily to point out that the parties themselves appear to consider the performance of a whole bundle of duties (not merely some specific duties) exempt from job posting until they have been performed for 140 days.

Clearly the parties recognize that the performance of work even on a long term temporary basis is to be considered less than sufficient to constitute a job worthy of posting. In my view, the temporary assignments to specific duties made by the Employer in the circumstances of the instant case are minor by comparison.

Article 10.06.02 speaks of “the junior qualified employee will be assigned to fill the position.” Again filling the whole position is not what happened in this case.

Article 10.09 addresses “temporary assignments outside the bargaining unit,” a notion that is not relevant to this case.

Articles 10.10, 10.11, 10.12, 10.13 and 10.14 deal with supervisory assignments and assignments outside the bargaining unit, each of which have no relevance here.

Article 11.03 provides position and pay protection for employees when others transfer into their department for training. A transfer is a type of assignment, but the clause is silent on the scope of these transfers. Once again the right to assign to specific duties as the Employer did in the instant case is neither specifically expressed or prohibited. As such this clause is of little assistance.

Article 13.04.13 refers to “the original assigned crew,” not a concept that is helpful here.

Article 14.02 speaks of employees being “assigned work related to or arising from that work which he/she was called out to perform.” My sense is that this refers to call out work associated with the bundle of duties in the employee’s job description. However, the clause is silent on whether an employee might be called out for an assignment in a job other than his own. On balance, the best that can be said of this clause is that it does not specifically prohibit the type of assignments made to Mr. Williams or Mr. Ennis in October of 2006.

Unless I have missed something among the remaining provisions of the agreement, the next

time assignments are mentioned is Appendix F, Letter of Understanding #4, which deals with temporary assignments and or assignments during turnarounds as of January 1, 2005 being accepted toward training qualifications for regular employees hired before December 31, 2000, who had not previously been in a line of progression. This language clearly recognizes the Employer's right to assign employees temporarily and to assign them during turnarounds to assist them to qualify for "the job to which he/she is most likely to have the opportunity of an upgrade." Although this language is written in the context of training, even if one were to take the position that it does not affirm the right of the Employer to assign employees to specific duties, it certainly does not specifically abridge the Employer's reserved right to assign in that manner.

Essentially then, I have been unable to find any provision of the collective agreement that, in my opinion, expressly provides or abridges the right of the Employer to assign employees to any work duties for which they are qualified whether or not those duties are normally performed by employees in other positions or other jobs. The Employer's right to assign employees to work duties for which they are qualified is a non-enumerated reserved right of management.

Summary

I find that Mr. Williams was not placed on the Control Tech progression program in these circumstances and was not assigned to Mr. Ennis' Control Tech position. He was assigned for valid reasons to the specific UT and UTP duties he was asked to perform. This was not a training assignment; it was a work assignment. The Training progression program does not establish proprietary rights for any employee to all and every duty he might perform as a Control Tech. Neither the scope of the specific duties performed by Mr. Williams nor the short duration and temporary nature of his assignments brought him sufficiently into the position or job of Control Tech

to result in him assuming those categories.

Mr. Ennis was not displaced by Mr. Williams; he was assigned to outside duties which he was qualified to perform but Mr. Williams was not qualified. Their assignments were a matter of skill and resource allocations under justifiable operational circumstances in which both employees retained their own positions and job titles and maintained their respective rates of pay.

I find that the right to assign employees to specific work duties for which they are qualified is not clearly and unequivocally expressed in article 10.04 or anywhere else in the agreement, but is nonetheless a right reserved unto management in accordance with article 4.02. I further find that no collective agreement provision specifically abridges that right.

Therefore, I find that the Employer had the right to assign Mr. Williams and Mr. Ennis to the specific assignments they were directed to perform in the particular circumstances of the Platformer turnaround in September/October 2006.

DECISION

On the basis of the evidence, the parties' submissions, and by the foregoing considerations, I find that the Employer had the right to assign Mr. Williams and Mr. Ennis to the specific assignments they were directed to perform in the particular circumstances of the Platformer turnaround in September/October 2006.

No violation of the collective agreement occurred in these circumstances.

Therefore, the grievance is denied.

Respectfully submitted as the decision of the arbitrator.

Dated at Mount Pearl, Newfoundland and Labrador, this 2nd day of April, 2008.

David L. Alcock
Sole Arbitrator